Title: Investigation of the Legal, Policy and Institutional Feasibility of Establishing a Durable River Protection Mechanism ("DRPM") in the Republic of Serbia – DRPM Country Report Serbia

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a. Purpose of the Study

The purpose of this study is to assess the opportunity for the creation of a legal, institutional or policy mechanism that would provide **a coherent, consistent, shared approach** to create a 'durable river protection mechanism' (**DRPM**) that could achieve assured protection of free-flowing rivers in the Republic of Serbia (Serbia).

The DRPM has the following components:

1. Planning
2. Designation
3. Enforceability
4. Stakeholder Involvement
5. Adequate Funding.

The Study takes USA's Wild and Scenic River Act as a starting point against which a capacity of Serbian institutional and legal system to establish implement and enforce DRPM components is assessed.

The Study examines the existing legal context at the national level and at the local level in Serbia to determine how the DRPM can be implemented. If no authority or only partial authority exists for the DRPM, the study identifies potential changes to the legal and institutional contexts in Serbia that could be used to establish the DRPM.

Institutional setups, policies and regulation may as well go contrary to the DRPM goals or create perverse incentives for water management rules in force to underperform. The Study will identify these and point to directions how they can be resolved.

In addition, ongoing changes in national environmental and water management institutional and legal system are influenced by the EU policies and legislation due to the accession process of Serbia to the EU. EIA Directive, NATURA 2000 directives and the EU's and Water Framework Directive are listed as legal instruments Serbia must effectively transpose before the accession.

The process in the same time generates useful information on the status of implementation and enforcement of national environmental and water quality management rules and policies. Therefore, the documents relevant to the status of the transposition and implementation of the EU instruments shall be considered for the purposes of the Study as well as appropriate sources produced in the context of the accession.

b. Water-related Institutional systems and arrangements

The Water Act[1] adopted by the National Parliament in 2010 regulates national surface and groundwater management policy. It governs legal status of waters, regulates integrated water management (including riverbed and riparian lands management, and water installations/objects management), prescribes sources and methods of financing water management activities, and monitoring and the enforcement requirements. **The Act establishes waters, riverbed and riparian lands as public good**, it regulates water use-related activities through the system of water approvals and water permits, prescribes measures for protection from waters, water quality and pollution control requirements.

Overall water management policy is a competence of the Republic in accordance with 2010 Water Act.[2] While, adopted at the national level **implementation and enforcement is effectively shared** between national, regional and local level. Government of the Republic of Serbia (**the Government**) adopts *integrated water management* [3] policy, which is implemented through the Ministry of Agriculture, Forestry and Water Management **(MAFWM**) as a central water management authority, autonomous province of Vojvodina[4], local self-governments, and Public Water Management Companies **(PWMC**s) *Srbijavod*e and *Vode Vojvodin*e.

The Government adopted the **Water Management Strategy**[5] in January 2017, a main policy document shaping national sustainable water policy up to 2034. It defines the legislative, organizational, financial, technical and scientific priorities of water management activities in the context of present socio-economic circumstances. The main objective of the Strategy is to **establish a well-integrated and coordinated water management regime for the whole territory**. However, the Strategy indicates that due to economic constraints and the availability of water resources before integrated water management is fully implemented Serbia will manage water resources in a largely centralized manner.

Republic Water Directorate (**WD**), an entity within the MAFWM, is charged with an overall coordination of the river management process, preparation of Water Management Plans (**WMPs**), and drafting of Programmes of Measures (**PoMs**). WMPs and PoMs are an attempt to reproduce Water Framework Directive[6] **(WFD)**, which requires the Member States to implement the integrated management of water resources based on River Basin Districts, River Basin Management Plans (RBMP) and related PoMs. WMPs are prepared by the WD for Danube River Basin and by the PWMCs for Water Districts within their geographical area of operation. They keep data on registered protected areas.The Government adopts WMPs and Programmes of PoMs.

[1] Official Gazette of the RS, No. 30/2010, 93/2012, 101/2016, 95/2018 and 95/2018
[2] Water Act, Article 24.2
[3] Water Act, Article 24.1 defines integrated water management as "a set of measures and activities aimed at maintaining and improving the water regime, ensuring the required quantities of water required for different purposes, protecting waters against pollution and protecting against harmful effects of water."
[4] In accordance with 2006 Constition Act Serbia has two autonomous provinces, Vojvodina and Kosovo. However, Serbian legal order has been suspended in Kosovo since 1999 by UN Security Council Resolution 1244.
[5] Official Gazette of the RS, No 3/2017.
[6] Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy

Ministry of Environment (**ME**) is a central authority for environmental quality protection, pollution prevention and control. ME is also a responsible authority for environmental impact assessment and nature protection policy and it has a **central role in process of designation of protected areas, which may as well include (sections of) rivers**. While national parks are designated by laws adopted by the National Parliament, ME proposes designation of nature protection areas of national and international importance to the Government.

The Institute for Nature Conservation of Serbia and **the Institute for Nature Conservation of Vojvodina Province** provide scientific basis for designation of protected areas. They propose the regime of protection, ie prohibitions and restrictions of developments and activities to be prescribed by an act on designation of the protected area. They also issue decisions setting prohibitions, restrictions and measures to be applied by the developer/operator of the proposed development or activity within the protected area.

Responsibilities in the area of water pollution control and water quality are split between the MAFWM and ME. Water environmental quality standards adopted by the Government are proposed by the ME. Serbian Environmental Protection Agency (**SEPA**), which is part of the ME, and Republic Hydro-meteorological Service of Serbia (**RHMS**) are responsible for surface and groundwater monitoring and maintenance of polluters' databases. While, quality of discharges is monitored and controlled by the ME's inspection, **discharges are consented through water permits issued by the MAFWM (and PWMCs)** on the other hand. MAFWM proposes to the Government 6 years Water Pollution Protection Plan (**WPPP**), which must be in accord with the WMPs. **MAFWM and ME, together with PWMCs, oversee establishing and keeping register of protected areas for the integrated water management purposes within water districts and basins**.

The ME determines the amount of water in the protected areas and areas of the ecological network taking into account the previously obtained opinion of the MAFWM. The MAFWM, on the other hand, determines the amount of water in wet and aquatic ecosystems outside the protected areas, which is necessary for the preservation of the hydrological phenomenon and the survival of biodiversity , according to the previously obtained opinion of the ME.[7]

Spatial planning and development control policy is responsibility of the Ministry of Construction, Transport and Infrastructure (**MCTI**). MCTI issues development consents for projects such as construction of industrial facilities, hydroelectric plants, thermal power plants, landfills, waste-water treatment plants, etc.[8] MCTI coordinates smooth functioning of the spatial planning and **integrated development permitting procedures** (**IDPPs**).[9] IDPPs assimilate elements of water management approval procedures (of MAFWM, Vojvodina, local self-governments and PWMCs) into integrated development permitting process.

Ministry of Mining and Energy (**MME**) is a central authority for an energy policy. In accordance with the Energy Act use of energy from renewable resources is in the national interest.[10] The MME proposes National Action

[7] The Nature Protection Act, Art. 18.5.
[8] See Spatial Planning and Development Act, Articles 8-8đ and Water Act, Articles 117.2, 118 and 119
[9] Spatial Planning and Development Act, Article 8.
[10] Energy Act, Art. 65.1.

Plan for Use of Renewables to be adopted by the Government as a tool to implement responsibilities that Serbia have taken over in accordance with international agreements.[11] National renewables target for 2020 is set at 27 % of gross final consumption of energy.[12] Renewable sources accounted for 21.8 % share of energy according to the data available in 2015.[13]

The section Sustainable Development of Technical Infrastructure of the **Act on Spatial Plan of the Republic of Serbia from 2010 to 2020**[14] estimates the electricity generation potential of small watercourses at 0.6 Mt (mega tonnes of equivalent oil).[15] In other words, the available potential of small hydropower plants amounts to 4.7% of the total electricity production in Serbia or about 15% of the produced energy in hydropower plants.[16] Potential locations for construction of small HP plants were determined based on the Small Hydro Power Plant Cadastre of Serbia.[17] The document was made in 1987 by ***Energoprojekt*** and the ***Jaroslav Černi*** Institute of Water Management in Belgrade for purposes of **Elektroprivreda Srbije**, a state-owned producer, supplier and distributor of the electricity.[18] The cadastre identified 856 potential sites for the construction of small HP plants with a total power of 450 MW, with a production of 1,590 GWh/year.[19]

The Government adopted **the *Regulation on the conditions and procedure for acquiring the status of privileged producer of electricity from renewable energy sources* in 2016 including hydropower plants with less than 30MW power as eligible for feed-in tariffs**.[20]

C. Environmental Law

FRAMEWORK LEGISLATION

2004 Environmental Protection Act (**EPA**)[21] sets a legal framework for the integrated system of environmental protection in Serbia.[22]

The system of environmental protection is based on principle of integration of environmental protection and quality improvement goals in sector policies, plans and programs, system of permits, technical standards, etc. by all levels of government (central, regional and local), principle of prevention, precautionary principle, *polluter pays* principle, principle of dissemination of environmental information to the public, the right to

[11] Energy Act, Art. 65.2.
[12] European Commission, Serbia Progress Report 2018, p. 68.
[13] Ibid.
[14] Official Gazette of the Republic of Serbia, No. 88/2010.
[15] Srbijavode http://www.srbijavode.rs/sr-latin/home/Aktuelno/mhe.html last time assessed on 2 April 2019.
[16] Ibid.
[17] Ibid.
[18] Ibid.
[19] Ibid.
[20] Regulation on the conditions and procedure for acquiring the status of privileged producer of electricity from renewable energy sources, Art. 3.1
[21] Official Gazette of the Republic of Serbia, No. 135/2004, 36/2009, 36/2009-dr.zakon, 72/2009-dr.zakon, 43/2011-US, 14/2016, 76/2018 and 95/2018
[22] Environmental Protection Act, Art. 1.

participate in environmental decision-making, and access to justice in matters concerning healthy environment.[23]

Detailed operationalization of principles has been done, mostly, through special laws and Government regulations governing:

1. environmental decision-making (strategic and environmental impact assessment);
2. protection, preservation and improvement of quality of specific elements of environment or ecosystem (air, water, soil, nature, wild species);
3. polluting activities (industry, waste management operations, waste-water treatment, etc.); and
4. different streams or sources of pollution (waste, packaging waste, mining waste, noise, chemicals, etc.).

Nevertheless, EPA operates as a general source of rules of environmental protection and may serve as tool to make up for legal lacunae in acts regulating specific areas of environmental policy.

The EPA identifies key actors of the environmental protection policy, determines objects of legal protection (environment and its elements air, water, land, forests, biodiversity, wild species etc.), ***conditions*** **of their protection** (environmental quality and emission standards), protection measures, monitoring requirements, duties of authorities to inform public on the state of environment and to enable their participation in environmental decision-making and economic instruments.

State authorities, autonomous provinces, units of local self-government (municipalities and cities), companies and entrepreneurs [24] that perform economic activities using natural resources or otherwise affecting environment, scientific institutions, citizens and civil organizations have been identified as the key actors.

The EPA sets general duties of legal persons, entrepreneurs and individuals and **financial liabilities in case of their non-compliance** with environmental quality standards and self-monitoring requirements, abuse of natural resources, failure to implement environmental protection measures in accordance with the EPA (including preventive measures, measures against chemical accidents, clean-up and remediation measures) or envisaged by other legislation regulating specific environmental policy areas.[25]

In addition, authorities (at all levels) and persons responsible within an authority may as well be held financially liable in case of their failure to perform their statutory duties prescribed by the EPA (failure to adopt action plans as prescribed by the law, failure to inform public, failure to perform monitoring within their territory, issuing permits for use of natural resources without prior authorization by the ME, preparing spatial plans without environmental protection measures envisaged to observe environmental quality standards, etc.).[26]

The EPA defines enforcement powers of environmental inspectors to investigate legal violations, to order the key actors to take measures to comply with the law, and to issue fines in case of non-compliance, etc.

RULES GOVERNING ENVIRONMENTAL IMPACT ASSESSMENT OF MAJOR INFRASTRUCTURE PROJECTS IN THE COUNTRY

2004 Environmental Impact Assessment Act (**EIA Act**)[27] is a main source of law regulating procedure for assessment of impact of projects that may have significant effects on environment (**EIA process**). Furthermore, the **Nature Protection Act**[28] provides additional source of rules regulating impact assessment of developments and activities on designated protected areas. **2004 Strategic Impact Assessment Act**[29] regulates environmental

[23] Environmental Protection Act, Art. 9.
[24] Under Serbian legal system entrepreneurs are independent self-employed individuals who are registered to perform economic activities as without status of legal person.
[25] Environmental Protection Act, Arts. 116-118a.
[26] Environmental Protection Act, Art. 120
[27] Official Gazette of the RS, No. 35/2004, 36/2009
[28] Official Gazette of the RS, No. 36/2009, 88/2010, 91/2010-corigendum, 14/2016 and 95/2018
[29] Official Gazette of the RS, No. 135/2004 and 88/2010

impact assessment procedure for certain plans, programs and strategic documents which may have significant effect on the environment.

