Review of Regulatory and Institutional Frameworks on Carbon Capture and Storage in Bosnia-Herzegovina, Kosovo and Serbia

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Final Report

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Appendix 1 Listing of laws and secondary legislation relating to environment in Kosovo
**ABBREVIATIONS**

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<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>Acquis</td>
<td>Acquis communautaire</td>
</tr>
<tr>
<td>BiH</td>
<td>Bosnia and Herzegovina</td>
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<tr>
<td>CCS</td>
<td>Carbon capture and storage</td>
</tr>
<tr>
<td>CDM</td>
<td>Clean Development Mechanism</td>
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<tr>
<td>CO₂</td>
<td>Carbon dioxide</td>
</tr>
<tr>
<td>DB</td>
<td>District Brčko of Bosnia and Herzegovina</td>
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<tr>
<td>EC</td>
<td>European Commission</td>
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<tr>
<td>ECT</td>
<td>Energy Charter Treaty</td>
</tr>
<tr>
<td>EEA</td>
<td>European Environmental Agency</td>
</tr>
<tr>
<td>EEZ</td>
<td>Exclusive Economic Zone</td>
</tr>
<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
</tr>
<tr>
<td>EIONET</td>
<td>European Information and Observation Network</td>
</tr>
<tr>
<td>EMAS</td>
<td>Eco-Management and Audit Scheme</td>
</tr>
<tr>
<td>EMS</td>
<td>Serbian transmission system operator</td>
</tr>
<tr>
<td>EPA</td>
<td>Environmental Protection Agency</td>
</tr>
<tr>
<td>EnCT</td>
<td>Energy Community Treaty</td>
</tr>
<tr>
<td>Entity</td>
<td>The Federation of Bosnia and Herzegovina or the Republika Srpska</td>
</tr>
<tr>
<td>Entities</td>
<td>The Federation of Bosnia and Herzegovina and the Republika Srpska</td>
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<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>ESC</td>
<td>Environmental Steering Committee</td>
</tr>
<tr>
<td>ESPOO</td>
<td>Convention on Environmental Impact Assessment in a Transboundary Context</td>
</tr>
<tr>
<td>FBiH</td>
<td>Federation of Bosnia and Herzegovina</td>
</tr>
<tr>
<td>FMET</td>
<td>Federal Ministry of Environment and Tourism</td>
</tr>
<tr>
<td>GHG</td>
<td>Greenhouse gas</td>
</tr>
<tr>
<td>GMOs</td>
<td>Genetically modified organisms</td>
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<tr>
<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>---------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
</tr>
<tr>
<td>INC</td>
<td>Initial National Communication for needs of UNFCCC</td>
</tr>
<tr>
<td>JCTF</td>
<td>Joint Consultative Task Force</td>
</tr>
<tr>
<td>KEK</td>
<td>Kosovo Energy Corporation</td>
</tr>
<tr>
<td>KEPA</td>
<td>Kosovo Environmental Protection Agency</td>
</tr>
<tr>
<td>KOSTT</td>
<td>Kosovo electricity transmission system operator</td>
</tr>
<tr>
<td>LEAP</td>
<td>Local Environmental Action Plans</td>
</tr>
<tr>
<td>LEP</td>
<td>Law on Environmental Protection</td>
</tr>
<tr>
<td>MESP</td>
<td>Ministry of Environmental and Spatial Planning</td>
</tr>
<tr>
<td>MIA</td>
<td>Ministry of Internal Affairs</td>
</tr>
<tr>
<td>MIAFWM</td>
<td>Ministry of Agriculture, Forestry and Water Management</td>
</tr>
<tr>
<td>MLSP</td>
<td>Ministry of Labour and Social Policy</td>
</tr>
<tr>
<td>MOFTER</td>
<td>Ministry of Foreign Trade and Economic Relations (B&amp;H State level)</td>
</tr>
<tr>
<td>NEAP</td>
<td>Inter-entity Plan of Activities in Environmental Sector</td>
</tr>
<tr>
<td>NSCESD</td>
<td>National Steering Committee for Environment and Sustainable Development</td>
</tr>
<tr>
<td>OG BiH</td>
<td>Official Gazette of Bosnia and Herzegovina</td>
</tr>
<tr>
<td>OG BiH-IA</td>
<td>Official Gazette of Bosnia and Herzegovina – International Agreements</td>
</tr>
<tr>
<td>OG FBiH</td>
<td>Official Gazette of Federation Bosnia and Herzegovina</td>
</tr>
<tr>
<td>OG RS</td>
<td>Official Gazette of Republika Srpska</td>
</tr>
<tr>
<td>PEEREA</td>
<td>Protocol on Energy Efficiency and Related Environmental Aspects</td>
</tr>
<tr>
<td>PSC</td>
<td>Project Steering Committee</td>
</tr>
<tr>
<td>RCC</td>
<td>Regional Cooperation Council</td>
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<tr>
<td>RERS</td>
<td>Regulatory Commission for Energy</td>
</tr>
<tr>
<td>RS</td>
<td>Republic of Srpska</td>
</tr>
<tr>
<td>SAA</td>
<td>Stabilisation and Association Agreement</td>
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<tr>
<td>SAP</td>
<td>Stabilisation and Association Process</td>
</tr>
<tr>
<td>SEA</td>
<td>Strategic Environmental Assessment</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<td>--------------</td>
<td>----------------------------------------------------</td>
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<tr>
<td>SERC</td>
<td>State Electricity Regulatory Commission</td>
</tr>
<tr>
<td>SFRY</td>
<td>Socialist Federal Republic of Yugoslavia</td>
</tr>
<tr>
<td>ToR</td>
<td>Terms of Reference</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNFCCC</td>
<td>United Nations Framework Convention on Climate Change</td>
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<tr>
<td>UNMIK</td>
<td>United Nations Interim Administration Mission in Kosovo</td>
</tr>
<tr>
<td>WB</td>
<td>World Bank</td>
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</tbody>
</table>
1. Introduction

With coal expected to remain the backbone fuel for the power sector, the energy sector is a leading source of greenhouse gas emissions worldwide. In the global endeavour to limit carbon dioxide emissions, carbon capture and storage (CCS) is being promoted and developed by some organisations as a means of reducing climate change.

These proponents view carbon dioxide capture and geological storage as a bridging technology that will contribute to mitigating climate change. It consists of the capture of carbon dioxide (CO₂) from industrial installations, its transport to a storage site via pipeline and its injection into a suitable underground geological formation for the purposes of permanent storage.

The diagram below visually demonstrates the process. CCS would be most sensibly deployed by developing networks where clusters of power stations or other heavy industry adopting CCS to use the same pipeline infrastructure. Given the expense of CCS technology and infrastructure, co-operation between countries in the same region would be prudent. For example, CO₂ could be captured in several countries and then transported across borders in pipelines for storage in another country in the region.

![Diagram of carbon capture and storage process](image)

Source: National Grid website

However, the use of CCS is not uncontroversial. There are bodies and organisations who dispute its usefulness, arguing that the technology involved is not yet proven and that it cannot be deployed in time and at the required scale to avoid the worst impacts of climate change.
Although the World Bank does not necessarily endorse the use of CCS technology, it is involved in various knowledge sharing initiatives on the subject. The objective of this study is to carry out a review of the existing national, regional, bilateral and multilateral institutional, regulatory and legal frameworks in Bosnia-Herzegovina, Kosovo, and Serbia relating to CCS. The purpose of the review is to enable gaps to be identified which might prevent the development of national and cross-boundary CCS projects and to suggest approaches to address the identified gaps.

2. International and European Legal Framework

International level

At present there is no international convention dealing specifically with CCS. Nevertheless, certain conventions are of general relevance to the CCS context, whilst other even regulate certain aspects of CCS. These conventions cover climate change and maritime law, and in particular, conventions concerning the protection of the marine environment. The table below shows whether or not Bosnia and Herzegovina, Kosovo and Serbia are parties to these agreements.

<table>
<thead>
<tr>
<th>International Convention</th>
<th>Status of accession</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Nations Framework Convention on Climate Change (UNFCCC)</td>
<td>Bosnia and Herzegovina: Party, Kosovo: Not a party, Serbia: Party</td>
</tr>
<tr>
<td>Kyoto Protocol</td>
<td>Bosnia and Herzegovina: Party, Kosovo: Not a party, Serbia: Party</td>
</tr>
<tr>
<td>Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention)</td>
<td>Bosnia and Herzegovina: Not a party, Kosovo: Not a party, Serbia: Not a party</td>
</tr>
<tr>
<td>London Protocol</td>
<td>Bosnia and Herzegovina: Not a party, Kosovo: Not a party, Serbia: Not a party</td>
</tr>
<tr>
<td>Barcelona Convention for Protection against Pollution in the Mediterranean Sea</td>
<td>Bosnia and Herzegovina: Party, Kosovo: Not a party, Serbia: Party</td>
</tr>
</tbody>
</table>
The United Nations Framework Convention on Climate Change (UNFCCC) sets the ultimate objective of stabilising greenhouse gas concentrations at a level that would prevent dangerous anthropogenic (human induced) interference with the climate system.

UNFCCC is complemented by the 1997 Kyoto Protocol, which has 192 Parties. Under this treaty, 37 industrialised countries and the European Community have committed to reducing their emissions by an average of 5 percent by 2012 against 1990 levels. The major distinction between the Protocol and the Convention is that while the Convention encouraged industrialised countries to stabilise GHG emissions, the Protocol commits them to do so. Industrialised countries must first and foremost take domestic action against climate change, although the Protocol also allows them to meet their emission reduction commitments abroad through so-called “market-based mechanisms”, such as the Clean Development Mechanism (CDM). The CDM permits industrialised countries to earn emission credits through investment in sustainable development projects that reduce emissions in developing countries.

The UNFCCC and the Kyoto Protocol do not expressly refer to the use of CCS, although proposed new accounting and inventory methodologies have gone some way toward its inclusion in the portfolio of climate change mitigation mechanisms.

For several years, there has been a proposal that CCS should be included in the Kyoto Protocol’s CDM. This proposal has gained positive backing at the recent Conference of the Parties (COP) 16 in Cancun, Mexico in 2010. There, Decision-/CMP. 6 was adopted which decided that CCS in geological formations is eligible as project activities under the CDM, provided that the issues identified in decision 2/CMP.5, paragraph 29, are addressed and resolved in a satisfactory manner. The next step in the process is that the Subsidiary Body for Scientific and Technological Advice is to prepare modalities and procedures for the inclusion of carbon dioxide capture and storage in geological formations as project activities under the clean development mechanism, ready for the COP 17 in South Africa in 2011.

Serbia and Bosnia and Herzegovina are parties to the UNFCCC and to the Kyoto Protocol (non Annex I and non Annex B parties respectively).

As Kosovo is not a member of the UN, it could not formally join either the UNFCCC or Kyoto Protocol. No climate change strategy exists in Kosovo, and there is also no greenhouse gas inventory. Yet, as a Party to the Energy Community Treaty (discussed below), Kosovo is committed to “endeavour to accede” to the Kyoto Protocol. Awaiting membership with the UN, Kosovo can still take steps to comply with these instruments as it was a State Party. While it is not under an international obligation to do so, from a moral, and perhaps most importantly, constitutional standpoint, it is obliged to take such measures and set appropriate targets on carbon emissions.

United Nations Convention on the Law of the Sea (UNCLOS) was signed in 1982 but only came into force in 1994. It introduced provisions setting the limit of various areas, measured from a carefully defined baseline such as internal waters, territorial waters, archipelagic waters, contiguous zone, exclusive economic zones (EEZs) and the continental shelf. It also contains provisions on navigation, on

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1 See http:// unfccc.int/files/meetings/cop_16/application/pdf/cop16_cmp_ccs.pdf
3 See, e.g., article 52(3) of the Constitution of the Republic of Kosovo (stating that: “The impact on the environment shall be considered by public institutions in their decision making processes.”).
archipelagic status and transit regimes, the EEZs, continental shelf jurisdiction, deep seabed mining, the exploitation regime, protection of the marine environment, scientific research, and settlement of disputes.

In order to protect the marine environment from pollution, UNCLOS requires states “not to transfer, directly or indirectly, damage or hazards from one area to another” (Article 195). At present, there is no conclusive opinion as to whether CO₂ constitutes a pollutant, nor whether it is considered a hazardous substance under UNCLOS. If CO₂ is defined in this way, it would prevent states from transporting CO₂ from the capture site to an offshore storage site.

UNCLOS does not address CO₂ pipelines specifically, but it does regulate the laying of pipelines in general and these rules could be extended to CO₂ pipelines. The right to lay pipelines is subject to different conditions and different jurisdictions can apply depending on the area of the sea where the pipeline is laid. Transport by ship could also fall under the provisions of the Convention.

Serbia and Bosnia and Herzegovina are parties to UNCLOS, but Kosovo is not.

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972, (London Convention) was one of the first international conventions to protect the marine environment from human activities and has been in force since 1975. In 1996, the London Protocol was agreed to modernise the Convention. In 2006, the Contracting Parties to the London Protocol adopted amendments that allow and regulate the storage of CO₂ streams from CO₂ capture processes in geological formations under the seabed. This was welcomed as an important step towards addressing the legal uncertainty surrounding CCS and is regarded by some scholars as the first international law explicitly addressing carbon sequestration in international waters and a step towards creating a positive international legal framework for CCS activities.

The London Protocol as amended includes ‘carbon dioxide streams from carbon dioxide capture processes for sequestration’ in Annex I (paragraph 1.8) listing wastes or other material that may be considered for dumping. Point 4 of Annex I states that:

“Carbon dioxide streams referred to in paragraph 1.8 may only be considered for dumping, if:
.1 disposal is into a sub-seabed geological formation; and
.2 they consist overwhelmingly of carbon dioxide. They may contain incidental associated substances derived from the source material and the capture and sequestration processes used; and
.3 no wastes or other matter are added for the purpose of disposing of those wastes or other matter.”

Serbia is a party to the London Convention, but not to the London Protocol. Bosnia and Herzegovina and Kosovo are not party to either agreement.

The Barcelona Convention for Protection against Pollution in the Mediterranean Sea 1976, is a regional convention to prevent and abate pollution from ships, aircraft and land based sources in the Mediterranean.

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5 World Resources Institute: London Protocol Adopts Amendment Allowing for Sub-seabed Carbon Dioxide Storage
Sea. This includes, but is not limited to, dumping, run-off and discharges. Parties to this Convention cooperate and assist in dealing with pollution emergencies, monitoring and scientific research. Members commit to take specific measures against *inter alia* pollution caused by prospection for, and exploitation of, the continental shelf, the seabed and its subsoil. The indirect introduction of CO$_2$ into the marine environment by an accidental release from CO$_2$ transport or geological storage activities can be considered pollution under the Barcelona Convention if it results in harm to living resources or hazards to human health. Certain aspects of the Dumping Protocol and the Land Based Protocol as amended in 1995 could also be relevant to CCS. Bosnia and Herzegovina and Serbia are parties to this Convention, but Kosovo is not.

The *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* imposes strict requirements on transboundary movements of hazardous waste, such as prior written notice by the state of export to the competent authorities of the state of import and transit, consent and tracking of waste movements. The Basel Convention places outright bans on the export of hazardous wastes to certain countries. Transboundary movements are permissible if the state of export does not have the capability to manage or dispose of the hazardous waste in an environmentally sound manner. A transboundary movement of CO$_2$ might trigger the application of the Basel Convention although this is not yet certain as CCS has not been considered in the context of the Basel Convention. When it is considered, the key issue will be on the classification of CO$_2$ and whether it should be considered as a hazardous waste under the Convention. Serbia and Bosnia and Herzegovina are parties to the Basel Convention, but Kosovo is not.

**EU level**

In April 2009, the EU adopted Directive 2009/31/EC on the geological storage of carbon dioxide with the aim of establishing a legal framework for the environmentally safe geological storage of carbon dioxide to contribute to the fight against climate change. The purpose of environmentally safe geological storage of CO$_2$ under this Directive is permanent containment of CO$_2$ in such a way as to prevent, and, where this is not possible, eliminate the negative effects and any risk to the environment and human health. It covers all CO$_2$ storage in geological formations in the EU, and lays down requirements covering the entire lifetime of a storage site. Existing legal frameworks are used to regulate the capture and transport components of CCS. It requires Member States to regulate this new area by for example the issuance of

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exploration permits, storage permits, and by ensuring that monitoring and inspections are carried out and that the storage site operator sets aside a financial guarantee. Notably, the Directive does not insist that Member States create such storage sites on their territory.

EU Member States are obliged to transpose Directive 2009/31/EC by 25 June 2011. Bosnia and Herzegovina, Serbia and Kosovo are not yet members of the EU, but as potential candidate countries, each committed to EU membership, they will at some point in the future, need to take steps to harmonise with Directive 2009/31/EC.

Bosnia-Herzegovina has not yet taken steps to transpose Directive 2009/31/EC into national law.

At present, Serbia has not transposed Directive 2009/31/EC into its national legal system, nor is Directive 2009/31/EC mentioned in any environmental protection or energy strategy (e.g. National Strategy on Sustainable Development, Energy Development Strategy and the Waste Management Strategy). Only when Directive 2009/31/EC is included in Serbia’s National Programme for Integration into the European Union are harmonisation efforts likely to accelerate.

The Legal Office in the Kosovar Ministry of Environment and Spatial Planning has confirmed that Directive 2009/31/EC has not been taken into account at all in the legislative processes so far, and that, in the opinion of the Office, it is highly probable that no special or separate legal act will be adopted in the near future concerning the approximation of this Directive.

The adoption of a legal framework to promote the development and safe use of CCS forms part of the EU’s climate and energy package. In order to assess the technical and economic viability of CCS technologies the EU plans to set up a network of CCS demonstration plants by 2015, with the aim of commercial update of CCS by around 2020.8

The CCS Directive amends other legal instruments in order to remove legal barriers to the deployment of CCS technology. These amendments are explained in the report of the Global CCS Institute ‘Strategic Analysis of the Global Status of Carbon Capture and Storage’ and summarised in the table below:

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**CCS Directive**

<table>
<thead>
<tr>
<th>Directive</th>
<th>85/337/EEC on environmental impact assessment (EIA)</th>
<th>Amends the EIA Directive to include CCS transport pipelines, storage sites and capture installations.</th>
</tr>
</thead>
</table>
| Directive | 2001/80/EC on large combustion plants (LCP)       | - Amends the LCP Directive by requiring Member States to assess whether suitable storage sites are available, transport facilities are technically and economically feasible, and it is technically and economically feasible to retrofit for CO₂ capture.  
- Introduces the requirements of ‘carbon capture readiness’ (CCR) in relation to new-build electricity generating power stations with related capacity of 300 MW or more. |
| Directive | 2008/1/EC concerning integrated pollution prevention and control (IPPC) | Amends the IPPC Directive to include within its scope the capture of CO₂ by CCS installations. |
| Directive | 2000/60/EC establishing a framework for the Community action in the field of water (Water Framework Directive) | Amended to allow Member States to authorise the injection of CO₂ streams into geological formations for storage purposes. |
| Regulation | 1013/2006 on shipments of waste                    | Amended to exclude from its scope shipments of CO₂ for the purposes of CCS. |

In addition to Directive 2009/31/EC, on 31 March 2011 the European Commission published four guidance documents aimed at assisting stakeholders with implementation of the Directive so as to promote a coherent implementation of the CCS Directive throughout the European Union⁹.

The following two treaties are also relevant to the Balkan region and this review.

1. The Energy Charter Treaty

The Energy Charter Treaty (ECT), which entered into force in April 1998, provides a multilateral framework for energy trade, transit and investments.¹⁰

The ECT could be used as a valuable legal basis for addressing some CO₂ related issues. According to a 2009 report,¹¹ the following aspects of the ECT may be relevant:

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⁹ http://ec.europa.eu/clima/policies/lowcarbon/ccs_implementation_en.htm  
¹⁰ http://www.encharter.org/index.php?id=7  
- Investment related aspects of the Treaty are applicable to CO₂ related activities within the energy sector, since CO₂ may be taken within the coverage of the term ‘energy related activity’ especially in the light of the Understanding which relates to Article 1(5) regarding activities illustrative of Economic Activities in the Energy Sector, i.e. ‘removal and disposal of wastes from energy related facilities such as power stations...’ The definition of ‘energy cycle’ in Article 19 also supports the argument that CCS may be taken as a waste storage and thus part of the energy chain activity under the ECT, all leading to an outcome that as an energy sector activity CO₂ might be construed so as to be covered by the investment regulation of the ECT under Part III.

- The ECT may also apply to CCS-related transfer of technology. Article 8(1) refers to investment in relation to promoting access to and transfer of energy technology on a commercial and non-discriminatory basis, and thus arguably allowing CCS technology to be transferred from a Contracting Party to another under the ECT provisions.

- ECT dispute settlement procedures might also be relevant to CCS related activities.

Bosnia is a party to the ECT and the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA). Serbia signed the ECT on 4 July 2001 and its accession to the ECT and PEEREA is pending. Therefore, at present it only has observer status. This would seem to imply that although it must in principle act in accordance with the object and purpose of the ECT it is not yet fully bound by its provisions. Kosovo is neither a member, nor an observer of the ECT.

2. The Energy Community Treaty

The Energy Community is a community established between the European Union and a number of third countries in order to extend the EU internal energy market to South East Europe and beyond. The Treaty establishing the Energy Community entered into force on 1 July 2006. The Energy Community aims at establishing a common regulatory framework for energy markets in contracting parties by extending the *acquis communautaire* of the European Union to the territories of participating countries. This Treaty is pertinent to CCS as it covers the relevant fields of energy, environment, and competition. The Energy Community deals with electricity, natural gas, and petroleum products.

Bosnia and Herzegovina, Serbia and Kosovo are all parties to The Energy Community Treaty. Therefore, in accordance with Article 10 of the Treaty, they must implement the *acquis communautaire* on energy.

Problems in terms of regional implementation of the Energy Community Treaty have arisen in relation to Serbia and Kosovo. Kosovo maintains that Serbia obstructs the Kosovar electricity transmission system operator (KOSTT), by blocking the transmission of electricity to, or through Serbia, to other regional countries. As a result, KOSTT finds it difficult to participate as an equal partner in regional commercial mechanisms. KOSTT has filed a complaint against the Serbian Transmission System Operator (EMS) with the Energy Community Secretariat. In its preliminary view, the Energy Community Secretariat has considered that EMS “failed to fulfil its obligations under the Energy Community Treaty.” KOSTT’s participation in the regional mechanisms is therefore awaiting the forthcoming dialogue between Kosovo and Serbia.
3. Country Profiles of the Targeted Countries

Section 3 of this Report provides short country profiles of the three countries so as to set out their recent geo-political histories as well as describing the country’s status vis-à-vis the European Union. Kosovo, Serbia and Bosnia and Herzegovina were all part of the Socialist Federal Republic of Yugoslavia (SFRY). SFRY was the Yugoslav state that existed from the second half of World War II (1943) until it was formally dissolved in 1992 amid the Yugoslav Wars. It was a socialist state and a federation consisting of six socialist republics: Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia.

3.1 Bosnia and Herzegovina

Bosnia and Herzegovina is located in the western Balkans, bordering Croatia (932 km) to the north and south-west, Serbia (302 km) to the east, and Montenegro (225 km) to the southeast. The country is mostly mountainous. The northeastern parts reach into the Pannonian basin, while in the south it borders the Adriatic. The country has only 20 kilometers of coastline, around the town of Neum in the Herzegovina-Neretva Canton.

The fundamental aspects of Bosnia and Herzegovina’s legal system are found in its Constitution. It should be noted that the Bosnia and Herzegovina Constitution is not a typical Constitution since it was created as an integral part of the Framework Agreement for Peace in Bosnia and Herzegovina. This Agreement had the main objective of stopping the war in Bosnia and Herzegovina and the solutions adopted in the Constitution are the result of a compromise between parties.

A further particularity is the fact that the Framework Agreement for Peace in BiH, including the country's Constitution, is implemented not only by bodies within BiH, but also by international bodies such as the Council for Peace and the High Representative of the international community. The Office of the High Representative (OHR) was established with very significant and broad powers.

Bosnia and Herzegovina under the Constitution (Article I, item 2) is defined as "a democratic state, which operates in accordance with the law and on free and democratic elections." Section I, item 3 of the Constitution provides that "Bosnia and Herzegovina consists of two entities: the Federation of Bosnia and Herzegovina and the Republika Srpska." The FB&H covers 51% of the total area of B&H, while the RS covers 49%.

The Constitution establishes a system of broad decentralisation. Item 1 of Article III explicitly lists the areas that are within the jurisdiction of Bosnia and Herzegovina such as foreign policy, customs, immigration, fulfilling international obligations etc. Then Article III, paragraph 1, under a) of the Constitution stipulates that "all government functions and powers in this Constitution, not expressly granted to the institutions of Bosnia and Herzegovina, belong to the Entities." Taking into account the afore-mentioned provisions, the Entities have responsibility for managing their own natural resources, including energy and environmental protection.

Bosnia and Herzegovina is committed to achieving European Union membership. A Stabilisation and Association Agreement (SAA) was signed between the European Union and its Member States and Bosnia and Herzegovina on 26th of June 2008 in Luxembourg. In order to enter into force, the SAA must be approved or ratified by the parliaments of all Member States, the European Parliament and the
Parliamentary Assembly of BiH. Up until now, the SAA has been ratified by 15 Member States. Until the ratification process is complete, an Interim Agreement, which is part of SAA and which largely regulates matters of trade and transport between BiH and the European Union, is in force. The Presidency of Bosnia and Herzegovina during its 47th session, on 6th of November 2008 issued its Decision on the ratification of the SAA between the European Community and its Member States and Bosnia and Herzegovina.12

3.2 Serbia

Serbia is situated in the central part of the Balkan Peninsula, on the most important route linking Europe and Asia, occupying an area of 88,361 square kilometres. It borders Hungary to the north; Romania and Bulgaria to the east; the Republic of Macedonia and Albania to the south; and Croatia, Bosnia and Herzegovina, and Montenegro to the west. The estimated population of Serbia in 2009 amounts to 7,320,807 inhabitants with a visible depopulation trend.13 Serbia is divided into two autonomous provinces (Vojvodina in the north and Kosovo and Metohija in the south), 29 districts and 194 municipalities.

The current government is a coalition of the Democratic Party, G17, the Serbian Socialist Party and several smaller parties. The president is Boris Tadic, the leader of the Democratic Party. At the time of writing there is pressure from the opposition parties to call for early parliamentary elections. Serbia continues to participate actively in regional initiatives, including the South-East European Cooperation Process (SEECP) and the Regional Cooperation Council (RCC), the Central European Free Trade Agreement (CEFTA), the Energy Community Treaty and the European Common Aviation Area Agreement (ECAAA).

Serbia’s relationship with the EU was renewed after the democratic changes of 2000. The process began with the establishment of the Joint Consultative Task Force (JCTF) which facilitated the initiation of negotiations between the EU and the Federal Republic of Yugoslavia.

A SAA between Serbia and the EU and its Member States was initialled on 7 November 2007 and signed on 29 April 2008 together with the Interim Agreement. The National Assembly ratified both agreements on 9 September 2008. On 19 December 2009, visa liberalisation for Serbian citizens travelling to the Schengen area entered into force. Serbia submitted its application for EU membership on 22 December 2009 and received the EU’s questionnaire on 24 November 2010. The replies to the European Commission questionnaire were successfully submitted on 31 January 2011. In the meantime, the EU Member States decided in June 2010 to start the ratification process of the SAA.

12 Pursuant to Article V. 3 (D) of the Constitution of Bosnia and Herzegovina and the consent of the Parliamentary Assembly of Bosnia and Herzegovina (BiH PA Decision No. 260/08 of 27th October 2008). See the BiH Official Gazette - International Agreements 10/08.
13 The Statistical Office of the Republic of Serbia has not at disposal and may not provide available certain data relative to AP Kosovo and Metohija and therefore data on these areas are not included in the coverage for the Republic of Serbia.
3.3 Kosovo

Kosovo is the youngest State in the region of the Western Balkans. It declared its independence from the Republic of Serbia on 17 February 2008. As at the date of completion of this report, Kosovo had been recognised by 75 sovereign and independent States from all geographical regions, including 22 out of the 27 Member States of the EU. The five EU Member States that have not yet formally recognised the State of Kosovo are Cyprus, Greece, Romania, Slovakia, and Spain.

