**Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the Conservation of Wild Birds (codified version of Directive 79/406/EEC and its amendments)**

**TRANSPOSITION**

A. Which parts of the Directive have been transposed?

Provisions of the Directive have been transposed in following regulations:

* Law on Nature Protection (“Off. Gazette of MNE”, no. 51/08)
* Amendments to the Law on Nature Protection
* Decree on protection of rare, thinned, endemic and endangered plant and animal species (“Off. Gazette of MNE”, no. 76/06)
* Rulebook on the manner of monitoring of population of protected wild birds (“Off. Gazette of MNE”, no. 62/10)
* Also relevant:
* Law on wild game species and hunting (“Off. Gazette of MNE”, no. 52/08)
* Rulebook on hunting seasons (“Off. Gazette of MNE”, no. 60/10)

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| **Full compliance** | |
| Council Directive 2009/147/EC | Amendments to the Law on Nature Protection (Low on Nature Protection (OG 51/08)) |
| Article 1 | Amendments to the Law on Nature Protection there is no appropriate Article but it is transposed in Article 4 and Article 7 of Law on Nature Protection (OG 51/08) |
| Article 2 | Article 32 |
| Article 3 | Article 34 |
| Article 4 paragraph 2 and 4 | Article 28 and Article 85 of Law on Nature Protection (OG 51/08) |
| Article 5 | Article 32 |
| Article 13 | Article 3 |
| Article 14 | Article 3 and Article 32 |
| ANNEX IV | Amendments to the Law on Nature Protection there no appropriate Article but it is transposed in Article 83 of Law on Nature Protection (OG 51/08) and Article 66 of Law on wild game species and hunting (“Off. Gazette of MNE”, no. 52/08) |

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| **Partial compliance** | | |
| Article 4 paragraph 1 | Article 19, and Rulebook on protection of rare, thinned, endemic and endangered plant and animal species (“Off. Gazette of MNE”, no. 76/06) | Partial compliance with Article 46 of Law on Nature Protection (“Off. Gazette of MNE”, 51/08) and Rulebook on protection of rare, thinned, endemic and endangered plant and animal species (“Off. Gazette of MNE”, no. 76/06). |
| Article 6 | Article 32 and Rulebook on protection of rare, thinned, endemic and endangered plant and animal species (“Off. Gazette of MNE”, no. 76/06) | Partial compliance with Rulebook on protection of rare, thinned, endemic and endangered plant and animal species (“Off. Gazette of MNE”, no. 76/06). Full compliance will be achieved by adoption of Regulation on the establishment of NATURA 2000. |
| Article 8 | Amendments to the Law on Nature Protection there no appropriate Article but it is transposed in Article 83 of Low on Nature Protection (OG 51/08) and Article 66 of Law on wild game species and hunting (“Off. Gazette of MNE”, no. 52/08) item 1 line 8 | Partial compliance with Article 83 of Law on Nature Protection (“Off. Gazette of MNE”, 51/08) and Article 66, item 1, line 8 Law on wild game species and hunting (“Off. Gazette of MNE”, no. 52/08). Full compliance will be achieved by adoption of Rulebook on strictly protection and protected wild plant, animal and fungi species with measures to protect their habitats |
| Article 9 | Article 32 | Full compliance will be achieved by adoption of Rulebook on protection of rare, thinned, endemic and endangered plant and animal species |
| Article 10 | Article 28 | Full compliance will be achieved by adoption of Rulebook on protection of rare, thinned, endemic and endangered plant and animal species |
| ANNEX I | Rulebook on protection of rare, thinned, endemic and endangered plant and animal species (“Off. Gazette of MNE”, no. 56/06) | Full compliance will be achieved by adoption of Rulebook on protection of rare, thinned, endemic and endangered plant and animal species |
| ANNEX II  Part A and Part B |
| ANNEX III  Part A and Part B |
| ANNEX V | In Amendments to the Law on Nature Protection there is no appropriate Article but it is transposed in Article 86 of Law on Nature Protection (OG 51/08) | Full compliance will be achieved by adoption of Rulebook on protection of rare, thinned, endemic and endangered plant and animal species |

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| **Non-transferable** | |
| Article 4 paragraph 3, Article 9, Article 10, Article 11,  Article 12, Article 15, Article 16, Article 17, Article 18, Article 19, Article 20, Annex VI A and B, Annex VII |  |
| Council Directive 2009/147/EC | Law on wild game species and hunting (“Off. Gazette of MNE”, no. 52/08) |
| **Partial compliance** | |
| Article 7 | Article 36 and (“OG of MNE”, no. 60/10) |