EIA Act

In accordance with the EIA Act the environmental impact assessment (**EIA**) is carried out for projects in the fields of industry, mining, energy, transport, tourism, agriculture, forestry, water management, waste management and communal utility activities, as well as for projects that are planned on a protected natural asset and in a protected environment of a fixed cultural property.

In accordance with Government's **Regulation on Lists of Projects Subject to the EIA Process**[30] projects are divided into:

- *List 1 projects* for which the EIA must be carried out in all circumstances (subject to the mandatory EIA); and
- *List 2 projects* which may be subject to the EIA in case if a project may have significant effect based on less comprehensive information gathered through a screening phase of the EIA process (See Annex 1).

Therefore, before committing List 2 project to the full EIA, a competent authority (ME, APV's Secretariat for Urban planning, Construction and Environmental Protection, or unit of local self-government in charge of environmental protection) will carry out a screening procedure in order to identify if the project is likely to have significant impact on the environment. The competent authority considers information specific to the project provided by the developer (a structured information provided by the project holder in the request for the screening – an environmental statement), location of the project, as well as opinions gathered from *interested public consultees* [31], *interested public* [32], including environmental civil society organizations.[33]

"Undersized" List 1 and List 2 projects are subject to the EIA screening procedure in any case if planned in area designated as protected in accordance with the Nature Protection Act (NPA, Art. 57.3)

NO EIA NO PROJECT!

Environmental inspector has power to withhold a project or to order a developer to stop construction works before it obtains consent on the impact assessment study even in case planning authority instructed the developer erroneously that the project does not require EIA. The decision that no environmental impact assessment is required may come from the EIA competent authority only (ME, APV's Secretariat for Urban planning, Construction and Environmental Protection, or unit of local self-government in charge of environmental protection)!

[30] Official Gazette of the RS, No. 114/2008

[31] The interested public consultees comprise of "organs and organizations of the Republic, the autonomous province and local self-government and enterprises, who are authorized to determine the conditions and issuance of permits, approvals and consents for the developments, spatial planning, monitoring the state of the environment, and the protection and use of natural and created values." (the EIA Act, Art. 2(8)).

[32] Interested public "shall include the public affected or likely to be affected by the project, including non-governmental organizations dealing with environmental protection and registered with the competent authority" (EIA Act, Art. 2(7)).

[33] EIA Act, Art. 10.4.

The developer of List 1 project and List 2 project (for which the need for EIA has been identified by a competent authority under screening criteria) cannot begin with the realization or construction works and execution of the project without obtaining a consent from the competent authority on the environmental impact assessment study (go-ahead consent).[34]

Namely, environmental inspector has power to withhold the project or to order the project holder to stop construction works before it obtains consent on the impact assessment study by the competent authority following the EIA procedure.[35] The rule applies even in case if wrong instruction given to the project holder by the planning authority on no need to subject the project to the EIA.[36]

The EIA process is subdivided into three sub-procedures:

1. **Screening procedure** - a competent authority decides on whether or not a full EIA is to be carried out for List 2 projects on the basis of the structured information provided by the developer (environmental statement) and opinions gathered from interested state consultees and interested public (Arts. 8-11);
2. **Scoping procedure** – on the basis of environmental statement provided by the developer a competent authority and taking into account information gathered from interested state consultees and interested public identifies major impacts of the project to be addressed in the EIA Study (Arts 12-15);
3. **Consent procedure** – once the EIA Study is submitted by the developer the competent authority orginizes public consultations and establishes a special expert commission tasked with assessment of the document. The commission submits the report to the competent authority with its assessment of the EIA Study and proposal of a decision. The report must provide evaluation of the eligibility of the measures envisaged by the developer to prevent, reduce and eliminate possible adverse impacts of the project on the state of the environment at the site and its surroundings, during project implementation, project work, in the event of an accident and upon termination of the project. The report takes into account information gathered from state consultees and interested public during the course of the EIA process. On the basis of the report competent authority decides to give its consent to the EIA Study or to deny its approval (Arts. 16-25).

Consent to the EIA study determines **main preventive, mitigating and measures eliminating harmful effects to the environment**.[37]

Consent to the EIA study (or the decision by the competent authority[38] that no environmental impact assessment is required) is an integral part of the documentation that is enclosed with the application for

[34] EIA Act, Art. 5.
[35] EIA Act, Art. 37.1(3)
[36] Commercial Appellate court, Case 85/2011 6 April 2011
[37] EIA Act, Art. 24.2
[38] Note that the term "competent authority" is used to describe ME, APV's Secretariat for Urban planning, Construction and Environmental Protection, or unit of local self-government in charge of environmental protection. In other words, the decision that no environmental impact assessment is required may not be obtained fromm the planning authority.

the issuance of a development consent or with the application for the commencement of the project (construction, works, technology changes, change of activity and other activities).[39]

The consent provides a „legal springboard" to the environmental inspector to hold the developer liable beyond the EIA procedure (a post-assessment monitoring) and to halt and prohibit activities within the development and to order to the developer to implement measures to comply with the consent's conditions.[40]

The consent decision or decision to deny consent to the EIA Study may be challenged before the Administrative Court. According to the law, *interested public* may challange the decision of the competent authority before the court, including non-governmental organizations dealing with environmental protection and registered with the competent authority.[41]

However, the actual reach of the provision in terms of effective access to the justice by the environmental CSOs is unclear and remains untested. Namely, definition of the „interested public" formally puts the CSOs in the equal position as „public affected or likely to be affected by the project". However, it is not clear if that means that environmental NGOs, which obviously are not affected by the project, enjoy standalone benefit of presumption of sufficient interest or they must submit evidence to make such claim as other members of general public would be required to prove that they are likely to be affected by the project.

Namely, Administrative Disputes Act, which governs access to justice against acts of executive power, stipulates that natural, legal or other person, has right to initiate case against a decision if it considers that "its right or interest vested in law" have been violated by such administrative act.[42] To a judge it may not be a clear-cut case if an environmental NGO has indeed an interest vested in law that is potentially violated by an individual environmental decision to allow its challenging. Therefore, much discretion has been left to the judge of the Administrative Court the concept of the interested public means that the sufficient interest of the environmental CSO to challenge the EIA decision is presumed without need to be specifically elaborated.

Indeed, given that Serbia is Party to the Aarhus Convention the interpretation that environmental NGOs hava the standalone right, without need to prove the sufficient interest, to challenge the EIA decision should apply. However, to my knowledge the legal avenue has not been tested by any environmental CSOs so far.[43]

It appears that national rules do not provide right to the *public concerned* not participating in EIA procedure (or in case of failure of a competent authority to subject a List 1 or List 2 project to the EIA from the beginning) to challenge the development decision directly before the Administrative Court. Namely, it is not clear if the right to appeal against the EIA authorization decision is independent from the fact if

[39] EIA Act, Art. 18.
[40] See EIA Act, Art. 37.1(4) and (5).
[41] EIA Act, Art. 2(7) and Art. 26.2.
[42] Administrative Disputes Act, Art. 11.1.
[43] Therefore, law as it stands now may be cause of conflict similar to those occurring at the EU level between general national rules on admissibility of action and the EU EIA Directive (see case Trianel (C-115/09) for example).

an environmental association has participated in the EIA procedure concerning the decision it intends to challenge as this would be the case under the EU law.[44]

The EIA Act covers major projects with likely significant effect on the environment. Therefore, not all environmentally harmful projects, works and activities are subject to the regime.

EIA ACT MAY SERVE AS A TACTICAL DELAYING TOOL BY ENVIRONMENTL CSOS, AND IN SOME CASES IT MAY STOP HARMFUL DEVELOPMENTS IN RIVER SECTION TO BE CARRIED OUT OR TO BRING IT TO THE END IN EARLY PHASE. THE EIA ACT IS MAINLY PROCEDURAL TOOL, HOWEVER, PROVIDING A COMPETENT AUTHORITY WITH INFORMATION NECESSARY TO PASS THE ENVIRONMENTAL DECISION, WHICH, RARELY DENIES FINAL APPROVAL TO THE DEVELOPER. THEREFORE, IT HAS **ONLY MARGINAL RELEVANCE FOR THE DRPM** SINCE IT IS LIMITED IN PROJECT COVERAGE, IT IS NOT DESIGNATION SPECIFIC, AND IT DOES NOT PROVIDE FOR "ASSURED PROTECTION OF FREE-FLOWING RIVERS" AS A DISTINCT OBJECT OF A PROTECTION.

Furthermore, the significant effect on the environment of the project is not a *per se* reason to prohibit the development, but a relevant fact which triggers the appropriate assessment procedure which almost never has a negative decision as its outcome. **The EIA Act is ultimately about ensuring that development decisions are made correctly rather than that the correct environmental decisions are made**. Therefore, a community of interest, between the developer and the planning authority (which the EIA competent authority as part of the central or local government may not entirely disregard) often prevail over environmental concerns.

Nature Protection Act

The Nature Protection Act (**NPA**) regulates the protection and conservation of nature, biological, geological and landscape diversity as part of the environment.[45] The NPA has as one of its goals "timely prevention of human works and activities that can lead to permanent impoverishment of biological, geological and landscape diversity, as well as disorders with negative consequences in nature".[46]

Beside development projects with potential significant impact, provisions of the Nature Protection Act (**NPA**) cover any use of natural resources or human intervention in the nature that may cause harm to protected natural resources (NPA, Art. 8.5). In addition, the NPA, in certain qualified cases, may prohibit activities and developments, without need to engage in individual project's impact assessment at the permitting stage.

[44] See Djurgården C-263/08, para. 38-39.
[45] NPA, Art. 1.1
[46] NPA, Art. 2.1(4)

Any development, activity, works or intervention in nature has a duty to act in accordance with the nature protection measures defined in the applicable spatial planning documents and in accordance with the technical documents in order to avoid or to minimize harm to the nature.

Before development consent is granted the developer must obtain ***nature protection conditions*** (Ser. услови заштите природе) a decision of a competent authority (a nature protection institute)[47], which provides assessment if proposed project/development/activity in a given location could be carried out in accordance with applicable rules, and defines conditions, prohibitions and restrictions specifically related to the proposed project.

In any case, **projects, works or activities, which harm, distort or modify the properties and values for which the area is protected are prohibited by the NPA** (Art. 57.1).

DESIGNATION OF THE PROTECTED AREAS

Designation of "protected areas", i.e. **a site designation approach**, has been envisaged as one of primary methods of nature protection by the NPA.[48] ***Protected areas*** **are areas with a pronounced geological, biological, ecosystem and/or landscape diversity and, therefore, are designated as protected areas of general interest by the protection act**.[49]

R**ivers, in integrity or as a section, are not immediate subject-matter of the NPA protection**. However, a river (section) may be eligible for the protection as aquatic ecosystem (NPA, Art. 18), scenic landscape (NPA, Art. 26), or indirectly as a part of the wider area protected for some other reasons. As a result, a specific protective regime may be envisaged for water bodies critical for conservation of the protected natural habitat.

Depending on the predominant value protected/purpose of designation NPA envisages several types of the protected areas, *a strict nature reserve, a special nature reserve, National park, a monument of nature, protected habitat, a landscape of exceptional qualities,* and *nature park*.

Depending on their value and importance, the protected areas are classified into categories:

1. Category I - protected area of international, national or exceptional importance;
2. Category II - protected area of provincial/regional, or of great importance;
3. Category III - a protected area of local significance.[50]

National parks are designated by the law passed by the National Parliament. *Category I* protected areas are designated by the Government's through its regulation on the proposal of the ME. *Category II* protected areas are designated by the Government's regulation, or by the competent authority of APV if a protected area is within Vojvodina. In later case, however, if within proposed area there are properties owned by the Republic, the competent authority of APV must obtain ME's approval and approval of other competent ministries.

[47] Nature Conservation of Serbia or Institute for Nature Conservation of Vojvodina Province on the territory of APV for protected areas of regional importance.
[48] NPA, Art. 7.1(2)
[49] NPA, Art. 3(26).
[50] NPA, Art. 41.