In terms of its immediate neighbours, Kosovo is recognised by Albania, Macedonia, and Montenegro. Four of the six States to emerge from the disintegration of the Socialist Federal Republic of Yugoslavia (SFRY), Croatia, Macedonia, Montenegro, and Slovenia, have recognised Kosovo. Kosovo is a member of the International Monetary Fund and International Bank for Reconstruction and Development and other organisations of the World Bank system. It became a member of these two UN specialised agencies on 29 June 2009.

Kosovo is a potential candidate for EU membership. Indeed, the conclusion by the EC of 5 November 2008 was explicit that Kosovo has clear European prospects.\(^\text{14}\) The next, much needed step, which would have serious implications for boosting reform, would be for Kosovo to enter into contractual relations with the EU as it is the only remaining country in the region that has not signed a SAA.

As part of the EU integration process, in April 2010, the Government of Kosovo established a Ministry of European Integration, which was essentially built upon the capacities of the previously named Agency for European Integration in the Office of the Prime Minister. Given the inescapable requirement that all aspiring members harmonise their legislative framework with the EU’s *acquis communautaire*, the Government of Kosovo has made it mandatory that every draft law prepared and proposed for adoption has to be checked for compliance with the *acquis*. No draft law can be adopted in the Government without a positive Statement of Compliance issued by the Ministry of European Integration.

With respect to international law and international treaties, the Constitution of the Republic of Kosovo provides that the Republic of Kosovo shall respect international law. International agreements relating to certain subjects are ratified by a two-thirds vote of all the (120) members of the Assembly. These include agreements on territory, peace, alliances, political and military issues, as well as fundamental rights and freedoms and Kosovo’s membership of international organisations. Other international agreements are ratified upon signature of the President of the Republic. International agreements become part of the internal legal system upon publication in the Official Gazette. They are directly applied except where application requires the promulgation of a law. Besides entering into new international treaty relations\(^\text{15}\), Kosovo has undertaken to honour all international obligations deriving out of treaties concluded by the former SFRY or the UN Administration Interim Mission in Kosovo (UNMIK).

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\(^{15}\) Kosovo has concluded approximately 50 treaties since the declaration of independence, which predominantly deal with issues such as development and economic cooperation, avoidance of double taxation, protection and promotion of investments, readmission of persons residing without authorisation, police cooperation, and cooperation and mutual assistance in customs matters.
4. Review of Regulatory and Institutional Framework on Carbon Capture and Storage in Bosnia-Herzegovina

4.1 Legal regime applicable to carbon capture and storage in Bosnia-Herzegovina

Policy and Legislation Framework in Bosnia and Herzegovina addressing the issues involved in Carbon Capture and Storage

There is no CCS related legislation in place at the state or entity level in Bosnia and Herzegovina (BiH). BiH has ratified the UNFCCC and the Kyoto Protocol, but as it is not an Annex 1 country, it is not required to set specific targets regarding reduction of CO₂ emissions. The Initial National Communication for needs of UNFCCC (INC) (2010), as the only comprehensive official act on BiH level addressing climate change, did not take in account CCS as a potential way of GHG emission reduction.

The INC does contain a statement on the need for introducing new technologies regarding reduction of GHG. This statement could potentially be used as a basis for CCS policy development.

The only policy which mentions CCS is the Draft Energy Strategy of Republika Srpska, but only as a possibility for the future, bearing in mind the complexity of CCS from the technological point of view, and high expense involved in CO₂ storage.

Legal framework on mining

Although CCS is not enshrined yet in BiH legislation, it is possible that some of the existing legislation on geological exploration and mining might be used as a basis for regulating CCS in the two entities of BiH.

The Federal Law on Mining (OG FBiH 26/10) was recently adopted and regulates the exploration of mineral resources on the surface and underground, conditions for economic utilisation of resources as well as the application of measures for environmental preservation of closed mines.

Article 8 of the Law gives a list of mining works, which includes, inter alia: construction and utilisation of fluid storages in geological environment (item 11); reconstruction and maintenance of mining spaces after finalisation of economic utilisation (item 12); closure of mining facilities, sanitation and re-cultivation of land (item 15); sanitation and re-cultivation of abandoned surface and underground spaces.

Article 19 reads as follows: ‘[i]f as a result of mining works, facilities are constructed that are not used to extract mineral resources, specific technical rules shall be applied.’ According to Article 19, paragraphs 1 and 2, such specific technical rules relating to storage and consumption of waste or secondary raw materials will be adopted by the Federal Minister, and the operator may adopt additional rules if the

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16 The Draft Strategy was developed through cooperation between experts from Croatia and Bosnia and Herzegovina. The RS Government adopted the Draft Strategy and launched public discussion in accordance with relevant rules.
specific nature of the particular works requires them. Therefore, facilities can be constructed which do not serve the purpose of underground mineral extraction, but rather serve some other related function. Therefore thinking ahead to a possible CCS context, it is theoretically possible that this provision would allow for the construction of facilities that could be used for a non-mining purpose.

In order to undertake mining activities, the legal entity has to obtain a permit, issued by the ministry in charge of mining affairs (Article 37). The request for a permit for carry out mining works has to contain a concession agreement since mining resources are “public interest” and belong to the state.

The Law sets out the operator’s obligations which include strict measures to protect the mining works, environmental protection and pays special attention to sanitation of the mining space after its closure (Chapter IV of the Law).

Inspection of implementation of this law is performed by a Technical Inspector.

The RS Law on mining (OG RS 107/05) regulates conditions for extraction and use of mineral resources from the surface and underground spaces, as well as use and maintenance of mining spaces and facilities. Article 8, para 1, indent 5 reads that mining works mean the construction and maintenance of facilities for underground storage of natural gas and crude oil. This provision opens the possibility for the introduction of geological storage of CO$_2$, especially bearing in mind the provisions of the RS Law on Gas$^{17}$, which draw parallels between natural gas and other gases that could technically be transported by gas pipelines. Interpreting these provisions together, it could be concluded that in accordance with Article 8, mining works cover potential use of underground space for storage of CO$_2$.

Mining works (regulated by chapter IV of the Law) have to be performed in full compliance with technical documentation that contains a long-term programme of use of minerals, mining projects and an annual work plan.

Mining facilities need to have a permit before operating. The Ministry in charge of mining affairs keeps record on all mining works and all mines, in accordance with Article 66 of the Law. In accordance with RS Law on Inspectorates, inspection of mining activities is carried out by Technical Inspector.

Even if the provisions which have been mentioned in this section from both of entities’ mining legislation are weak, they could be used as a very basic starting point for consideration of potential introduction of CCS in the legal system in the Entities.

Current regulatory regime for oil/gas pipelines and storage facilities

Bosnia and Herzegovina has no sources of oil or natural gas. To satisfy the needs of citizens and the economy, BiH imports oil and gas. The oil refinery in Brod (Bosanski Brod), recently privatised by the Russian company Zarubežnjeft, produces oil products and provides fuel, and the refinery in Modrica produces lubricants and other similar products based on crude oil. These two refineries cannot satisfy the needs of the BiH market, and certain amounts of oil products are still imported from different sources.

Oil is transported by Janaf (Jadranski naftovod), the Adriatic oil pipeline. Janaf was built as a joint investment of companies from Croatia, Bosnia and Herzegovina and Serbia in the 1970s. Today, due to

$^{17}$ See Article 1 of the RS Law on Gas which is discussed below in the following section.
the territorial principle applied under the Succession Agreement, most of the pipeline belongs to Croatia; with Bosnia and Herzegovina owning the small part of the pipeline that is located on its territory.

Gasification of Bosnia and Herzegovina is in very early stages. A gas pipeline exists for the needs of Sarajevo, and all gas is imported from Russia.

The two entities have created different legal frameworks in the energy sector.

The RS Law on Energy (OG RS 49/09) operates as a sort of framework law. Additionally, the energy sector in RS is regulated by the following legal acts:
- Law on electricity (OG RS 8/08, consolidated text published in OG RS 34/09 and 92/09)
- Law on Gas (OG RS 86/07)
- Law on Oil and Oil Products (OG RS 36/09)
- Law concerning safety in transportation by oil and gas pipelines (OG SFRY 64/73)

RS’s Law on Gas (OG RS 86/07) regulates the gas market sector, including liquid oil gas, bio-gas and other types of gases that technically may be safely transported (Article 1). Article 2 sets out that gas sector activities are those activities aimed at production, transportation, storage, distribution and supply of gas to the market.

A legal entity may start activities in the gas sector only after obtaining a permit issued by the Energy Regulatory Commission. This permit is issued as part of an administrative procedure.

Chapter V of the Law on Gas (Articles 20- 26) regulates transportation of gas. Article 20, paragraph 1 provides that transportation of gas is a public interest activity. There are implications of an activity being considered to be ‘public interest’. Firstly, the facilities involved in ‘public interest’ activities are owned by the State (by RS or FBiH). However, private interests over ‘public interest’ activities may be exercised in accordance with concession regulations. Secondly, in cases of need, the state may invoke a public interest claim in order to expropriate an activity if there is a need to upgrade facilities etc.

Chapter VI of the Law on Gas concerns storage of natural gas (Articles 27 and 28). The operator of the natural gas storage site shall adopt technical rules regulating operation, maintenance and safety of the gas storage. These rules shall be confirmed by the Regulatory Commission.

In the energy sector, the FBiH has only adopted one law, the Law on Electric Energy in 2002 (OG FBiH 41/02, and 38/05). Besides the Law on Electric Energy, FBiH adopted several bylaws regulating the energy sector:
- Governmental Decree on Organisation and Regulation of Gas Economy (OG FBiH 83/07);
- Governmental Decree on the use of Renewables and Cogeneration;
- Rulebook on technical characteristics of system for heating and cooling of buildings (OG FBiH, 49/09);
- Rulebook on technical requirements for thermal protection of buildings and rational use of energy (OG FBiH 49/09);
- Rulebook on the energy certification of buildings (OG FBiH 50/10)

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18 The 1973 Law concerning safety in transportation by oil and gas pipelines was adopted in the times of the former Yugoslavia, but is still in force in RS due to the Decision of validity of legal acts overtaken from former Yugoslavia.
The Governmental Decree on Organisation and Regulation of Gas Economy (OG FBiH 83/07) provides the basis for establishment of the gas sector in FBiH. Article 2 of the Decree reads that ‘This Decree defines responsibilities in compliance with the South Eastern Europe Energy Community as well as the Directive on Gas 2003/55/EC’, and further that ‘All provisions of the Decree follow the "acquis communautaire" on energy’.

All gas management issues that have not been regulated by this Decree, are governed by the regulations in sectors of spatial planning, environmental protection, concessions and rules of establishing and functioning of market economy.

Article 4 of Decree defines “gas” as bio-gas, gas from biomass and other types of gas which technically and safely may be transported via gas transportation system. Article 6 specifies that gas systems, which supply, transport, distribute and store gas, may be built only by authorised subjects in accordance with legislation regulating spatial planning and construction, and under the full application of rules regarding safety and environmental protection.

Current regulatory regime for environmental protection that might apply to CCS infrastructure

In the last section, it was noted that the FBiH Decree on Organisation and Regulation of Gas Economy (Article 6) as well as RS Law on Gas (Article 2, para 3) require that all activities in the gas sector shall be performed in accordance with principles of environmental protection. This section presents the regulatory regime of environmental protection in BiH.

The Federation of Bosnia and Herzegovina, with the support of EU PHARE project, adopted a set of laws related to environment:

- Law on Environmental Protection (OGFBH 33/03, 39/09)
- Law on Waste Management (OGFBH 33/03, 72/09);
- Law on Nature Protection (OGFBH 33/03)
- Law on Air Protection (OGFBH 33/03, 4/10);
- Law on Water protection (OGFBH 33/03, repealed by Law on Waters (OG FBH 70/06);
- Law on Environmental Fund (OGFBH 33/03).

As a framework environmental law, the Law on Environmental Protection (LEP) regulates all environment sectors including EIA, environmental permitting and accidental situations. It establishes, based on the polluter pays principle, the obligation for a waste holder to take adequate measures for waste management and provide basic measures for the prevention of pollution and waste production and to ensure that as much energy is recovered as possible (Article 19).

Chapter VII of the LEP sets out the various bodies that are responsible for environmental protection and their respective competencies (Articles 40, 42 and 43). The responsible bodies are the Federal Ministry for environment (FMET) and the Cantonal ministries for environment. Both the FMET and the Cantonal ministries responsible for environment may issue environmental permits (hereinafter eco-permits). The procedure and division of competences between the federal and cantonal environmental ministry is defined in Article 85 of the LEP.

The Constitution of the Federation of BiH III Articles 2(c) and 3 divides the environmental competences between Federal and Cantonal authorities. However, the language of these provisions is such that the exact division of responsibilities is unclear and subject to misinterpretation. According to the Federal
Constitution competences may be exercised jointly or separately, or by the Canton as coordinated by the Federal government and with respect to these responsibilities the Cantons and the Federal government shall agree on a permanent basis. Such agreement has not been made. This could lead to uncertainty as to who is responsible for what and when. Furthermore, such an unclear division on who is going to regulate the different activities may create gaps where neither the Federal level, nor the Cantons take responsibility.

Another problem arising is that differences exist between the cantons. The FBiH delegates some competencies to the Cantons, but not all of the Cantons actually go on to adopt the required implementing legislation since no deadlines are set by FBiH. The varying legislative situations between the Cantons, could lead to differentiated end results on the same matter in different cantons.

Chapter VIII of the LEP provides for a system of environmental planning (Article 45) where an inter-entity environmental protection programme has to be adopted by FBiH and RS, as well as Federal Environmental Protection Strategy and Action plan and Cantonal environmental protection plan. The Inter-entity Plan of Activities in Environmental Sector (NEAP) was adopted in 2003 by decision of both Entities’ Parliaments. Given the possible impacts of CCS on the environment, one might expect the NEAP to mention CCS, but as yet, it does not even discuss CCS as a future activity to be conducted in Bosnia and Herzegovina.

The Law on Air Protection is the framework law for air protection activities and four bylaws have been adopted to-date on the basis of this framework. Other secondary legislation, adopted on the basis of other laws, which is relevant to air protection exists in FBiH. It is likely that some of the provisions of the Law on Air Protection, the related bylaws and other legislation concerning air quality will be of relevance to CCS projects in FBiH as potential legal basis for reduction of emission of CO₂ in atmosphere.

19 The Federal Strategy covers water and waste management as well as nature and air protection and lasts for 10 years. The Action Plan lasts for 5 years. Both the Federal Strategy and the Action Plan have to be harmonised with the inter-entity programme (Article 46).
20 Decree on Emission Limit Values to the air (OG FB&H, No. 12/05)
Rulebook on Monitoring of Air Quality (OG FB&H, No. 12/05)
Rulebook on Emission Limit Values to the air for harmful substances (O.G. FB&H, No. 12/05)
Rulebook on emission limits for biomass combustion plants (Official Gazette FB&H No(34/05)
21 Decree on installations subject to environmental impact assessment and on installations that may be commenced only when obtain the environmental permit (OG FBiH, No.19/04),
Rulebook on the Content of Safety Reports, Information on Safety Measures and the Content of Internal and External Emergency Plans (O.G. FBiH, No.68/05),
Rulebook on Best Available Techniques for Attaining the Environmental Quality Standards - hereinafter Rulebook on BAT (O.G. FBiH,92/07),
Decree on financial and other securities to cover the risk of possible damage, clean-up and closure of landfills (OG of the FBiH 39/06),
Regulation on the Contents of Conditioning Plans for Existing Landfills (OG FBiH, No: 09/05)
Decree on reporting obligations for operator and manufacturer of waste on conveying supervision, monitoring and evidence in refer to conditions from waste (OG of FBiH, No. 31/06);
Regulation on Conditions of Operation of Waste Incineration Plants (Official Gazette FBiH, No 12/05),
Regulation on the Categories of Wastes with Lists (OG. FBiH 09/05),
Regulation on issuing the permit for small-scale activities on waste management (OG of FBiH, No 9/05), Art. 7. and 9., published on 16.02.2005
Law on Free Access to Information in Federation of Bosnia and Herzegovina (OG of the FBiH, No. 32/01). This law provides the legal basis for public access to air quality information.
According to the afore-mentioned Federation Draft Strategy on Environmental Protection, the main work to be done in field of air protection in near future is the creation of a system for measuring, control and reduction of emissions of substances effecting climate change.

The environmental protection regime of the Republika Srpska is founded on Article 35 of the Constitution Act of Republic Srpska. In RS, the Republic (i.e. entity level) adopts, implements and enforces laws. Sometimes power is delegated to the municipalities to implement regulations. There are no Cantons in RS.

Environmental legislation was introduced in Republika Srpska, with support of the EU through the PHARE project, by adoption of a set of six environmental laws in September 2002: 22

- Law on Environmental Protection (OG RS 28/07 consolidated text, 41/08, 29/10) originally, this law was published in OG RS 53/02) (hereinafter referred to as RS LEP);
- Law on Waste Management (OG RS 53/02, 65/08);
- Law on Nature Protection (OG 113/08 / consolidated text), originally this law was published in OG RS 50/02;
- Law on Air Protection (OG RS 53/02);
- Law on Water protection (OG RS 53/02); 23 and
- Law on Environmental Fund (OG RS 51/02, 53/07).

Principles (such as sustainable development, polluter pays, etc) are the basis for functioning of the entire system of environmental protection in RS and they are set out in Chapter III of the Law on Environmental Protection.

Chapter VII of the RS LEP sets out the competencies and responsibilities of the various bodies involved in environmental protection. The People’s Assembly of Republic of Srpska adopts laws and strategy on environmental protection reports on the state of the environment. 24 The Government of Republic of Srpska, executes laws adopted by People’s Assembly, implements environmental policy, enacts bylaws and controls the work of ministries involved in environmental affairs. 25

In RS the Ministry of Spatial Planning, Civil Construction and Ecology is competent for environmental protection. The Ministry establishes and runs environmental information system and issues consents and permits in accordance with law. 26

The administration at the local level issues Environmental Permits and urban consents in accordance with urban planning and environmental related legislation, and participates in procedures regarding those activities that might have direct impact environment of local community. 27

Chapter VIII of the Law sets out environmental planning obligations. Article 46 requires the adoption of an Environmental Strategic Plan at RS level, as well as adoption of local environmental plans.

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22 There was no environmental law in RS prior to 2002.
23 This law was repealed by Water Law (OG RS 50/06, 92/09)
24 Article 39 of LEP
25 Art 40 of LEP
26 Art. 42 of LEP
27 Art. 44 of LEP
In accordance with Article 51 of the Law, municipalities must adopt Local Environmental Action Plans (LEAP). Air protection within the local community is an obligatory part of the LEAP (Article 51 para 2).

The Law on Air Protection of Repubika Srpska (OG RS 53/02) sets out measures to generally improve air quality. As in the case of Federal Law on Air Protection, RS Law does not yet take into account the reduction of GHG emissions. Besides the adoption of strategies and plans on air protection, the Law on Air Protection introduces a permitting process to be applied as a measure for reduction of potential air pollution. Four bylaws on air protection have also been adopted on the basis of the RS Law on Air Protection.28

4.2 Institutional framework relevant to carbon capture and storage in Bosnia-Herzegovina

As mentioned earlier, CCS as such has not been recognised in Bosnia and Herzegovina’s legislation as yet. It follows that Bosnia and Herzegovina has not designated any institution responsible for CCS. It is possible that some of the existing institutions in the sectors of energy, mining or environment might be made responsible for the future regulation of CCS, or a totally new authority could be created. If an existing institution is used in relation to CCS, it is noteworthy that there are some pervasive problems affecting institutions in all three sectors, namely: understaffing; lack of mutual coordination and need for additional staff training.

Institutions in the energy sector

The Ministry of Foreign Trade and Economic Relations (MOFTER) is the main institution in charge of energy policy at the state level. At entity level there are two responsible ministries, the Ministry of Industry, Energy and Mining in RS, and the Ministry of Energy, Mining and Industry in FBiH.

Other governmental agencies involved in the regulation of the energy sector are the State Electricity Regulatory Commission (SERC)29, and at entity level in FBiH there is the Regulatory Commission for Electricity (FERC) and in RS, the Regulatory Commission for Energy (RERS).

Institutions in charge of mining activities

The main competent authorities are at entity level, the Ministry of Industry, Energy and Mining in RS, and the Ministry of Energy, Mining and Industry in FBiH.

Institutions in charge of environmental protection

The BiH Ministry of Foreign Trade and Economic Relations is the ministry responsible for coordination of activities at state level.

28 Decree on Emission Limit Values to the air (O.G. RS, No. 39/05)
Rulebook on Monitoring of Air Quality, Art 9 (O.G. RS, No. 39/05)
Rulebook on Emission Limit Values to the air for harmful substances (O.G. RS, No. 39/05)
Implementation Regulation – emission limits for biomass combustion plants - Art. 2. (OG RS No 85/05).
29 SERC – Report on activities of the state electricity regulatory commission in 2008, BiH.
The competent authority in FBiH is the Ministry for Environment and Tourism. Additionally, the ten Cantonal ministries in charge for environment participate in activities in the sector.

The Ministry of Spatial Planning, Civil Constructing and Ecology is the main institution in charge of environmental protection in Republika Srpska.

It should be noted that the entities have established inter-entity cooperation in the area of environment.\(^{30}\)

### 4.3 Specific issues applicable to carbon capture and storage

(i) **Classification of carbon dioxide and its legal definition, including proprietary rights of stored CO\(_2\)**

CO\(_2\) has not been defined or regulated by legislation in Bosnia and Herzegovina so far. The explanation for this is that, traditionally, CO\(_2\) has not been considered to be a pollutant, and it is not listed among the pollutants in any of the legislation in BiH. Issues relating to CO\(_2\) only became more prominent after the discovery that CO\(_2\) is one of the GHG that influence climate change. GHG are not defined in the legislation either.

As already mentioned in this Review, Bosnia and Herzegovina, including all levels in the country, has not yet adopted adequate legislation regarding climate change and has not introduced a special status for GHG so far. Several strategic, policy and planning documents already highlighted this issue and they propose that legislation is drafted to provide a legal framework for more efficient engagement of all sectors in reduction of GHG emissions.

Earlier in this review, the legal framework of environmental protection was described, including air protection legislation as set by entities’ legislation. It is likely that the principles and provisions of that legislation will serve as general framework for future work on climate change legislation.

There is currently no legislation in BiH setting out the proprietary rights of stored CO\(_2\). The previous sections presented the existing legal frameworks of the energy sector, geological exploration and mining and environmental protection that may be a basis for introduction of a legal regime of CCS in the country. The legislation on production, transportation, distribution and storage of gas is perhaps the most likely to corresponded to the requirements of CCS. However, the legislation on geological exploration and mining is also pertinent, since the focus of Directive 2009/31/EC is geological storage of CO\(_2\).

So, when discussing the proprietary rights over stored CO\(_2\), the starting point should be activities in the gas sector. The legislation of Republica Srpska clearly states that all activities in the gas sector, including

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\(^{30}\) An Environmental Steering Committee (ESC) was established by the two entities’ governments in 1998. The main results of the ESC cooperation at national level was the adoption of an Inter-entity Plan of Activities in Environmental sector (NEAP) and BiH Solid Waste Management Strategy. Both of documents have been developed jointly by two entities and adopted in identical text by two entities’ parliaments. The Waste Management Strategy paper was passed in RS as a Waste Management Strategy and in FBiH it was passed as a part of the Environmental Strategy document.
storage of the gas, are public interest activities. As mentioned earlier, a consequence of an activity being “public interest” is that ownership of the installation and facilities is considered to be “public” property, or more precisely, under the ownership of Republika Srpska. Additionally, section IV – “Construction of New Facilities” of the RS Law on Gas, which regulates works on extension of gas network, provides that the legal basis for extension of the existing pipeline network is the Law on Concessions[^31]. The Law on Concessions is applied in cases where the interested operator intends to use natural and other public resources to operate a permitted activity. Thus, the Law on Concessions enables the Republic to retain ownership over the facilities, whilst allowing the operator to perform the activity and to generate income. Additionally, the Law on Concessions recognises only an operator of the system, including storage operator.

A similar situation exists in FBiH with the Decree on organisation and regulation of the gas sector. It should be underlined that this Decree, as a bylaw, can not explicitly regulate ownership issues. Again, the subject in charge of providing services in the gas economy is the “operator”. The operator is the legal entity that obtains a permit in adequate administrative procedure. As in the case of RS, the Decree on organisation and regulation of the gas sector defines that concession may be one of the legal basis for having rights regarding activities in the gas sector. Concessions in BiH are regulated by the BiH Law on concessions[^32] and the FBiH Law on concessions.[^33]

Based on the provisions of the above-mentioned legislation, the Entities are the owners of facilities within gas sector on their territories. Having in mind that provisions of the Law on Gas should be applied to all gases, their production, capturing, transportation and storage, it is very likely that CCS, when regulated in BiH, will also be considered as a public interest activity.

(ii) Jurisdiction over the control and management of domestic and cross-boundary pipelines and reservoirs (including monitoring, reporting and verification requirements)

As mentioned earlier, Bosnia and Herzegovina uses the Janaf oil pipeline system which was built in the 1970s, as part of a joint investment of companies from Croatia, Bosnia and Herzegovina and Serbia. Today, due to the territorial principle applied under the Succession Agreement, most of the pipeline belongs to Croatia; with Bosnia and Herzegovina owning the small part of the pipeline that is located on its territory. This is the source of a dispute between Croatia and Bosnia and Herzegovina. Bosnia and Herzegovina consider that its ownership rights to the pipeline should be greater since it contributed one third of the overall original investment, but Croatia maintains that the pipeline should belong to the various countries proportionally to its extent on the respective territories.

The gas pipeline in Bosnia and Herzegovina was built to provide a gas supply to Sarajevo. It connects the Town of Sarajevo with the Serbian Border, which is a total length of 120km. Gas is imported from Russia, and is transported via Serbia.

The national legislation does not yet explicitly regulate transportation of CO₂ in pipelines whether domestic or cross-boundary, but interpreting provisions of RS law on Gas and FBiH Decree on gas sector, there is a legal basis for transportation of gases which are technically acceptable for transportation by gas pipelines.

[^31]: RS Law on Concessions (OG RS 25/02) and the Laws on concessions in cantons.
[^32]: OG BiH 32/02.
[^33]: OG FBiH 40/02.
Both of these acts provide a legal basis for the extension of the existing gas network, and there do not appear to be any legal barriers for introducing amendments to allow for the transport of CO\textsubscript{2}. It is the expert’s opinion that the existing dispute between BiH and Croatia in relation to ownership of the oil pipeline, will not be a barrier to the further development of joint transboundary projects aimed at extension of pipeline infrastructure. This is because Bosnia and Herzegovina recognise the principle that countries are exclusively entitled to manage infrastructure facilities on their own territories and furthermore because BiH will not get involved in any actions which jeopardise the Croatia or Serbia’s rights to manage the gas pipeline on their territories.

Currently, Bosnia shares its oil pipeline with Croatia and on the other side, shares its gas pipeline with Serbia. Due to its geographical position, BiH must cooperate with neighboring countries with regard to any development of pipeline infrastructure. Transportation of oil and gas is regulated on the basis of bilateral agreement, with Croatia and Serbia respectively.

In case of CCS development, transportation of CO\textsubscript{2} may be regulated on bilateral basis, following legal principles of mutual interest, cooperation and the need to ensure that no harm is caused to other countries.

The above-mentioned acts set out the procedure by which an operator can extend a network of pipelines (concession and meeting of other legal requirements), as well as measures for implementation of the legislation, including inspection and enforcement.

Legal acts introduce a full set of obligations for the operator, aimed at the proper functioning and maintenance of the pipeline network.

Spatial Planning and Environmental legislation prescribe strict rules on obtaining a location consent, construction permit and use permit, including EIA procedure and environmental permitting as a part of the process. Additionally, the regulatory framework specifies conditions that the operator must meet, to obtain a permit for performing activities in gas sector. It is therefore considered that the gas legislation in BiH entities provides a solid structure which could be followed for the introduction of CO\textsubscript{2} pipelines in the country.

Bearing in mind that all activities in the gas sector – production, transportation and storage – are activities of public interest, and all facilities are owned by the state (Entities), future facilities for CCS projects are also likely to fall under the public interest regime. Based on legislation defining concessions, the operator may be entitled to carry out a public interest activity for a certain period of time, without becoming the owner of the actual facilities.