1. How and when the remaining provisions will be transposed?

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| Name of Regulation | Time Frame |
| Rulebook on measures for protection of protected and strictly protected plants, animals and fungi with measures to protect their habitats | 2013 |
| Rulebook on Ecological Network | Beyond 2013, until the accession to the EU |
| Regulation on the establishment of NATURA 2000 | Beyond 2013, until the accession to the EU |

**IMPLEMENTATION**

What has been achieved so far as regards:

* **Establishing the competent authority/ies**

Competent authorities for implementation of provisions of Council Directive 2009/147/EC according to national legislation are:

- Ministry of Sustainable Development and Tourism

- Ministry of Agriculture and Rural Development (hunting)

- Environmental Protection Agency

- PE “National Parks of Montenegro”

- Directorate for Inspection Controls (Ecological and Hunting inspection)

Role of competent authorities:

*Ministry of Sustainable Development and Tourism*

* Setting nature conservation policies and implementation (negotiations with stakeholders, developing regulations, education, communication)
* Maintenance of compliance with EU policies and legislation on nature protection, including coordination of the establishment, planning and designation of the Natura 2000 procedures
* Reporting to the European Commission

*Ministry of Agriculture and Rural Development (hunting)*

* Forest management
* Fishery
* Hunting
* Agro-biodiversity
* Cartagena protocol, bio-safety
* GMOs
* Pesticides regulations
* Water management

*Environmental Protection Agency*

Environmental Protection Agency is in charge of:

* Monitoring of the wild bird population
* Propose the list of protected and strictly protected wild birds
* License limited to selective removal, storage and use of certain strictly protected wild species of plants, animals and fungi in small numbers and non-protected species according to the Rulebook on the manner and conditions for the collection, use and trade of non-protected wild plants and fungi, animal species that can be used for commercial purposes(“Off. Gazette of MNE”, no. 62/10.)
* SEA and EIA procedures
* Appropriate assessment procedure
* Assessment of imperative reasons of overriding public interest
* Compensatory measures
* Issue of nature protection requirements for spatial planning and project documents, bases and programmes for all natural resources

*PE “National Parks of Montenegro”*:

* Undertakes measures and activities to meet the established policy of the management, utilization, protection, development and improvement of national parks
* Adopts the Act on internal order in the national parks and provides protection services;
* Ensure, the implementation of the management plan and annual management program;
* Implements protection measures in accordance with the strict protection
* Preserves, enhances and promotes the value of national parks
* Monitor the situation in the national parks and provision of allowance as the administrative authority for nature protection
* Give the use of national parks for the development of science, tourism, culture and recreation
* Provides a benefit to the good of the national parks and facilities tourism, hospitality, hunting and fishing
* Performs other tasks in order to protect, enhance and enable rational use of national parks

*Directorate for Inspection Controls (Ecological and Hunting inspection)*

* Ecological inspection
* Hunting inspection- Law on Wild Game Species and Hunting (“Off. Gazette of MNE”, no. 52/08) is in charge of control of implementation of the Law on Nature Protection.

*Research institutions (e.g. Universities, Natural history museum, Institute of marine biology)*

* Technical research, *inter alia*: specific species status, biology and requirements, habitat management and species and habitat conservation value criteria, potential involvement in creating list of SPAs, development of indicators
* **Identifying potential species to be listed in Annexes of the Directive for correct application of Directive**

According to existing data and taking into consideration that Member states from region (Slovenia and Croatia) proposed recently species for inclusion in Annexes of the Directive, estimation is that Montenegro will not have additional species to be proposed to be included on Annexes of the Directive.

* **Carrying out an assessment of Annex I bird species and regularly occurring migratory species**

According to the Amendments on the Law on Nature Protection, Article 34, Environmental Protection Agency is in charge for monitoring of the wild bird population size and status. This monitoring program is conducted annually by EPA. Population of wild birds are monitored according to the Rulebook on monitoring of wintering and no wintering bird species. Data and monitoring are in place only for species with limited distribution at national level on the most important areas. So due to financial restriction, assessment of all Annex I bird species and regularly occurring migratory species relevant for Montenegro, hasn’t been still conducted.

* **Identifying and designating special protection areas (SPAs) (Art. 4)**

Preparation for designation of SPA’s hasn’t been started yet. Regarding identification of potential sites the first step was conducted by realization of EMERALD network (EC) funded project) started in 2006 and finalized in June 2008 by proposal of the List of (32) EMERALD sites.