Category III area is designated by local self-government's decision in whose territory the area is sited, or in accordance with the agreement reached between two or more self-governments if an area covers several territories. In case properties owned by the state or APV are within the proposed area, a local self-government must obtain approval(s) from the ME, competent ministries and APV, respectively.[51]

The designation of area may be initiated by the Republic, by APV, a local self-government, by a scientific organization, by an individual, group of individuals or by any CSO.[52] The draft designation act must be based on scientific and expert document, a study of protection, which determines the values of the area proposed for protection and the method the area is managed.[53]

The draft designation act, however, is drafted by the Institute for Nature Conservation of Serbia (or Institute for Nature Conservation of Vojvodina Province for protected areas of regional importance on its territory) and not by initiators.[54] The Institute informs the local population, owners and users of the area that is covered by the study and cooperates with them during its preparation. Thereby, **the formal procedure for protection of an area as future protected area starts only when a competent institute submits the protection study to a competent authority (the designating authority) and the ME informs the public about the procedure for initiating protection of the natural area on the ME's website**.

The **act of designation** of the protected area defines the type of the protected area, the territorial coverage of the protected area, goals of protection, *regime of protection*, the managing authority in charge of adopting and implementing managing plan, monitoring compliance with the regime and methods of financing managing operations.[55] The designating acts may not be challenged by local landowners.

> The start of the formal procedure for designation of a natural area as a protected area triggers the NPA's protection regime, whereby **measures prescribed in the protection study as part of the draft designation act fully apply pending the formal adoption of the designation act by the competent authority** (NPA, 42.6)

The draft designation act includes the proposal of the protection regime and methods of protection as well as a cartographic display with boundaries and protection regimes as part of its elaboration.[56] This is an important point since **the start of the formal procedure for designation of a natural area as a protected area triggers the NPA's protection regime**, whereby **measures prescribed in the protection study as part of the draft designation act apply fully pending the formal adoption of the designation act** by the competent authority.[57]

THE PROTECTION REGIMES

[51] NPA, Art. 41a
[52] NPA, Art. 42.2.
[53] NPA, Art. 42.1.
[54] NPA, Art. 42.3.
[55] NPA, Art. 44
[56] NPA, Art. 42.4
[57] NPA, Art. 42.6

The protection regime is a set of measures and conditions that determine the manner and degree of protection, use, regulation and improvement of a protected natural asset.[58] *The protection regimes* and the boundaries of parts of the protected area to which regime applies are determined by the act on the designation of the protected area based on the protection study developed by a competent institute.[59]

Depending on the protection regime, developments, works and activities are distributed in two categories: strictly prohibited operations ("prohibited operations") and operations that may be allowed if restricted to certain size, scope, area and/or purpose ("restricted operations").

Nevertheless, in accordance with an act of designation of the protected area the second category may as well be declared as prohibited operation if endangers the core value of the protected area.

The NPA envisages three degrees of protection.

The first-degree protection, or *the strict protection*, a severest regime prescribed "is carried out in entire protected area or its part with original or slightly changed ecosystems of exceptional scientific and practical significance, which enable the processes of natural succession and the preservation of habitats and living communities in the conditions of the wilderness."[60]

The second-degree protection or *active protection*, "is carried out in the protected area or its part with partially altered ecosystems of great scientific and practical significance, and areas and the object of geo-heritage with special values."[61]

The third-degree protection or *proactive protection* is „carried out in a protected area or part thereof with partially altered and/or altered ecosystems, areas and objects of geo-heritage of scientific and practical significance."[62]

All three regimes may exist within the protected area in accordance with an act of designation.

Under the first-degree or the *strict regime* of protection all developments are prohibited as well as all type of uses of natural resources.[63] The activities that may be allowed subject to the ME's approval are strictly limited to scientific research and monitoring of natural processes, controlled visits to

Under the first-degree protection regime (the *strict regime* of protection) all developments as well as all type of uses of natural resources are prohibited. (NPA, Art. 35.4) However, effectively the zone of the strict regime of protection covers only fraction of the entire protected area.

[58] NPA, Art. 2(63)
[59] NPA, Art. 35.10
[60] NPA, Art. 35.2
[61] NPA. Art. 35.4
[62] NPA, Art. 35.9
[63] NPA, Art. 35.3

educational, recreational and general cultural purposes, as well as implementation of protective, sanitation and other necessary measures in case of fire, natural disasters and accidents, the occurrence of plant and animal diseases and

Under *active* (second-degree) and *proactive* (third-degree protection) regimes only some explicitly listed developments, works and activities are directly prohibited by the NPA ("**prohibited operations**") – see Annex 2.

Second category of operations comprises of listed developments, works and activities, which are allowed if limited by size and scope ("**restricted operations**") under active or proactive protection regime, respectively (see Annex 3).

Restrictions of operations are determined in terms of space, time, by volume and in relation to the spatial distribution of natural and created values, in accordance with the sustainable use of natural values and the capacity of space.[64]

The act on the designation of the protected area specifies in more detail prohibitions and restrictions for the development projects, works and activities. The conditions on the nature protection issued by the competent nature protection institute in individual case makes the provisions of the NPA and the act of designation applicable to the proposed project or activity.

If they endanger some of the core values of the protected area the restricted operations may be transferred into the prohibited operations category in accordance with the act of designation of the protected area (Regulation on the Protection Regimes, Art. 6.2)

For example, **the construction of hydropower plants with individual power up to 5 MW, and the construction of power facilities and mini hydropower plants with a maximum power of up to 30 MW, may be consented within zones of active and proactive protection regime within the designated protected area**, respectively, in accordance with the conditions of the nature protection issued by the competent nature protection institute and the mitigating conditions set in the approval of the EIA study.

Furthermore, the restricted operations as defined by the NPA may be transferred into the prohibited operations category in accordance with the act of designation of the protected area and having in mind the natural resource, heritage and related protection goals defined by the designation study, if they endanger some of the core values of the protected area.[65]

For example, within the protected habitat, as the specific category of the protected area, all operations that endanger or harm one or more types of habitat are prohibited.[66] As a result, all operations that endanger the protected hydrological phenomenon or conservation of the biodiversity within the protected water ecosystem are prohibited.[67]

[64] Regulation on the Protection Regimes, Official Gazette of the RS", no. 31/2012, Art. 6.1
[65] Regulation on the Protection Regimes, Art. 6.2
[66] NPA, Art. 32.3.
[67] NPA, Art. 18.4

Before starting proposed operations within the protected area a developer or a user of natural resources must obtain a „nature protection conditions" from a competent nature protection institute. [68] The **nature protection condition** is an administrative decision, which states:

> The NPA does not prohibit development of hydropower plants in protected areas' zones of the second-degree and the third-degree regime of protection. However, the NPA provides that the act of designation of the protected area may prohibit such developments to safeguard core values od the protected area.

1. the data on natural values within the area covered by submitted planning documents;
2. the data on protected areas and other protected natural goods, including areas and natural goods for which the procedure for designation and protection is pennding;
3. the data on applicable protection ragime;
4. if planned operations can be carried out having in mind the objectives of nature protection and adopted regulations and documents, including applicable protection regime in accordance with an act on designation of a protected area;
5. conditions, ie prohibitions and limitations under which the planned works and activities can be implemented;
6. biological, technical and technological measures of nature protection to be applied by the developer;
7. legal and expert basis for prohibition or restriction; and
8. data on compensatory measures if applicable in accordance with the NPA.[69]

If the competent nature protection institute suspects that an operation may have adverse effects on the *ecological network*, instead of the decision, it will issue an opinion on need to subject the operations to the specific prior approval procedure, a *special admissibility assessment procedure* before the competent authority.[70]

THE ECOLOGICAL NETWORK SPECIAL ADMISSIBILITY ASSESSMENT PROCEDURE (SAA) [71]

The SAA is a specific procedure applicable to the operations proposed in the protected areas and natural pathways which belong to *the ecological network*.

The concept of the ecological network is not directly defined by the NPA. The NPA envisages that the network shall be comprised of *the important ecological areas of national or international importance* and *ecological corridors*.[72]

[68] NPA, Art. 9.1
[69] NPA, Art. 9.2
[70] NPA, Art. 9.3
[71] The special admissibility assessment procedure is Serbian attempt to transpose the Habitat Directive's appropriate assessment (AA) procedure.
[72] NPA, Art. 38.2 and 38.3.

Important ecological areas are areas of national importance which contribute to the conservation of biological diversity in the Republic of Serbia based on biogeographical representation and representativity.[73] **Important ecological areas of international importance** are areas which contribute to conservation of habitat types and habitats of species, including birds in accordance with international treaties and generally accepted rules of international law by their biogeographical representation and representativeness.[74] An **ecological corridor** is an ecological pathway and/or a link that allows the movement of individual populations and the flow of genes between protected areas and ecologically important areas from one site to another and which forms part of the ecological network.[75]

The Government determines the ecological network of the Republic of Serbia through its regulation.

As a result, operations that are not prohibited under the applicable protection regime, as well as works for which it is reasonably assumed that they may have adverse effects on the *ecological network*, are subject to the specific prior approval procedure in accordance with the EIA Act and NPA, respectively.[76]

In other words, **the operation, even if not listed as prohibited or restricted under the protection regime applicable in the protected area are, nevertheless, subject to the prior approval under the EIA procedure if they belong to List 1 or List 2 projects.** As already mentioned, "undersized" List 1 and List 2 projects are subject to the EIA screening procedure in any case if planned in a designated protected area.

In addition, **all projects, works and activities, even if not listed as prohibited or restricted under the applicable protection regime in the protected area, are, nevertheless, subject to the SAA if it is reasonably assumed that they may have significant adverse effects on the integrity of the *ecological network***.[77]

If, based on the assessment of admissibility, the ME concludes that projects, works and activities proposed *may have* a significant negative impact on the conservation objectives and the negative impact on the integrity of the important ecological area, the competent authority shall refuse to grant consent.[78]

Furthermore, the adoption of spatial planning documents may as well be suspended if the ME establishes under the SAA that they *may have* significant adverse effects on the integrity of the important ecological areas and the ecological network.[79]

In case of doubt, plans, programs, projects, works and activities are considered to have a significant negative impact on the conservation objectives and the negative impact on the integrity of the important ecological area.

[73] NPA, 38.3(1)
[74] NPA, Art. 38.3(2)
[75] NPA, Art. 4(17).
[76] Regulation on the Protection Regimes („Sl. glasniku RS", broj 31/2012), Art. 9.
[77] NPA, Art. 10.1 and 10.2/
[78] NPA, Art. 10.8
[79] NPA, Art. 10.8

The SAA is integrated as an element of the EIA procedure for the projects covered by the EIA Act and into the strategic impact assessment procedure for plans and programs with likely significant effect on the environment[80] in accordance with the Strategic Impact Assessment Act.

The NPA envisages three phases of the SAA process:

1. Prior assessment
2. Main assessment
3. Consent procedure.

However, the specific scope and subject-matter of the prior assessment and the main assessment are not prescribed by the NPA. Namely, the particulars are left to the Government's implementing regulation which has not been adopted so far.

As a rule, the projects, activities and works that may have a significant negative impact on the important ecological areas may not be consented. In case of doubt, the competent authority shall assume that the proposed project, activity or works have a significant negative impact on the important ecological area.

However, **the Government has yet to designate protected areas as the important ecological areas and to establish ecological network, meaning that the SAA is not effectively enforced**, hence reducing the effectiveness of the NPA as a potential DRPM preventive and controlling tool.

Although envisaged by the NPA special admissibility assessment procedure (a procedure that reproduces the appropriate assessment procedure of the Habitat Directive's Art. 6) for developments with potential significant effect on the ecological network is not effectively enforced in Serbia.

d. Water Resource Management

The system of the watershed planning, designation, monitoring, enforcement and stakeholders involvement is regulated by the Water Act. The Water Act also regulates surface and groundwater quality protection and conservation.

Furthermore, the Water Act prescribes rules and conditions governing development planning and permitting of *water facilities*, i.e. developments and objects, which, together with the devices that belong to them, constitute a technical or technological unit, and serve for performing *water activities,* such as facilities aimed at regulating watercourses, protection from floods, different water uses (including hydropower production units), waste water collection and treatment systems, monitoring waters, etc.

The Water Act adopts, formally, a river basin (river catchment) approach regarding integrated water resource management and pollution control, as a legal component of an attempt to progressively align national water management system with the WFD.

However, Serbia has a long way to accomplish the integrated water management system.

[80] NPA, Art. 10.4

RIVER BASINS AND WATER DISTRICTS

90% of Serbian territory belongs to the Black Sea/Danube basin.