\textbf{(iii) Proprietary rights to cross-boundary CO\textsubscript{2} capture and storage sites and facilities}

Currently, as there are no CCS sites and facilities in BiH, discussion of this topic is based on analogy to the gas and oil pipeline network.

This report has already mentioned the Entities’ legislation which regulates the gas sector within their territories: the FBiH Decree on Organisation and Regulation of Gas Economy and the Law on Gas of RS. The legislation of FBiH cannot create rights and obligations for persons and legal subjects in the Republika Srpska, and similarly, the legislation of RS cannot create rights and obligations for persons in the FBiH.

This is a basis for observing of the legal regime of installations potentially used for CCS.
Gas sector installations in BiH are public property and are officially owned by the entities. This means that all installations within the territory of FBiH are owned by Federation of Bosnia and Herzegovina; installations within the territory of Republika Srpska are owned by Republika Srpska.

Inter-entity flow of gas is regulated on the basis of cooperation in this area, and through agreements achieved by relevant governments, ministries and Regulatory Commissions. On an operational day by day basis, cooperation is organised at operator level. Inter-entity flow of CO\textsubscript{2} is also likely to be regulated on the basis of such co-operation.

Then there is the issue of coordination of activities at BiH level. Coordination should ensure that legal subjects of both entities work for the same goal, the same effect and at the agreed time. One of the points where all interested parties have the same goal is EU approximation. Article 9, para 2 of the Law on Ministries and Other Administrative Bodies of Bosnia and Herzegovina reads as follows:

‘The Ministry (MOFTER) is responsible for performing tasks within the competence of Bosnia and Herzegovina with regard to defining policy, basic principles, coordinating activities and harmonising plans of the Entity authorities and institutions at the international level in the areas of:

- Agriculture;
- Energy;
- environmental protection, development and utilization of natural resources;
- Tourism.

It is the legal obligation of MOFTER to set rules for coordination of activities among entities and District Brcko, especially in line with international treaties that Bosnia and Herzegovina participates in.’

Further development of facilities in gas sector, including gas pipelines as well as storage facilities are/will be subject to special legal arrangements (concessions, permitting procedure and mainly, achieving mutual economic interest). Future projects will be regulated in agreements, as this is a case with other infrastructure projects.

So, the current situation in terms of cross-boundary gas sector projects is that ownership is being regulated; inter-entity communication is in place, as well as international communication. If in the future there were to be a cross-border CCS project, the proprietary rights to the capture and storage site and facilities would be set out in bilateral agreements between BiH and the relevant neighboring state or states.

(iv) Regulatory and/or licensing (permitting) scheme related to the operation and management of storage and transportation facilities

There is no specific licensing system in place yet for CCS projects. However, the existing permitting system from the gas sector in both of entities might be applicable.

Article 6 of FBiH Decree stipulates conditions that the system operator has to meet. Gas systems to supply, transport, distribution or store gas, may be constructed and managed only by authorised legal entities in accordance with legislation regulating spatial planning and construction, under full application of the rules regarding safety and environmental protection. The same approach is found in Article 8 of RS Law on Gas:

(1) The permit is the authorisation to perform activities in the gas sector.
(2) the operator may start with performing the activity within gas sector only after obtaining a permit. The Regulatory Commission issue permits, as an administrative act.

(3) An application for a permit shall contain following data:
   a) title of the operator,
   b) specific activity that operator is applying for,
   v) list of facilities and data on the capacity of the facilities to be managed by operator,
   g) data on the area of performing the activity,
   d) period of time that operator states in request.

(4) Permit shall be issued in 60 days period of time, starting with day of submission of request.

Article 10 of the RS Law on Gas regulates action in case that operator does not fulfill the conditions of his permit. The Regulatory Commission may revoke the permit on temporary basis and can set the operator a deadline by which time he must have achieved full compliance with the requirements.

Article 11 of the RS Law on Gas gives the Inspector the option to initiate procedure of revoking of the permit where he finds non-compliance with the permit.

(v) Long-term management and liability issues arising out of accidents or leaks in domestic and cross boundary CCS projects

Bosnia and Herzegovina signed the Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters to the Water Convention during the Kiev Conference 2003, but the Protocol has not been ratified so far.

Also, the entities have not introduced any legislation on environmental liability and not started to harmonise with Directive 2004/35/EC yet. In situations where damage is caused, the laws on obligations and general rules on damages shall be applied.

Article 103 of RS Law on Environmental Protection and Article 103 of FBiH Law on Environmental Protection regulate liability concerning dangerous activities and are identical provisions. Dangerous activities are those that may cause significant risk for people, health, property and/or the environment.

The legal entity that performs dangerous activities bears responsibility for damages caused by that activity. Both laws list dangerous activities such as:
   - Management of locations which are dangerous to the environment;
   - Release of GMOs;
   - Release of microorganisms.

Although CCS projects are not expressly included in the Laws as dangerous activities, it is likely that plants containing equipment to capture CO₂, the pipelines used to transport concentrated CO₂ and also the plant used to inject CO₂ would be considered as locations that are dangerous to the environment.

Dangerous locations are also listed and they include mines, installations for gas supply, oil pipelines, and gas pipelines as well as many other locations which are not so relevant in the context of CCS projects.

A legal entity may be excluded from liability if it can prove that all measures possible for prevention of damages were taken. (Article 104 of both of entities’ laws). The result of this is that an entity may not be liable for accidental leakages.
(vi) Financial assurance for long-term stewardship, including how long-term responsibility for a storage site is transferred to the relevant authority, and how CCS regulatory frameworks may reduce the financial exposure of the relevant authority by requiring the operator to contribute to the costs associated with long-term stewardship of the site

As CCS is not specifically regulated by legislation in Bosnia and Herzegovina, this section simply presents some guarantee scenarios from existing legislation that potentially could be taken into account when drafting legislation on financial assurance for long-term stewardship of a CCS site. The legislation is practically the same in both Entities and therefore this overview covers both Entities.

Both Entities’ laws on environmental protection contain a provision that provides that the legal entity that carries out activities which are dangerous to the environment is responsible for the damage caused by that activity. Additionally, these laws assume that dangerous activities will entail the management of a dangerous location, and specify that dangerous locations include: ‘facility for gas supply, mine, oil refinery, system for transportation of gas or oil…’.

Both laws on environmental protection require that the legal entity managing the dangerous activity provides sufficient financial security to cover any damage which potentially might occur to third parties and compensation through insurance or by some other means. However, it is unclear whether this general provision regarding liability also applies to closed facilities as there are no specific provisions expressly stating that it does apply to closed facilities.

RS Law on Gas and FBiH Decree on Organization and Regulation of Gas Economy do not set out conditions for closure of facilities and also do not contain provisions regarding financial guarantees for long term stewardship and transfer of responsibility to the relevant authority.

The Entities’ laws on waste management require that sites holding hazardous waste provide a financial guarantee and other forms of guarantee aimed to compensate against the costs related to risks or costs related to minimising of damage as well as for costs produced by activities after closure of such facility. The financial guarantee shall be proportional to the size of the site, quantity of waste disposed and expected risks. The financial guarantee has to be in place for maintenance of the facility after closure for at least thirty years.

(vii) Third party access rights to transportation networks, transit rights and land rights with regard to pipeline routes

Again as there is no CCS legislation at present in BiH, the gas sector legislation vis-à-vis third party access rights will be considered.

The FBiH Decree on Organisation and Regulation of Gas Economy and RS Law on Gas define obligations of operator. With regard to the transportation network, the operator is responsible under both the FBiH Decree and the RS Law for providing access and use of the transportation network to third parties under transparent rules based on principles of non-discrimination and full protection of users interest; and giving of all information needed for efficient access to transportation network users.

Article 43 of RS Law on Gas and Article 22 of FBiH Decree on Gas Sector prescribe that the operator of a gas storage facility shall provide access to third parties, in accordance with principles of transparency,
non-discrimination and full respect to business confidentiality of the third party, in line with technical
capacities of the transportation and/or storage system.

(viii) Regulatory compliance and enforcement schemes

This section provides an overview of the inspection system in place in BiH.

Inspection

Both Entities have adopted a Law on Inspections. The system consists of an entity-level Directorate for
Inspections (Inspectorate) and inspections established at a local (canton/municipal) level. The Laws on
Inspections provide for inspection units for certain areas, and includes “Technical inspection”,
“Urbanism-construction and ecology inspection” and “Sanitary inspection”. It is considered that
“technical inspections” would be most relevant in the context of CCS projects.

Local communities can establish canton/municipal inspections by decision of municipal assembly, but
with the previous consent of the entity level Inspectorate. Inspections at a local level have to be connected
to an entity level Inspectorate. A local inspector may perform an inspection in another municipality on the
basis of previous agreement between municipalities, which must be confirmed by entity Inspector.

Urban-construction and ecological inspections are aimed at ensuring compliance with the rules of
environmental protection, ecology and spatial management and waste management.

After performing an inspection, the Inspector will prepare a report on these findings. If any non-
compliance has been noted, the inspector shall a) issue an enactment with order to eliminate
incompliance; b) prohibit further performing of activity; or c) undertake other appropriate action.
Inspectors are also entitled to propose the initiation of an offence procedure, propose the initiation of
criminal procedure, or inform another administrative organ that will start a procedure regarding the non-
compliance. Any request/proposal/application issued by inspector to another public body has
the status of an ‘urgent matter’.

Appeals may be submitted to Ministry competent for certain area of affairs against the decisions of
Inspectors.

Enforcement

Enforcement measures and actions with regard to environmental protection are set on several levels. The
following two paragraphs describe the situation in both entities, since the situation is practically the same.

The Entities’ Laws on Offences establish a system of offences and sanctions and authorised bodies that
may impose sanctions. The Laws state that offences and sanctions may be prescribed by law,
governmental decree, governmental decision and by decision of municipal/town assembly. Other laws
may also prescribe offences, but they must follow the general rules as set in the laws of offences. The
offence procedure is held in the court of first instance and appeals against court decisions may be
submitted to a higher court.

The criminal laws provide for crimes relating to “destruction of facilities of public use” and “crimes
against environment”. There is high likelihood that CCS installations will be considered as public interest
facilities or facilities of public use making the crime relating to “destruction of facilities of public use”
potentially applicable. Additionally, the legislation on environmental protection and on air protection sets out several crimes and offences related to air protection.

The enforcement possibilities in RS differ from that of FBiH in so far as RS has introduced a Law on the Communal Police (OG RS 83/03). The Law aims at better implementation, inspection and enforcement of environmental protection measures. The Communal Police monitor activities related to communal affairs, including maintenance of local energy supply facilities. If the Communal police notice any violations of the law, they must carry out measures to protect the public interest, issue fines in accordance with regulations adopted on local level and undertake any other legal action required.

(ix) Environmental impact (including cumulative impact) assessment process, risk assessment and public consultation

With regard to transposition and implementation of Directive 85/337/EC (the EIA Directive), both BiH Entities have achieved good results. Recent monitoring of transposition and implementation of EU environmental acquis found that approximately 70% of the EIA Directive had been transposed.34

The Republika Srpska Law on General Administration Procedure (OG RS 13/02) sets basic rules of administrative procedure, but allows for specific rules to be imposed by other laws. The provisions of specific law take precedence over the general provisions (lex specialis derogat legii generali). For purposes of this section, the permit issuing procedure found in the RS LEP and the accompanying EIA component will be described.

The RS LEP sets rules for two administrative procedures: Environmental Impact Assessment (EIA) and ecological permits. EIA is the procedure for obtaining an administrative decision on the acceptability of environmental impact in the process of project development. In a wider context, the decision on EIA is a pre-condition for obtaining a construction permit. Article 56 of the RS LEP reads: ‘projects that may have significant impact on environment due to their size, nature and location, must be subject to EIA and obtain an administrative decision approving the Environmental Impact Study’.

The EIA procedure itself has two main parts. Firstly, the screening process, which results in a decision on whether or not EIA is mandatory and the extent of the EIA procedure. Secondly, is the actual decision on EIA. The RS LEP prescribes rules on procedure, involvement of interested parties and the public in the procedure.

The RS Minister responsible for environmental protection is responsible for both parts of the EIA decision making (Article 57). The Ministry is obliged to inform local communities in the territory of the planned project and to ask for their opinion (Article 60 of the Law).

Governmental Decree on Projects that Require Environmental Impact Assessment and on EIA Screening and Scoping Criteria (OG RS 7/06) gives the list of projects to be subject to EIA. The Decree has two lists of projects: list (A), projects where EIA is mandatory and list (B), projects to be screened and a decision made as to whether or not, due to specific features of the project, EIA will be performed.

34 Report on Progress Monitoring on transposition and implementation of EU environmental acquis for 2009.
In evaluation of the Study on Environmental Impact, the Ministry has to, *inter alia*, pay due attention if project will produce waste, if measures for minimization of waste generation are undertaken, if waste is adequately treated, reused or recycled. A guideline on Content of the Environmental Impact Study (OG RS 118/05) defines the content of the EIA Study.

Another procedure prescribed by the RS LEP is the procedure of issuing ecological permits and prevention of accidents (Chapter X of RS LEP). The main purpose of the procedure of issuing of ecological permit is control of those activities and installations which may cause negative environmental impact.

Governmental Decree on the Installations that may be commenced only after obtaining an Ecological Permit (OG RS, No. 7/06) in Art 2 imposes an obligation to obtain an ecological permit from the Ministry responsible for environmental protection for all installations listed in Articles 2 and 3 of the Decree on EIA. The municipal administrative body responsible for environmental protection has to issue ecological permits for those installations that are below thresholds listed in Articles 2 and 3 of the Decree on EIA. Therefore, whilst the EIA procedure must be performed only at Ministry level, the ecological permit may be issued at Ministry level or at municipal level.

For detailed instructions on the procedure, specific requirements and documents to be submitted along with the application, the Minister competent for environmental protection enacted a Rulebook on the Conditions for Applying for the Environmental Permit (OG RS, No. 24/06) and a Rulebook on the Time-lines for Applying for the Environmental Permit (OG RS, No. 24/06).

According to the *Federation of Bosnia and Herzegovina* LEP (art. 42 & 43), the competent authorities for issuing the eco-permit are FMET and the Cantonal ministries responsible for environment.

The competent authorities for installations requiring an eco-permit or for installations falling under provisions regulating major-accident hazards of certain industrial activities the competent authorities:
- For large and medium installations above the thresholds defined in implementing regulations and for installations falling under the major accidents provisions, the Federal Ministry in charge of environmental protection.
- For smaller installations, i.e. installations below the thresholds defined in the implementing regulations and for very small installations with emissions not exceeding the emissions typically emitted by households and for which no special environmental permit is required, the Cantonal Ministries in charge of environmental protection.

Further division of competencies between the Federation and the Cantons is set out in the Rulebook on plants and installations for which the environmental impact assessment is obligatory and which may be constructed and operated only if they have the environmental permit (FBiH OG 19/04) (hereinafter: Rulebook on EIA).

The Rulebook on EIA lists the categories of plants and installations for which an EIA is obligatory in order to obtain an eco-permit from FMET. For all other plants and installations not listed in the Rulebook, and for which an EIA is not needed, and for those with capacities below the thresholds defined in the Rulebook, an eco-permit is issued by the responsible Cantonal ministry.

A permit for small businesses (Rulebook on issuing permits for small businesses OG FBiH 9/05) would be issued by the competent Cantonal ministry and the permit will specify type and quantity of waste, the treatment method, general technical requirements for the operation, monitoring and control procedures.
The procedure by which cantons issue a permit for small businesses will be defined by cantonal regulations (such regulations have not yet been adopted by the cantons).

Article 70 of the LEP regulates the procedure for issuing permits for projects that have transboundary or inter-entity effects. The Law envisages that ‘more specific details on the procedures concerning projects with possible Inter-Entity trans-boundary effects can be specified by agreement between the two Entities. Such agreements shall be concluded in consultation with the competent Inter-Entity body (hereinafter: the Body).’ The Inter-Entity body (Article 112 of the Environmental law) shall be established by a governmental decision (in both entities). The scope of work of the Body is the work related to all issues concerning the environment which need a harmonised approach between the Entities. The issues are listed (the non exhaustive list) in Article 113 of the Law. It seems that the Body has taken over some of the competences of the MOFTER especially issues related to international treaties and programmes concerning environmental matters and cooperation with international organisations and foreign states.

**Public participation in environmental matters**

Public participation is one of the principles of environmental protection under the law of both Entities. The laws in both Entities prescribe full rights of interested parties to participate in all procedures of:
- Adoption of new legislation regarding environmental protection,
- Adoption of environmental plans and programmes,
- Specific activities with impact on the environment.

Bosnia and Herzegovina acceded to the Aarhus Convention in 2008, and currently is preparing its First National Report for needs of the Aarhus Convention.

Besides the environmental protection legislation, the legal basis for free access to information and public involvement is set by the Law on Free Access to Information (OG FBiH 32/01) and Law on Free Access to Information (OG RS, No. 20/01).

In the expert’s opinion, the current situation regarding public participation in the EIA process is acceptable. The legislation is clear in that the publishing of information is mandatory and that there must be public participation possibilities which are open to all interested parties and to the general public. Furthermore, the public and interested parties are able to provide written comments and also to participate in public scrutiny. The competent authority has to take into consideration all comments and to prepare written explanations regarding all comments that are discounted in the final decision making. If the public considers that a competent authority has erred in any of its obligations, including failure to organise a public audit, then the legislation provides a legal basis to start a procedure in the administrative or judicial system. However, the expert also considers that there are certain weaknesses to be eliminated in future, including the lack of an obligation for public scrutiny in the screening process within the EIA procedure, and the lack of Strategic Environmental Assessment (SEA) rules.
5. Review of Regulatory and Institutional Framework on Carbon Capture and Storage in Serbia

5.1 Legal regime applicable to carbon capture and storage in Serbia

At the moment there are no specific laws or regulations dealing with the issue of CCS in Serbia. However, there are several statutes regulating oil and gas pipelines and storage facilities and mining which are interesting by way of analogy.

Current regulatory regime for oil/gas pipelines and storage facilities

The three key statutes are the Energy Act, the Geological Explorations Act and the Act on Pipeline Transport of Gaseous and Liquid Hydrocarbons and Distribution of Gaseous Hydrocarbons.

Serbian Energy Act\(^{35}\) - The Energy Act regulates the transport of natural gas and management of the transportation system, as well as the transportation of oil and oil derivatives by pipelines. With regard to oil transport and storage, the statute prescribes the technical and legal requirements that need to be fulfilled by an entity transporting oil derivatives by pipelines. The statute deals specifically with the transit of oil through pipelines according to the principles of regulated third party access, non-discrimination and transparency, and due respect for international conventions. The reasons for refusal of third party access are prescribed by this statute.

The Energy Act defines the system for transport of natural gas as consisting of a pipeline network, other energy facilities, telecommunication and information systems and other infrastructure necessary for the transport of natural gas under the operational pressure of over 16 bars (hereinafter referred to as natural gas transportation system). The energy entity transporting the natural gas is responsible for safe natural gas transport from its entry into the natural gas transportation system to its delivery point to the energy entity that will distribute the natural gas, as well as for the operation, maintenance and development of the natural gas transportation system.

As for the storage and management of natural gas, the energy entity in charge of this must ensure conditions for secure storing, functioning and maintenance of natural gas storage pursuant to technical regulations and standards relating to its line of activity, as well as conditions provided for environmental protection. The statute also prescribes in detail the responsibility of the storage entity, as well as the criteria and procedure for issuing an energy permit.

Serbian Act on Pipeline Transport of Gaseous and Liquid Hydrocarbons and Distribution of Gaseous Hydrocarbons\(^{36}\) - Although this Act does not specifically regulate CCS projects, it may be applied in future to similar projects. It prescribes the conditions for safe and uninterrupted pipeline transport of gaseous hydrocarbons and liquid hydrocarbons and distribution of gaseous hydrocarbons. The statute regulates different types of pipelines, namely oil, gas and product pipelines. In order to ensure the conditions for safe and uninterrupted transport of gaseous hydrocarbon and liquid hydrocarbons and distribution of gaseous hydrocarbons the statute regulates several phases of this process: the industrial

design, testing, commissioning the pipeline, use and maintenance of pipelines, safety measures and inspection.

**Geological Explorations Act***37 - The Act stipulates the requirements for carrying out geological explorations and for using the results of these explorations. The Act defines the notion of geological explorations as explorations undertaken with the aim of: *learning about the development, composition and structure of the earth crust;* discovering and ascertaining the quantity and quality of mineral deposits; *establishment of the geologic characteristics of soil for construction of buildings; planning of space and explorations undertaken for the purpose of environmental protection.* It seems that the three italicised definitions could apply in the case of CCS projects.

In regions representing protected natural areas, entities of special cultural and historical and construction value, tourist and recreational resorts, sources of special significance for regional water supply and other protected areas, conduct of geological explorations is subjected to prior approval of the agency in charge of spatial planning and the agency in charge of a certain region.

The Act regulates in detail the performance of geological explorations. Geological explorations may be done by a company or other legal entity registered in the court registries for execution of these works. Under certain conditions, foreign companies may undertake those explorations. Geological explorations are performed according to projects whose elements are prescribed by this statute. Geological exploration projects are subject to technical inspection.

During the geological explorations, the manager of explorations must ensure expert supervision of the geological explorations which entails controlling the quality of exploratory works and fulfilling the regulations, standards, technical and quality norms; controlling the application of health and safety at work measures; monitoring the schedule of execution of works and observing the agreed timeframes. Following the completion of the geological explorations stipulated by the project a study will be made on results of geological explorations.

The responsible ministry must approve geological explorations in a certain exploratory area. The municipality, city of Belgrade, or any other territorial unit with the status of a city is entrusted with the task of approving the execution of detailed geological explorations to fulfil the needs of planning, designing, construction and rehabilitation of terrain. The approval will cease to be valid if the geological explorations are not commenced within the timeframe set out in the approval.

This Act will need to be amended so as to prescribe rules regarding geological exploration required for a CCS project.

**Legal Framework on Mining**

**Mining Act***38 - The provisions of the Mining Act related to certain types of mining facilities used for underground storage of natural gas and raw oil as well as other materials at the mining site could be useful for analysing the legislative framework that could potentially apply to CCS projects. According to the Act the company in charge of exploitation of mineral resources must acquire three different approvals from the ministry responsible for energy sector:

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37 Off. Jour. of RS, No. 44/95.
1. exploitation approval;
2. approval for performing mining works;
3. approval for use of mining facility.

The approval for use of a mining facility involves the acquisition of planning permission which is, upon the request of the investor issued by the responsible ministry within the eight days from receiving the report stating the facility is ready for use. Before planning permission is granted, the facility has to undergo a technical inspection. If the inspection concerns a facility for which it is necessary to test the installation, machines and devices, as well as its stability and safety, the ministry, upon the request of the investor may allow a trial period.

**Current regulatory regime for environmental protection that would apply to CCS infrastructure**

The full implications of CCS technology are not clear due to the fact that it is not yet used in Serbia and thus it cannot be said with absolute certainty which environmental legislation will apply. Legislative activity in the field of environment has been very intensive. Since 2004 around 20 different laws have been adopted together with numerous bylaws covering all environmental sectors.

With respect to CCS projects, several laws and bylaws should be mentioned. Each of them will be analysed in relation to the nine specific issues of the study. Thus, in this part only the most important environmental acts are listed:

- Environmental Protection Act (Off. Jour. of RS, Nos. 135/04, 36/09, 36/09 – other law and 72/09 – other law);
- Environmental Impact Assessment Act (Off. Jour. of RS, Nos. 135/04; 36/09)
- Strategic Environmental Impact Assessment Act (Off. Jour. of RS, No. 135/2004 and 88/10);
- Integrated Pollution Prevention and Control Act (Off. Jour. of RS, No 135/04)
- Air Protection Act (Off. Jour. of RS, No. 36/09);
- Waste Management Act (Off. Jour. of RS, No. 36/09);
- Packaging and Packaging Waste Act (Off. Jour. of RS, No. 36/09)
- Chemicals Act (Off. Jour. of RS, Nos. 36/09 and 88/10)
- Spatial Planning and Construction Act (Off. Jour. of RS, No. 72/09);
- Noise Protection Act (Off. Jour. of RS, Nos. 36/09 and 88/10)
- Waters Act (Off. Jour. of RS, No. 30/10);
- Law on Nature Protection (Off. Jour. of RS, No. 36/09, 88/10)
- Workplace Safety and Health Act (Off. Jour. of RS No. 101/05).

**5.2 Institutional framework relevant to carbon capture and storage in Serbia**

Competences for authorising or monitoring CCS activities have not yet been explicitly defined in the regulations of the Republic of Serbia. However, several of the existing authorities/bodies in the energy or environmental sectors might be given responsibilities for CCS.

Before briefly looking at these existing bodies, it should be noted that the Constitution of the Republic of Serbia regulates in a general way competence for undertaking activities in the field of energy, oil/gas,
infrastructure, environment, etc. It defines competences of the Republic, the two autonomous provinces and municipalities\textsuperscript{39}.

**Energy sector institutions**

According to Article 10 of the Law on Ministries (Off. Jour. of RS, No. 13/11), the Ministry for Infrastructure and Energy\textsuperscript{40} performs tasks of the state administration relating to energy, oil and gas industry, safe pipeline transport of gas and liquid hydrocarbons and geological exploration. In addition to the Ministry, the Energy Agency exists and is the regulatory body with competences for electricity, natural gas, oil and oil products, and combined heat and power energy sectors.

**Environmental institutions**

In terms of the environmental sector, the main ministry is the Ministry of Environment, Mining and Spatial Planning\textsuperscript{41}.

Also relevant to this sector is the Environmental Protection Agency\textsuperscript{42} (EPA). It is competent for: coordination and management of the national environmental information system; collection of environmental data, data processing, reporting on the state of the environment, participation in the implementation of national environmental policy; development of methods of environmental data processing and of their assessment; collection of data related to the best available techniques; cooperation with the European Environmental Agency (EEA) and with the European Information and Observation Network (EIONET), etc.

It should be noted that different elements of water management and protection actually fall under the jurisdiction of four ministries: Ministry of Agriculture, Trade, Forestry and Water Management, Ministry of Environment, Mining and Spatial Planning, Ministry of Health and Ministry of Infrastructure and Energy.

According to recently adopted environmental laws, the Republic Serbia entrusts to AP and/or local self-government units’ significant number of tasks. For example, in accordance with the Law on IPPC the responsibility of integrated permitting is divided between: the Ministry of Environment, Mining and Spatial Planning, Provincial Secretariat for Environment Protection and Sustainable Development, and local government bodies responsible for environment-related issues. The Ministry shall carry out the supervision over the implementation of provisions of this Law and bylaws adopted based on it. The Autonomous Province is entrusted with the task of inspection supervision over the installations and activities for which the permit is granted by the competent provincial authority in accordance with this Law. The local self-government unit is entrusted with the task of inspection supervision over the installations and activities for which the permit is granted by the competent local self-government authority in accordance with this Law.

\textsuperscript{39} See Article 97 of the Constitution on the Republic of Serbia’s competences, Article 183 of the Constitution for the autonomous provinces competences and Article 190 of the Constitution for the municipalities competences.

\textsuperscript{40} <www.mem.sr.gov.yu>.

\textsuperscript{41} http://www.ekoplan.gov.rs/src/index.php

\textsuperscript{42} http://www.sepa.gov.rs/ The EPA was established by Article 4 of the Law on Changes and Additions of the Law on Ministries (Off. Jour. of RS, No. 88/04)
5.3 Specific issues applicable to carbon capture and storage

(i) Classification of carbon dioxide and its legal definition, including proprietary rights of stored CO₂

There is no legal definition of CO₂ in national environmental legislation. The Initial National Communication of the Republic of Serbia (Belgrade, November, 2010) does not define CO₂ and references to possible sources of law (and definition) are not contained in other relevant strategic documents: National Environmental Protection Programme, Waste Management Strategy and National Sustainable Development Strategy.