In addition to that also ***identification of potential IBA sites*** was conducted and as a result of it:

* Data for each potential IBA site is available
* 5 IBA in BLI database and 8 is in procedure

This 13 IBA sites are about 10.6% of territory of Montenegro and 11 IBA are proposed Emerald sites.There is an indication, based on field researches and based on List of indicator bird species for Montenegro, that 7 more IBA sites can fulfill criteria to get status of IBA sites. IBA sites are mainly included in EMERALD list of sites with difference that borders of Emerald and IBA sites are not completely in compliance.

* **Establishing measures to ensure that bird populations are maintained at appropriate levels, both inside and outside SPAs (Arts. 2 & 3)**

Inside protected areas measures to ensure that bird populations are maintained at appropriate levels are achieved by proclaimed special ornithological reserves. Also, zonation of whole protected areas is ongoing. Also, activities, actions or operations affecting a protected natural asset (protected areas) may be carried out on the bases of an approval issued by EPA.

Before the development of spatial planning and project documents, bases and programmes, plan drafters, or users of natural resources, assets and protected natural assets are obliged to acquire from the management authority in charge of environmental protection (Environmental Protection Agency) the nature protection requirements. EPA issues nature protection requirements for spatial planning and project documents, bases and programmes for all natural resources based on available data. EIA and SEA procedures are also obligatory for projects for which that procedures are prescribed by EIA and SEA Laws.

Compesatory measuress are also prescribed by Amadments to the Law on Nature Protection in case of demages in protected areas or ecological network after its establishment.

* **Establishing of protection safeguards (Article 6 of Habitats Directive)**

According to the Law on Nature Protection (“Off. Gazette of MNE”, 51/08) spatial planning and project documents, bases and programs shall contain nature protection conditions and measures stipulated by the Law, as follows:

* measures for conservation of biological, geologic and landscape diversity;
* review of protected and registered natural assets;
* measures for protection and enhancement of protected and registered natural assets.

Before the development of spatial planning and project documents, bases and programmes, plan drafters, or users of natural resources, assets and protected natural assets are obliged to acquire from the management authority in charge of environmental protection (Environmental Protection Agency) the nature protection requirements. EPA issues nature protection requirements for spatial planning and project documents, bases and programmes for all natural resources based on available data. Also,activities, actions or operations affecting a protected natural asset (protected areas) may be carried out on the bases of an approval issued by EPA.

According to the Amendments on the Law on Nature Protection, Environmental Protection Agency will be in charge to implement appropriate assessment procedure for Ecological network sites. For intended projects, activities and actions for which it is required by the Law to undertake EIA or SEA, appropriate assessment will be conducted through the EIA or SEA procedure with special attention on impacts on nature. Nature appropriate assessment procedure will be conducted in two parts: Previous appropriate assessment for plans, programs, projects, activities and main nature appropriate assessment. Main nature appropriate assessment will be conducted in s similar way as an EIA procedure by the development of Study (Elaborate) and its evaluation by Expert Commission.

Also, mechanism for assessment of imperative reasons of overriding public interest and defining of compensatory measures in case of overriding public interest or damages in protected areas or ecological network sites are prescribed in Amendments to the Law on Nature Protection. In both cases EPA will be in charge to implement procedure.

Since Ecological network hasn’t been established yet full implementation of the provisions will be in place by its establishment.

* **Taking special conservation measures to protect the habitats of Annex I species and regularly occurring migratory species (art. 4)**

Since Ecological network hasn’t been established yet conservation measures are undertook only in National Parks and one special reserve (Tivat saline). By establishment of Ecological network conservation measures to protect the habitats of Annex I species and regularly occurring migratory species will be conducted in compliance with Article 4.

* **Establishing a general system of protection for all wild bird species (Arts. 5 & 6)**

General Measures for Bird Protection are prescribed in the Amendments to the Law on Nature Protection (Article 86) in the folowing way that:

Public roads and other types of roads, as well as other facilities shall be constructed in such a manner to reduce their negative impact on the roads of migratory wild animal species and enable safe passing of wild animals at appropriate distances.

Measures referred to in paragraph 1 of this Article shall be ensured with the application of special construction and special technical-technological solutions on the facilities themselves and in their vicinity.

Special technological and engineering solutions (ecological bridges, constructed passes and crosses, tunnels, pass-through cylinders, ditches, safety and guiding facilities, fish paths and lifts etc.), which ensure unobstructed and safe passage of wild species, shall enjoy protection as protected natural assets.