The Water Act establishes three river basins as units for integrated water management in Serbia:

1. Part of the Black Sea Basin – River Danube Basin;
2. Part of the Aegean Basin – sub-basins of River Pčinja, River Lepenca and River Dragovištica;
3. Part of the Adriatic Basin - River Beli Drim Basin and sub-basin of River Plavska.[81]

The Water Act established 5 Water Districts to which basins and sub-basins are assigned:

1. Water District Sava – encompasses a part of the Bosut River sub-basin, the Fruška Gora watercourses, a part of the sub-basin of the River Sava, the sub-basin of Kolubara River and the sub-basin of the River Drina;
2. Water District Danube – encompasses a part of the River Danube Basin, parts of the sub-basins of Tisa, Tamiš and other Banat watercourses, sub-basins of Mlava, Pek and Poreč rivers and part of the sub-basin of the River Timok;
3. Water District Morava – encompasses the sub-basin of the Great Morava River and parts of the sub-basins of the Western Morava and the South Morava rivers, including River Lepenca and River Dragovištica of Aegean Basin;
4. Water District Ibar and Lepenac – encompasses the sub-basins of Ibar and Lepenca rivers;
5. Water District Beli Drim – encompasses Beli Drim Basin and sub-basin of River Plavska.[82]

The Government's Decision on Determination of Water Districts' Borders was adopted in October 2017 demarcated Water Districts' boundaries. Therefore, the River Danube Basin as a water management unit is covered by 5 Water Districts. Each Water District is further subdivided into the Water Units defined by the ME's Rulebook.[83]

However, a Water District is not assigned to a single regulator. Namely, PWMC Vode Vojvodine governs waters within the APV territory, while PWMC SrbijaVode governs waters within the rest of Serbian territory. Furthermore, permitting of certain water uses and development of water facilities are competence of the APV on its territory. Since Danube River and Sava River are in the same time natural administrative boundary between Vojvodina and Central Serbia, it means that Sava Water District and Danube Water District are regulated by several regulators in the same time. Therefore, several water regulators may oversee area within a single Water District on each side of the bank of bordering rivers, respectively.

The WD, as part of the MAFWM, oversees the coordination of the River Management process (RM process), preparation of water management plans (WMPs), and drafting of programmes of measures (PoMs) for each WMP.

WMPs and PoMs represent an attempt to reproduce WFD's requirements for the EU Member States to perform the management of water resources based on River Basin Districts, River Basin Management Plans and related Programmes of Measures.

WATER MANAGEMENT PLANS (WMPS)

[81] The Water Act, Art. 26.
[82] The Water Act, Art. 27.
[83] Rulebook on Determination of Water Units and Their Boundaries (Official Gazette of the RS no. 8/2018 of January 31, 2018)

WMPs are policy tools for watershed planning along the line of boundaries of River Danube Basins and River Districts.

The Water Act envisages development of the WMP for the Danube River Basin and Water Districts within.[84] In addition, specific WMP must be developed for the Aegean Basin.[85]

WMP must provide a general description of the characteristics of the Danube River Basin and Water Districts within, and description of the significant impacts of human activities on the status of surface and groundwater, including the assessment of pollution from concentrated and diffused sources of pollution, the overview of land uses and the economic analysis of the water use.[86]

The Government adopts WMP for River Danube Basin and Water District, on the MAFWM proposal.[87] WMP for River Danube Basin is prepared by the MAFWM, i.e. by the WD.[88] WMP for Water Districts are prepared by PWMCs, i.e. by *Vode Vojvodine* for part of Water Districts within APV, and by *SrbijaVode* for parts of Water Districts belonging to rest of Serbia.[89]

The WMP is subject to the strategic impact assessment procedure before the adoption in accordance with the SEA Act.[90]

Each WMPs draft must go through the MAFWM and WD before being adopted by the Government, which theoretically, may provide for their mutual complementarity of documents and integrity of planning. However, a Danube River Basin is covered by several Water Districts. Hence, several WMPs drafts applicable to the Basin may circulate in the same time. Development, integration and implementation of several draft WMPs and PoMs into the single Danube Basin Water Management Plan may result in *gold plating*, i.e. higher costs of administering and risk of inefficient implementation and enforcement.

Indeed, a great deal of coordination between several regulators is needed in order to achieve integrated planning and management along the line of designated Water Districts by the Water Act. The MAFWM and the PWMCs that prepares the WMP must enable active public participation in the process of preparation and adoption of the plan.[91] Draft WMP must be published at least one year before the beginning of the period to which the plan relates.[92]

In accordance with the Water Act **surface and ground water bodies must be determined in order to preserve or achieve good ecological, chemical and quantitative status of waters or their good ecological potential**, including artificial water bodies, heavily modified water bodies.[93]

***Surface water bodies* are a special and significant element of surface water such as lake, reservoir, stream, river or channel or part of a stream, river or canal**.[94] Bodies of surface waters are classified into types based on obligatory (altitude, geographical latitude and longitude, geology, basin size) and optional (distance from

[84] The Water Act, Art. 33.1
[85] Ibid.
[86] The Water Act, 33.2(1) and (2) and (13).
[87] The Water Act, Art. 34.3
[88] The Water Act, Art. 34.1
[89] The Water Act, Art. 34.2
[90] The Water Act, Art. 37
[91] The Water Act, Art. 38.1
[92] The Water Act, Art. 38.4
[93] The Water Act, Art. 7.1
[94] The Water Act, Art. 2(14)

the source, morphological parameters, valley shape and other) factors.[95] Classified water bodies must be recorded in the WMP.[96] Therefore, **WMP must produce maps indicating the position and boundaries of surface and groundwater bodies** and mapping ecoregions and types of water bodies of surface water.

WMP produces a list of environmental objectives for surface and groundwater and protected areas, including cases in which the deadline for reaching targets is applied and less stringent protection targets for certain water bodies such as heavily modified water bodies.

The WMP provides an **outline of the "adopted works" and programme of measures** and the way the established objectives will be achieved and **including additional measures for achieving the identified environmental objectives** when necessary.

Furthermore, **a summary of the register of protected areas, with a map indicating the position of the protected areas** and the regulations according to which these areas have been declared protected must be provided within the WMP. The Register of Protected Areas, envisaged by Article 110 of the Water Act, must include areas intended for the protection of habitats or species where an essential element of their protection is the maintenance or improvement of the status of waters, and recreational water bodies, including bathing waters.

A list of more detailed WMPs for sub-basins, or more detailed plans for specific issues or types of waters, including their content, must also be integrated in the WMP.

In addition, **WMP must contain an overview of the obligations assumed by international agreements** related to water management and the manner of their implementation, including a single river basin management plan in case of water areas that extend across several states.

WMP must indicate a map of the monitoring network and a cartographic survey of the results of the monitoring, which includes the ecological and chemical status of surface waters and the chemical and quantitative status of groundwater and protected areas, as well as possible deviations from the established deadlines for the implementation of the WMP.

Indeed, WMP provide for identification of surface water bodies, i.e. rivers or section of rivers for the purposes of preserving or achieving good ecological, chemical and quantitative status of waters or their good ecological potential. Therefore, eligibility for their designation within the WMP and protection is not related to preserving (section of) rivers in free-flowing condition due to outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values.

PROGRAMME OF MEASURES (POMS)

In order to achieve the objectives set by the Water Management Strategy (**Strategy**), WMPs for the Water Districts and by the Danube River Basin Water Management Plan, the Government, upon the proposal of the

[95] The Water Act, Art. 7.2
[96] The Water Act, Art. 111.4.

MAFWM, adopts PoMs. The Government reviews the PoMs and, if necessary, revises the plan every six years, counting from the date of its adoption.

PoMs measures related to water protection are measures:

- to protect and improve the quality of water, including additional measures to achieve the objectives set out in the Strategy;
- which are determined by legislation in the field of environmental protection, nature protection and protection of health;
- which are determined by legislation in the field of agriculture, fisheries and others;
- relating to the reversal of trends in the concentration of polluting substances, groups of polluting substances or indicators of pollution in the body or group of bodies of groundwater;
- to prevent the entry of all hazardous substances into groundwater, the measures necessary to limit the input of other polluting substances into groundwater so that inputs do not cause deterioration of quality or significant and persistent upward trends of concentrations of polluting substances in groundwater, unless otherwise regulated by a special legislation.[97]

The PoMs may also contain other measures for a groundwater body to ensure the protection of equitable and terrestrial ecosystems and the human use of groundwater that are dependent on a given part of the body of the groundwater in cases where the limit values of pollutants are exceeded at one or more measuring points in accordance with the rules that determines the ecological and chemical status of surface waters and the chemical and quantitative status of groundwater.[98]

Interestingly, instead to fix measures to objectives defined by the WMP for bodies of surface and ground waters, the Water Act provides that PoMs contains the measures to protect and improve the quality of water, including additional measures to achieve "the objectives set out in the Strategy", a more abstract document, with presumably less updated data.

In addition to the water protection measures, the Water Act integrates measures aimed at watercourse regulation, protection against harmful effects of water and water management and use in the PoMs. Hence, unlike programmes of measures envisaged by Article 11 of the WFD, national PoMs is not strictly limited to measures aimed at achievement of environmental objectives set by the WMP for bodies of surface and ground water and protected areas.

[97] The Water Act, Art. 40.4.
[98] The Water Act, Art. 40.6

Therefore, **PoM may envisage measures and works that may affect and modify (a section of) a river, including construction of water facilities and priorities for their realization, as long as they do not affect environmental objectives set by the regulations, Strategy and WMP**.[99]

In any case, **keeping rivers in a free-flowing condition is not a PoMs concern**. PoMs are limited to the long-term protection, enhancement and restore of quality of all bodies of surface and ground water against applicable environmental quality standards integrated in Strategy and WMPs.

In addition, PoMs may provide basis for measures and works aimed at solving other water management issues, such as protection from floods, and sustainable use of waters.

Nevertheless, the Water Act sets the minimum content of the WMPs and PoMs. They are relatively flexible tools. The Water Act does not prevent other values and objectives to be integrated in documents, including specific measures applicable to (sections of) rivers to keep them in the free-flowing condition.

IMPLEMENTATION AND ENFORCEMENT OF WMPS AND POMS

Implementation of the Water Act's provisions regulating integrated water management is in initial phase. Strategy has been adopted and some, mostly, preliminary measures are identified. Measures are related to the overall improvement of institutional system of water management and not immediately connected to the environmental protection of water bodies.

Nevertheless, according to the Strategy 499 surface water bodies have been established, 492 belonging to the Danube River Basin,[100] and 153 groundwater bodies (152 belonging to the Danube River Basin).[101] Namely, bodies for rivers with sub-basin area bigger than 100 km2 have been determined and classified in 38 types. 342 bodies or **70% are characterized as natural** and 16 as artificial, while **28% (141 bodies) have been preliminary classified as heavily modified water bodies** due to significant hydromorfological changes.

However, **1st WMP for Danube River Basin and WMPs for Water Districts and related PoMs have yet to be adopted by the Government**.[102] Environmental objectives, therefore, are not set for identified water bodies and integrated in the WMPs and PoMs. The Register of Protected Areas, envisaged by Article 110 of the Water Act, has yet to be established.[103]

[99] See the water Act, Art. 40.3(4).
[100] The Government of the Republic of Serbia, *Water Management Strategy for the Territory of the Republic of Serbia until year 2034* ("Official Gazette of the RS") p. 14.
[101] Ibid. p. 19.
[102] European Commission, *Serbia 2018 Report 2018*, COM(2018) 450 final, p. 79
[103] PWMCs are in charge of keeping registers of protected areas within water districts assigned to them in accordance with Rulebook on the Content and Method of Keeping Registers of Protected Areas („Official Gazette of the Republic of Serbia", no. 33/2017).

Monitoring network is underdeveloped and does not produce enough data for purposes of the integrated water management.[104] 103 out of 499 surface water bodies are covered by 140 quality monitoring stations. Some quality parameters (indicators) for assessing ecological status by biological parameters have not been systematically monitored so far. As a result, analyses of status of water quality are performed on the basis of partial data and expert judgment, hence, on the insufficiently reliable inputs.

Scarcity of available pollution data, unknown status of water resources, insufficient level of knowledge on the impacts from various pressures, insufficient capacities of WD and PWMCs and institutions responsible for monitoring do not allow preparation of the integrated PoMs.

Lack of WMPs and PoMs means that, effectively, watershed planning (i.e. WMPs based on river basin approach), environmental objectives, protection measures and monitoring of compliance is not in place, and that integrated watershed planning is not yet effectively phased in the system of approvals of development of water facilities and water permitting procedures.