Proposals for the inclusion of project activities “which pertain to production and use of nuclear energy and carbon capture and storage into CDM activities” have been mentioned without explanations or definitions.⁴³

Application of Carbon Capture Storage (CCS) technology in the thermal power plants of the Electric Power Industry of Serbia has been mentioned in the Green Book of the Electric Power of Serbia also without explanation.⁴⁴

General legal framework applicable to the classification and definition of CO₂

A) Law on Environmental Protection (Off. Jour. of RS, No. 135/04, 36/09, 36/09-other law and 72/09-other law)
Article 3:
- pollutants shall mean substances whose release into the environment affects or may affect its natural composition, properties and integrity; (Point 15)
- emission shall mean the discharge and outflow of pollutants in gas, liquid and solid state of matter or emission of energy from pollution sources into the environment; (Point 18)
- waste shall mean any object or substance, categorised according to determined waste classification, that the owner treats or is obliged to treat, i.e. manage; (Point 20)
- dangerous substances shall mean chemicals or other substances that have harmful and hazardous characteristics; (Point 21)

B) Law on Air Quality (Off. Jour. of RS, No. 36/09)
Article 3:
- greenhouse gases are the gases absorbing and re-emitting infrared rays and getting into the atmosphere as a consequence of natural processes, but also due to human activities; (point 2)
- emission of greenhouse gases is transmission of greenhouse gases from individual and/or diffuse sources into the air; (point 12)

Article 40 (Measures for preventing and decreasing air pollution):
Measures for preventing and decreasing air pollution and improving air quality include the following:
1) prescribing the limit values of the pollutant emissions from the stationery pollution sources;
[…]

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⁴³ National Strategy for Incorporation of the Republic of Serbia into Clean Development Mechanism - Waste Management, Agriculture and Forestry Sector, op. cit, p. 82.
3) consolidation with national emission ceilings after their establishment for individual pollutants; 
[…]
5) decreasing the emission of greenhouse gases;

Article 50: Greenhouse gases are the following: carbon dioxide (CO$_2$), methane (CH$_4$), nitridesuboxide (N$_2$O), fluorohydrocarbons (HFCs), perfluorocarbons (PFCs) and sulphurhexafluoride (SF6).

C) Law on Waste Management (Off. Jour. of RS, No. 36/09, 88/10)
Article 5:
- *waste* means any substance or object, contained in the list of waste categories (Q list), which the holder discards or intends or is required to discard, in accordance with the law; (point 17) (N.B. The Q list does not include CO$_2$)
- *hazardous waste* means waste that because of its origin, composition or concentration of dangerous substances may endanger the environment and human health and has at least one of the dangerous properties governed by special regulations, including the package into which the hazardous waste was or is packed; (point 18)

Article 4: 
The provisions of this Law shall not apply to: *gases emitted into the atmosphere*; (point 2)

In the context of CCS of course, gases are stored underground rather than being emitted into the atmosphere. The Law on Waste Management only mentions the notion of “underground” once, in an indirect way in the Article 5 point 5 definition of “landfill”. It says “landfill means a waste disposal site for the deposit of the waste onto or into land”. Given that the definition of “waste” does not appear to cover CO$_2$, the definition of landfill is not going to apply to CCS.

**Framework applicable to proprietary rights over stored CO$_2$**

Although no specific provisions regulate the proprietary rights over stored CO$_2$, the provisions of the Act on Bases of Property Relations, Act on Conveyance of Immovable Title, the Contracts and Torts Act and the Concession Act could apply accordingly. The main question that arises in regard to CO$_2$ is whether it could represent a “thing (matter)” which can be possessed, used and disposed of, and which can be subject of property rights. Certain civil law codes specifically regulate this issue. Although there are no specific legal provisions to this effect, it is accepted in case law in Serbia that any “substance” (gas, natural sources of energy such as wind, electricity, heat) which is subjected to human intervention (such as capturing a gas) represents a matter over which a person may have property rights. The same analogy should be applied to captured and stored CO$_2$. Article 15 of the new draft Act on Property Rights and other rights *in rem* defines a thing as any substance (matter) which may be in one’s power or represent a subject of property rights on any other rights *in rem*.

As regards the ownership of stored CO$_2$ the rule *superficies solo cedit* in principle applies— an improvement that stands on the surface of the ground, such as a construction, trees, plants and anything underground belongs to the owner of the land. If it concerns state land, the conveyance of title to natural or legal persons is possible but it may only be done by public sale (Article 14, paragraph 1 of the Act on Conveyance of Immovable Title$^{45}$) or by public procurement. However, a foreign legal person can acquire a property title only if it is necessary for its professional activity. This restrictive approach will have to be changed in the light of the European integration process. There is a legal gap concerning the ownership of

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immovable property in cases when the company ends its professional activity. In cases of conveyance of title to a foreign natural person statute requires *de facto or de iure* reciprocity.

The Act on Conveyance of Immovable Title defines immovables as land (agricultural land, land used for construction and forest), buildings, apartments, business premises, garages and designated street or outdoor parking space) as well as other construction premises. This statute stipulates requirements to be met in cases of title conveyance – the contract must be in written form and the signature of the contracting parties must be certified by the court.

Any contract on the use of pipelines and other facilities in connection to the pipelines is to be governed by the Contracts and Torts Act which regulates the obligations of the contracting parties, provided that the requirements of certain relevant acts (in this case the Energy Act, the Geological Explorations Act, the Mining Act and the Act on Pipeline Transport of Gaseous and Liquid Hydrocarbons and Distribution of Gaseous Hydrocarbons) are respected.

At the same time this statute regulates the question of damages in case of civil liability for environmental damage. It provides a legal basis for initiating the class action. If damage occurs as a result of performing an activity of general interest for which the permit is required, the plaintiff may only require compensation for damage above the “normal level” (Article 156). It is worth mentioning that the judiciary is not very efficient in these legal proceeding. Moreover, certain behaviours lead at the same time to civil and criminal liability. Unfortunately, the number of environmental cases is negligible.

The Concession Act can also potentially be applied in the case of CCS projects, depending on how the CCS projects will be treated and how the property rights issues over the captured and stored CO₂ will be regulated. According to Article 3 of the statute the concession entails the use of natural resources, a good of public importance and performing activities of public importance which are transferred to the concessionary by the state. The concessionary pays an adequate fee for the use of these rights. Building, maintenance and use of oil pipelines, gas pipelines, facilities for storage, transport and gas distribution as well as their reconstruction, modernisation, maintenance and use may be the subject matter of the concession. The procedure for granting concession, elements of the concession contracts are criteria for determining the concession fee, rights and obligations of the concessionary and the dispute resolution provisions are prescribed by this statute.

(ii) *Jurisdiction over the control and management of domestic and cross-boundary pipelines and reservoirs (including monitoring, reporting and verification requirements)*

The transportation of CO₂ is not regulated by any specific law. However, the provisions of the aforementioned Act on Pipeline Transport of Gaseous and Liquid Hydrocarbon and Distribution of Gaseous Hydrocarbons could apply. This statute defines transportation by pipeline as the transportation of gaseous and liquid hydrocarbon by oil pipelines, oil derivatives pipeline and gas pipelines under the operational pressure of over 16 bars. The statute regulates different types of pipelines, namely oil, gas and product pipelines. Moreover, the statute distinguishes interstate systems for oil and natural gas transport or their products when it concerns the cross boundary movement between other states or transit through Serbia.

The ministry responsible for energy is in charge of inspection of energy facilities. The inspection powers are vested in the autonomous provinces for the territory they cover. In performing the inspection, an inspector has the following powers:
• to order the removal of any irregularity or deficiency concerning the building, use and maintenance of the facility and implementation of safety measures;
• to suspend transport or distribution of natural gas to a client if the operator did not remove identified irregularities or deficiencies or in cases when there is an immediate threat to the life and health of people, environment and property;
• to bring criminal or petty offence charges and
• to suspend works in the protected area of a pipeline if the works are not performed in compliance with the law.

An appeal to the minister may be lodged within a time limit of 15 days from the service of the inspector’s decision.

(iii) Proprietary rights to cross-boundary CO\textsubscript{2} capture and storage sites and facilities

The Agreement on Succession Issues signed in Vienna, on 29 June 2001 regulates the division of existing movable and immovable property which also includes cross border sites. The use of cross border sites is an issue to be regulated by separate agreements. According to Article 1 of Annex A to the Agreement the movable and immovable State property of the federation constituted as the SFRY shall pass to the successor States in accordance with the provisions of Annex A. Immovable State property of the SFRY which was located within the territory of the SFRY shall pass to the successor State on whose territory that property is situated. Tangible movable State property of the SFRY which was located within the territory of the SFRY shall pass to the successor State on whose territory that property was situated on the date on which it proclaimed independence. Where pursuant to Annex A property passes to one of the successor States, its title to and rights in respect of that property shall be treated as having arisen on the date on which it proclaimed independence, and any other successor State's title to and rights in respect of the property shall be treated as extinguished from that date.

A Joint Committee on Succession to Movable and Immovable Property shall be established by the successor States, which shall ensure the proper implementation of the provisions of this Annex applicable to tangible movable and immovable property (other than military property) and the resolution of any problems which might arise in the course of their application. The work of the committee is still in process and it should be accelerated.

However, in relation to cross border facilities or sites that do not currently exist but may be built in the future, these shall be regulated by a separate agreement that must be in accordance with the relevant international environmental agreements ratified by contracting parties. The content of the agreement will depend on the contracting parties, whether it is the inter-state agreement or the agreement of private parties.

(iv) Regulatory and/or licensing (permitting) scheme related to the operation and management of storage and transportation facilities

As stated previously, the lack of more precise information on CCS projects leaves uncertainty as to the permits that would be required in this case. Therefore, instead in this section the experts try list all existing and possibly relevant permits that may be required for this purpose. They are divided into two categories: permits according to the Mining Act, Geological Explorations Act and Energy Act, and permits issued under the Spatial Planning and Construction Act, environmental and other legislation. This
classification comes from the idea that the use of CCS technology will both include permits required for certain hazardous activities and their effects on the environment and human health, as well as permits required for geological explorations, mining sites and energy facilities.

The procedure for issuing permits in accordance with the Mining Act, Geological Explorations Act and Energy Act is analysed in more detail below.

**List of permits according to the Geological Explorations Act, Mining Act and Energy Act**

According to the **Geological Explorations Act** two different permits/approvals are requested:

- Geological explorations design – The geological exploration design is subject to technical inspection before approval is granted;
- Exploration permission - Geological explorations in a certain exploratory area shall be executed on the basis of approval of explorations issued by the responsible Ministry.

According to the **Mining Act** the company in charge of exploitation of mineral resources must acquire several different permits from the ministry responsible for energy sector: exploitation approval, approval for performing mining works, approval for use of mining facility. The approval for use of a mining facility requires that planning permission is obtained

Although there is no specific legislation regulating CCS, the provisions of the Energy Act and the Act on Pipeline Transport of Gaseous and Liquid Hydrocarbons and Distribution of Gaseous Hydrocarbons as well as the Rulebook on Criteria for Issuing Energy Permits, Application Content and Procedure for Issuing Permits may apply.

According to the Serbian **Energy Act**, the energy facilities are constructed pursuant to the statute regulating spatial planning and construction of facilities, technical and other regulations, with a previously obtained energy permit. An energy permit is issued for the construction and reconstruction of the following facilities: electrical power generation facilities with an installed capacity exceeding 1 MW; oil derivatives manufacturing facilities; direct electrical power transmission lines, oil pipelines, oil derivative pipelines, gas pipelines and heating pipelines; oil pipelines and oil derivative pipelines, facilities for oil storage and oil derivative reservoirs of over 50 tons capacity; natural gas transportation facilities; natural gas storage facilities; natural gas distribution facilities; liquefied natural gas storage facilities; heat producing facilities with an installed capacity exceeding 1 MW and for heat distribution facilities and electrical power transmission facilities and electrical power distribution facilities of over 35 kV voltage. Any domestic and foreign entity may be the holder of the permit and the permit may be obtained before the conveyance of ownership.

The issuance of an energy permit for the construction of direct power transmission lines, gas pipelines, oil pipelines, oil derivative pipelines or heat pipelines may be denied if their construction would threaten environmental protection objectives or energy supply safety of tariff consumers with their route, place of construction or connection conditions.

More detailed rules for issuing energy permits are prescribed by the Rulebook on Criteria for Issuing Energy Permits, Application Content and Procedure for Issuing Permits. Depending on the type of energy facility the Rulebook prescribes different criteria for issuing the energy permit. The statute differentiates

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criteria depending on the type of facilities (1. energy facilities used for production and 2. “other energy facilities”).

Depending on the type and activity of a facility the following criteria must be fulfilled in order for a permit to be issued: requirements regarding the safe and uninterrupted functioning of the energy facility; requirements regarding the identification of the location and use of land and requirements regarding the safety and health measures for the protection of people and property.

The application for an energy permit has to be submitted along with documents related to spatial planning and environmental impact assessment.

Energy permits are issued by the Minister responsible for the energy sector.

**List of permits and procedures according to the Spatial Planning and Construction Act, environmental and other relevant legislation (possibly relevant for CCS facility)**

- **Geo-mechanical elaborate**, Law on Planning and Construction (Off. Jour. of RS, no.72/09, 81/09)
- **Feasibility Study and Preliminary Design**, Law on Planning and Construction (Off. Jour. of RS, no. 72/09, 81/09)
- **Location permit**, Law on Planning and Construction (Off. Jour. of RS, no. 72/09, 81/09)
- **EIA Study and Compliance**, Law on Environmental Impact Assessment (Off. Jour. of RS, no. 135/04 and 36/09)
- **Main design**, Law on Planning and Construction (Off. Jour. of RS, no. 72/09, 81/09)
- **Construction permit**, Law on Planning and Construction (Off. Jour. of RS, no. 72/09, 81/09)
- **Act on risk assessment on work**, Law on Health and Safety on Work (Off. Jour. of RS, no. 101/05)
- **Water permit**, Law on Water (Off. Jour. of RS, no. 30/10)
- **Waste management permit**, Law on Waste Management (Off. Jour. of RS, no. 36/09, 88/10)
- **Safety report and emergency plan**, Law on Environmental Protection (Off. Jour. of RS, no. 135/04 and 36/09)
- **Usage permit**, Law on Planning and Construction (Off. Jour. of RS, no. 72/09, 81/09)
- **IPPC permit**, Law on IPPC (Off. Jour. of RS, no. 135/04)

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47 “Other energy facilities” is the term that is used in the statute and covers facilities which are similar to pipelines for carbon capture and storage. “Other energy facilities” include:
1. direct power transmission line, oil pipelines, oil derivatives pipelines, heating pipelines;
2. oil pipelines and oil derivatives pipelines, facilities for oil storage and oil derivative reservoirs of over 50 tons capacity;
3. natural gas transportation facilities; natural gas storage facilities; natural gas distribution facilities; liquefied natural gas storage facilities;
4. electrical power transmission facilities and electrical power distribution facilities of over 35 kV voltage; facilities for heat distribution.

48 It should be noted that to obtain a construction permit, the following compliances must be obtained from relevant institutions: water compliance, electricity, roads, water/sewage connection, protected area, protected cultural monuments, archaeological area, etc.
(v) Long-term management and liability issues arising out of accidents or leaks in domestic and cross boundary CCS projects

Generally speaking, the issue of liability for pollution damage caused to the environment is regulated by law. The responsibility for pollution to the date of privatization at state enterprises shall be borne by the state, not the new owner (Article 41g, the Law on Privatization, Off. Jour. of RS, No. 38/01, 18/03, 45/05, 123/07).49 In Serbia, there are no instruments which have been implemented that require compensation for damages caused to the environment50. Nor is insurance obligatory for facilities or activities that represent a high level of risk to human health and the environment in cases of damage caused to third parties as a result of accidents.51

General environmental act or code

The Law on Environmental Protection (Off. Jour. of RS No. 135/04, 36/2009, 72/2009) regulates environmental liability in a rather general way. Article 5 prescribes that subjects of liabilities are ‘the Republic, Autonomous Province, and local self-governance body, legal and natural entities’. All of them are responsible for activities which change the environmental status. Article 5 paragraph 2 is important: “In performing their activities, legal and natural entities are obliged to provide: rational use of natural resources, calculation of environmental protection expenditures in their investment and running costs, implement regulations, namely take environmental protection measures in compliance with the law”. In accordance with Article 9 (principle of liability of polluter and its legal successor) any legal or natural person that causes environmental pollution by illegal or improper activities shall be liable. This applies even in cases where the polluter goes into liquidation or bankruptcy. The polluter or its legal successor shall be obliged to eliminate the cause of pollution and its consequences. Where ownership of a company changes an environmental assessment and determination of liability for environmental pollution has to take place, as well as settlement of debts of the previous owner on account of pollution and/or damage induced on the environment.

The section of the Law on Environmental Protection entitled Chemical Accident Protection regulates the issues of chemical (industrial) accident protection (Articles 58-63).52 It obliges the operator of the installations where activities are performed that include one or more dangerous substances in prescribed quantities, to create Major Accident Prevention Policy or Safety Report and Emergency Plan, and to take measures to prevent chemical accidents and limit the impact of such accidents. The Minister establishes the list of dangerous substances and their quantities which trigger the obligations on the operator. Currently CO₂ is not listed as such a dangerous substance.

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50 Below Articles 103 and 104 of the Law on Environment Protection are discussed and they create a system of damages, but these have not been implemented.
51 Ibid, p. 128.
52 It is considered that national regulations of the Republic of Serbia related to the field that regulates industrial risks and accidents are approximated with the basic requirements of the provisions of SEVESO II Directive and Convention on the Transboundary Effects of Industrial Accidents and there are basic institutional preconditions for their implementation.
In the case of an accident, depending on its scope, the Ministry can proclaim a state of endangerment of the environment. For accidents with transboundary effects, the state of endangerment of the environment shall be proclaimed by the Government (Article 62).

Assessment of ecological damage of environment and human health is performed in accordance with the Regulation on establishment of criteria for assessment of the status of endangered environment and remediation priorities (Official Gazette of RS, No. 22/10); it is based on the methodology for determination of priorities of contaminated locations restoration by setting up a national classification system. The system was developed to establish a rationally and scientifically based comparative assessment of contaminated locations in Serbia and for determination of responsibility for emerged situation and deployment of induced expenses.

Chapter VII (Articles 102-108) of the Environmental Protection Law is devoted to questions of responsibility for environmental pollution. Pursuant to Article 103, liability for pollution is grounded on the principle of strict liability: the polluter is responsible for induced damage pursuant to the strict liability principle. At the same time, any legal and natural person who enabled or allowed pollution of environment through illegal or incorrect action shall also be responsible. If several polluters are responsible for the environmental damage, and if it is not possible to determine the share of certain polluters, the costs shall be borne jointly and individually. Polluters have to undertake the necessary measures in order to reduce damage to the environment or eliminate further risks, hazard or rehabilitation of the damage in the environment. Under Article 104, if the damage made to the environment cannot be rehabilitated through adequate measures, the person that has caused it shall be responsible to pay a charge equivalent to the value of the destroyed good. However, in practice the system of damages created in Articles 103 and 104 has not been implemented.

Water, waste, air protection legislation

The Law on Waters (Off. Jour. of RS, number 30/10), in the section entitled Protection of Waters against Pollution (Articles 92-111), regulates protection of waters, not only against pollution caused by major industrial accidents, but also against any other pollution, by taking measures and activities that protect and improve quality of surface and ground waters. According to Article 101, if there is an imminent threat of pollution or if water pollution has already occurred, a legal or physical person must take measures to prevent or minimise water pollution. If such persons fail to take the necessary measures to reduce water pollution, then the necessary measures will be taken by the public water management company, at the expense of the legal or physical person.

Natural or legal persons, who deteriorate the water regime, shall, within a time frame stipulated by the inspector, conduct operations with the aim of establishing conditions that existed before the damage occurred. If a person fails to act within a specified period, these actions will be carried out by a public water management company at the expense of the person who caused the damage (Article 139).

Article 35 Paragraph 5 of the Law on Waste Management (Off. Jour. of RS, No. 36/09 and 88/10) prescribes that where pollution is caused during transport of waste\textsuperscript{54}, the waste carrier is responsible for cleaning and removal of pollution of the area. The transport of hazardous waste\textsuperscript{55} shall be performed in accordance with the regulations governing the transport of hazardous goods.\textsuperscript{56} According to Article 8 of the Law on transport of hazardous goods (Off. Jour. of RS, No. 88/2010), transportation of hazardous goods must be insured against liability in the case of harm to persons, property and the environment, in accordance with the law.

Article 62 of the Law on Waste Management provides for the documentation required to be submitted by operators of plants for storage, treatment and disposal of waste together with the application for a waste management permit. Moreover, it is necessary to provide financial and other guarantees or appropriate insurance for the case of accident or damage caused to third parties during performance of waste management activities (Paragraph 3.9).

The provisions of the Law on air protection (Off. Jour. of RS, No. 36/09) do not apply to pollution caused by radioactive matters, \textit{industrial accidents} and natural disasters. (Article 1, paragraph 2). Currently, a leakage from a CCS project is not expressly covered in the definition of “industrial accidents”.

\textbf{Health and safety legislation}

Employers’ liabilities and responsibilities have been defined by Articles 8-31 of the Law on Health and Safety at Work (Off. Jour. of RS, No. 101/05).

Article 9(2) of the Law stipulates that the employer shall not be relieved of duties and responsibilities related to the application of health and safety at work measures by appointing another person or transferring his/her own duties and responsibilities to such other person. Article 9(3) of the Law stipulates that in case of a work related injury caused by irregular or unforeseen circumstances that are out of control of the employer or by exceptional events the consequences of which, despite all the efforts, could not be avoided, the employer shall not be liable within the meaning of this law. Thus, under this provision employers are not be liable in case of force majeure.

Article 13 of the Law requires the employer to issue a risk assessment act in writing for all workstations in the working environment and to define the way and measures for removing any identified risks, and to modify the risk assessment act should any new risk or change in risk level occur in the work process. Article 15(1) point 1 of the Law requires the employer to designate a person in charge of health and safety at work.

The Law on Health and Safety at Work (Article 53) requires the employer to insure employees against injuries at work, occupational diseases and work-related diseases in order to ensure collection of damage claims. Costs of this insurance would be borne by the employer. However, the Law on Health and Safety

\textsuperscript{54} \textit{waste} means any substance or object, contained in the list of waste categories (Q list), which the holder discards or intends or is required to discard, in accordance with the law; (Article 5 Point 17)

\textsuperscript{55} \textit{hazardous waste} means waste that because of its origin, composition or concentration of dangerous substances may endanger the environment and human health and has at least one of the dangerous properties governed by special regulations, including the package into which the hazardous waste was or is packed; (Article 5 Point 18)

\textsuperscript{56} Hazardous goods are substance, object or waste which have been categorised as hazardous goods according to the legislation (international treaties) mentioned in Article 2 Paragraph 2 (of the Law on transport of hazardous goods): ADR, ADN; COTIF, RID, etc.
at Work in Article 53(3) stipulates that the terms and procedures for insurance against injury at work, etc shall be regulated by law. The Republic of Serbia still does not have a separate law on insurance against injuries at work and occupational diseases. Employees exercise their rights in relation to insurance against injury at work in accordance with the Law on Health Insurance (Off. Jour. of RS, No. 107/05 and 109/05) and the Law on Pension and Disability Insurance (Off. Jour. of RS, No. 34/05, 64/04 and 84/04, 85/05, 101/05).

**All statutory “duties of care”**

The principle of a duty of care is an obligation that falls both on the owner of a certain property (immovable and movable) and on any other person who according to law or contract has a right to the possession and use of lands, building and movable property.

According to the Act on Bases of Property Relations the owner is obliged to possess, use and dispose of a subject of property rights in a manner prescribed by law (Article 3). The owner is also obliged not to breach others’ property rights, which represents his duty of care. This statute also regulates nuisances, which include any emitted smoke, odours, noise vibrations, light or gases. The owner should refrain from any action when using his immovable property that causes nuisance, bearing in mind the acceptable levels and the area where the property is located.

The Contracts and Torts Act recognises strict liability in cases of damages resulting from the functioning of facilities that could cause harm to the environment or human health and “ultra-hazardous activities”. This type of liability does not depend on actual negligence or intent to harm. If the liability is proven, the court may order confiscation of hazardous objects from the owner. At the same time, the Contracts and Torts Act prescribes a liability for environmental damage that may result in a class action by which one seeks a removal of the source of damage. The plaintiff may ask for a removal of the source of danger or the cessation of an activity that causes damage or disturbance. If it concerns an activity of general interest, the plaintiff may only request damages. A significant part of the Act is devoted to rules on awarding damages to the injured party. It is important to note that the same behaviour may result both in civil and criminal liability.

According to Contracts and Torts Act, the tenant (which includes any legal or natural person in a contractual relationship) has a right to possession a subject of lease with “due care” which implies a greater standard of care than the owner would have with his own possessions (Article 581). Breach of this standard may result in an owner requesting the court to order that the subject of the lease is returned to him. Bearing in mind that third party access to pipelines represents a type of lease, these provisions might apply.

Upon joining the EU, the liability regimes set out in the following Directives would also be applicable.
- Directive 2004/35/EC on environmental liability with regard to prevention and remedying of environmental damage. So far, full transposition of relevant provisions of Directive 2004/35/EC on environmental liability with regard to prevention and remedying of environmental damage has not been achieved.
- Directive 2003/87/EC which covers liability for climate change as a result of leakages from storage sites. Directive 2003/87/EC has not been transposed in the national legal system. The

57 In a class action, a single person or a small group of people can represent the interests of a larger group.
Republic of Serbia ratified the Kyoto Protocol as a non-Annex I Party. The ETS mechanism is not covered by domestic legislation.\(^{58}\)

**(vi) Financial assurance for long-term stewardship, including how long-term responsibility for a storage site is transferred to the relevant authority, and how CCS regulatory frameworks may reduce the financial exposure of the relevant authority by requiring the operator to contribute to the costs associated with long-term stewardship of the site**

Article 18 of the EU CCS Directive provides that the legal obligations for a closed CCS site (e.g. for monitoring and corrective measures, etc) shall be transferred to the State/competent authority if certain conditions are met. Under Article 20, Member States have to ensure that the operator of a site makes a financial contribution to the competent authority before responsibility is transferred from the operator to the State in accordance with Article 18. The contribution should cover at least the anticipated monitoring costs for a period of 30 years.

By analysing several relevant acts, namely the Mining Act, Geological Explorations Act, the Act on Ionising Radiation and Nuclear Safety,\(^{59}\) Environmental Protection Act, Environmental Protection Fund Act, Waste Management Act and Air Protection Act, it can be concluded that there is no similar financial assurance scheme in place in Serbia. However, some provisions of these acts should be kept in mind.

1. The Mining Act\(^{60}\) requires companies performing mining of mineral raw materials to pay a royalty for their utilisation (Articles 16-16a). Funds obtained from payment of the royalty represent 50 per cent revenue of the Republic of Serbia, and 50 per cent revenue of the municipality on whose territory the mining is performed. When mining of mineral raw materials is carried out on the territory of the autonomous province, 40 per cent represent revenue of the Republic of Serbia 10 per cent the revenue of the autonomous province and 50 per cent the revenue of the municipality on whose territory mining is performed. In order to enhance the development of mining and prevention and suppression of damaging effects as a result of exploitation of mineral raw materials, the Government shall pass an annual programme determining the type and scope of activities, as well as the requirements and allocation of funds designated for the implementation of the programme.

The Mining Act also provides for suspension or termination of mining activities. If, for any reason, mining on certain underground and open cast mines or in mining districts for oil and gas extraction is suspended temporarily or permanently, the enterprise shall inform the Ministry, at least 30 days prior to the suspension of operations. The Ministry shall form a committee which shall examine the reasons for the suspension of operations and effects of this suspension on site. If the committee establishes that operations were not suspended for reasons of force majeure or by someone else’s fault, but that harmful effects were created, the Ministry shall propose to the competent authority the initiation of the procedure for the identification of responsibility for damages created by the suspension.

\(^{58}\) In addition, Serbia is member of the following international treaties, inter alia: Vienna Convention on Civil Liability for Nuclear Damage (“Off. Jour. of SFRY” -International Treaties, No. 5/77); International Convention on Civil Liability for Oil Pollution Damage (“Off. Jour. of SFRY” International Treaties, No. 7/77); Multilateral treaties which have been planed for ratification are following: Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal, 1999; Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, Lugano, 1993.

\(^{59}\) Official Gazette of the RS, No. 36/2009.

In case of the permanent suspension of operations, the company in charge must take all necessary measures to protect the mining structure and land on which operations were carried out, together with safety and environmental measures in accordance with the supplementary mining design for the permanent suspension of operations. The company in charge shall submit to the Ministry for Mining a detailed design on mine closure, mining plans and drawings, surveying records and other documents on the state of mining operations at the time of suspension.