It shall be forbidden to deliberately kill or capture strictly protected birds, in particular migratory birds, to destroy their nests and eggs or remove nests even when empty, their disturbance particularly at the time of feeding nestlings and during reproduction, holding birds which are prohibited for hunting, as well as performing activities contrary to this law.

Poles and engineering components of medium and high voltage cables shall be constructed in such a manner to protect birds from electric shocks and mechanical injuries.

Provisions referred to paragraphs 1 and 2 of this Article shall not apply to upper railway cables.

For the purpose of preservation and protection of protected bird species, it is necessary to undertake research of the wild bird population size and status of wild birds in line with international agreements. Monitoring of the wild bird population size and status shall be conducted by the EPA and measures for protection shall be defined based on results of monitoring.

* **Establishing a system of authorisations for any derogations (Art. 9)**

System of authorisations for any derogation according to the Article 9 hasn’t been established.

* **Establishing measures to ensure that hunting of Annex II species does not jeopardize conservation efforts (Art. 7)**

Measures are prescribed by Amendments on Rulebook on hunting seasons (“OG of MNE”, no. 60/10) and for its implementation Ministry of Agriculture and Rural Development in charge. This regulation isn’t completely in compliance with Birds Directive regarding hunting seasons. More precisely hunting seasons are longer that it is supposed to be in order to protect migratory birds that return from their wintering sites.

* **Prohibiting certain types of capture/killing (Art. 8)**

According to the Law on Nature Protection ("Official Gazette of Montenegro", No. 51/08) Article 83 it is forbidden to use any means for the capture and killing of wild animal species, which disturb their populations and damage their habitats and which may cause their local disappearance.

The use of the following means is forbidden:

- traps;

- crossbows;

- electrical devices capable of killing or stunning;

- artificial light devices, except in fishing at sea;

- mirrors and other dazzling devices;

- sound emitters (tape recorders, cassette recorders and others) reproducing sounds of calling; pain or making known;

- devices for illuminating targets;

- sighting devices for night shooting comprising an electronic image magnifier or image converter;

- explosives;

- poisons and poisonous or anaesthetic bait;

- semi-automatic or automatic weapons;

- aircraft;

- moving motor vehicles;

- and other means determined by international agreements.

Exceptionally, certain means of this Article may be used in a limited manner in order to implement the reintroduction programme, monitoring and protection and conservation programme, on the basis of the permit of the Management Authority (EPA).

Article 119 of the Law on Nature Protection ("Official Gazette of Montenegro", No. 51/08) prescribes fines for using of prohibited means for capturing and killing wild animals.

Article 309 of the Criminal Code of Montenegro envisages criminal offenses in violation of regulations for those who kill, hurt or torture an animal or damaging or destroying their habitats greater or wider. The offender shall be punished by a fine or imprisonment of up to one year.

If the result of the foregoing acts under Article 309 of the Criminal Code, was a murder or cruelty to animals that belongs to the specially protected animal species, the offender shall be punished with imprisonment from six months to five years.

Environmental Inspection in accordance with the Law on Inspection is empowered to, one who used prohibited methods of capturing and killing wild animals without a permit from the administrative authority, fine by misdemeanor warrant or to submit a request for criminal procedure to the competent Misdemeanor authority. Environmental inspectors have powers, if there is a basis for criminal charges, to report the crime to the prosecutor.

Hunting inspection, according to the Law on wild game species and hunting (“Off. Gazette of MNE”, no. 52/08), is in charge to control only users of hunting areas. Illegal hunting is controlled by hunting ranger services.

* **Establishing an effective inspection and enforcement system**

Directorate for Inspection Controls is consisted of different inspectorates and one of them is Ecological Inspection. Ecological Inspection is in charge for supervision according to the Law on inspection that prescribes methods and procedures for inspection, duties and powers of inspectors and other issues of importance for the performance of the inspection. Ecological Inspection is responsible for controlling of all prohibited acts according to the Law on Nature Protection (OG 51/08) Articles 115 and 116.

In order to eliminate the irregularities, the inspector is competent to :

1) point out the irregularities and set a deadline for their removal;

2) order appropriate measures and actions within the time specified;

3) temporarily prohibit the performance of activities and other actions;

4) issue a misdemeanour order

5) request for criminal proceedings;

6) bring criminal or other appropriate charges;

7) perform such other powers and duties in accordance with the regulations.

According to the Law on Misdemeanours inspector is given the opportunity to issue a misdemeanour order to the perpetrator of the offense on the spot.

Criminal offenses against the environment are prescribed in Chapter XXV of the Criminal Code. For criminal offenses related to environment the principle of individual responsibility corresponds:

- fine

-sentence from 6 months to 15 years.