54% of the population is connected to the sewage network and less than 10% of population is covered by effective waste water pre-treatment. [1] Most of the industrial capacities are connected to the communal sewage network. Most of industrial waste waters are not pre-treated.[1] The industry does not report discharges to the Agency for the Environmental Protection which manages National Register of Polluters.[1]

The livestock fund produces 57% of the total nitrogen load and about 46% of the total loads from phosphorus, while the population not connected to public sewage systems participate with 4% nitrogen load, 15% load with phosphorus and 10% organic pollution.[1] Municipal landfills also represent a type of potential diffused pollution. Landfills are often located near watercourses and lakes (sometimes in the on the banks).[1] More than 6% of the landfills are located at a distance of less than 500 m from the sources for water supply.[1] Finally, wild dumps, provides for 50% of total of solid waste produced in Serbia and a major source of surface and ground water pollution risk.[1]

Therefore, effective enforcement of environmental protection provisions of the Water Act is missing. Lack of communal and industrial waste water collection and pre-treatment facilities in Serbia, and suboptimal financing[1], coupled with inadequate enforcement of economic instruments ("polluter pays" principle), have been a major source of excuse for lack of enforcement efforts and delaying administrative tactics. [1]

Besides, the Water Act's conditions for supplying water development approvals and water permits by competent authorities do not expressly require compliance with applicable environmental quality standards as a pre-requirement for their issuance.[105] Likewise, the applicable rules do not provide for the possibility to revise approvals and permits to accommodate new WMPs and PoM or, otherwise, any changes of environmental objectives.[106]

Another weakness of the system is that competent authorities in charge of issuing water development approvals and water permits (WD, PWMCs, APV, LSG) are more concerned with economic side of the use of waters and safeguarding enough water quantities for other uses and less with environmental concerns. In addition, PWMCs are in charge for permitting and licensing certain activities see their competence as a source of revenues.

[104] Serbian Environmental Protection Agency http://www.sepa.gov.rs/download/wwd2017/1.%20Strategija%20upravljanja%20vodama%20na%20teritoriji%20Srbije.pdf accessed 22. March 2019.
[105] See Articles 115 and 122 of the Water Act.
[106] Ibid.

Furthermore, existing industrial installations' discharges are not effectively controlled, i.e. enforcement of rules regulating quality of discharges into surface and groundwater quality have been postponed.

As a result, ME as an authority in charge of monitoring compliance of discharges is in principle (1) left out from the procedure of issuing approvals and water permits (2) and does not effectively monitor discharges from sewage and (existing) industrial installations, in the moment.

The river basin governance mechanisms that are currently in place are weak and ineffective. In addition, the current mechanism does not provide truly enforceable protection of (sections of) water bodies (rivers) even, under existing criteria.

Therefore, once WMPs and PoMs are put in place, it remains to be seen how existing rules on water development approvals and water permits will accommodate environmental objectives, and if it would be possible to leave certain water bodies or their sections as free-flowing.

However, as the institutional set up and law stands now, this is highly unlikely.

e. Water Rights

THE SYSTEM OF AN OWNERSHIP OF WATER

The water ownership rights system is regulated by the Water Act in accordance with the Constitution of the Republic of Serbia („**the Constitution**")[107] and the Public Property Act.

The Constitution guarantees private, cooperative and public property rights.[108] All forms of property rights enjoy equal legal protection.[109] Public property rights may be transferred only in accordance with the conditions prescribed by the law.[110]

Public property rights are subdivided into a state property (i.e. property of the Republic), a property of an autonomous province and property of a unit of a local self-government.[111]

The Constitution declares natural resources as exclusive subject of the state property.[112] Natural resources are used under the conditions set by law.[113] State ownership of natural resources may not be transferred into other forms of public property rights or into the private ownership or the cooperative ownership. The **Public Property Act** declares waters, watercourses, including their springs and groundwaters as the natural resources.[114] Therefore, surface and ground **waters, watercourses, their springs and belong to the Republic of Serbia.[115]**

[107] "Official Gazette of the Republic of Serbia", no. 98/2006 10. November 2006.
[108] The Constitution, Art. 86.1
[109] Ibid.
[110] Ibid. Art. 86.3
[111] Ibid.
[112] Ibid. Art. 87.1.
[113] Ibid. Art. 87.3
[114] The Public Property Act, Art. 3.1.
[115] The Public Property Act, Art. 9.1.; the Water Act, Art. 5.1

Title of the state ownership over these natural resources may not be transferred to private entities or to the APV and LSGs.[116]

However, the law may set rules on constituting rights to use natural resources.[117] The manner and conditions of exploitation and management of natural resources are regulated by a specific law.[118]

WATER RIGHTS

The water is the property of the Republic.[119] The title of ownership on (section of) waters/watercourse may not be transferred.[120] Therefore, the ownership right on water is separated from the ownership of a land. However, the rights to use waters may be established for a private entity or individual in accordance with the administrative procedure prescribed by the law. The regime of rights to use waters and manner of their allocation ("**the water rights"**) is regulated by the Water Act.

As a general principle, water resources must be used in a way that does not adversely affect waters and coastal ecosystems and do not limit the rights of others.[121] The sustainable use of waters by state-owned, private entities or individuals is managed through the system of approvals and permits and in accordance with the Strategy and WMPs.[122] Basically, any use of waters or man-made modification of riparian land and watercourse which may affect the *water regime*[123] must be covered with the water approvals and water permits.

The right to use waters and limits and conditions are set by **water permits** issued by competent authorities. However, before a water permit is issued, it is presumed that an operator had obtained a so-called **water approval** to start works on development of the facility which is subject to the water permit requirement.[124] Namely, the water permits are issued by the MAFWM/WD and APV after developer supplies authority with the report of the PWMCs that it complied with conditions set in the water approvals. Therefore, water approvals are acts related the planning phase of the project, while water permits are related to the operation/performance of a facility or on-going works.

MAFWM/WD, APV, LSGs, PWMCs are competent authorities. An authority competent for issuing water approvals is in the same time the competent authority to issue water permits.[125] In accordance with the Water Act, distribution of powers to issue approvals and permits between the MAWMF/WD/APV, on the one hand,

[116] The Public Property Act, Art. 16.6.
[117] The Constitution, Art. 87.3
[118] The Public Property Act, Art. 40.
[119] The Water Act, Art. 5.1.
[120] The Water Act, Art. 5.3
[121] The Water Act, Art. 5.4.
[122] The Water Act, Art. 113.1.
[123] The water regime is the natural quantitative and/or qualitative state of ground and surface waters in a given area and at a certain time natural and/or state caused by human activities (the Water Act, Art. 3(10)).
[124] Exceptionally, a water permit can be issued without water approvals for constructed facilities and systems that have a use permit and do not adversely affect the water regime.
[125] The Water Act, Art. 122.3

and LSGs and PWMCs on the other hand, is based on type and/or size of the project/works. Furthermore, criteria for division of powers between MAWMF/WD and APV and between PWMCs Srbija Vode and VodeVojvodine, respectively, is territorial. APV and VodeVojvodine are in charge of issuing all water approvals and water permits within their territories.

For some planned facilities and works the water approvals are issued to the developer within the integrated development permitting procedures (**IDPPs**), which is implemented by MCTI and other authorities competent for issuing development permits.[126] For works and facilities outside the IDPPs system the developer/operator must surrender water approvals issued by water authorities in the general development consent procedure. Therefore, IDPPs and general consent procedure assimilate water management approvals (of MAFWM, APV, LSGs and PWMCs) into single development permitting procedure for developments such as construction of industrial facilities, hydroelectric plants, thermal power plants, landfills, waste-water treatment plants, etc. [127]

The developer must surrender the water approvals to the authority competent for issuing **development consent** as part of the technical documentation necessary for issuing development consent. The authority competent for issuing development consent does not enter in the assessment of the water approvals/water permits, nor it examines the accuracy of the water approvals it acquires during the IDPPs or development consent procedure. As a result, authority will issue development consent once the developer surrenders water approvals.[128]

WATER APPROVALS

The *water approvals* (Ser. "Vodni uslovi") are acts issued by the competent authorities to the developer as a part of the general development consent procedure. The water approvals determine the technical and other requirements that must be met during the construction, extension and reconstruction of the facilities, the design of the planning documents and the execution of other works in order to comply with the provisions of the Water Act and the executive regulations based on the Water Act.[129]

The water approvals are related to the development of new or reconstruction or upgrade of existing facilities and for carrying out works that can permanently, intermittently or temporarily affect water regime, or endanger environmental objectives. In addition, water approvals are issued as part of the procedure of adoption of spatial planning acts, planning documents on management of fishing and protected areas and forest management.[130]

The Water Act does not provide precise technical criteria and environmental requirements that need to be met before the activities on construction can start or before execution of works. In particular, the Water Act does not require specific adjustment of the content of the water approval to the (section of) the water body (river)

[126] Spatial Planning and Development Act, Article 8.
[127] See Spatial Planning and Development Act, Articles 8-8đ and Water Act, Articles 117.2, 118 and 119
[128] Spatial Planning and Development Act, Article 8đ
[129] The Water Act, Art. 115.2
[130] The Water Act, Art. 115.1

based on specific environmental objectives or criteria. Furthermore, the Water Act does not provide guidelines for cases the water approval may not be granted.

However, before issuing a water approval MAFWD and APV as competent authorities must obtain expert opinion from PWMCs, Hydrometeorological Service of Serbia (**HSS**) and from the Agency for Environmental Protection (as an authority in charge of implementing the state monitoring of the water quality). For activities within their power PWMCs must seek expert opinion from HSS and Agency as well. LSG seek expert opinion before issuing water approval from the competent PWMC within their territory.
The specific content of the relevant opinions is defined by the MAFWD's Rulebook.[131] Opinions of the PWMC, HSS and Agency *may* contain non-mandatory proposal to the competent authority to define technical and other requirements within the water approval which must be fulfilled by the developer related to the construction or reconstruction of the object or works. However, opinions are not binding to the competent authority.

The MAFWD and APV may seek the opinion of the ME for facilities and works for which they are competent authority for issuing the water approvals. However, it is under their discretion if they will do so. In addition, the Water Act does not recognize nature protection institutes[132] as mandatory statutory consultees in the procedure for issuing water approvals. Furthermore, PWMCs and LSGs are not required to seek opinion from the ME or institutes for developments and works under their competence in any case.

Therefore, the competent authorities for water management enjoy wide discretion in issuing water approvals. The Water Act rules on issuing water approvals do not accommodate adequately requirements of the EIA Act and the Nature Protection Act regulating environmental impact assessment of projects and developments and works within the protected areas, respectively. Namely, **it is possible for a developer of a project to obtain water approvals from a competent authority before applicability of the EIA or nature protection regime to the project is cleared.** In addition, **the link between WMP, environmental objectives, PoMs applicable to the given (section) of water body/river and content of the water approvals is rather weak** and not elaborated by the Water Act, executive regulations or guidelines.

[131] Rulebook on the content and form of the request for issuing water acts, the content of the opinion in the procedure for issuing water acts and the content of the reports in the procedure for issuing a water permit ("Official Gazette of the RS" no. 72/2017 and 44/2018).
[132] Institute for Nature Conservation of Serbia or Institute for Nature Conservation of Vojvodina Province for protected areas of regional importance on territory of APV.

Only administrative acts may be challenged before the administrative court. However, in accordance with the Water Act the water approvals are not considered as administrative acts.[133] Therefore, **the Water Act does not provide effective legal remedies to the public concerned to challenge water approvals to protect (section of) rivers against harmful developments in the planning phase based on the environmental concerns and applicable environmental quality standards.**

The Water Act does not provide the legal remedies to the public concerned and environmental CSOs to challenge water approvals to protect (section of) rivers against harmful developments and works in the planning phase based on the environmental concerns and applicable environmental quality standards.

WATER PERMITS

The *water permit* is a decision of competent authorities "that determines the method, conditions and scope of water use, method, conditions and volume of waste water discharges, storage and discharge of hazardous and other substances that may contaminate water, as well as conditions for other works affecting the water regime."[134] A competent authority in charge of issuing water approvals is in the same the competent authority for issuing the water permits.