2. The Act on Ionising Radiation and Nuclear Safety prescribes requirements for permanent shutdown of a nuclear facility which are prescribed in detail by the Decision on the requirements for the siting, construction, trial run, commissioning, operation, and permanent shutdown of a nuclear facility. Prior to the permanent shutdown of a nuclear facility, the user of the nuclear facility is obliged to draft a programme for permanent shutdown and a project in which he proposes phases and timescale for implementation of those activities, having in mind the protection against ionising radiation. The Programme will contain the following: methods for dumping of the radioactive waste materials, plan for monitoring of radioactive contamination of the environment in the vicinity of the nuclear facility’s site and assessment of the condition of the environment after the permanent shutdown. Approval for permanent shutdown shall be issued if the programme for permanent shutdown and other documentation provide insurances for prescribed protection against ionising radiation.

A research nuclear reactor shall cease being a nuclear facility upon removal of the nuclear material from it. If the user of the shallow dumping site for radioactive waste materials has an intention to close down the dumping site for good, he must first develop a programme of the dumping site shutdown. The user of the shallow dumping site for radioactive waste materials must provide for its active maintenance during the five-year period after the dumping site units have been covered.

3. In accordance with Article 90 of the Environment Protection Act (Official Gazette of the Republic of Serbia, No. 135/2004, 36/09, 72/09) an Environmental Protection Fund has been established for the purpose of providing financial resources for promoting the improvement and protection of environment in the Republic of Serbia. The Fund is responsible for financing preparation, implementation, and development of programmes, projects and other activities concerning preservation, sustainable usage, protection and improvement of the environment, as well as for the renewable energy resources exploitation. According to Article 93 of the Amendment to the Environmental Protection Act (2009) and Article 17 of the Law on Environment Protection Fund (Official Gazette of RS, number 72/09) it is envisaged to expand the list of activities to be financed by the Fund (encouragement of sustainable development of rural area; encouragement of cleaner transport; encouragement of educational, research and development studies, programmes, projects and other activities, including demonstration activities; co-financing of programmes, projects and other activities in the field of basic geological research).

4. Pursuant to Article 81 of the Waste Management Act (Official Gazette of RS, number 36/09) the resources of the Environmental Protection Fund shall be used for financing programmes, projects and other investments and operative waste management activities such as: the construction of waste management facility; the improvement of waste management organization; the implementation of regional waste management plans; the development of waste management information system; support in development and implementation of new waste management technologies; remediation of long-standing waste pollution, etc.

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5. According to Article 71 of the Air Protection Act (Official Gazette of RS, No 36/09) resources for funding the protection and improvement of air quality are provided in the Republic of Serbia budget, from the income of the Environmental Protection Fund, the operators’ obligations in accordance with the law and other sources. Apart from this, resources for funding the protection and improvement of air quality are provided from autonomous province and local self-government unit budgets, as well as from the income of the Environmental Protection Fund realized at the autonomous province or local self-government unit territory.

The resources are used for, inter alia: implementing measures for decreasing the effect of polluted air on climate change and ozone layer protection; exercising the obligations agreed in international contracts; realization of action plan, plans of air quality and short term action plans; funding and/or co-funding of professional and scientific research needed for the achievement of this law’s aims; co-funding of the investments that shall contribute to the significant decrease of air pollution; funding and/or co-funding of other projects, programmes and measures with the aim of protecting and improving air quality; encouraging cleaner technologies and implementation of the best available techniques for the work of installations and exercising the activities; implementation of technology and products decreasing air pollution; co-funding of preventive and intervention measures in extraordinary circumstances of air pollution and enabling reaction in event of accident (Article 72).

(vii) Third party access rights to transportation networks, transit rights and land rights with regard to pipeline routes

The Serbian Act on Pipeline Transport of Gaseous and Liquid Hydrocarbon and Distribution of Gaseous Hydrocarbons prescribes the conditions for safe and uninterrupted pipeline transport of gaseous hydrocarbon and liquid hydrocarbons and distribution of gaseous hydrocarbons, industrial design, building, installation and use of pipelines and internal gaseous installation. The statute regulates different types of pipelines, namely oil pipelines, gas pipelines and product pipelines. In order to ensure the conditions for safe and uninterrupted transport of gaseous hydrocarbons and liquid hydrocarbons and distribution of gaseous hydrocarbons the statute regulates several phases of this process which are the following: the industrial design, testing, commissioning the pipeline, use and maintenance of pipelines, safety measures and inspection.

The Energy Act provides for third party access which in the absence of a relevant CCS provision may give an indication of the possible rules to be applied. The operator in the energy entity in charge of transmission, transportation or distribution systems, i.e. natural gas storage shall allow access of third parties to the system based on the principles of transparency and non-discrimination, in conformity with technical possibilities and depending on the load level of the transmission, transportation or distribution systems. Transmission, transportation or distribution systems, i.e. natural gas storage access and use prices are regulated and public. The aforementioned system of access and use prices is to be determined by the system operator in conformity with the pricing methodology for system access and use, based on the previously obtained opinion of the Energy Agency. The Government of the Republic of Serbia approves the pricing.

A system operator may refuse access to the system when technical possibilities do not so allow due to a lack of capacities, faulty operation or system overload i.e. as a result of threatened system functioning safety or the objection of an energy producer in the Republic of Serbia on a lack of reciprocity. Data on the load level of a transmission, transportation or distribution system or on the capacity of a natural gas storage facility are public. A system operator shall bring a reasoned decision on refusal of system access within three days as of the date of application for system access, at the latest. An appeal may be filed...
against this decision to the Energy Agency within eight days from the service of the decision. Third party access is regulated both regarding the electrical power, oil and oil derivatives and natural gas. Thus, an energy entity carrying out oil derivatives transport by pipelines shall establish the transportation system grid code which shall, in particular, contain: technical conditions for connection to the oil transportation system, technical conditions for safe system operation, breakdown procedures, rules on third party access to the oil transportation system, functional requirements and measuring devices precision level, the oil measuring method and other transport conditions. At the same time the energy entity carrying out oil pipeline transport shall enable the transit of oil through pipeline according to the principles of regulated third party access, non-discrimination and transparency, with due respect for the concluded international conventions or contracts. The energy entity carrying out oil pipeline transport may refuse third party access based on a request for pipeline oil transit, if there are technical-technological limitations, if oil pipeline capacities are full, or due to the already undertaken contractual commitments and oil consumption of consumers on the territory of the Republic of Serbia.

As for third party access rights it is important to analyse the contractual provisions which should regulate this issue, provided that the aforementioned provisions of the Energy Act are respected. As a rule any improvement that stands on the surface of the ground, such as construction, trees, plants and anything underground belongs to the owner of the land. If it concerns state pipelines, the provisions of the Concession Act can be applied.

(viii) Regulatory compliance and enforcement schemes

Generally, the responsibilities related to inspections and enforcement are determined by several legal acts. These are:

- Law on State Administration (Off. Jour. of RS, No. 79/05, 101/07),
- Law on Establishing Competences of the Autonomous Province of Vojvodina (Off. Jour. of RS No. 99/09), and

The Law on State Administration contains special provisions related to inspection control, in Articles 22-33 while Articles 34-37 are related to administrative inspection. Inspection control is performed by ministries through their inspectors and other authorized persons. The inspector is obliged to undertake inspection if asked by citizens, enterprises and other organizations, in matters concerning their business, and to inform them about the results of the inspection. The inspector is obliged to start proceeding with competent authorities if he finds that a criminal act, commercial offence, offence or breach of working duty has been committed by breach of regulations, over which he is competent (Article 30). Organs or organizations which are obliged to start the above-mentioned proceeding should at the end of a proceeding inform the inspector about the result of it. Certain activities concerning of inspection control could be by law transfer to organs of counties, city of Belgrade, other cities and autonomous provinces (Article 22 of the Law on State Administration).

62 According to Art. 18 of the Law on state administration (2005) that inspection supervision will be regulated by special law. Until then, relevant provisions of the previous Law on state administration are in force (Off. Jour. of RS, Nos 20/92 and 6/93, 48/93, 53/93, 67/93, 48/94 and 49/99) (Art. 93).

63 The inspected parties are obliged to allow the inspector to perform his duties without any obstacle, to allow him to inspect documents and objects and to help him in other way if asked (Art. 29).
Apart from the above mentioned responsibilities of the environmental inspections, inspections in the relevant fields are regulated by sectoral laws such as: Law on Environmental Protection, Law on IPPC, Law on SEA, Law on EIA, Law on Waste Management, Law on Chemicals, Law on Air Protection, Law on Mining, Energy Law, Law on Geological Explorations, Law on Pipeline Transportation of Gaseous and Liquid Hydrocarbons and Distribution of Gaseous Hydrocarbons, etc).

Environmental inspection

Competence for law enforcement in the field of environmental protection is divided between: republic inspections, provincial inspectors and local inspections. The Instruction on Environmental Inspection Reporting\(^{64}\) entered into force on 31 January 2007 and attempted to unify inspection work on all levels in Serbia.

Republic inspection for environmental protection is the state institution for control and monitoring functioning within the Ministry of Environment, Mining and Spatial Planning. There is a territorial division of competences- within the republic inspection; there are departments across the territory of the whole Republic, responsible within the republic inspection competences. At the time of writing, there are a total of 306 inspectors for environmental protection (republic 92, provincial 18 and local 196).

The Department of Control and Monitoring performs duties related to: environment pollution protection; protection and use of natural assets and resources; procedure in case of a chemical emergency; water and fishery pollution protection; protection from ionizing and non-ionizing radiation; waste management; approximation of environmental inspection activities with EU requirements for implementation of European Council Recommendation on minimum criteria for environmental inspection; preparing reports and records of enforcement of inspection control; participation in preparing professional framework for drafting regulations; construction monitoring tasks; urban monitoring tasks; performing other tasks within the scope of the Department.

On the basis of Article 109a (“Supervision of the work”) of the Law on Environmental Protection, the Ministry shall supervise the work of the competent bodies of local self-government units (LSU bodies) in the performance of the entrusted tasks. Also, based on Article 78 Paragraph 2 of the Law on Local Self-Government bodies, the Republic supervises the legality of the work and acts of LSU bodies, in accordance with the Constitution and the law.

The Autonomous Province of Vojvodina, through its agencies in the area of protection and improvement of the environment (Article 28, Law on Establishing Competences of the Autonomous Province of Vojvodina) performs inspections in the field of environmental protection and takes measures to prevent irregularities in the area. However, it does not carry out inspection control in the case of accidents, in the field of ionising radiation or in the case of transboundary movement of goods. Transboundary movements of goods (such as poisons, ozone depleted substances, protected flora and fauna, waste, radioactivity) are in the competence of the republic environmental inspection.

On the basis of the Law on Local Self-governments, Article 52, Item 5 and Article 6, the Republic of Serbia may entrust a LSU with particular matters within its competency, such as enforcement of laws and regulations, and the LSU are obliged and responsible to carry out these tasks as entrusted.

\(^{64}\) No. 353-03-2197/2006-01.
Obligation to cooperate

Obligatory cooperation between inspectors from different domains is regulated by the Law on State Administration. Article 27 of the Law on State Administration is especially important. It states that in the performance of his duty the inspector “cooperates with other inspectors, judicial organs, magistrates and other interested organs and organizations.” Also, the inspector is obliged to undertake and propose necessary preventative measures and actions aimed preventing the breach of legal and other regulations.

General rules of cooperation of environmental inspectors with inspectors competent in other domains are regulated by Article 113 of the Law on environmental protection. Article 113 provides that the inspector must “inform other competent authorities as well as taking measures under his authorisation.” Furthermore, “the other competent inspection authority shall inform the inspector of the measures taken.” But, in cases when the “inspector determines such violation of law, which is also within the competence of other inspection authorities, he is obliged to inform the Minister thereof, without further delay, so that they could jointly perform inspection and take adequate measures.”

Powers

Rights and duties of inspectors, in performing inspection control, are prescribed by specific provisions of the Law on state administration (Article 23).

An inspector, in the scope of his/hers authorities, can initiate three types of legal proceedings: 1. bring charges of criminal offence or 2. bring charges of commercial offence to a competent body and/or 3. request initiation of misdemeanour proceedings.

Ability of the authorities to handle the inspection (routine and non-routine) requirements found in Article 15 of Directive 2009/31/EC

Requirements found in Article 15 of Directive 2009/31/EC are not explicitly covered by the regulations relevant for activities of the enforcement authorities. However, it could be said that same general elements of the procedure could be found.

In accordance with Directive on Planning and Reporting on Environmental Inspections (republic level) No. 353-03-2196/2006-01 entered into force on 31 January 2007 and compliant to the Council of Europe and the European Parliament Recommendation from 4 April 2001 (2001/331/EC) on Introduction of Minimum Criteria for Environmental Inspections (RMCEI), planning method, reporting and record keeping on implemented inspection monitoring have been unified for all republic inspectors. Beside planned ones, inspection also performs unplanned, non-scheduled (ad hoc) monitoring, that can be performed: on the request from a party when establishing whether conditions related to EP have been met (for example in the procedure for obtaining licenses, permits and similar), based on notification/annunciation/complaint from a citizen on illegal work of an operator (for example in the case of air pollution or illegal waste disposal, exceed of noise level and similar) and in case of an accident or incident.

Generally speaking, it should be stressed that enforcement of environmental legislation in Serbia is sometimes still insufficient and that it suffers from serious drawbacks, due to the weak monitoring

system, lack of certain environmental standards, and low compliance with the law. According to the National Environmental Protection Program, institutional capacity in implementation of environmental protection legislation is generally insufficient, particularly at the local level. Institutional weaknesses in policy and environmental management include, inter alia: incomplete implementation of laws and supervision over the enforcement of regulations by inspection particularly at the local level. Environmental Inspection should be significantly enhanced, particularly at provincial and local level (in towns and municipalities).

(ix) Environmental impact (including cumulative impact) assessment process, risk assessment and public consultation

a) Serbia has carried out environmental impact assessment (EIA) since the early 1990s when EIA legislation was passed for the first time. The new Law on EIA was passed by Parliament in a package together with a new Law on Environmental Protection (EPL) and new laws on SEA and IPPC in December 2004. EPL stipulates that environmental impact assessment shall be an integral part of the technical documents and without it no project execution may start (Article 36, paragraph 3).

b) The basic legal act which currently regulates EIA in the Republic of Serbia is the Law on Environmental Impact Assessment (Off. Jour. of RS, No. 135/2004, 72/09). The Law on EIA targets planned projects and projects being implemented, changes in technology, reconstruction, the extension of capacity, the termination of operations, and the removal of projects that may have significant impact on the environment (Article 3).

c) Further elaboration of basic goals contained in this Law has been achieved by adoption of certain bylaws.

66 See also: Ministry of Environment and Spatial Planning, Sector for Control and Surveillance, Annual Report 2010, Belgrade, 2011. [link]
68 Currently the following bylaws on EIA are in force:
1) Regulation on the List of projects for which EIA is obligatory and the List of projects for which EIA may be required (on the basis of Article 4, par 1 and 3 of the Law on Environmental Impact Assessment (Off. Jour. of RS, No. 114/2008)
2) Rules on contents of the application on needs for the impact assessment and contents of application for determination of size and contents of the study of the environmental impact assessment (on the basis of Article 8 par. 3 and Article 12 par. 3 of the Law, the minister decreed on 9 August 2005) (Off. Jour. of RS, No. 69/2005).
3) Rules on the procedures of the public access, presentation and public debate on study of the environmental impact assessment (on the basis of Article 20 par.5 of the Law, the minister decreed on 9 August 2005) (Off. Jour. of RS”, No. 69/2005);
4) Rules on work of technical commission for assessment of the study of the environmental impact assessment (on the basis of Article 23 par.5 of the Law, the minister decreed on August 9 2005) (Off. Jour. of RS, No. 69/2005);
5) Rules on contents of the study on environmental impact assessment (on the basis of Article 17 par.4 of the Law, the minister decreed on August 9 2005) (Off. Jour. of RS”, No. 69/2005);
**EIA procedure**

The environmental impact assessment procedure is provided for by Articles 6-34 of the Law on EIA. According to Article 6, the procedure in Serbia comprises the following steps: (1) the decision on the need for an impact assessment of projects referred to in Article 4, paragraph 1, point 2 of this Law (Articles 8-11); (2) the definition of the content and scope of an impact assessment (Articles 12-15); and (3) the decision on the approval for an EIA Study (Articles 16-28).

The main stakeholders in the EIA procedure are: Competent authorities (ministries, autonomous region and local authorities), project developer (investor), authorities and organisations concerned, the general public and the public concerned. According to Article 2 of the EIA Law “competent authority” means the authority responsible for carrying out the environmental impact assessment procedure within the functions set forth by this Law, i.e. the Ministry responsible for environmental protection – for those projects for which the permit for project implementation is under the responsibility of the Republic authority; the provincial authority responsible for environmental protection matters – for those projects for which the permit for project implementation is under the responsibility of the authority of the autonomous province; the local self-government authority responsible for environmental protection matters – for those projects for which the permit for project implementation is under the responsibility of the local self-government authority;

**List of activities**

a) Activities relating to the capture, transport, injection and storage of carbon dioxide have not been stipulated as activities for which the EIA procedure is obligatory. However, it must be kept in mind that, in accordance with the Regulation on the List of Projects for which EIA is Obligatory and the List of Projects for which EIA May Be Required, the EIA procedure is obligatory for the following projects:

- Pipelines for the transport of gas, liquefied petroleum gas, oil and oil derivates or chemicals with a diameter of more than 800 mm and a length of more than 40 km (point 16 of List I)
- Storage facilities for petroleum, petrochemical and chemical products, natural gas, flammable liquids and fuels, whose capacity is 100,000 tons or more. (Point 21 of List I)

b) In addition, the competent authority may decide that the environmental impact assessment procedure has to be applied in case of other activities which could have a significant effect on the environment. Lists of projects for which an impact assessment may be required (Article 4 par. 1 point 2 of the EIA Law) include, inter alia, the following activities:

- Pipelines with associated developments for transport of gas, crude oil, chemicals, steam, hot water or without associated developments, as well as transfer of electricity by overhead cables: (a) Oil and gas pipelines (length exceeding 10 km and radius exceeding 150 mm); (b) Pipelines for transport of chemicals, excluding the pipes used for operation (length exceeding 2 km and radius exceeding 150 mm);
- Pipelines for transport of steam or hot water, for objects in 3.1 excluding internal pipes in factories (length over 20 km) (d) Pipelines for transport of waste Water (length over 10 km); (e) Crude oil and oil derivates Pipelines (projects not included in Annex I); (f) Overhead high voltage cables (of 110 kV or more) (point 4 of the List II of the Regulation);
- Storage of combustible inflammable liquids and gases, natural gas, fossil fuels, crude oil and derivates and chemicals: (a) Storage of combustible gases or products containing combustible gases (total exceeding 50 m3); (b) Storage of inflammable liquids (total exceeding 500 m3).

Article 31 of EU Directive 2009/31/EC amends the EU’s EIA legislation, namely Directive 85/337/EC on the assessment of the effects of certain public and private projects on the environment. As a result, Directive 85/337/EC is now applicable to the capture and transport of CO₂ streams for the purposes of geological storage and also to storage sites pursuant to this Directive. Serbia’s Regulation on the List of
Projects for which EIA is Obligatory and the List of Projects for which EIA May Be Required does not contain provisions relevant to Directive 2009/31/EC. It means that CCS activities covered by amendments prescribed by Directive 2009/31/EC and relevant for environmental impact assessment have not yet been stipulated in national legal system of the Republic of Serbia.

Strategic Environmental Assessment (SEA)

The Law on Strategic Environmental Impact Assessment (SEA) introduced strategic assessment of effects on the environment into the legal system of Serbia (Official Journal of RS, No. 135/2004, 88/10). According to Article 5 the strategic assessment shall be carried out for all plans, programmes, sectoral master-plans and strategies (plans and programmes) in the fields of spatial and town planning or land use planning, planning in the fields of energy, industry, transport, waste management, water management, preservation of natural habitats and wildlife (flora and fauna), that set the frameworks for granting the approval for future development projects defined by the environmental impact assessment related legislations.

Articles 5-24 prescribe strategic assessment procedure, which is, in accordance with Article 8, composed of the following three stages:

1) The preparation stage includes: the decision on the strategic assessment elaboration; the selection of the strategic assessment developer; the participation of authorities and organizations concerned;

2) The strategic assessment report;

3) The decision-making procedure that includes: the participation of authorities and organisations concerned; the participation of the public concerned; the report on the results of participation of authorities and organizations and public concerned; the evaluation of the strategic assessment report; the approval of the strategic assessment report.

Environmental Impact Assessment in a Trans-boundary Context

a) If the planned project could cause a significant impact on the environment of another state, or when another state in which the environment could be significantly threatened requests the information, the Ministry shall, within the shortest possible period, at the latest simultaneously with notifying its own public, submit to the State concerned all relevant information. Article 32 of the Law on EIA defines types of information that have to be submitted to another State in the process of transboundary consultation.

b) Pursuant to Article 23 of the Law on SEA the Ministry responsible for environmental protection has an obligation to conduct the exchange of information on transboundary impact of plans and programmes on the environment.
Risk assessment

Articles 58-63 (chemical accidents) of the EPL lay down the obligations of operators of installations where activities are performed that include or might include one or more dangerous substances in prescribed quantities, to create Major Accident Prevention Policy or Safety Report and Emergency Plan, etc. During 2010 three by-laws had been adopted and published in “Official Gazette of RS”, no. 41/10. These are following: Rulebook on the content of the notice about new Seveso facility or complex, existing Seveso facility or complex and about permanent cessation of Seveso facility or complex; Rulebook on the content of Accident prevention policy and the content and methodology of the Report on the safety and Accident protection plan; Rulebook on the List of hazardous substances and their amounts and criteria for determining the type of documents produced by the operator of Seveso facility or complex.\(^{69}\)

The Law on IPPC prescribes that the documentation approval in the field of chemical accidents protection for Seveso installations has to be attached to the request for the issuing of an integrated permit. The Law on Emergency requires the creation of Emergency Protection and Rescue Plans at the level of the Republic, autonomous province and local government unit. The Law on Waters (Official Gazette of RS, number 30/10), in the section entitled Protection of Waters against Pollution, prescribes protection of waters, not only against pollution caused by major industrial accidents, Protection of waters is implemented pursuant to the Plan on Protection of Waters against Pollution.

Pursuant to the Law on Environmental Protection, the Government of the Republic of Serbia adopted a Regulation on the programme for the systematic monitoring of soil quality, soil degradation risk assessment indicators and methodology for the development of remediation programmes (Official Gazette of RS, No. 88/10).

Risk assessment at work has been regulated by the Law on Health and Safety at Work (Official Gazette of RS No. 101/05) and several by-laws: Regulation on health and safety at work on temporary or mobile construction sites (“Official Gazette of RS” No. 14/09), Regulation on preventive measure for safe and healthy work in mineral exploitation through drilling (Official Gazette of RS No. 61/10), Regulation on preventive measure for safe and healthy work in surface and underground mineral exploitation (Official Gazette of RS No. 65/10), Rulebook on curriculum, method and costs for taking certification exam for jobs in the area of health and safety at work and jobs of a responsible person (Official Gazette of RS No. 29/06 and 62/07), Rulebook on terms and costs for issuing licences for jobs in the area of health and safety at work (Official Gazette of RS No. 29/06, 72/06 and 62/07), Rulebook on method and procedure of risk assessment at workplace and in working environment (Official Gazette of RS No. 72/06, 84/06 and 30/10), etc.

Public consultation

a) Public participation as well as access to information is regulated at the national level. In addition, the Republic of Serbia is member of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Official Gazette of the RS, no. 38/09). A number of legal and sub-legal acts deserve mentioning. The 2004 Law on Environmental Protection (EPL) contains a number of provisions of systemic character relevant for access to environmental

\(^{69}\) It is believed that with these regulations are fully implemented provisions of the Seveso II Directive in the national legislation.
information and public participation (Articles 78-83). It also prescribes certain limitations for the right to access to environmental information.\footnote{Two other documents deserve mentioning: The 2004 Law on Free Access to Information of public interest (Official Journal Of. RS, No. 120/2004) and 2005 Instruction for publishing information on the work of public bodies. Both documents entitle citizens to enquire about the work of government bodies in general, including those in environmental field. They can require such bodies to report to the public about their responsibilities, organizational structure, budget, services, public procedures, procedure for requesting information, and so on. Citizens are also given the possibility to voice their opinions about the Government’s work and procedures.}

b) Public participation is regulated by Articles 10, 11, 14, 15, 20, 25, 27, 29, and 32 of the Law on EIA. This Law defines public participation, prescribing that the public should be informed at three different stages of the process and has the right to voice its opinion at each of these stages. The authorities must, if requested to do so, at all stages provide complete documentation, related to an EIA procedure. Specified confidential business or state information is the exception. According to Article 20 of the Law on EIA, the competent authority shall make the EIA Study available to the public and arrange for a public presentation and debate on the Study. Within seven days from the date of receipt of the application for the EIA Study approval, the competent authority shall inform the project developer, the authorities, organizations and the public concerned about the time and venue for public consultation, presentation and debate on the EIA Study. Public debate may not be held sooner than twenty days from the date when the public was informed. The project developer shall participate in the public presentation and debate on the EIA Study.

c) The 2004 Law on Strategic Environmental Assessment provides that the public has the right to be informed about programmes in preparation and their impact on the environment. Article 19 of the Law on SEA states that: the competent planning authority shall provide for public participation in the strategic assessment report consideration prior to submission of application for granting the approval for the strategic assessment report. The public referred to in paragraph 1 of this article shall consider the report within the procedure of making the plans and programmes available for public insight and during the public debate, if it has not been otherwise provided for by the Law. The competent planning authority shall inform the public referred to in paragraph 1 of this article about the method and deadlines for insight into the content of the report and submission of opinions, as well as about the time and venue of public debate organized in accordance with the Law regulating the procedure of adoption of plans and programmes.

In accordance with this, the Law on Planning and Building (Official Journal of RS, No. 72/09, 81/09, 64/10) defines the procedure for adoption of relevant urban and spatial plans.

d) The Law on Integrated Pollution Prevention (IPPC) prescribes public consultation in all phases, from preparation to adoption of integrated permits. The competent authority is also obliged to inform, in cases referred to in Articles 11, 12 and 15, other authorities and organizations and the public, through the public media (including the Internet), publishing the information about them in at least one local newspaper published in the territory that will be affected by the impact of activities and installations (Article 23).
6. Review of Regulatory and Institutional Framework on Carbon Capture and Storage in Kosovo

6.1 Legal regime applicable to carbon capture and storage in Kosovo

In terms of the relevant domestic legal framework, it must be noted that aspects of CCS were only recently included in the sphere of applicable legislation. Additionally, to-date CCS issues are only regulated in the very limited context of assessing the projects’ environmental impact assessment. The Law on Environmental Impact Assessment,\(^{71}\) which entered into force in December 2010, addresses specifically issues relevant to CCS, and implicitly, also the Law on Strategic Environmental Assessment,\(^{72}\) though limited to the extent the Strategic Environmental Assessment is carried out for plans and programmes that undergo environmental impact assessment according to the Law on Environmental Impact Assessment.

Overall, Kosovo has a comprehensive fundamental regulatory regime for environmental protection in place that could in some fashion apply to CCS infrastructure. In order to provide a complete picture of the applicable environmental-related framework in Kosovo, Appendix 1 provides a full list of these laws, as well as an account of secondary legislative acts, adopted by either the Government or the competent Ministry, which in the present case is the Ministry of Environment and Spatial Planning. Some of the laws that might prove to be of relevance for CCS include the Law on Environmental Protection, the laws on Environmental Impact Assessment and Strategic Impact Assessment, the Law on the Protection of the Air from Pollution, the Law on Sewage, the Law on the Administration of Waste, and/or the Law on the Protection of Nature. However, it must be noted that Kosovo lacks specific and targeted legislation and policy on climate change. Additionally, the alignment of Kosovar law to EU environmental standards, is described by the EU Commission, as being “still at an early stage although progress can be observed in adopting legislation,”\(^{73}\) and its implementation remains problematic, due to continued lack of resources, staff and, in some cases, expertise.\(^{74}\)

In relation to the regulatory regime that pertains to gas pipelines, Kosovo has recently adopted a new Framework Law on Natural Gas,\(^{75}\) though it does not have a gas market. However, the regulatory regime, has been established with a view to promote Kosovo’s participation in regional gas supply and potentially bring pipeline gas to Kosovo. The Law on Natural Gas establishes the framework necessary for the transmission, distribution, supply, usage and storage of natural gas. It entrusts the Ministry of Energy and Ministry with the responsibility for development of policies in the natural gas sector, in consultation with other governmental bodies.\(^{76}\) Such natural gas policies are to be reviewed at least every three years.\(^{77}\)

An independent Energy Regulatory Office, which is responsible to the Assembly of Kosovo, is empowered with the key function of regulating the natural gas market of Kosovo with a view to achieving a competitive, secure and environmentally-sustainable market of natural gas, based on the principle of

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\(^{71}\) Law listed at point 62 of Annex 1 list.