Strict liability for offenses in the field of environmental protection done by legal persons are the following:

- fine

-dissolution of the legal entity.

Ecological inspection has 7 employees (2 of which are biologists).

**Ecological inspection is in charge to control provisions from Article 81, 82, and 86 of the Law on Nature Protection** that prescribes that is forbidden to capture and kill protected and non-protected animal species to the extent to which the number of population may be endangered and without getting approval of competent authority (EPA).

The Ecological Inspection in accordance with the Law on inspection controls and The Law on nature protection has the authority to issue fines or to submit a request for legal proceedings to authorized bodies to people who destruct (kill) birds or use birds (protected or unprotected species) without permissions of the management authority or perform columns and technical components of medium and high-voltage lines on the way to protect birds from electrocution and mechanical injuries. Also the ecological inspection has the authority to institute legal proceedings against the offender, if there is a basis for criminal complaint filed to the competent prosecutor.

Article 119 of Law on Nature Protection provides fines for the aforementioned offenses.

Article 309 of the Criminal Code of Montenegro envisages criminal offenses in violation of regulations for those who kill, hurt or torture an animal or damaging or destroying their habitats greater or wider. The offender shall be punished by a fine or imprisonment of up to one year.

If the result of the foregoing acts under Article 309 of the Criminal Code, was a murder or cruelty to animals that belong to specially protected animal species, the offender shall be punished with imprisonment from six months to five years.

In accordance with the Law of Nature Protection, protected species are considered as protected natural assets and inspectors may punish offender as stated in Article 310 of the Criminal Code.

In December 2012, Ministry of Sustainable Development and Tourism inform of European Commission on incident, which occurred in the area of the National Park „Skadar Lake“, when the black eagle (*Aquila clanga*), named Bruzda, was shouted. Namely, this was highly protected, endangered and rare species, listed in the Annexes I and II of the Convention on Migratory Species - Bonn Convention, as well as in the Annex I of the Directive 2009/147/EEC of European Parliament and Council on the conservation of wild birds. *Aquila clanga* species has been also included under the Decision of the Institute for Nature Protection on conservation of rare plants and animal species ("Official Gazette of Republic of Montenegro", no. 76/06). In addition to the priceless value that the eagle possessed when it comes to the diversity of the European fauna, he was, at the same time, useful for providing the European ornithological community with valuable scientific data, since it was equipped with the appropriate transmitter. The Ministry of Sustainable Development and Tourism has been informed from the media on the unpleasant incident regarding black eagle death, and in the shortest time addressed the problem through recognition of all relevant facts and circumstances pertaining to the case. This is primarily referred to the reaction of the National park „Skadar Lake“, and the Public Enterprise „National Parks of Montenegro“, as the institution responsible for the implementation of management plans and annual management program of the national parks, including the National park „Skadar Lake“.

Hunting inspectors, according to the Law on wild game species and hunting (“Off. Gazette of MNE”, no. 52/08) is one in charge of the following:

1) the requirements that users of hunting grounds must meet the for the use of hunting;

2) implementation of long term management plans and annual hunting plan;

3) execute agreements on regulation of the use of hunting ground;

4) the documents, when necessary in order to assess the use of resources, enforcement of regulations and measures relating to hunting and wild game species;

5) hunting of wild animals, hunting license, hunting maps, the responsibilities of rearing game and improve hunting, trophy hammer and sheets;

6) keeping a register of hunting, hunting grounds and facilities at the works performed in hunting grounds;

7) records taxidermists and tanneries their space for storing game or its parts;

8) allocation, billing, registration and use of resources;

9) measures to prevent damage from wildlife and wildlife.

Upon determination of a violation of Law or Regulation, or not compliance with the standards or norms, hunting inspectors shall, in addition to administrative measures and actions prescribed by the Law governing the inspection, take the following administrative measures and actions:

1) temporarily prohibit hunting and other activities which are contrary to this Law and the regulations made ​​under this Law;

2) temporary determines a number of individual wildlife species for hunting

3) seize illegally caught or misappropriated the dead animal or its parts, or unlawfully placed animal or its parts on the market, as well as tools and materials were carried out those actions;

4) prohibition of hunting activities or specific tasks at certain time, if the activity or tasks are performed in violation of this law and regulations made under the Law;

5) recommend revocation hunting.

Hunting inspection has 11 inspectors.

* **Establishing information systems to enable reports to be sent to the Commission**

Information system of EPA is under establishment and data obtained from monitoring activities will be part of this system and could be base for reports to be sent to the Commission.