The water permit is issued for a limited period up to 15 years. Permits must be issued in accordance with the Strategy and WMPs. In other words, the permit should operate as tool to enforce integrated water management plans and safeguard integrity of the *water regime*[135] i.e. of the quantitative and/or qualitative state of ground and surface waters in a given area and at a certain time.[136]

The water permit may not be issued without the prior water approval[137], except in case of facilities and systems which may not affect the water regime "unfavourably".[138] The water permit issued by the MAWMF/WD and APV must be supplied by the report of the PWMCs that operator complied with conditions set in the water approval.[139] In addition, the water permit for use of groundwaters may not be issued without prior decision of

[133] The Water Act, Arts. 113.3 and 114.2
[134] The Water Act, Art. 122.1
[135] The Water Act, Art. 113.1.
[136] The Water Act, Art. 3(10).
[137] The Water Act, Art. 123.1
[138] The Water Act, Art. 123.2. The Water Act does not define the term "unfavourable". The concept is imprecise and open to interpretation. Indeed, the concept should be interpreted extensively in the context of the overall requirement that water resources must be used in a way that does not adversely affect waters and coastal ecosystems and do not limit the rights of others (the Water Act, Art. 5). Otherwise, it would have been possible to claim that the facility may not have unfavourable effect to the water regime because of the existing modifications and pressures or capacity of receiving waters to dilute discharges. However, the Water Act is not explicitly based on the environmental principle of prevention and precautionary principle, it does not offer other guidelines the issue, hence, it leaves the question of interpretation to the discretion of competent authorities, which are not *per se* environmental.
[139] The Water Act, Art. 122.4

the Ministry of Mining and Energy (MME) which is the authority responsible for geological exploration of established and classified reserves of groundwater.

The ME monitors and controls compliance of operators with waste water pre-treatment requirements and compliance of discharges with applicable emission standards.

On the paper, the water permit, must accommodate the environmental objectives set in the WMP applicable to the body of water (including river or the section of river) where the regulated facility or activity is operated. The water permit should make WMPs operational and used as a tool to implement PoMs (basic and additional measures necessary) to achieve good status of the body of water or more stringent requirements applicable to the water bodies within protected areas.

However, the ME and institutes for nature protection do not take part in the procedure for issuing water permits for facilities and works. On the other hand, MAFWM/WD, Provincial Secretariat for Agriculture, Water Management and Forestry and PWMCs as the competent authorities are not environmental authorities *per se*. They have mixed duties and preferences while regulating water management (as economic) activities. Furthermore, the regulated operations are in the same time source of revenues of the competent authorities. Therefore, the MAFWM/WD, Provincial Secretariat for Agriculture, Water Management and Forestry and PWMCs often disregard environmental effects of the operation (taken alone and in the context of existing and future environmental pressures) while issuing water permits. As a result, a water permit, at the moment, does not accommodate appropriately environmental objectives, while it may serve as a (permit) defence against ME's charges or against challenges by concerned parties.

In addition, the WMP and PoMs, which are supposed to identify environmental objectives and measures of protection for (sections) of water bodies have not been adopted yet. **The Water Act does not provide for an explicit legal basis to modify or revise water permits in accordance with (changing) environmental objectives or to accommodate new (basic or additional) measures**. The link between WMP, PoMs and environmental objectives applicable to the given (section) of water body/river and conditions of the water permits is rather loose, not being elaborated adequately by the Water Act, executive regulations or guidelines.

The Regulation on Limit Values of Emissions of Polluting Substances in Water and Time Limits for Compliance[140] provides transitional period to existing operators to align their emissions with the emission limit values of pollutants in the waters prescribed by this Regulation no later than December 31, 2025. Therefore, the system of environmental protection of waters is additionally diluted by delays in enforcement.

[140] „Official Gazette of the RS", no 67/2011, 48/2012 and 1/2016

The Water Act does not provide for an explicit legal basis to modify or revise existing water permits to accommodate (changing) environmental objectives or new (basic or additional) environmental measures, which limits their flexibility as a tool to regulate activities.

Therefore, **the competent authorities enjoy wide discretion while issuing water permits**.

The water permit is an administrative act and it may be challenged before the administrative court by the developer. However, **the Water Act does not recognize environmental CSOs as a party concerned by the decision**, i.e. a party whose interests may be affected by the water permit. Moreover, given the discretionary nature of the decision, it would have been difficult to gain access and to build the legal case to challenge the legality of the water permit before the Administrative Court by any party other then by the operator itself.

The Water Act does not recognize environmental CSOs as a party concerned, i.e. a party whose interests may be affected by the administrative decision to issue a water permit. The Water Act , hence, does not provide effective legal remedies to the public concerned to challenge water permits to protect against harmful developments based on the environmental objectives or any environmental quality standard applicable to (sections of) rivers.

Therefore, **the Water Act does not provide effective legal remedies to the public concerned to challenge water permits to protect (section of) rivers against harmful developments based on the environmental concerns and applicable environmental quality standards**.

f. Land and Property Rights

The Water Act adopted by the National Parliament in 2010 regulates national surface and groundwater management policy. It governs legal status of waters, regulates integrated water management (including riverbed and riparian lands management, and water installations/objects management), prescribes sources and methods of financing water management activities, and monitoring and the enforcement requirements. The Act establishes surface waters, riverbed and riparian lands as public good, it regulates water usage related activities through a system of consents and permits, prescribes measures for protection from waters and water quality and pollution control requirements.

THE LAND OWNERSHIP SYSTEM

The property rights system is regulated by the Property Act[141] in accordance with the Constitution. The Constitution guarantees private, cooperative and public property rights. All forms of property rights enjoy equal legal protection.

The title of ownership provides to the owner entire interest over movable or immovable property. The owner may hold, use and dispose with the property.[142] Agricultural land, forest land and land for development may be subject of the private property, cooperative property rights or public property rights.

The use of and disposal with agricultural land, forest land and land for development is free.[143] However, the law may restrict the ownership rights, i.e. it may prescribe limits to and conditions for use and disposal of land in order to eliminate risk of damage to the environment or to prevent harm to the rights and to the legal interests vested in other entities or individuals by the law.[144]

For example, the manner of use and methods of management of the land by the owner may be limited by specific regimes prescribed by the Land Protection Act, Agricultural Land Act, Spatial Planning and Development Act, Nature Protection Act, Environmental Protection Act, Water Act etc. In addition, specific legal regimes may establish public easements in favor of certain entities and public interests within the privately-owned land, which an owner must respect.

Movable or immovable property subject to the public ownership rights are considered as *goods of public interest*. As a result, the property and management regime for land owned by public entities such as land for development, agricultural land, riparian land, protected natural goods, water facilities, forests and forest land are regulated by specific laws. Public property rights over land and other goods of public interest (entire interest or specific rights) may be transferred only in accordance with the conditions prescribed by these specific laws.

THE RIGHTS RETAINED BY THE GOVERNMENT

Natural resources are excluded from the private and cooperative property rights. Furthermore, natural resources are property of the Republic, hence, excluded from the property of APV or LSGs as well. What is considered as a natural resource is regulated by specific laws.

The Public Property Act establishes waters, watercourses and their springs, and ground waters as natural resources.[145] Waters are defined as all running and still surface and ground waters.[146] The watercourse is defined as a waterbed along with shores with stream of running water that flows through constantly or occasionally and can be natural (river, stream) and artificial (channel, cut, displaced waterbed). As such, they are exclusive and non-transferable ownership of the Republic.

[141] "Official Gazette of the SFRJ", no. 6/80 and 36/1990, "Official Gazette of the SRJ", no. 29/1996 and "Official Gazette of the RS", no. 115/2005
[142] The Property Act, Art. 3.1
[143] The Constitution, Art. 88.1
[144] The Constitution, Art. 88.2
[145] The Public Property Act, Art. 9.1
[146] The Water Act, Art. 3(8)

THE LEGAL REGIME OF RIPARIAN AREAS

For the purposes of the integrated water management, the Water Act establishes concepts of *water/aquatic land* (Ser. *водно земљиште*) and *riparian land* (Ser. приобално земљиште). Aquatic land is defined as an area which is constantly or occasionally supplied with water, hence, forming special hydrological, geomorphological and biological relations, which are reflected in the aquatic and riparian ecosystem.[147] Aquatic land of running waters, in the sense of the Water Act, is a waterbed for large water and riparian land.[148]

Boundaries of the aquatic land are defined by the MAFWD and APV, respectively, and they are entered in the cadastre of immovable property, spatial planning documents (LSGs spatial plans, regional spatial plans and in spatial plans adopted for specific purposes) and urban planning documents.

Riparian land is defined as a zone of land next to the waterbed of large waters' watercourse that serves to maintain structures for protection from waters, to protect of waterbed of large waters and to perform other activities related to water management (protection from waters, protection of waters, and sustainable use of waters).[149] The riparian land zone width is up to 10m in areas not protected from floods.[150] The riparian land zone in areas protected from floods (depending on the size of the watercourse or protective structure) is up to 50m counting from the top of the embankment and toward defended area.[151] However, MAFWD and APV may designate different size of riparian land zone, respectively, where they find it necessary for protection of waters, aquatic and riparian ecosystems, protection of goods of specific value and capital infrastructure, water management or other works of general interest.[152]

Sections of aquatic land may be publicly or privately owned. However, publicly owned sections of water land are considered as public good regulated by the specific regime. The day-to-day management of publicly owned aquatic land is conveyed to the PWMCs.

The title over publicly owned aquatic land may not be transferred.[153] The owner who intends to sell aquatic land is obliged to first offer the land to the competent authority of the Republic of Serbia or the autonomous province. Therefore, the Republic and APV (for channels with in its territory) enjoy the preemption rights, i.e. first option to buy privately-owned aquatic land.

THE CONCESSION PROCESS IN RIPARIAN AREAS, RIVER ACCESS AND RIVER MANAGEMENT

Waters, watercourses and publicly owned aquatic land are non-transferable public goods. However, under conditions defined by the law, right to use waters may be established. Also, leasehold interest in publicly owned aquatic land may be established as well under procedure and conditions prescribed by the Water Act.

[147] The Water Act, Art. 8.1
[148] The Water Act, Art. 8.2.
[149] The Water Act, Art. 9.1
[150] The Water Act, Art. 9.2(1)
[151] The Water Act, Art. 9.2(2)
[152] The Water Act, Art. 9.3
[153] The Water Act, Art. 5.3

Water use rights ("Water Rights") are allocated by the competent authorities in accordance with the Water Act through the water acts (*water approvals* and *water permits*) as described under the title "Water Rights". These acts regulate technical requirements and measures under which facilities and works that use surface and/or ground waters may be developed/started and rules and conditions under which right to use waters are granted. As explained, any facility or activity that may modify or affect the water regime of watercourses, or which may be affected by the water regime, are subject to the water rights regime.

Aquatic land owned by the state, APV or LSG may be leased to any legal entity, entrepreneur and to individual for the purposes related to *the maintenance and improvement of the water regime*[154] and, *in particular*, for:

1. development of water facilities, their reconstruction and repairing;
2. maintenance of watercourses and water facilities; and
3. implementation of measures related to watercourse regulation and protection against harmful effects of water, use and treatment of water and water protection.[155]

In addition, aquatic land may be leased for:

1. construction and maintenance of liner infrastructure facilities;
2. construction and maintenance of facilities intended for the defense of the state;
3. construction and maintenance of shipyards, as well as harbors, ports, waterways and other facilities in accordance with the law regulating navigation;
4. construction and maintenance of facilities for use of natural bathing areas and for the implementation of protective measures on natural bathing sites;
5. construction and maintenance of facilities to produce electricity using water power;
6. carrying out economic activity that is forming temporary landfills of gravel, sand and other materials, the construction of facilities for which a temporary building permit is issued in the sense of the law governing the development of buildings, and installation of small prefabricated buildings for the performance of activities for which development consent in terms of the law governing the development of buildings is not required;
7. the installation of a berth for boats, or floating objects in the sense of the law governing navigation and ports;
8. sports, recreation and tourism;
9. performing agricultural activities;
10. exploitation of mineral resources in accordance with this and a special law.[156]

The lease decision and the contracting for leasing publicly owned aquatic land is within the power of PWMCs. City of Belgrade has the power to lease floating objects on its territory. Publicly owned aquatic land may be leased out in the public tender procedure or through collection of written offers submitted following public advertisement. The initial amount of the lease cannot go below the market price for renting in the area in

[154] The Water Act, Art. 10.1
[155] The Water Act, Art. 10.1
[156] The Water Act, Art. 10.2

which the land is located. The lease period is up to 15 years, except for the construction of facilities in which case the lease period cannot be longer than 50 years.

The Water Act establishes the first option right or pre-emption right to a legal entity or to an entrepreneur who carries out economic activity on the public aquatic land offered for lease. If more persons apply or bid for the aquatic land, the operator that carries out economic activity may equal a highest offered amount for the lease.