\(^{72}\) Law listed at point 63 of Annex 1 list.

\(^{73}\) See European Commission, Kosovo 2010 Progress Report, p. 43.

\(^{74}\) See generally id.

\(^{75}\) Promulgated on November 11, 2009.

\(^{76}\) Art. 3.

\(^{77}\) Art. 4 (1).
non-discrimination between these undertakings as regards to either their rights or obligations.\textsuperscript{78} In terms of substantive tasks, the Office is required to implement appropriate measures to achieve objectives of social and economic cohesion, environmental protection, which may include means to combat climate changes, and security of supply, as well as to take incentive economic measures based on the legislation in force and other measures required by the EU’s Acquis.\textsuperscript{79}

The Government of Kosovo has authority for selecting the legal persons who operate the transmission and storage system for natural gas, and bases its selection “on competition.”\textsuperscript{80} The candidates for operator of the transmission and storage systems are then required to apply for a license to the Energy Regulatory Office. The application must be made within sixty days from the day of selection by the Government. Each transmission, storage and/or LNG (natural liquated gas) system operator is bound to operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities, with due regard to the environment.\textsuperscript{81} The transmission and storage system operator is part of a vertically integrated undertaking,\textsuperscript{82} and is independent at least in terms of its legal form, organisation and decision making from other activities not related to transmission.\textsuperscript{83}

Turning now to the oil industry, although there is an oil market in Kosovo, it is relatively modest. There are a few regional oil trading operators. No oil is produced and possible reserves are not known. Activities and matters pertaining to oil pipelines and storage are regulated by the Law on Trade of Petroleum and Petroleum Products in Kosovo, amended and supplemented in July 2009. It applies to all persons engaged in the wholesale, retail, transport, storage or sale of petroleum and/or petroleum products in Kosovo. Persons engaged in such activities for commercial purposes must possess a valid license, which is issued and may be extended, dismissed, amended or revoked by the Licensing Office, established within the Ministry of Trade and Industry.\textsuperscript{84} Members of the Licensing Office are civil servants, ultimately responsible before the Minister of Trade and Industry. All licenses must be signed by the Minister.\textsuperscript{85}

The Ministry of Trade and Industry is the competent authority for reviewing and approving the quality standards for petroleum and petroleum products, based on harmonised EU and international standards.\textsuperscript{86} In defining these standards, the Ministry is explicitly required to make sure that its decisions do not negatively affect the market supply with petroleum and petroleum products, and that it does not favour a producer or a place.\textsuperscript{87} Further, it has to make sure that any standard it sets is in accordance with the country’s overall economic development.\textsuperscript{88} The Law requires that all petroleum and petroleum product storage and sale points possess at any time reserves from at least 5% of their storage capacity for state

\textsuperscript{78} Id.
\textsuperscript{79} Id. para. 4.
\textsuperscript{80} Id. Art. 6.
\textsuperscript{81} Id. Art. 7(1)(1.1).
\textsuperscript{82} Defined as “a natural gas undertaking or a group of undertakings whose mutual relationships fit within the meaning of ‘control’ of concentrations between undertakings and where the undertaking/group concerned is performing at least one of the functions of transmission, distribution, LNG or storage, and at least one of the functions of production or supply of natural gas.”
\textsuperscript{83} Art. 8.
\textsuperscript{84} Law on Amendment and Supplementation of the Law no. 2004/5 on Trade of Petroleum and Petroleum Products in Kosovo, art. 3.
\textsuperscript{85} Id. Art. 3(3).
\textsuperscript{86} Art. 9(1).
\textsuperscript{87} Id. 9(2).
\textsuperscript{88} Art. 9(3).
emergency purpose. In case of market disorganisation, the Minister of Trade and Industry, through special legal acts, can determine the highest percentage for emergency reserves.

6.2 Institutional framework relevant to carbon capture and storage in Kosovo

In the present Kosovar legal framework, no institutions have been given responsibility for regulating carbon capture and storage.

Institutions in the energy sector

In the energy sector, the Ministry of Energy and Mining is the competent authority for energy and natural gas. The Ministry carries out the administrative supervision of the implementation of Energy Law and other related secondary legislation.

An Energy Regulatory Office is also established as an independent regulator of energy activities vested with the powers prescribed in the Law on the Energy Regulator, Law on Energy, Law on Electricity, Law on District Heating and the Law on Natural Gas. It has authority to issue the licenses to carry out energy activities, grant authorisations for the construction of new generating capacity, and overall, to create and foster efficient functioning of competitive energy markets. The Energy Regulatory Office also plays a crucial role in the natural gas sector. It exercises regulatory authority for natural gas undertakings and the natural gas industry in Kosovo, as well as regulating the natural gas market of Kosovo.

An Energy Inspectorate also exists. It is a body operating within the Ministry of Energy and Mining. Inspections necessary for supervision of the implementation of the Energy Law are thus carried out by the Energy Inspectorate.

In oil sector, the Ministry of Trade and Industry is the main responsible governmental body, with powers to review and approve the quality standards for petroleum and petroleum products, and the Minister of Trade has the ultimate authority for signing licenses.

In the oil sector, the Licensing Office is vested with powers to issue, extend, dismiss, amend or revoke licenses in compliance with the Law on Amendment and Supplementation of Law No. 2004/5 on Trade or Petroleum and Petroleum Products in Kosovo. However, all licenses need to be signed by the Minister of Trade and Industry.

89 Art. 10 (3).
90 Id.
91 Law on Energy, art. 32(1).
92 Law on the Energy Regulator, art. 1.
93 Law on Energy, art. 32(2).
94 Law on Amendment and Supplementation of Law No. 2004/5 on Trade or Petroleum and Petroleum Products in Kosovo, art. 3(2).
95 Id. Art 3(3).
Institutions involved in environmental protection

In the broader environmental protection setting, the bodies responsible for environmental protection include the Government of Kosovo, Ministry of Environment and Spatial Planning, and municipalities. The Assembly of Kosovo also has a role to play, as it has the power to adopt, on a proposal from Government, the Strategy for environmental protection and sustainable development. The Government, on proposal of the Ministry of Environment and Spatial Planning, provides an annual report to the Assembly regarding the state of the environment.

A Kosovo Environmental Protection Agency (KEPA) is also established by the Law on Environmental Protection, with the aim of monitoring the quality of the environment.

The Law on Environmental Protection has also established an Environmental Protection Inspectorate, responsible for performing inspections relating to all aspects of the implementation of this law and other subsidiary acts issued pursuant to it, whereas the administrative supervision for the implementation of this law and sub-legal acts deriving from it is reserved for the Minister of Environment and Spatial Planning. The Ministry of Environment and Spatial Planning is also the competent authority for applying Environmental Impact Assessment procedures.

So to conclude, the possible institutional scheme in Kosovo regulating CCS could involve any of the following institutions: Ministry of Environment and Spatial Planning and/or Kosovo Environmental Protection Agency, the Ministry of Energy and Mining and/or Energy Regulatory Office and Ministry of Trade and Industry.

One option might be for the Ministry of Trade and Industry to be responsible for CO₂ pipeline operations, with the Energy Regulatory Office taking responsibility for pipeline tariff rates and access. Or the Energy Regulatory Office could be made into the single authority vested with powers for regulating pipeline operations, tariff rates and licenses. When it comes to the regulatory authority for underground injection and environmental monitoring of CO₂, it could be either the Ministry of Environment or the Environmental Protection Agency, or both, each covering a separate dimension (e.g., the Ministry could be made responsible for underground injection, whereas the Agency for environmental monitoring of CO₂, which would go more with the Agency’s current mandate of monitoring the quality of the environment). Alternatively, an entirely new authority might be established for the role. At the moment, of course, this is purely hypothesis.

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96 Law on Environmental Protection, art. 5(1).
97 Id. Art. 5(2).
98 Id. Art. 5(3).
99 Id. Art. 20(1).
100 Id. Art. 25(1).
101 Id. Art. 59.
102 Id. Art. 81.
103 Id. Art. 80.
104 Law on Environmental Impact Assessment, art. 4.
6.3 Specific issues applicable to carbon capture and storage

(i) Classification of carbon dioxide and its legal definition, including proprietary rights of stored CO₂

No legal definition of CO₂ can be found in presently applicable legislation in Kosovo. For instance, the Law on Air Protection from Pollution does not include CO₂ in the list of basic environmental indicators of air quality that indicate the concentration of solid, liquid and gaseous substances in the air. Nor does the Law on Air Protection from Pollution provide any definition or classification of CO₂. What this Law, however provides, in the context of identification and gradual elimination of substances that damage the ozone layer, and products and equipment that contain these substances, is that these have to be regulated by a special act from Government, on a proposal by the Ministry of Environment and Spatial Planning.¹⁰⁵ The special act has not been adopted yet. The Law further provides that, the prevention and reduction of air pollution that has an impact on climate change is to be achieved through (1) monitoring of greenhouse gas emissions and reducing the quantity of these gases; and (2) stimulation of clean development measures.¹⁰⁶

From a reading of all pertinent legislation, it appears that carbon dioxide in Kosovo would be more likely defined as a pollutant, although no clear and explicit classification can indeed be found. This conclusion is drawn for the following reasons. Firstly, CO₂ does not appear on the list of substances belonging to the category of waste in the Waste Law. Secondly, in at least one case, in Annex II of the Law on Environmental Impact Assessment, “installations for the capture of CO₂ streams for the purposes of geological storage” are listed under “Energy Industry” section rather than under “Waste” which is another section of this Annex.

However, it should be stressed that it is impossible to predict at this point how the Kosovar legislator will decide to classify CO₂.

As CCS is essentially not regulated by the existing legal framework, it is difficult to unequivocally set out the proprietary rights of stored CO₂. However, one could apply the proprietary rights of the Law on Energy. The Law on Energy might possibly be applicable also in the case of CCS, as it is the only pertinent law that indeed clarifies the legal content of relevant property rights.

The Law on Energy entered into force in October 2010, and provides for two principal mechanisms. Firstly, those energy enterprises that owned, used (or had the right to use), operated or otherwise possessed energy facilities sited on property over which the energy enterprise had not formally acquired or been granted a servitude, right of use or property ownership right were granted all necessary servitudes, rights of use and/or other property rights in or to the concerned property by the operation of the Law on Energy, provided that such energy facilities were in the possession or use of the energy enterprise on the effective date of this Law (i.e., 1 December 2010).¹⁰⁷

¹⁰⁵ Law on Air Protection from Pollution, art. 19.
¹⁰⁶ Id. Art. 20.
¹⁰⁷ The Law was published in the Official Gazette on November 15, 2010, and as prescribed in the Law, it enters into force fifteen days after its publication in the Official Gazette. The effective date of this particular law was also confirmed with the Office of the Official Gazette.
The second aspect concerns the new developments, such as the construction of new, or expansion of existing, generation, transmission or distribution facilities that require the acquisition of servitudes, rights of use or other property rights. This aspect would be most likely to apply to proprietary rights over stored CO₂. The probable application of this second aspect of the Law is based on the current absence of any CCS project, or the absence of any CCS project as at the date the Law on Energy became effective. Against this background, and if the property concerned is privately-owned, the Law provides that the concerned energy enterprise shall give notice to the private land owner. Such notice has to specify the details of the land to be encumbered by, or transferred to, the concerned energy enterprise and the compensation proposed, based on the fair market value of the land. Any servitudes or other property rights agreed by the parties have to be registered with the competent Municipal Cadastral Office. If, however, the concerned energy enterprise and the land owner cannot agree on the need for the new or expanded servitudes or the proposed route within thirty days of delivery of the written proposal by the energy enterprise, the energy enterprise may request that the Energy Regulatory Office issues its own determination as to whether the new or expanded facilities are needed to meet the energy enterprise’s license obligations.108 Pursuant to the Law on Energy, the Energy Regulatory Office issues its determination within thirty days of the written request of the concerned energy enterprise being submitted to the Energy Regulatory Office in the form prescribed by that Office.109 If the Energy Regulatory Office determines that the new or expanded facilities are needed to meet the concerned energy enterprise’s license obligations, such determination is deemed to meet the requirements of the Law on Expropriation of Immoveable Property and the Energy Regulatory Office forwards that determination to the Government with its request for initiation of the proceedings for expropriation of the private land and the transfer of that land to the energy enterprise for the compensation determined in accordance with the relevant provisions of the Law on Expropriation of Immoveable Property.110

If cases where a particular situation concerns the establishment of property rights on public land, the concerned energy enterprise would then need to notify the appropriate municipality or other relevant public authority and request that a servitude or other property right be granted.111 If the concerned energy enterprise and the municipality or public authority cannot agree on the need for the new or expanded servitudes or other property rights within thirty days of delivery by the concerned energy enterprise of a written request for such servitudes or other property rights, the energy enterprise may then request that the Energy Regulatory Office issues its own determination as to whether the servitudes or other property rights are needed to meet the concerned energy enterprise’s license obligations or are otherwise required under the laws of Kosovo.112 If the Energy Regulatory Office determines that the servitudes or other property rights are so needed, such determination is deemed to meet the requirements of the Law on Expropriation of Immoveable Property;113 it issues its determination within thirty days of the written request of the concerned energy enterprise being submitted to the Energy Regulatory Office.114 As a final step in the process, the Energy Regulatory Office forwards its determination to the Government with its request or the initiation of proceedings for the expropriation of the public land, so that the expropriated land is transferred to the energy enterprise against appropriate compensation.115

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108 Law on Energy, art. 25(1).
109 Id. Art. 25(2).
110 Id. Art. 25(3).
111 Id. Art. 25(4).
112 Id. Art. 26(1).
113 Id. Art. 26(2).
114 Id. Art. 26(3).
115 Id. Art. 26(4).
116 Id. Art. 26(5).
(ii) Jurisdiction over the control and management of domestic and cross-boundary pipelines and reservoirs (including monitoring, reporting and verification requirements)

Kosovo law does not currently regulate the transportation of CO₂, though it addresses aspects that relate to the transportation of CO₂ for purposes of conducting an Environmental Impact Assessment, required for granting an environmental consent by the Ministry of Environment and Spatial Planning to relevant public or private projects. This will be discussed in more detail under sub-section ix below.

National law, however, regulates the transportation of gas, oil and energy (broadly defined in terms that may include electricity, heat, or natural gas) through the respective Laws on Natural Gas, Energy, and Trade of Petroleum and Petroleum Products. No other general environmental law appears to be applicable to CO₂ transportation.

With regard to natural gas, although Kosovo does not have a natural gas market yet, it has established the legal infrastructure, with a view to possibly develop it in the future. It must be noted in this context that a pipeline system used to supply town gas produced in Obiliq to Prishtina, Mitrovica and Skopje, Macedonia. Thus, the only neighbouring country that Kosovo has a cross-border gas pipeline with is Macedonia. However, after town gas production stopped in 1986, the pipeline was not maintained. It is now corroded and would need to be fully replaced. The pipeline and the right-of-way along the route are reportedly owned by Kosovo Energy Corporation (KEK).

In terms of legal framework, the Law on Natural Gas provides that legal persons as candidates for operator of the transmission and storage system will be selected competitively by the Government of the Republic of Kosovo. The selected candidates then have to apply for license from the Energy Regulatory Office within sixty (60) days from the day of selection. An identical procedure applies also to distribution system operators. The Law sets forth specific and similar tasks for both transmission and storage system operators and distribution system operators. Each transmission and storage system operator and distribution system operator is therefore obliged to operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities, with due regard to the environment; refrain from discriminating between system users or classes of system users; provide any other transmission system operator, storage, LNG and/or any distribution system operator, sufficient information to ensure that the transport and storage of natural gas may take place in accordance with the secure and efficient operation of the interconnected system; and provide system users with the information they need for efficient access to the system.

The Natural Gas Law also allows for the operation of a combined transmission, LNG, storage and distribution system operator. In respect to third party access, the Law requires that transmission and distribution system operators allow natural gas undertakings and eligible customers, including supply undertakings, to have non-discriminatory access to transmission and distribution systems, pursuant to rules and tariffs approved and published by the Energy Regulatory Office. These tariffs should be transparent and non-discriminatory.

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117 Law on Natural Gas, art. 6.
118 Id.
119 Id. art. 10.
120 Id. art. 7, para. 1 and art. 11, para. 1.
121 Id. art. 14.
122 Id. art. 17.
As already indicated, the Energy Regulatory Office is by Law the competent authority for regulating the natural gas industry in Kosovo and it is responsible for ensuring a nondiscriminatory, effectively competitive and efficiently functioning natural gas market in Kosovo.\textsuperscript{123} In performing its tasks, the Energy Regulatory Office monitors: the rules on the management and allocation of interconnection capacity, in conjunction with the regulatory authority or authorities of those countries adjacent to Kosovo with which interconnection exists; any mechanisms to deal with congested capacity within the national gas system; the time taken by transmission and distribution system operators to make connections and repairs; the publication of appropriate information by transmission and distribution system operators concerning interconnectors, grid usage and capacity allocation to interested parties, taking into account the need to treat non-aggregated information as commercially confidential; the effective unbundling of accounts, to ensure there are no cross subsidies between transmission, distribution, storage, LNG and supply activities; the access conditions to storage and to other ancillary services; the level of transparency and competition.\textsuperscript{124} The Energy Regulatory Office has further the authority to require transmission, LNG and distribution system operators, if necessary, to modify the terms and conditions, including tariffs and methodologies, so as to ensure that they are proportionate and applied in a non-discriminatory manner.\textsuperscript{125}

As with the natural gas, the Energy Regulatory Office is mandated by the Energy Law to monitor the security of energy supply,\textsuperscript{126} and energy activities in the energy sector are also carried out on the basis of licenses issued by the Energy Regulatory Office.\textsuperscript{127} This monitoring by the Energy Regulatory Office includes the supply/demand balance of the energy sector, including the projected balance of supply and demand for the next five (5) year period; the level of expected future demand and expected additional generation and transmission capacity being planned or under construction over a five (5) year period, including any cross-border interconnection capacity; the prospects for security of energy and electricity supply for the period between five and fifteen (15) years from the time of the monitoring; the investment intentions, for the next five (5) or more calendar years, of Transmission System Operators and those of any other party of which they are aware, as regards the provision of cross-border interconnection capacity; levels of operational system security achieved and expected; the quality and level of maintenance of the systems; and measures to cover peak demand and to deal with shortfalls of one or more suppliers.\textsuperscript{128}

In the case of petroleum, the Law authorises the Minister of Trade and Industry to define tariffs for each type of license and their renewals.\textsuperscript{129} Any person may engage in the transport, storage, import, or sale of petroleum and/or petroleum products, within the wholesale or retail capacity, for commercial purposes, provided that that person has acquired a valid license from the Licensing Office.\textsuperscript{130}

At present, Kosovo has no oil pipelines, nor does it have cross-border oil pipelines with any of the neighbouring countries. In terms of the legal regime applicable to the jurisdiction over possible future domestic pipelines and reservoirs, as well as cross-border pipelines, the applicable legal framework is also silent, and no guidance can be inferred from it.

\textsuperscript{123} Id. art. 22.
\textsuperscript{124} Id.
\textsuperscript{125} Id. art. 22(4).
\textsuperscript{126} Law on Energy, art. 15(2).
\textsuperscript{127} Id. art. 15(3).
\textsuperscript{128} Law on Energy Regulator, art. 39(1).
\textsuperscript{129} Law on Amending and Supplementing the Law on Petroleum, art. 6.
\textsuperscript{130} Id. art. 5.
(iii) Proprietary rights to cross-boundary CO₂ capture and storage sites and facilities

As a matter of fact, Kosovo is not a party to any succession agreement concluded by former constituent units of the former SFRY. At the moment, there are no official contacts or relations whatsoever between Kosovo and Serbia. This situation might change and this aspect clarified or settled with the forthcoming dialogue, which is expected to begin as soon as the new Kosovo government is constituted. The dialogue will be facilitated by the EU. Against this background, it is very unlikely that at present or in the near future there would be any scope for agreement with Serbia on a cross-boundary CO₂ capture and storage site and facilities.

Also in relation to other immediate neighbouring States that emerged from the former Yugoslavia (Macedonia and Montenegro), there is no inter-State legal framework that addresses the proprietary rights to cross-boundary CO₂ capture and storage sites and facilities. The most probable outcome one could foresee is the regulation of the issue on a bilateral basis. One would also think that, in ordinary circumstances, the same principles underlying the agreement on succession between other former Yugoslav entities would apply. The relevant Articles 2 and 3 of the Agreement on Succession Issues of 2001, in their respective paragraphs, provide that, “immovable State property of the SFRY which was located within the territory of the SFRY shall pass to the successor State on whose territory that property is situated,” and that, “tangible movable State property of the SFRY which was located within the territory of the SFRY shall pass to the successor State on whose territory that property was situated on the date on which it proclaimed independence.”

Although no succession dimension is involved in relation to Albania, the only neighbouring country of Kosovo that has not been a constituent unit of the former SFRY, it is conceivable that there might be a possible future agreement between Kosovo and Albania on a cross-boundary CO₂ capture and storage site and facilities, especially amidst the growing cooperation between the Kosovo and Albania in many fields of mutual interest.

(iv) Regulatory and/or licensing (permitting) scheme related to the operation and management of storage and transportation facilities

No legal framework specifically directed at CCS is currently in place. The national expert considers that the legal framework which presently applies to energy and natural gas licensing is likely to apply in the future to CCS projects.

In the case of energy, the Energy Regulatory Office has the authority to issue, amend, suspend, transfer, or terminate licenses to energy enterprises. The Energy Regulatory Office also issues authorisations for the construction of new energy generation capacities, new facilities for the transmission and distribution of gas, and direct electricity lines and direct pipelines for the transition of natural gas. There is a slightly different standard for the selection of distribution system operators of natural gas, and this difference is that the Law on Natural Gas authorises the Government of Kosovo to select “based on

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131 Agreement on Succession Issues, art. 2(1).
132 Id. Art. 3(1).
133 Law on Energy Regulator, art. 14(2.2).
134 Id. Art. 14(2.7).
“competition,”” and “designate one or more candidates as operators of the distribution system,”135 which is not the case with energy enterprises. Still, notwithstanding the designation by the Government, the candidate companies seeking to operate in the field of natural gas have to apply for a license to the Energy Regulatory Office within sixty days from the day of selection by the Government. The Law on Energy Regulator is more detailed and instructive than any other applicable law for future possible licensing and authorisation schemes that could be relevant to CCS.

It follows from this analysis that, also in the future CCS projects, the interested enterprises would most likely have to apply for an operating license from the Energy Regulatory Office or any other similarly designated independent body. It remains to be seen whether the Kosovo legislator also allocates any role to the Government, as in the Law on Natural Gas. If a particular case involves not only operational activities (i.e., distribution, generation, operation, storage, supply, or transmission), but also the construction of whatever facility required for such activities (e.g., construction of new facilities or systems for the storage of CO₂), the Law on Energy Regulator requires an authorisation from the Energy Regulatory Office.

In terms of conditions that need be satisfied to obtain a license, the Law on Energy Regulator provides a wide range of criteria for licenses and conditions for licenses. A license can only be issued to any energy enterprise registered under Kosovo’s applicable law if it (1) possesses the technical and financial capability, material and human resources, and organisational structure for meeting the regulatory requirements under the license; (2) holds property rights over or a legal right to use the energy facilities to be used to perform the activity; (3) provides evidence that the energy facilities to be used to perform the activity meet health, safety and environmental protection requirements; (4) is not insolvent or in a process of liquidation or bankruptcy; and (5) has not had a license for the same activity terminated within five years of the date that the application is submitted.136 In addition to these five basic and principal criteria, there is a second set of criteria for granting a license, which apply “to the extent relevant to the license in question,” and these refer to: the safety and security of the electricity system, installations and associated equipment; the protection of public health and safety; the protection of the environment; land use and siting; use of public land; energy efficiency; the nature of the primary energy sources; characteristics particular to the applicant, such as technical, economic and financial capabilities; the renewable energy targets and standards of the Energy Strategy; the emission reduction targets and standards of the Energy Strategy; and the promotion of a competitive energy market.137 Further to these criteria, licenses may contain such conditions as the Energy Regulatory Office considers necessary for the activities to be undertaken.138

As far as the authorisation procedure for the construction of facilities is concerned, the Law on Energy Regulator requires that this is be carried out by the Energy Regulatory Office in line with objective, transparent and non-discriminatory criteria.139 The Law then specifies further that the criteria for issuing such authorisations correspond to the criteria stipulated in respect of licensing140 (presented in the preceding paragraph above).

135 Law on Natural Gas, art. 10.
136 Id. Art. 29(1).
137 Id. Art. 29(2).
138 Id. Art. 29(3).
139 Id. Art. 38(2).
140 Id.
(v) Long-term management and liability issues arising out of accidents or leaks in domestic and cross boundary CCS projects

The Law on Environmental Protection specifies a number of liability-related aspects which could be applied to an accident or leak from a CCS project.

Article 65 of the Law on Environmental Protection addresses liabilities of both legal and natural persons. According to this provision, all natural and legal entities are obliged to ensure environmental protection while performing their activities through the implementation of provisions on environmental protection; rational use of natural resources and energy; application of efficient technologies; use of renewable natural resources; use of products, processes, technologies and practices less harmful to the environment; undertaking preventive measures or eliminating the consequences of threat and damage to the environment; keeping records in the way prescribed by law; controlling the activities and operation of plants that may represent risk or cause danger towards human health and environment; use of methods for analysing life cycle products; and other measures in compliance with law. There are penalties for breach of Article 65. The Law provides that “air pollution by pollution source operators, which violate discharge norms, norms for special protection zones, smog and emergency regulations, technical conditions and other requirements specified in the environmental permit, big and medium pollution sources shall have imposed on them penalties starting from € 1,000 to € 10,000 depending on the type and amount of discharge. Their activities shall be banned until the operator brings the discharges under the allowed limits”.

In relation to responsibility for environmental pollution, the Law on Environmental Protection provides that, the polluter is responsible for the damage caused and is also responsible for the evaluation and elimination of the damage. It further provides that, legal and natural persons that through their illegal or inadequate action have enabled or allowed environmental pollution are also responsible. However, responsibility for the damage caused may be excluded if the polluter provides evidence that adequate measures have been applied for the prevention and reduction of damage in the following cases: when the damage is caused by a third person; when the damage is caused by force majeure; and when the damage is caused as a consequence of armed conflict.

The Law on Environmental Protection has been approximated to Directive 2004/35/EC on environmental liability with regard to prevention and remedying of environmental damage to the extent that it complies with the basic principles of the Directive. The Law, as the Directive, establishes a legal framework for environmental liability based on the “polluter pays” principle, with the view to preventing and remedying environmental damage. More precisely, the Law on Environmental Protection foresees in its Chapter VIII, liabilities and responsibilities for environment pollution. Amongst others, Article 69 addresses exactly the responsibilities for damage when this article stresses that “Polluter is responsible for the damage caused in environment and space and he will be responsible for all the expenditures for damage assessment and its avoidance. However, the Law is not complete when it comes to the liability schemes.

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141 Law listed at point 1 on the List.
142 Law on Environmental Protection, art. 65(1).
143 Id. Art. 66(1).
144 Id. Art. 66(2).
145 Id. Art. 67.
as outlined in Article 3(1) of the Directive 2004/35/EC. The Law does not contain any differentiation between the liability schemes that essentially apply to two different, though complementary situations, which apply to occupational activities specifically mentioned in Annex III of the Directive, and all other activities.

In the case of water, the Water Law\textsuperscript{146} sets out the following obligations: “Persons who discharge or dispose of hazardous and harmful substances on waters, banks or protected areas, are obliged to report the incident to the competent authorities.”\textsuperscript{147} Sanctions (fines) are foreseen for breach of this obligation. Natural person who breach the Article 51 will pay a fine of 5,000 to 10,000 euro and legal persons must pay a fine ranging between 10,000 to 20,000 euro.