Theoretically, **environmental CSOs may obtain leasehold interest in publicly owned aquatic land,** for the water protection purposes (including protection of riparian ecosystems) which would provide control over use rights or development rights in that section of river for a limited time**.** However, **the lease may be obtained on market terms in competition with other interested parties.** Furthermore, **entities that already operate economic activity on the publicly owned aquatic land offered for lease have an option to equal the environmental CSO's offer**.

Environmental CSO may obtain leasehold interest in aquatic land. However, the revenues from leasing aquatic land belongs to the PWMCs. Therefore, the Water Act lease rights granting rules prefer economic activities over activities aimed at nature conservation.

The revenues from leasing belongs to the PWMCs. Therefore, the Water Act lease right granting policy favors economic activities over activities aimed at nature conservation.

RESTRICTIONS OF LAND USES FOR CONSERVATION PURPOSES

In accordance with the Constitution the way the land is used may be limited by specific laws to eliminate risk of damage to the environment.

In accordance with the Nature Protection Act restrictions can be placed on developments and activities to protect areas designated as protected and/or protected wild species.

As a rule, projects, works or activities, which harm, distort or modify the properties and values for which the area is designated as protected are prohibited by the NPA (Art. 57.1).

As a rule, projects, works or activities, which harm, distort or modify the properties and values for which the area is designated as protected are prohibited by the NPA (Art. 57.1).

In addition, depending on the applicable level of protection (the protection regime) within the protected area all or certain developments and activities on land may be prohibited directly by the NPA or in accordance with the act on the designation of the protected area.

In other words, if qualified as prohibited by means of the applicable protection regime or by the act of designation, one may not enter in the assessment if the activity harms, distorts or modifies the properties and values for which the area is designated as protected are prohibited.

Some other operations on land within the protected area are qualified by the NPA as restricted by location, size, time, volume and scope. The act on the designation of the protected area specifies in more detail prohibitions and restrictions for the development projects, works and activities on land.

Furthermore, if they endanger some of the core values of the protected area, the operations restricted by the NPA may be qualified as prohibited operations in accordance with the act of designation of the protected area, having in mind the natural resource, heritage and related protection goals defined by the designation study.

MANAGING OF DESIGNATED PROTECTED AREAS

National parks are designated by the law passed by the National Parliament. *Category I* protected areas are designated by the Government's through its regulation on the proposal of the ME. *Category II* protected areas are designated by the Government's regulation, or by the competent authority of APV if a protected area is within Vojvodina. *Category III* area is designated by local self-government's decision in whose territory the area is sited, or in accordance with the agreement reached between two or more self-governments if an area covers several territories ("**designating authorities**").

The protected area is managed by a legal entity, which fulfills the professional, personnel and organizational conditions for carrying out tasks of preservation, enhancement, promotion of natural and other values and sustainable use of the protected area.[157] Act of designation of the protected area establishes a managing entity to the designated protected area (Ser. управљач заштићеног подручја).[158]

The study of protection an expert document of the competent nature protection institute (on which the designation is based) proposes the human capacities and technical requirements to be satisfied by the managing entity. The study may propose the potential managing entity.

In practice, the designating act, regulary, establishes a state-owned public utility company as a managing entity. For example, in case of the protected area, special reservoir of nature „Gorge of Mileševka River" the managing entity is PUC „Srbijašume" (a national public utility company in charge of protection and sustanable management of forests).

The desingating authority may establish a specific legal entity as a managing entity for the protected area or several protected areas. The entitz may have a form of the commercial society/company, public utility company or public institution.

In accordance with **National Parks Act**[159], which designated national parks "Fruška Gora", „Kopaonik", „Tara", „Šar planina" and „Đerdap", specific public utility companies are established as a managing entities for each national park.

The managing entity adopts the managing programme and it must establish guardian services. The management programme provides methods of implementation of the protection, use and management of the protected area, guidelines and priorities for the protection and preservation of the natural values of the protected area, as well as development guidelines, while respecting the needs of the local population.[160] Legal

[157] NPA, Art. 67.2
[158] NPA, Art. 44(7).
[159] "Official Gazette of the RS", no. 84/2015 and 95/2018
[160] NPA, Art. 52.3

entities, entrepreneurs and natural persons are obliged to perform activities in the protected area in accordance with the management plan.[161]

CONVERSION OF THE PROTECTED AREA INTO A NON-PROTECTED AREA

A protected area may lose the status of the protected natural asset through an act of the designating authority. However, the conversion act must be based on the proposal of the competent nature protection institute if the protected are loses the values which were the reason of designation.[162] The designating authority shall, within six months from the receipt of the proposal of the nature protection institute, issue an act on the cessation of protection and submit it to the nature protection institute in order to remove the protected area from the register of protected natural assets. Within a period of one month from the day of passing the cessation act, the Institute shall delete the protected area from the register of protected natural assets. In addition, the Republic Geodetic Authority shall delete the entry in the land registers or real estate cadaster.

LAND ACQUIRED BY THE CSO OR LOCAL GOVERNMENT TO KEEP THE LAND UNDEVELOPED PERMANENTLY

Land within the protected area is subject to the applicable protection regime. The land within the protected area may be privatly owned or publicly owned. Patchwork of protperty rights may exist. In addition, any entity, including local CSO or LSG may acquire land within the protected area. However, each owner of the land must comply with the nature protection regime and comply with the management programme of the managing entity.

The NPA provides that Republic of Serbia may expropriate land or immovable property within the protected area or otherwise limit ownership or other proprietary rights for purposes of the protection and conservation of the protected area in accordance with the general law regulating expropriation.[163]

Hypotetically, Republic, APV or LSG may expropriate land for the protective purposes in accordance with general rules governing expropriation (in case the owner is not willing to sell the property).

The CSO may acquire land in accordance with general rules regulating commercial transactions involving immovable property. As a general rule, land as an immovable property must be used for the purposes prescribed by the given category.

For example, Agricultural land may be used only for agricultural purposes in accordance with Agricultural Land Act.[164] Other uses of agricultural land are prohibited in pricniple. Agricultural land, however, may be converted into the pasture if belongs to the 4th or 5th quality class or into the the forest (any quality class).[165] Conversion must be approved by the MAFWM.

The Sparial Planning and Developemnt Act does not provide basis for conversion of the development land into other categories (agricultural land, forest land). On the other hand, the local environmental CSO would be able to keep the acquired development undeveloped. Namely, the Spatial Planning and Development Act prescribes that development land must be used in accordance with the purpose specified in the planning document, in a manner that ensures its rational use, in accordance with the law. However, the Act does not prescribe sanctions if owner decides to keep the land undeveloped.

[161] NPA, Art. 52.4.
[162] NPA, Art. 46.1.
[163] NPA, Art. 62.
[164] Agricultural Land Act, Art. 22.
[165] Agricultural Land Act, Art. 23.

Indeed, legal remedies to protect land, outside the protected areas, are available through the general tort rules and rules against nuisance or interference, which are rather inefficient against major sources of environmental pressure. However, in 2015 Serbia adopted the **Soil Protection Act**[166] regulating the regime of protection of land as a natural resource, nothwithstanding its legal and property status, which may serve as additional protection enforcement tool.

PROTECTION OF THE LAND AS A NATURAL RESOURCE

The Soil Protection Act (**SPA**) regulates soil protection and monitoring of the soil quality. The SPA applies to all types of land as a natural resource, regardless of the form of ownership, its purpose and use.

The SPA establishes the duty of care for owners or users of land, or by any operator of a facility whose activity may cause pollution or soil degradation.[167]

The SPA prohibits discharges and dispose of polluting, harmful and hazardous substances and wastewater to the soil and soil surface subject to the financial fines.

In addition, owners, users or operators may be held financially liable to carry out remediation of the soil in accordance with the remediation project in case concentrations of polluting, hazardous and harmful substances supersede a prescribed remediation value.[168]

PROTECTION OF RIVERS AND RIPARIAN AREAS WITHIN THE PROTECTED AREA

As means to safeguard biodiversity, geological and landscape diversity the NPA provides that an area may be designated as a protected area. The act of designation defines the boundaries of the protected area, protected values, the applicable protection regime, protective measures, prohibited and restricted activities. A managing entity of the protected area adopts management plan to implement protective measures.

The NPA defines eligibility criteria for designation of the protected area. Hypothetically, sections of rivers or their entire watercourses may be physically covered by boundaries of the protected area. However, the protected subject-matter in the protected area may or may not be river as such.

To be eligible for designation as such (river as a protected area), a river (or section of river) must be linked with the protected subject-matter of the NPA (biodiversity, geological and landscape diversity).

For example, a (section of) river together with its riparian zone may be designated as the protected area as an aquatic ecosystem.[169] As a result, works and activities that endanger a hydrological phenomenon or survival and preservation of biological diversity would have been prohibited in the (section) of river and within its riparian zone/belt designated as protected aquatic ecosystem.[170]

[166] "Official Gazette of the RS", no. 112/2015
[167] SPA, Art. 7.1 and 11.1.
[168] SPA, Art. 19. Remediation values are prescribed by the *Regulation on Limit Values of Polluting, Harmful and Dangerous Substances in Soil* („Official Gazette of the RS“, no. 30/2018)
[169] NPA, Art. 17.
[170] NPA, Art. 18.4

A (section of) river together with its coastal area may be protected as a landscape with outstanding qualities due to combination of its natural, historic, scenic and cultural values.

Finally, a (section of) river may be protected indirectly as a collateral of the protected area designated for some other reasons, or as an inherent element of otherwise complex interrelated values that exist in the protected area (biological, geological and landscape diversity).

Indeed, the preservation of river in "free-flowing condition" is not recognized as eligibility criteria for designation of (section of) river as the protected area. However, the NPA establishes other criteria of eligibility for protection that bear a resemblance to the concept of outstandingly remarkable values (ORVs) of US's The Wild and Scenic Rivers Act.

However, the level of protection of the river and riparian belt will depend on goals protected by the designation and applicable regime of the protection. Therefore, it is possible to achieve free flowing condition as a desired outcome, indirectly, at least within boundaries of the protected area and with adequate zoning of strict protection regime within designated area[171].

g. Regulatory Structure: Mitigation/Offsets:

REGULATORY STRUCTURE

The mitigation hierarchy is not developed in the Serbian environmental protection system as such.

The Environmental Protection Act sets framework principles of the environmental regulation and for specific regulatory environmental policies based on the prevention, precautionary approach and *polluter pays*.[172] Accordingly, the environmental protection system is based on set of measures, conditions and instruments that prevent, control, reduce and remedy all forms of pollution of the environment.[173]

These are rather unenforceable declaratory and aspirational provisions. They are made operational through specific legal instruments adopted to protect particular medium of environment, and individual approvals, consents and permits regulating individual plans, programmes and projects with significant environmental impact, prevention and control of industrial sources or streams of pollution or protection and use of natural resource.

As a result, the NPA regulates prohibitions, restrictions and compliance regime for developments and activities with (potential) impact on the protected natural resources and protected areas.

As a general rule, developments and activities that harm, distort or modify properties and values which were the reason for the designation of the protected area are prohibited (NPA, Art. 57.1). For example, if

[171]In accordance with the NPA, strict regime of protection (or first-degree protection) prohibits all developments and activities within the qualified zone of the designated protected area. In practice, however, the strict regime applies only to the fraction of the entire protected area.
[172] The Environmental Protection act, Art. 9.
[173] The Environmental Protection Act, Art. 2.1(2).

an area is designated to protect aquatic ecosystem, developments, work and activities that endanger the hydrological phenomenon or survival and the conservation of biological diversity are prohibited (NPA, Art. 18.4). These rules are applicable to any operation within the protected area on a case by case basis. In addition, proposed project or activity which *may* have a significant negative impact on the conservation objectives and the negative impact on the integrity of an *importan ecological area* may not be consented (NPA, Art. 10.8).

Furthermore, the NPA prescribes that within the **strict protection regime zone** of the protected area all activities are prohibited. In addition, within the zone of **active and pro-active protection regime** some activities are prohibited, and some restricted.

For any project or activity proposed in the protected area, the competent nature protection institute issues **the nature potection conditions**, an act that provides:

1. an **assessment** if proposed project or activity could be carried out from the point of view of the objectives of nature protection and adopted regulations and documents;
2. **conditions, i.e. prohibitions and restriction** under which the proposed works and activities can be implemented;
3. biological, technical and technological **measures** of nature protection to be implemented;
4. **Compensatory measures**, if there is a basis, in accordance with the NPA.

In case of the projects covered by the EIA Act regime the developer must surrender nature protection conditions issued by the nature protection institute together with the EIA study.