The Waste Law\textsuperscript{148} also sets forth responsibilities and obligations for waste management. However, it should be noted that these would only be applicable in the CCS context if captured CO\textsubscript{2} was considered to be waste. The relevant provision stipulates that an “unlicensed person should not hold, transport, treat, recover or dispose of waste that causes or is likely to cause environmental pollution.”\textsuperscript{149} A person cannot transfer the control of waste to any person other than a person authorized under the Law.\textsuperscript{150} A holder of waste is under a duty to inform, without delay, the relevant competent authority of any loss, spillage, accident or other development concerning waste which causes, or is likely to cause pollution.\textsuperscript{151} There are no sanctions foreseen for those who breach these provisions. The holder of waste is further required to be registered in the Waste Management Register,\textsuperscript{152} and is responsible for all expenses incurred in relation to the transport, treatment and disposal of waste, until the waste is passed to another authorized person.\textsuperscript{153}

Under “universal responsibilities of pollution sources,” the Law on Air Protection from Pollution\textsuperscript{154} provides that it is the duty of every natural and legal person to maintain air quality, to protect air from pollution caused during the activities they conduct in the territory of Kosovo, and are therefore obliged to monitor emissions; minimise polluting emissions and un-pleasant smells; to not exceed limited values of emissions.\textsuperscript{155} For construction of new plants as well as renovation of existing ones, the Law states that, “ecological technology ought to be used.”\textsuperscript{156} There is also a set of specific obligations for pollution source operators. Thus, operators of pollution sources are obliged to use these sources only as specified by technical conditions and as laid down in the environmental permit; to promulgate internal technical regulation, which defines functions of pollution source; and to monitor discharges in the air.\textsuperscript{157} Operators of pollution sources should also prepare a list of technical, operational parameters, as well technical-organisational measures for sources of pollution.\textsuperscript{158}

Certain obligations pertaining to public health and protection of environment, if violated, can amount to criminal offences against public health and the environment, punished by Criminal Code. The relevant

\textsuperscript{146} Law listed at point 22 on the List.
\textsuperscript{147} The Water Law, art. 51.
\textsuperscript{148} Law listed at point 30 on the List.
\textsuperscript{149} The Waste Law, art. 16(1).
\textsuperscript{150} Id. Art. 16(2).
\textsuperscript{151} Id. Art. 16(3).
\textsuperscript{152} Id. Art. 16(5).
\textsuperscript{153} Id. Art. 16(6).
\textsuperscript{154} Law listed at point 10 on the List.
\textsuperscript{155} Law on Air Protection from Pollution, art. 8(1).
\textsuperscript{156} Id. Art. 8(3).
\textsuperscript{157} Id. Art.9(1).
\textsuperscript{158} Id. Art. 9(2).
public health provision in the Criminal Code concerns the pollution of drinking water. According to this provision, whoever by means of any noxious substance pollutes water used by people for drinking purposes and in this way endangers human life or health is punished by imprisonment of up to three years.\textsuperscript{159} When this offence is committed by negligence, the perpetrator is then punished by a fine or by imprisonment of up to three months.\textsuperscript{160} When the offence results in serious bodily injury or serious impairment to health, the perpetrator is punished by imprisonment of up to eight years; if committed by negligence, by imprisonment of up to three years.\textsuperscript{161} If the offence results in the death of one or more persons, the perpetrator is punished by imprisonment of one to twelve years; or, by imprisonment of one to eight years, in case the offence is committed by negligence. The Code also regulates situations that endanger the life or health of animals. In such cases, whoever by means of any noxious substance pollutes water intended for use by animals, and thereby endangers the life or health of animals is punished by a fine or by imprisonment of up to one year.\textsuperscript{162} If the offence results in the death of animals of a value exceeding 10,000 EUR or the death of a large number of animals, the perpetrator is punished by imprisonment of up to three years.\textsuperscript{163}

The Code also provides for the punishment of a number of offences against the environment. These include pollution or destruction of the environment; unlawful handling of hazardous substances and waste; and unlawful operation of hazardous installations. So as to give a complete and precise picture of the content of the provisions on pollution or destruction of the environment and unlawful handling of hazardous substances and waste, they will be provided here in their original form. In case of pollution or destruction of the environment, the following terms and conditions apply:

(1) Whoever, in breach of the law, pollutes or degrades the environment or excessively uses or exploits natural resources and in this way jeopardises the environment or the life or health of a great number of people shall be punished by imprisonment of up to two years.
(2) When the offence provided for in paragraph 1 of the present article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to one year.
(3) When the offence provided for in paragraph 1 or 2 of the present article results in the impairment to health of a great number of people or the complete or partial destruction of flora or fauna or reservoirs of drinking water or any other damage to the environment with serious consequences or an increase in pollution to a critical level or critical damage to the environment, the perpetrator shall be punished by imprisonment of up to five years, in the case of the offence provided for in paragraph 1 of the present article or by imprisonment of up to two years, in the case of the offence provided for in paragraph 2 of the present article.
(4) When the offence provided for in paragraph 1 or 2 of the present article results in irreparable damage or destruction of the environment or endangerment of protected natural resources, the perpetrator shall be punished by imprisonment of up to eight years, in the case of the offence provided for in paragraph 1 of the present article or by imprisonment of up to five years, in the case of the offence provided for in paragraph 2 of the present article.\textsuperscript{164}

Clearly, the operation of a CCS project could result in pollution of the environment or unlawful operation of a hazardous installation. Although a definition of hazardous installations is not provided and CO\textsubscript{2} is
not expressly included in the definition of hazardous matters, CO₂ is likely to be covered by Article 16. Article 16 stresses that “administration of hazardous matters, as well as planning, organising and undertaking preventive and measures of rehabilitation shall be carried out under conditions and in a way that shall ensure reduction from risk of accident and provision of an adequate response to the accident, according by certain laws. It also sets the obligations of legal and natural persons by providing that “Legal or natural person who administer hazardous matters or apply technologies that are harmful towards the environment are obliged to undertake all the necessary protective and security measures by which the risk towards the environment and human health shall be reduced”. Further, Article 47 regulates persons during the operations with hazardous chemicals and provides “Handling of hazardous chemicals in the production, use, transport, trade, processing, storage and disposal shall proceed in such a way as to avoid threat to life and health of people, pollution of the environment, provide for and take protection measures and other measures determined by law”, even though CO₂ is still not expressly included.

With regard to unlawful handling of hazardous substances and waste, the Criminal Code provides as follows:

(1) Whoever, in breach of the law on protecting the environment, disposes of, handles, stores, transports, exports or imports hazardous substances or waste likely to cause the death or serious bodily injury of any person or substantial damage to the quality of the air, soil, or water or to animals, plants or property shall be punished by a fine or by imprisonment of one to three years.

(2) Whoever, in breach of the law on protecting the environment, disposes of, handles, stores, transports, exports or imports radioactive substances or waste which can cause the death or serious bodily injury of any person or substantial damage to the quality of air, soil or water or to animals or plants or property shall be punished by a fine or by imprisonment of one to five years.

(3) When the offence provided for in paragraph 1 or 2 of the present article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to two years, in the case of the offence provided for in paragraph 1 or by a fine or by imprisonment of up to one year, in the case of the offence provided for in paragraph 2 of the present article.

(4) When the offence provided for in the present article results in death or serious bodily injury to any person or damage to property, animals or plants, or the degradation of the quality of the air, water or soil, the perpetrator shall be punished by a fine and by imprisonment of one to twelve years, in the case of the offence provided for in paragraph 1 or 2 of the present article or by imprisonment of up to eight years, in the case of the offence provided for in paragraph 3 of the present article.\(^\text{165}\)

The Code also sanctions the unlawful operation of hazardous installations. In such a case, it provides that, whoever, in breach of the law on protecting the environment, operates or manages a plant or an installation in which a hazardous activity is carried out and thereby causes potential death or serious bodily injury to any person or substantial damage to the quality of the air, soil or water or damage to animals or plants or property, is punished by a fine or by imprisonment of up to three years.\(^\text{166}\) When the offence is committed by negligence, the perpetrator would be punished by a fine or by imprisonment of up to one year.\(^\text{167}\)

\(^{165}\) Id. Art. 277.

\(^{166}\) Id. Art. 278(1).

\(^{167}\) Id. Art. 278(2).
In relation to the approximation of pertinent Kosovar legislation with the *acquis*, it must be noted that Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading is not approximated. No applicable rules covering liability for climate change as a result of leakages from storage sites can be found. Therefore, the introduction of new legislation or amending existing legislation is still needed in order to cover the content of this Directive.

(vi) **Financial assurance for long-term stewardship, including how long-term responsibility for a storage site is transferred to the relevant authority, and how CCS regulatory frameworks may reduce the financial exposure of the relevant authority by requiring the operator to contribute to the costs associated with long-term stewardship of the site**

Following a confirmation from the Kosovo Ministry of Environment and Spatial Planning, it must be noted at the outset that Directive 2009/31/EC of 23 April 2009 has not yet been approximated in the domestic legislation. It is also not possible to observe the presence of any provision that in any way reflects the content of the Directive’s relevant Article 18 on transfer of responsibility and Article 20 on financial contribution.

None of the possibly analogous laws (*i.e.*, Laws on Energy, Natural Gas, Trade of Petroleum and Petroleum Products) provides any guidance or instruction with respect to financial assurance for long-term stewardship of closed sites or facilities. Nor is there any prescription as to how long-term responsibility for a storage site is transferred to the relevant authority or requiring the operator to contribute to the costs associated with long-term stewardship of a site. As this matter does not appear to have been addressed even in these analogous laws (*e.g.*, storage of natural gas), it is impossible to draw any inference relevant to CCS.

(vii) **Third party access rights to transportation networks, transit rights and land rights with regard to pipeline routes**

As the existing Kosovo legislation is silent on carbon dioxide transportation networks and third party access rights to such networks, the alternative is to look at similar applicable legislation that contains third party access rights. This would provide an indication of the likely approach to be taken on third party access in the field of carbon dioxide transport. The Law on Natural Gas currently addresses the topic in detail.\(^{168}\)

According to relevant provisions of the Law on Natural Gas, the transmission and distribution system operators should allow natural gas undertakings and eligible customers, including supply undertakings, to have non-discriminatory access to transmission and distribution systems, pursuant to rules and tariffs approved and published by the Energy Regulatory Office.\(^{169}\) Such tariffs should be transparent and non-discriminatory.

These provisions, however, cannot prevent the conclusion of long-term contracts so long as they are not contrary to the intent of the Law to promote competition. Therefore, transmission system operators can, if

\(^{168}\) Law listed at point 55 on the List.

\(^{169}\) Law on Natural Gas, art. 17(1).
necessary for the purpose of carrying out their functions, including in relation to cross-border transmission, have access to the network of other transmission system operators.\textsuperscript{170}

Access for third parties similar to those specified in the case of transmission and distribution system operators above is also permitted to upstream pipeline networks, including facilities supplying technical services incidental to such access, except for the parts of such networks or facilities which are used for local production operations at the site of a field where the gas is produced. Transmission and distribution system operators should offer nondiscriminatory services for all users of the network.\textsuperscript{171} Such access is provided for in order to achieve a competitive market in natural gas, taking into account the security and regularity of supply, and capacity which is or can reasonably be made available and environmentally protected. In line with this, the Law stipulates that the following should be taken into account: the need to refuse access where there is incompatibility of technical specifications which cannot be reasonably overcome; the need to avoid difficulties which cannot be reasonably overcome and could prejudice the efficient, current and planned future production of hydrocarbons, including that from fields of marginal economic viability; the need to respect the duly substantiated reasonable needs of the owner or operator of the upstream pipeline network for the transport and processing of gas and the interests of all other users of the upstream pipeline network or relevant processing or handling facilities who may be affected; and the need to apply their laws and administrative procedures, in conformity with the legislation in force, for the granting of authorisation for production or upstream development.\textsuperscript{172}

The Energy Regulatory Office is vested with powers to issue rules for settlement of the disputes related to access or refusal to allow access to every facility set forth in the Energy Law.\textsuperscript{173} The Energy Regulatory Office is further required by the Law to publish information on flow, methodology and structure of tariffs.\textsuperscript{174} In order to provide transparent, objective and non-discriminatory tariffs and to facilitate the efficient use of gas networks, transmission system operators should also make public the detailed information related to services offered and conditions required for application together with necessary technical information for users of the network to have efficient access to the network.\textsuperscript{175}

An important aspect in the Energy Law that merits to be noted is that the final decision of the Energy Regulatory Office is subject to appeal to the courts of general jurisdiction of Kosovo.\textsuperscript{176}

\textsuperscript{170} Id. Art. 17(2).
\textsuperscript{171} Id. Art. 17(3).
\textsuperscript{172} Id. Art. 17(4).
\textsuperscript{173} Three different procedures exist to resolve the disputes in the energy sector. These are as follows:
\textsuperscript{174} a. A procedure for customers to use against licensees concerning the services provided;
\textsuperscript{175} b. A procedure for licensees to use against other licensees related to the performance of the licensed activity;
\textsuperscript{176} c. A procedure regarding third party access to the transmission or distribution electricity or natural gas networks and cross border transmission of electricity or natural gas.

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\textsuperscript{176} c. A procedure regarding third party access to the transmission or distribution electricity or natural gas networks and cross border transmission of electricity or natural gas.
(viii) **Regulatory compliance and enforcement schemes**

Besides the Government and Assembly that are relevant in the sense of any legislation to be adopted concerning CCS activities or that could possibly also be relevant in terms of the need for adoption by them of a CCS programme or strategy, one would expect that a governmental ministry will be designated as the responsible authority for the implementation and monitoring of the relevant legal act.

In the energy context, the Ministry of Energy and Mining is the responsible authority for the implementation of the Law on Energy. In performing this task, *inter alia*, it monitors the implementation of the energy efficiency development plans and the realisation of specified targets for energy savings; prepares three and ten year action energy efficiency plans for development, in accordance with Kosovo’s obligations under the Energy Community Treaty, including a ten year target figure for energy saving; drafts and adopts sub-legal acts for the promotion of efficient use of energy, after consulting the Energy Regulatory Office. The administrative supervision of the Law on Energy is also carried out by the Ministry of Energy and Mining. However, all inspections necessary for supervision of the implementation of the Law are, carried out by the Energy Inspectorate, a body operating within the Ministry. According to Energy Law, the Energy Inspectorate may, where it considers it necessary, carry out inspections of energy facilities and prepare a written report on the inspection, a copy of which it submits to the Ministry. In addition, where the Energy Regulatory Office considers it necessary, it may request the Energy Inspectorate to carry out, inspections of energy facilities without warning and provide the Energy Regulatory Office with a written report on the inspection. All natural or legal persons owning or operating energy facilities, equipment, buildings, systems or energy installations to which the Energy Law applies are further obliged to promptly inform the Energy Inspectorate of any damage or error that has occurred or may occur as a result of energy supply outage or other cause, or of any hazard to life or human health, traffic, or to neighbouring buildings or surrounding environment.

The alternative institutional scheme that could apply in the future to CCS activities is the one prescribed in the Law on Environmental Protection. In this case, the Ministry of Environment and Spatial Planning would be the authority responsible for the implementation and monitoring of a Law on CCS, as well as for adopting any sub-legal act and carrying out administrative supervision. Inspective activities would, in this case, be carried out by the Environmental Protection Inspectorate. Inspections in municipalities are carried out by municipality environmental inspectors, who may also be tasked with other duties by the Ministry of Environment and Spatial Planning.

The existing structures of authority in Kosovo (i.e. the Energy Inspectorate and the Environmental Protection Inspectorate) may overall be considered sufficient for carrying out inspections within the meaning of Article 15 of Directive 2009/31/EC. It must, however, be reemphasized that, the most commonly agreed and identified deficiencies relate to the inefficient, insufficient or incomplete implementation of legislation related to the environment as a result of a continuing lack of resources.

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177 Law on Energy, Art. 9(1).
178 Id. Art. 32(2).
179 Id. Art. 32(3).
180 Id. Art. 32(4).
181 Law on Environmental Protection, arts. 50 and 80.
182 Id. Art. 81(1).
183 Id. Art. 81(2).
184 Id.
staff, and expertise rather than the absence of formal authorities. It is worth noting in this context that, the budget allocated for financing environmental activities is less than 1% of Kosovo’s total budget (around €13 million). Any intervention in pertinent future decision-making processes would thus need to maintain the focus on these critical deficiencies.

(ix) Environmental impact (including cumulative impact) assessment process, risk assessment and public consultation

The environmental impact assessment is the only aspect in the applicable legislation of Kosovo that already explicitly addresses CCS, though it still does not cover it in its entirety. For example, it does not provide any guidance with regard to injection and storage. It mainly speaks of this aspect in terms of a broader environmental dimension, of assessing all projects, public and private, that could significantly impact the environment, for the sole purpose of acquiring the required consent to operate from the competent governmental body.

An environmental consent is required by the Law on Environmental Impact Assessment for every public or private project, which is likely to have significant effects on the environment by virtue, inter alia, of its nature, size or location. Environmental consents are issued by the Ministry of Environment. The Law then goes on to specify that all projects listed in Annex I of the Law are obliged to undergo an Environmental Impact Assessment. Annex I, under “Transport Infrastructure”, lists pipelines with a diameter of five hundred (500) mm or more and a length of ten (10) km or more for the transport of natural gas, oil or chemicals, and carbon dioxide (CO₂) streams for the purposes of geological storage, including associated booster stations, as well as pipelines with a diameter of eight hundred (800) mm or more and a length of forty (40) km for the transport of carbon dioxide (CO₂) streams for the purposes of geological storage, including associated booster stations. Also under Annex I, which is projects that must in any case undergo an Environmental Impact Assessment, listed under “Other Projects,” are storage sites for the geological storage of carbon dioxide, and installations for the capture of CO₂ streams for the purposes of geological storage from installations covered by Annex I or where the total yearly capture of CO₂ is 1.5 megatons or more.

Projects listed in Annex II of the Law are, however, to be examined on a case-by-case basis and in accordance with the criteria set out in Annex III of the Law (e.g., size of the project, environmental impact when combined with other existing or expected future projects, the use of natural recourses, pollution, etc.), in order to determine whether such projects must undergo the Environmental Impact Assessment. In this annex, under “Energy Industry,” are listed installations for the capture of CO₂ streams for the purposes of geological storage (installations not covered by Annex I), and under “Infrastructure projects,” oil and gas pipeline installations and pipelines for the transport of CO₂ streams for the purposes of geological storage (projects not included in Annex I).

The Law on Environmental Impact Assessment requires that the main conclusions and recommendations included in the Environmental Impact Assessment Report and the proposed decision for environmental consent are made subject to public debate, and that the results of these consultations have to be taken into

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186 Law listed at point 56 of list.
187 Law on Environmental Impact Assessment, art. 7(1).
188 Id. Art. 7(2).
consideration in reaching the decision on the environmental consent. The Law provides that it is the applicant’s responsibility to plan and organize the public debate. The plan must be sent to the Ministry of Environment for approval; the plan must also contain the location and date of the public debate, including the time and mechanisms for informing the public, as well as the locations where the Non-Technical Summary of the Environmental Impact Assessment Report and the proposed decision are to be displayed. The public debate cannot be held until the applicant has received the Ministry’s written approval. It is also the responsibility of the applicant to inform the public through public information media, including an announcement in at least one daily newspaper, of the date, place and time of the public debate. The public debate is to be held within twenty to thirty days after the applicant, the environmental authorities and the public concerned have been informed. Within ten days from the date on which the public debate is concluded, the Ministry reviews the remarks and opinions emerged in the public debate, and may request the applicant to change or complete designated elements of the EIA Report. After taking a decision on granting or refusing an environmental consent, the Ministry informs the public of the decision and makes available for public inspection a statement containing: the content of the decision and any possible conditions; the main reasons and considerations upon which the decision was based including, if relevant, information about the participation of the public; a description, where necessary, of the principal measures to avoid, reduce and, if possible, offset the major adverse effects; and legal advice about regular means of appealing the validity of the decision and the procedures. Where an affected country has been consulted in accordance with the Law, the Ministry informs that country of the decision and forwards to it the information that it makes available for its own public, excluding the advice on means and procedures for appealing the decision’s validity.

In terms of approximation, Kosovo’s Law on Environmental Impact Assessment has undergone the screening of its compliance with Directive 85/337/EC and is made in line with its content; in some cases, even complete reproduction of the language of the Directive’s provisions can be noted. It may also be observed that the content of Article 31 of Directive 2009/31/EC amending Directive 85/337/EC on the assessment of the effects of certain projects on the environment is included in the Law on Environmental Impact Assessment, meaning that it is applicable both to the capture and transport of CO₂ streams for the purposes of geological storage and also to storage sites.

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189 Id. Arts. 20 and 22.
190 Id. Art. 20(2).
191 Id. Art. 20(3).
192 Id. Art. 21(1) and (2).
193 Id. Art. 22(4).
194 According to Article 28 of the Law on Environmental Impact Assessment, the Ministry of Environment has to make sure that the public is informed about the proposed project through at least one local daily newspaper edited in the territory that will be affected by the planned project, as well as through electronic media. Further, the public concerned is to be given early and effective opportunities to participate in all phases of the Environmental Impact Assessment procedure, including the decision-making process.
195 Id. Art. 22(5).
196 For comparative purposes, Article 31 of Directive 2009/31/EC reads: “Directive 85/337/EEC is hereby amended as follows:
1. Annex I shall be amended as follows:
   (a) point 16 shall be replaced by the following:
   ‘16. Pipelines with a diameter of more than 800 mm and a length of more than 40 km:
      — for the transport of gas, oil, chemicals, and,
      — for the transport of carbon dioxide (CO₂) streams for the purposes of geological storage, including associated booster stations.’;
   (b) the following points shall be added:
7. Key Findings, Gaps & Recommendations

Sections 4, 5 and 6 of this report have presented in-depth regulatory and institutional reviews of the situations in Bosnia and Herzegovina, Serbia and Kosovo. In order to compare more closely the findings of this review in terms of the nine key issues, the following summary table has been prepared. Since none of the target countries have introduced specific legislation governing CCS yet, the final column contains Milieu’s general recommendations on how to introduce effective legislation in this area.

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24. Installations for the capture of CO\textsubscript{2} streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations covered by this Annex, or where the total yearly capture of CO\textsubscript{2} is 1.5 megatonnes or more.

2. Annex II shall be amended as follows:
(a) the following point shall be added to point 3:
‘(j) Installations for the capture of CO\textsubscript{2} streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations not covered by Annex I to this Directive.’;
(b) point (i) of point 10 shall be replaced by the following:
‘(i) Oil and gas pipeline installations and pipelines for the transport of CO\textsubscript{2} streams for the purposes of geological storage (projects not included in Annex I).’

Relevant provisions in the annexes of Kosovo’s Law on Environmental Impact Assessment include content and language: “Pipelines with a diameter of eight hundred (800) mm or more and a length of forty (40) km for the transport carbon dioxide (CO\textsubscript{2}) streams for the purposes of geological storage, including associated booster stations;” “Storage sites for the geological storage of carbon dioxide;” “Installations for the capture of CO\textsubscript{2} streams for the purposes of geological storage from installations covered by this Annex or where the total yearly capture of CO\textsubscript{2} is 1.5 megatonnes or more;” “Installations for the capture of CO\textsubscript{2} streams for the purposes of geological storage (installations not covered by Annex I).”
<table>
<thead>
<tr>
<th>9 Key Issues</th>
<th>Key Findings Bosnia &amp; Herzegovina</th>
<th>Key Findings Serbia</th>
<th>Key Findings Kosovo</th>
<th>Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Classification of CO₂ &amp; its legal definition</td>
<td>- CO₂ has not been defined or regulated by legislation in Bosnia and Herzegovina to-date. Traditionally, CO₂ has not been considered to be a pollutant.</td>
<td>- Currently undefined in Serbian legislation.</td>
<td>- Currently undefined in Kosovar legislation.</td>
<td>Since CO₂ is not yet defined in any of the three countries, the path is clear for the introduction of a definition of CO₂ and captured CO₂ in the CCS context. These new legal frameworks on CCS should take care to ensure that captured CO₂ is excluded from the scope of any existing waste legislation.</td>
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<tr>
<td>2) Jurisdiction over domestic and cross-border pipelines &amp; reservoirs</td>
<td>- Currently, BiH shares its oil pipeline with Croatia and on the other side, shares its gas pipeline with Serbia. Cross-border transportation of oil and gas is regulated on the basis of bilateral agreement, with Croatia and Serbia respectively. Cross-border transportation of CO₂ is also likely to be regulated on bilateral basis.</td>
<td>- The transportation of CO₂ is not regulated by any specific law.</td>
<td>- Kosovo shares a cross-border gas pipeline with Macedonia, but it is no longer used. The pipeline and the right-of-way along the route are reportedly owned by the Kosovo Energy Corporation (KEK).</td>
<td>These new legal frameworks on CCS in each of the three countries need to clearly allocate the jurisdiction, role and responsibilities of relevant players in the operation of domestic and cross-border pipelines and reservoirs. Legislators should consider developing the existing legal frameworks to cover CO₂ pipelines and reservoirs. So for example,</td>
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<td>- Ownership of the oil pipeline shared with Croatia is a source of dispute. BiH only owns the small part of the pipeline that is located on its territory, despite having invested one third of the overall investment for the initial construction.</td>
<td>- The provisions of the Act on Pipeline Transport of Gaseous and Liquid Hydrocarbons could apply. This defines transportation by pipeline as the transportation of gaseous and liquid hydrocarbons by oil pipelines, product and gas pipelines. The law distinguishes interstate systems for oil and natural gas transport or their products when it concerns cross boundary movement between other States or transit through Serbia.</td>
<td>- The Law on Natural Gas regulates domestic gas transmission and storage operators and also gas distribution system operators. These operators also need to have a licence from the Energy Regulatory Office.</td>
<td>- In BiH, the RS Law on Gas and the FBiH Governmental Decree on Organisation and Regulation of Gas Economy.</td>
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<td>- The gas pipeline connects the Town of Sarajevo with the Serbian Border. Gas is imported from Russia, and is transported via Serbia.</td>
<td>- At present, Kosovo has no domestic oil pipelines, nor does it have any cross-border oil pipelines. In terms of the legal regime applicable to the jurisdiction over possible future domestic pipelines and reservoirs, as well as cross-border pipelines, the applicable legal framework is silent, and no guidance can be inferred from it.</td>
<td>- Oil pipelines as well as the transport, storage, import and sale of petroleum is regulated by the Law on Trade of Petroleum and Petroleum Products. Persons engaging in activities relating to transport, storage, import and sale of petroleum need to have a license from the Licensing Office.</td>
<td>- In Serbia, the Act on Pipeline Transport of Gaseous and Liquid Hydrocarbons.</td>
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<td>- The gas legislation in BiH entities provides a solid structure which could be followed for the introduction of CO₂ pipelines in the country.</td>
<td>- Oil pipelines as well as the transport, storage, import and sale of petroleum is regulated by the Law on Trade of Petroleum and Petroleum Products. Persons engaging in activities relating to transport, storage, import and sale of petroleum need to have a license from the Licensing Office.</td>
<td>- In Kosovo, the Law on Natural Gas.</td>
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<tr>
<td>3) Proprietary</td>
<td>- The proprietary rights to a future use of domestic and cross-border pipelines in BiH are in the process of development.</td>
<td>- The Agreement on Successions Issues currently does not recognise</td>
<td>Serbia. Serbia currently does not recognise</td>
<td>As there are no cross-boundary CCS frameworks to cover CO₂ pipelines and reservoirs.</td>
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### Rights to Cross-Border CO₂ CCS Sites and Facilities

<table>
<thead>
<tr>
<th>Cross-border CCS site and facilities</th>
<th>Cross-border CCS site and facilities likely to be set out in bilateral agreements between BiH and the relevant neighbouring state or states.</th>
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<tr>
<td>- By analogy to the gas sector, Inter-Entity flow of gas (i.e. from FBiH to RS and vice versa) is regulated on the basis of cooperation in this area, through agreements between the relevant governments, ministries and Regulatory Commissions.</td>
<td>- The division of movable and immovable property, including cross border sites between the successor States of the SFRY.</td>
</tr>
<tr>
<td>- The use of cross border sites is to be regulated by separate agreements.</td>
<td>- The use of CCS technology would be likely to include permits required for certain hazardous activities and their effects on the environment and human health, as well as permits required for geological explorations, mining sites and energy facilities.</td>
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<tr>
<td>- Joint Committee on Succession to Movable and Immovable Property to be established by successor States to ensure implementation and the resolution of problems. The work of the committee is still in process and should be accelerated.</td>
<td>Kosovo, and thus a cross-border CCS project is currently very improbable.</td>
</tr>
<tr>
<td>- Albania. Future agreement between Kosovo and Albania on a cross-boundary CO₂ capture and storage site and facilities, is conceivable given the growing cooperation between the two countries.</td>
<td>- Macedonia &amp; Montenegro. No inter-state legal framework addressing property rights to cross border CCS sites. Likely to be governed on a bilateral basis or possibly following the principles set out in the Agreement on Succession Issues (2001).</td>
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### 4) Regulatory Schemes Related to Management of Storage and Transportation Facilities

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<thead>
<tr>
<th>Regulatory Schemes Related to Management of Storage and Transportation Facilities</th>
<th>- Currently there are permits according to the Spatial Planning and Construction Act, environmental and other legislation and permits according to the Mining Act, Geological Explorations Act and Energy Act.</th>
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<tr>
<td>- There is no specific licensing system in place yet for CCS projects.</td>
<td>- Currently there are permits according to the RS Law on Gas and the FBiH Decree on the Organisation and Regulation of Gas Economy</td>
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<td>- The existing permitting system from the gas sector in both of the Entities might be applicable (i.e. the RS Law on Gas and the FBiH Decree on the Organisation and Regulation of Gas Economy)</td>
<td>- The use of CCS technology would be likely to include permits required for certain hazardous activities and their effects on the environment and human health, as well as permits required for geological explorations, mining sites and energy facilities.</td>
</tr>
<tr>
<td>- Presently, licences must be obtained from the Energy Regulatory Office for construction of new energy generation capacities, new facilities and pipelines to transmit and distribute gas and for storage of natural gas. Possibly this framework would be widened to cover licensing of CCS storage and transportation facilities.</td>
<td>- Currently no licensing scheme in place relating to CCS storage and transportation facilities.</td>
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<td>- There is no specific licensing system in place yet for CCS projects.</td>
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<td>- There is no specific licensing system in place yet for CCS projects.</td>
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### 5) Long-term Management and Liability Arising Out of Accidents or Leaks

| Long-term Management and Liability Arising Out of Accidents or Leaks | Article 103 of RS Law on Environmental Protection and Article 103 of FBiH Law on Environmental Protection regulate liability concerning dangerous activities that may cause significant risk to people, health, property and/or the environment. The legal entity that performs dangerous activities bears responsibility for damages caused by that activity. Although CCS projects are not expressly included in the Laws as “dangerous activities”, it is likely that plants containing equipment to.
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<td>- Article 103 of RS Law on Environmental Protection establishes a framework for environmental liability based on the polluter pays principle with a view to remediing environmental damage.</td>
<td>- Chapter 8 of the Law on Environmental Protection establishes a framework for environmental liability based on the polluter pays principle with a view to remediing environmental damage. Article 65 establishes general liability for legal and natural persons and Article 66 provides that the polluter is responsible for damage caused and for making good the damage.</td>
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</table>
| - Separate liability provisions also exist in the Law on Waters, Law on Waste Management and the Law on Health and Safety at Work. | - The Criminal Code provides for the punishment of various offences relating to the environment such as pollution or destruction of the environment, unlawful handling of hazardous substances and waste and unlawful activities that may cause significant risk to people, health, property and/or the environment. The legal entity that performs dangerous activities bears responsibility for damages caused by that activity. Although CCS projects are not expressly included in the Laws as “dangerous activities”, it is likely that plants containing equipment to.
| - According to the principle of duty of care there is an obligation both for the owner of certain property and for any other person who according to law or | General environmental liability provisions already exist in each country’s legislation. However, it would be prudent if the new legal frameworks on CCS set out the liabilities of the different players involved in each aspect of CCS for accidents and leaks. Liability for environmental damage and also climate damage should be covered. |
capture CO₂, the pipelines used to transport concentrated CO₂ and the plant used to inject CO₂ would be considered as "locations that are dangerous to the environment" and thus qualify as "dangerous activities".

6) **Financial assurance for long-term stewardship**
- No provision made on this as yet in relation to CCS sites.
- Both Entities’ Laws on Environmental Protection require that the legal entity managing the dangerous activity provides sufficient financial security to cover any damage which potentially might occur to third parties and compensation through insurance or by some other means.
- The Entities’ Laws on Waste Management require that sites holding hazardous waste provide a financial guarantee which covers the costs of activities required after closure of such facility.

7) **Third party access rights**
- Not governed in the context of CCS as yet.
- Both the FBiH Decree on Organisation and Regulation of Gas Economy and RS Law on Gas place obligations on the operator. Operators of transportation network must:
  - provide access and use of the transportation network to third parties under transparent rules based on principles of non-discrimination and

<table>
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<tr>
<th>Operating Companies</th>
<th>Contractual Obligations</th>
<th>Legal Frameworks</th>
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<tr>
<td>Milieu Lt</td>
<td>Contract has a right to possess and use of lands, building and movable property. The owner’s rights and obligations are regulated in greater detail by the Act on Bases of Property Relations, while the duty of care of other persons is prescribed by the Contracts and Torts Act.</td>
<td>Milieu Lt Final Report, April 2011</td>
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<td>Milieu Lt</td>
<td>Separate liability provisions also exist in the Water Law and the Law on Air Protection from Pollution.</td>
<td>Milieu Lt Final Report, April 2011</td>
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<tr>
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<td>No provision made on this as yet in relation to CCS sites or in any analogous legislation.</td>
<td>Milieu Lt Final Report, April 2011</td>
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<td>No provision made on this as yet in relation to CCS sites or in any analogous legislation.</td>
<td>Milieu Lt Final Report, April 2011</td>
</tr>
<tr>
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<td>Milieu Lt Final Report, April 2011</td>
</tr>
<tr>
<td>Milieu Lt</td>
<td>No provision made on this as yet in relation to CCS sites in the three countries, this will be a totally new element to be introduced into the new legal frameworks on CCS. The requirements of Articles 18 and Article 20 of Directive 2009/31/EC should be adequately reflected in the new legal frameworks. Also the European Commission’s recent Guidance Document 4 on Financial Security (Art. 19) and Financial Mechanism (Art. 20) should be born in mind. The Guidance concludes by recommending that the financial mechanism selected under Article 20 of Directive 2009/31/EC be simple, established and low risk and cautions against complex financial arrangements.</td>
<td>Milieu Lt Final Report, April 2011</td>
</tr>
<tr>
<td>Milieu Lt</td>
<td>This topic is not developed yet in terms of CO₂ transportation but detailed provisions exist in the Law on Natural Gas governing third party access rights.</td>
<td>Milieu Lt Final Report, April 2011</td>
</tr>
<tr>
<td>Milieu Lt</td>
<td>The Law on Natural Gas requires that transmission and distribution system operators allow natural gas undertakings and eligible customers, including supply undertakings, to have non-discriminatory access to transmission and distribution systems, pursuant to rules and tariffs approved and published by the Energy Regulatory Office.</td>
<td>Milieu Lt Final Report, April 2011</td>
</tr>
<tr>
<td>Milieu Lt</td>
<td>Third party access rights are already governed in BiH, Serbia and Kosovo in the energy/gas sector contexts. Nevertheless, the new legal frameworks on CCS should provide for fair and open access to the CCS transport network and storage sites.</td>
<td>Milieu Lt Final Report, April 2011</td>
</tr>
</tbody>
</table>

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full protection of users’ interest; and
give all information needed for efficient access to transportation network users.

Operators of gas storage facilities must:
provide access to third parties, in accordance with principles of transparency, non-discrimination and full respect to business confidentiality of the third party, in line with technical capacities of the transportation and/or storage system.

- The Act on Pipeline Transport of Gaseous and Liquid Hydrocarbons and Distribution of Gaseous Hydrocarbons lays down the conditions for safe and uninterrupted pipeline transport of gaseous hydrocarbons and liquid hydrocarbons and distribution of gaseous hydrocarbons.
- In the case of State pipelines, the Concession Act can apply.

8) Regulatory compliance and enforcement scheme
- Both Entities have a Law on Inspections.
- Both Entities have an entity-level Directorate for Inspections (Inspectorate) and inspections established at a local (canton/municipal) level.
- A CCS project would be likely to be subject to a “technical inspection” as well as an “urbanism-construction and ecology inspection”.
- Inspectors have various powers to take action if they note any non-compliances.
- In terms of enforcement, both Entities have Laws on Offences which establish a system of offences and sanctions and authorised bodies who may imposing these offences and sanctions. The criminal laws provide for “crimes against environment”. Additionally, the legislation on environmental protection and on air protection sets

- The responsibilities related to inspections and enforcement are determined by several legal acts.
- Competence for law enforcement in the field of environmental protection is divided between republic inspectors, provincial inspectors and local inspectors.
- Other inspections relevant to environmental issues are the mining inspection, spatial planning inspection, building inspection, electro-energetic inspections, health inspection, etc.
- The Law on State Administration and certain other laws require cooperation between inspectors from different domains.
- Regulatory enforcement of the energy sector is performed by the Energy Inspectorate as part of the Ministry of Energy and Mining. The Energy Inspectorate has powers to carry out inspections both with and without notice. Also, energy facility operators must inform this Inspectorate of any damage or error that occurs as a result of energy supply outages or of any hazard to life, health or the environment.
- Regulatory enforcement in the environmental sector is carried out by the Environmental Protection Inspectorate which is part of the Ministry of Environment and Spatial Planning.

- The Act on Pipeline Transport of Gaseous and Liquid Hydrocarbons and Distribution of Gaseous Hydrocarbons lays down the conditions for safe and uninterrupted pipeline transport of gaseous hydrocarbons and liquid hydrocarbons and distribution of gaseous hydrocarbons.
- In the case of State pipelines, the Concession Act can apply.

Either the existing inspection and enforcement schemes that are in place in the three countries should be extended to cover CCS facilities and pipelines, or the new legal frameworks on CCS should enshrine the inspection requirements found in Article 15 of Directive 2009/31/EC and also the penalty provisions.
### Environmental impact assessment

- Article 56 of the RS Law in Environment Protection requires that "projects that may have significant impact on environment due to their size, nature and location, must be subject to EIA and obtain an administrative decision approving the Environmental Impact Study".

- The RS Minister responsible for environmental protection is responsible for the EIA decision making. Also, the Ministry is obliged to inform local communities in the territory of the planned project and to ask for their opinion.

- In FBiH, the Rulebook on EIA lists the categories of plants and installations for which an EIA is obligatory in order to obtain an eco-permit from the Federal Ministry in charge of environmental protection. For all other plants and installations not listed in the Rulebook, and for which an EIA is not needed, and for those with capacities below the thresholds defined in the Rulebook, an eco-permit is issued by the responsible Cantonal ministry.

- According to the Law on Environmental Impact Assessment, EIA is required for planned projects and projects, changes in technology, reconstruction, the extension of capacity, the termination of operations, and the removal of projects that may have significant impact on the environment.

- Activities relating to the capture, transport, injection and storage of CO₂ have not yet been stipulated as activities for which the EIA procedure is obligatory. But EIA is obligatory for projects involving pipelines for the transport of gas, liquefied petroleum gas, oil or chemicals and for storage facilities for petroleum, petrochemical and chemical products, natural gas, flammable liquids and fuels.

- The competent authority may also decide that the EIA has to be applied in case of other activities which could have a significant impact on the environment.

- If a planned project could cause a significant impact on the environment of another State, or when another State whose environment could be threatened requests the information, the Ministry responsible for environmental protection must send this other State all relevant information.

- Public participation and access to information are regulated at national level.

- An environmental consent is required by the Law on Environmental Impact Assessment for every public or private project, which is likely to have significant effects on the environment by virtue, inter alia, of its nature, size or location. These consents are issued by the Ministry of Environment. Public participation is an important requirement.

- An environmental consent is required for projects involving the capturing and transport of CO₂ streams for the purpose of geological storage and also storage sites.

The EIA legislation in Kosovo already applies to CCS projects.

The EIA legislation in BiH and Serbia is established, but does not yet specifically mention activities relating to the capture, transport, injection and storage of CO₂. This should be addressed.
Gaps and country specific problem areas

The objective of the present regulatory review is to identify gaps in the existing multilateral, bilateral and national regulatory and legal frameworks in Bosnia and Herzegovina, Serbia and Kosovo that might prevent the development of cross-boundary and national CCS projects where appropriate, and suggest approaches to address the identified gaps to remove the regulatory and legal barriers to CCS deployment.

Milieu has noted a few country specific problem areas which, if not resolved, may hinder the development of national and cross-boundary CCS projects. These are presented in the following short sections, along with some other country specific issues which, although they may not prevent CCS deployment, are worth bearing in mind.

Bosnia and Herzegovina

A first point to note concerns the very make up of Bosnia and Herzegovina. Since the country consists of two Entities, FBiH and RS, it must be borne in mind that any CCS project may require inter-entity cooperation, before considering any cross-border cooperation. This is not considered to be a problem in itself, but could give rise to further complexity in the deployment of a successful cross-Entity CCS project.

Through a number of documents, BiH has committed itself to participate in international action to reduce GHG emissions, including the application of new technologies aimed at reduction of anthropogenic impact on climate change. However, even though Bosnia and Herzegovina have joined the UNFCCC and the Kyoto Protocol, they are not obliged to set or meet specific targets regarding reducing CO₂ emission. It would be beneficial if specific carbon reduction targets were set so that real action regarding climate change can begin, and so that the need for technologies such as CCS becomes more evident.

The Initial National Communication for needs of UNFCCC (INC), as the only comprehensive official act on BiH level addressing climate change, did not take in account CCS as a potential way of GHG emission reduction. The INC does contain a statement on the need to introduce new technologies regarding reduction of GHG. This statement could potentially be used as a basis for CCS policy development.

Another area that will require effort in Bosnia and Herzegovina is that of awareness raising. The general public needs to be informed of the potential benefits of CCS. Even court judges and prosecutors need to be made more aware of environmental protection legislation in general and the significance of strong enforcement measures in this area.

Bosnia and Herzegovina is a country with strongly expressed ambitions to join the EU, which requires full transposition of the EU acquis in all sectors, including Directive 2009/31/EC. Given its aspirations of EU membership, BiH will have to take steps towards introducing the legal, institutional and administrative framework for the application of CCS projects in the near future. As described, the existing regulatory framework for CCS in BiH is weak; CCS has not yet been recognised by legislation in BiH.

Despite this, there are certain possibilities for creating a legal basis CCS in the near future. The existing legal system recognises the possibility of geological storage of fluids; gas transportation is already regulated and may be applied for needs of CCS; environmental protection, public safety and safety of workers are already fundamentally included in the regulatory system and would be considered as necessary pre-conditions for CCS projects.
For Bosnia and Herzegovina, other key issues to successful deployment of CCS projects will be whether or not there is sufficient technical capacity, knowledge and investment potential to develop CCS system in the country.

Serbia

As with BiH, Serbia is also a potential candidate for EU membership and has a signed SAA. It, too, will therefore be obliged to start approximating its laws to the framework found in Directive 2009/31/EC.

As mentioned earlier, Serbia has ratified both the UNFCCC and the Kyoto Protocol. However, climate change was only recently identified as a problem in Serbia. Although the Government has begun to undertake measures to implement its international obligations, these are in relatively early stages. For example, efforts have been made to set up the institutional framework for implementing clean development mechanism projects. Just after the ratification of the Kyoto Protocol, the Serbian Government adopted the ‘National Strategy for the Inclusion of the Republic of Serbia in the CDM of the Kyoto Protocol in the field of Waste Management, Agriculture and Forestry’. Moreover, in accordance with the Kyoto Protocol provisions, the Serbian Government formed a body in charge of implementation of CDM projects, which became operational on 21 November 2008. Given the early stages of implementation of climate change efforts, it is understandable that CCS technology has not yet received much attention. However, efforts in terms of awareness raising of CCS will need to be intensified.

Kosovo

Kosovo is a potential candidate for EU membership, although it does not yet have an SAA.

One weakness is that Kosovo lacks specific and targeted legislation and policy on climate change. As Kosovo is not a member of the UN, it cannot formally join either the UNFCCC or the Kyoto Protocol. Kosovo does not have a climate change strategy or a greenhouse gas inventory. Additionally, Kosovo does not yet have any domestic legislation setting targets on carbon reduction. However, as it awaits membership of the UN, Kosovo can still take steps to comply with the UNFCCC and the Kyoto Protocol. This would be beneficial as it would strengthen the general framework and context for the introduction of CCS legislation.

A significant and practical problem facing Kosovo and any possible cross-border cooperation on a future CCS project is that it is not recognised by some of the other countries in the region. Non-recognition of Kosovo has already given rise to Kosovo’s implementation of the regional Treaty establishing the Energy Community, as discussed in Section 2 of this report. Such difficulties are also likely to arise on collaboration on cross boundary CCS projects.

The approximation of Kosovar law to EU environmental standards, is described by the EU Commission, as being “still at an early stage”, and its implementation remains problematic, due to continued lack of resources, staff and, in some cases, expertise. These are all weaknesses that will also affect transposition and implementation of Directive 2009/31/EC in due course.

Finally, there is one other issue that affects all three countries alike. As they are all committed to EU membership, at some point in the future, they will all begin to take steps to harmonise with Directive 2009/31/EC. However, this review has shown that they already have a considerable body of existing environmental, energy and mining laws, some aspects of which may overlap with issues arising from
CCS. It will of course be for each country to decide how best to harmonise with Directive 2009/31/EC. However, if the countries decide to put in place new laws specifically on CCS, they will need to undertake a careful review of all existing laws to ensure that there is no unnecessary conflict between the existing laws and the new CCS regulations. Amendments to existing legislation may well be required. At the same time, structures will need to be put in place to ensure that competences of the relevant national authorities do not overlap and that a coordinated institutional framework equipped with the powers and resources to properly monitor and ensure compliance with legal requirements is in place.
APPENDIX 1
**LIST OF KOSOVAR LAWS\(^{198}\)**

<table>
<thead>
<tr>
<th>Name of the Law</th>
<th>Number</th>
<th>Date of promulgation</th>
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<tbody>
<tr>
<td>1. Law on Environmental Protection</td>
<td>2002/8</td>
<td>15.04.2003</td>
</tr>
<tr>
<td>2. Law on Forests in Kosovo*</td>
<td>2003/3</td>
<td>20.03.2003</td>
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<tr>
<td>4. Law on Farmers Cooperatives*</td>
<td>2003/9</td>
<td>23.06.2003</td>
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<td>5. Law on Artificial Fertilizers</td>
<td>2003/10</td>
<td>23.06.2003</td>
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<td>6. Law on Roads</td>
<td>2003/11</td>
<td>27.06.2003</td>
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<tr>
<td>10. Law on Air Protection*</td>
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<td>11. Law on Road Transport*</td>
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<tr>
<td>12. Law on Livestock Production*</td>
<td>2004/33</td>
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<td>14. Law on Animal Welfare</td>
<td>02/L-10</td>
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<tr>
<td>15. Law on Transport of Dangerous Goods</td>
<td>2004/6</td>
<td>05.06.2004</td>
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<tr>
<td>16. Law on Energy</td>
<td>2004/8</td>
<td>30.06.2004</td>
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<td>17. Law on the Energy regulator</td>
<td>2004/9</td>
<td>30.06.2004</td>
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<td>18. Law on Electricity</td>
<td>2004/10</td>
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<tr>
<td>19. Law on Measuring Units</td>
<td>2004/11</td>
<td>28.05.2004</td>
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<tr>
<td>20. Law on Planting Material</td>
<td>2004/13</td>
<td>28.05.2004</td>
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<tr>
<td>23. Law on Precious Metal Products</td>
<td>2004/28</td>
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<td>25. Law on Air protection</td>
<td>2004/30</td>
<td>25.11.2004</td>
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<td>26. Law for the Irrigation of Agricultural Lands*</td>
<td>02/L-9</td>
<td>25.11.2005</td>
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<td>27. Law on Animal Welfare</td>
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<td>28. Law on Nature Conservation</td>
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<td>29. Law on Agricultural Land</td>
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<td>23.06.2006</td>
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<td>30. The Waste Law</td>
<td>02/L-30</td>
<td>05.05.2006</td>
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<td>31. Tobacco Law*</td>
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<tr>
<td>32. Law on Fire Protection</td>
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<td>34. Law on Hunting</td>
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<td>35. Law on Fishery and Aquaculture</td>
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<td>36. Law on Plant Protection</td>
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<tr>
<td>37</td>
<td>Law on Protection of Plants Varieties</td>
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<td>16.05.2008</td>
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<td>Law on Noise Protection</td>
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<td>Law on Apiculture</td>
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<td>Law on Chemicals</td>
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<td>Law on Organic farming</td>
<td>02/L-122</td>
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<td>42</td>
<td>Law on Protection of Products</td>
<td>03/L-042</td>
<td>27.11.2008</td>
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<td>43</td>
<td>Law on Amending and Supplementing of the Law on Spatial Planning No. 2003/14**</td>
<td>03/L-106</td>
<td>17.11.2008</td>
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<td>44</td>
<td>Law on Agriculture Inspection</td>
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<td>45</td>
<td>Law on Central Heating</td>
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<td>Law on Environmental Strategic Assessment</td>
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<td>Law on Environmental Impact Assessment</td>
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<td>Law on Environmental Protection</td>
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<td>50</td>
<td>Law on Use, Management and Maintenance of Building Joint Ownership</td>
<td>03/L-091</td>
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<td>51</td>
<td>Law on Integrated Prevention Pollution Control</td>
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<td>52</td>
<td>Law on Biocide Products</td>
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<td>Law on Amendment and Supplementation of the Law No. 2004/5 on Trade of Petroleum and Petroleum Products in Kosovo**</td>
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<td>Law on Natural Gas</td>
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<td>56</td>
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<td>Law on Amending and Supplementing the Law on Tobacco No.02/L-36**</td>
<td>03/L-157</td>
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<td>58</td>
<td>Law on Amending and Supplementation of Law No. 2003/3 on Kosovo Forests**</td>
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<td>Law on Air Protection from Pollution</td>
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<td>60</td>
<td>Law on the Amending and Supplementing the Law No.02/L-9 on Irrigation of Agriculture Lands**</td>
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<td>Law on Mines and Minerals</td>
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<td>63</td>
<td>Law on Strategic Environmental Assessment</td>
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<td>Law on Nature Protection</td>
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<td>Law on Energy**</td>
<td>03/L-233</td>
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<td>Law on Energy Regulator**</td>
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<td>Law on the Amendment and Supplement of the Law on Kosovo Livestock**</td>
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<td>68</td>
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<td>09.11.2010</td>
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* Amended and supplemented by other, later laws.
** Laws that amend and supplement previous laws addressing the same subject matter.

II. LIST OF SECONDARY LEGISLATION

1. Administrative Instructions adopted by the Government of Kosovo

- Administrative Instruction No. 05/2008 on administration of medical wastes (7 March 2008);
- Administrative Instruction No. 06/2008 on administration of hazardous wastes (7 March 2008);
- Administrative Instruction No. 09/2008 on energy audits (14 April 2008);
- Administrative Instruction No. 12/2008 on elimination of medicinal product wastes (15 July 2008);
- Administrative Instruction No. 13/2008 on limited values of the effluents discharged on water bodies and on the system of public canalization (18 July 2008);
- Administrative Instruction No. 15/2008 on promotion of efficient consumption of energy by end-users and energy services (31 July 2008);
- Administrative Instruction No. 01/2009 on conditions for selecting the location of the waste storage construction (28 January 2009);
- Administrative Instruction No. 02/2009 on the allowance of norms of hazardous substances and harmful presence in soil (28 January 2009);
- Administrative Instruction No. 2009/04 on the control of volatile organic compounds emissions during the storage, filling, discharging, packaging and transfer of fuels (3 April 2009);
- Administrative Instruction No. 2009/05 on setting of tax registration of the artificial fertilizer (3 April 2009).
2. Administrative Instructions adopted by the Ministry of Environment and Spatial Planning

A. Environment

- Administrative Instruction No. 3/2004 on licensing persons and enterprises for conducting environmental impact assessment reports;
- Administrative Instruction No. 22/03 on the establishment of Kosovo’s Environmental Protection Agency;
- Administrative Instruction No. 26/05 on the issuance of environmental permit (7 December 2005);
- Administrative Instruction No. 2/2004 on the establishment of Environmental Protection Inspectorate (18 February 2004);
- Administrative Instruction No. 22/05 on the cadastre of the emission for environmental polluters (16 August 2005);
- Administrative instruction No. 04/2006 on the form and system of the central register of Nature Protection Areas (September 2006);
- Administrative Instruction No. 01/07 on the notification system of Nature Conservation Areas (December 2006);
- Administrative Instruction No. 04/07 on administration of the end-of-life vehicles and their wastes (December 2006);
- Administrative Instruction No. 02/07 on the waste of battery and expended accumulator (December 2006);
- Administrative Instruction No. 05/07 on construction and demolition wastes (December 2006);
- Administrative Instruction No. 03/07 on administration of used waste and oils (January 2006);
- Administrative Instruction No. 07/04 on Environmental Impact Assessment* (January 2006) (currently not in force);
- Administrative Instruction No. 08/07 on proprietor and operator’s competences for the wastes treatment (26 July 2007);
- Administrative Instruction No. 09/07 on packaging of waste (26 July 2007);
- Administrative Instruction No. 10/07 (26 July 2007) on poly-chloral biphenyls and three-phenyls.
B. Spatial Planning

- Administrative Instruction No. 02/05 on the implementation of the Law on Spatial Planning and on essential elements of the regulation of urban planning (4 March 2005);

- Administrative Instruction No. 2003/14 on the implementation of the Law on Spatial Planning and on the regulation of supervising, punishments and taking measures (13 September 2001);

- Administrative Instruction No. 03/05 on professional examination and licensing in the field of urban and spatial planning (3 June 2003);

- Administrative Instruction No. 21/03 on the implementation of the Law on Spatial Planning and on the content of essential elements for special areas of spatial planning (3 July 2003);

- Administrative Instruction No. 2005/54 on the implementation of the Law on Spatial Planning and on the establishment of the Institute for Spatial Planning (3 October 2003);

- Administrative Instruction No. 25/03 on the implementation of the Law on Spatial Planning and on the main elements for the spatial planning in Kosovo (21 November 2003);

- Administrative Instruction No. 15/05 for the implementation of the Law on Spatial Planning and on the procedure for public discussions on spatial and urban planning (10 May 2005);


C. Construction

- Administrative Instruction No. 60/05 on the closure of building site and the system of its enclosure by the construction inspectorate (14 July 2005);

- Administrative Instruction No. 57/05 on inspection evidences (14 July 2005);

- Administrative Instruction No. 18/05 on qualification conditions for construction inspector of MESP, and municipal construction inspector (14 July 2005);

- Administrative Instruction No. 05/05 on criteria and procedures for issuing licenses, for exercising the activities in the field of projecting, constructing and professional supervision and reviewing (19 April 2005);

- Administrative Instruction No. 06/05 on technical professional exam, engineering, constructional degree engineering, architecture, electro-technician and machinery in the field of constructions (19 April 2005);
• Administrative Instruction No. 27/05 on conditions and measurements for the issuance of authorization for the project control;

• Administrative Instruction No. 20/05 on inspective supervision of constructive inspection (14 July 2005);

• Administrative Instruction No. 25/05 on Project Verification (2 December 2005);

• Administrative Instruction No. 03/06 on the list of buildings nor requiring construction permit (16 June 2006);

• Administrative Instruction No. 01/06 on other specific administrative violations and respective fines (10 February 2005);

• Administrative Instruction No. 02/06 on project control (14 February 2006);

• Administrative Instruction No. 26/05 on technical inspection of constructional buildings;

• Administrative Instruction on construction buildings technical terms for accessibility to disabled persons.

D. Water

• Administrative Instruction No. 23/05 for the determination of the evidence system and legitimating by the water inspector (11 October 2005);

• Administrative Instruction No. 24/05 on the content, form, conditions and method of issuing and retaining the water permit (11 October 2005);

• Administrative Instruction No. 06/07 on the content of water infrastructure (8 June 2007);

• Administrative Instruction No. 13/07 on criteria for defining the water protection zones and their protection measures for water resources used for drinking water (29 October 2007).