The developer's request to the competent authority to issue the consent to the EIA study contains information *on main alternatives* assessed to the proposed project (EIA Act. Art. 17.1(4)). The EIA Act does not set criteria for defining alternatives, if they are activity (technical/technology/design/leyout) related, scope, input or impact related, site related, etc. and if the proposal may be refused if stated alternatives are inedaquate as not being realistic, i.e. "practicable", "feasible", "relevant", "reasonable" and "viable".

The competent authority's **consent to the EIA study determines main preventive, mitigating and measures eliminating harmful effects to the environment to the proposed project**.[174] Namely, the competent authority decides on the adequacy of the preventive, mitigating and measured eliminating harmful effects to the environmnet proposed by the the developer of the EIA study, and not on the adequacy of the proposed location of the project compared to the „alternatives" and adequacy of stated „alternatives" to begin with.

Current wording, or order of provisions of the NPA, and the EIA Act do not clearly state in which circumstances the consent must be refused in any case, notwithstanding any proposed mitigating measure ("a **zero tolerance clause**"). For example, proviso of Art. 57.1 of the NPA that developments/activities that harm, distort or modify protected properties of the protected area are prohibited. The provision should be placed closer or next to the provision regulating power of the institute to issue the conditions (Art. 8 of the NPA) so that is clear that the institute must refuse to issue the conditions in such cases, notwithstanding the proposed mitigating measures (see *Stara Planina* Case below).

[174] EIA Act, Art. 24.2

Therefore, the duty to provide information on main alternatives to the proposed project is rather formalistic. Furthermore, the EIA Act does not provide guidelines on situations in which the consent must be refused.

DUTY TO CLEAN-UP AND LIABILITY FOR HARM TO THE PROTECTED NATURAL RESOURCE

Following the end of the consented activity the developer has duty to finance measures to *clean-up or to recultivate the site* (NPA, Art. 8.6) subject to the financial fine (up to 3.000.000,00 RSD, app. 30.000,00 $). The exact scope of duty is not clearly defined by the NPA, except that the clean-up must be performed in accodance with the NPA and applicable rules of specific regulation. Indeed, since clean-up is associated with the halting deterioration the scope of duty may not satisfy standards of full restoration to the baseline conditions/remediation in practice.

In any case, any harm to the protected natural asset caused by non-consented activity or as a result of non-compliance with the conditions of nature protection issued by the competent nature protection institute must be restored by the operator (NPA, Art. 13.1). The liability is strict. The competent nature protection institute shall assess the scope of harm and propose measures to the ME „to eliminate harmful consequences" (NPA, Art. 13.3). The operator shall finance the measures of the ME if it does not „eliminate consequences" of the harm alone (NPA, Art. 13.2). The NPA, however, does not set precise critera for scoping the liability in individual case, which is left to the discretion of the competent authorities. Indeed, the „elimination" may ammount to the full restitution/remediation of the lost natural resources, yet, they may as well come short to the full remediation of the lost resources to the baseline situation (but for the harm).

DEROGATION FROM THE PROHIBITION AND COMPENSATORY MEASURES

The Government may, *in accordance with law* derogate the prohibitions set by the prescribed protection regime of the designated area and authorize works, activities or projects in the protected area, in the case of **projects of general interest and national importance**, in particular in the fields of energy, transport infrastructure, water management, agriculture, tourism, sport, mining, nature and environmental protection, (NPA, Art. 57.2). The derogation under Article 57.2 is not qualified with any mandatory prior analyses of existence of alternative options, existence of overriding public interest, mandatory minimization, offsets or mandatory restoration as last resort.

The discretionary power of the Government appears to be wide. The proviso „in accordance with law" may suggests that the Government must respect condition set by the NPA in case of derogation from the prohibition of activities with significant impact. Namely, in accordance with Article 10 of the NPA a competent authority shall give consent to the project or activity with potential significant impact to **the important ecological area** if:

1. there is no other **alternative solution**;
2. in relation to important ecological area in which at least one priority habitat type and/or priority species is located, only if there are imperative reasons of overriding public interest, relating to the protection of human health and public safety, to beneficial effects of primary importance for environment and if there are other **prevailing reasons of public interest** with

previously obtained opinion of the European Commission. In relation to all other parts of the ecological network only if there are other imperative reasons of public interest, including the interests of a social or economic nature, which prevail over the interest of preserving these areas; and

3. ***compensatory measures*** necessary to preserve the overall coherence of the ecological network are implemented before granting approval to the project or activity.

Compensatory measures are defined in order *to mitigate damaging effects* which (may) occur as a result of the project or activity within the protected area or important ecological area.

Depending on the harm to the protected resource the ME may order:

1. **establishing a new site** that has the same or similar characteristics as a damaged site;
2. **establishing another site** important for the preservation of biological and landscape diversity, or for the protection of a natural good; or
3. in case it is not possible to carry out compensatory or remedial measures **a monetary compensation** in the value of the caused damage to the site.

For important ecological areas of the European Union NATURA 2000, the only possible compensatory measure is the establishment of a new site. The compensatory measures concerning the ecologically important area of the European Union NATURA 2000 are notified to the European Commission.

However, the problem is that rules limiting discretionary power to derogate from the prohibition are fully applicable only to the important ecological areas as part of the *ecological network* which have not been established yet. Furthermore, the legal effect of provisions related to the NATURA 2000 is postponed until the accession of Serbia to the EU. Rules on compensatory measures are not yet effective, and monetary compenstation is an option. Therefore, the competent authorities are not required to apply mitigation hierarchy prior to the approval meticulously. In principle, the developer is

not required to comply with the mitigation hierarchy to get the go-ahead consent to the project. Indeed the developer may be required to implement combination of measures to avoid, minimize or reduce impact of the proposed project in accordance with nature protection conditions and consent to the EIA

Case of small HP plants in protected area of Stara Planina

The local company proposed the development of the small HP plant within the protected area of park of nature "Stara planina". The act on designation of this protected area did not explicitly prohibit such development within zones of the second- and third-degree protection.* The development of a small HP plant was consented by the Institute for Nature Protection of Republic of Serbia in 2013.* The institute consented the project with specific mitigating conditions attached to the project and ME approved the EIA study in the EIA procedure on 18 July 2017.* However, a monitoring report of the Institute from 10 July 2017 discovered that certain protected species were present in the river and that any water abstraction would endanger them. Public utility company "Srbijašume" the managing entity of the protected area requested in december 2017 the reopening of the EIA procedure by the ME, based on the monitoting report. It also claiming that the EIA study failed to observe conditions issued by the Institute based on another expert report of the Forest Faculty of the University of Belgrade from 20 December 2017. The ME reopened the EIA procedure due to the new facts that if known at the time of the EIA procedure could have affected the content of the decision.* The operator challenged the ME's decision to reopen the EIA before the Administrative Court on 23 January 2018. The Court upheld the challenge. The ME brought the case to the Supreme Court of Cassation. The Supreme Court decided that the Administrative Court erred in law and that the ME had the right to reopen the case and quashed the action of the developer against ME's decision.*

The Supreme Court pointed at Art. 57.1 of the NPA and to the fact that report supplied by the managing entity suggested that the conditions set by the Institute were not met by the developer. Namely, Article 57.1 prohibits any activity that damage, distort or modify properties and values for which the area is protected.

The case illustrates that the regulatory system and practice of competent authorities do not provide efficient protection of the free-flowing condition against development of the small HP plants even for sections of rivers within the protected area. Nevertheless, with proper designation policy, i.e. by indicating in the text of the act on designation that small HP plants as *per se* prohibited development in all zones of the protection area the operator would have not been in the position to manipulate environmental consenting procedures.

- Government's Regulation on protection of Nature Park "Stara planina", "Official Gazette of the Republic of Serbia" No. 23/2009 (act of designation of the protected area), art. 4.2.
- Decision of the Nature Protection Institute of the Republic of Serbia 03 no. 019-291/8 of 18 December 2013.
- Decision of the Ministry of Environmental Protection No. 353-02-1374 / 17-16 dated 18.07.2017
- Decisions of the Ministry of Environmental Protection No. 353-02- 1374 / 17-16 of 23.01.2018.
- The Supreme Court of Cassation, Uzp 189/2018, 26. September 2018.

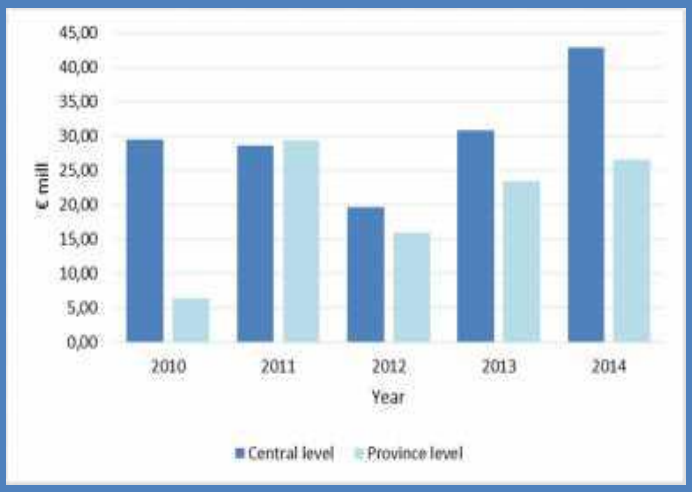
study (where applicable) even in case location-related alternatives are still open. The competent authorities and the Government enjoy wide discretion while setting the nature protection conditions, conditions to the EIA consent to the project, when deviating from the prohibition for the purposes of development of infrastructure of general interest and deciding on the applicability and type of the compensatory measure, including the monetary compensation.

h. Sources of Funding

NATIONAL SOURCES OF FUNDING

Serbia has not established sustainable system of financing environmental, nature protection and water protection policies. As stated by the European Commission in 2018 Report on Serbia „[p]redictable financing based on the polluter pays principle is needed to raise investment levels in the sector." [175]

Water sector revenues central vs provincial level



(Source: the Ministry of Environmental Protection http://www.ekologija.gov.rs/wp-content/uploads/eu_integracije/Radna_verzija_Post_skrining_dokumenta.pdf?lang=lat)

According to the Government's estimates, approximately € 600 million were available for environmental financing from public institutions at central and provincial level in period 2010-2014. [176] Additional € 158 million were available at local level in the same period. [177] Out of that app. € 350 million was generated from environmental protection charges [178] and € 250 milion from water charges.[179]

Nevertheless, out of the generated revenues from environemtnala and water charges at national level, the investment share is between 9-10%.[180]

No data on 2015-2018 have been sourced for environmnetal protection revenues yet. However, no dramatical changes to the data for 2010-2014 should be expected. Namely, the amendments to the Environmental Protection Act in 2016 introduced new financing facility the Green Fund.[181] The Green Fund is not a legal entity,

[175] The European Commission, *Serbia 2018 Report* Strasbourg, 17.4.2018 SWD(2018) 152 final, p. 79.
[176] The Government of the Republic of Serbia, "Transposition and Implementation of Environmental and Climate Change Acquis - CHAPTER 27: STATUS AND PLANS", Belgrade July 2015, p. 16 http://www.ekologija.gov.rs/wp-content/uploads/eu_integracije/Radna_verzija_Post_skrining_dokumenta.pdf?lang=lat accessed on 1 April 2019.
[177] Ibid. p. 17
[178] Ibid. p. 17.
[179] Ibid. p. 19.
[180] Ibid. p. 18-19
[181] The Environmental Protection Act, Art. 90.

but a register within the national budget recording funds intended for financing programs, projects and activities in the field of conservation, sustainable use, protection and improvement of the environment.[182] However the instrument is not yet operational.[183]

The projected water management budget (OPEX and CAPEX) at the level of the Republic between 2015 and 2019 were following:

2015	2.882.701.364,89 RSD[184]	App. € 24 million
2016	2.347.607.000,00 RSD[185]	App. € 19.3 million
2017	2.517.515.000,00 RSD[186]	App. € 20.3 million
2018	3.304.493.000,00 RSD[187]	App. € 27.9 million
2019	3.908.308.000,00 RSD[188]	App. € 30 million

PORTION OF THE REVENUES DIRECTED TO CONSERVATION OR MITIGATION-RELATED ACTIVITIES

The most of the revenues coming from the water charges are directed at financing day to day administrative costs and operational costs of the MAFWM/WD and PWMCs. For example, out of total revenues in 2014 € 24 million was directed to the finiancing administrative costs of WD and €23 million for financing operational and investment costs of water management. Out of €23 million for financing water management CAPEX was € 4 million.[189]

From 2015 to 2019 the projected OPEX and CAPEX were between €19.3 and €30 million (see table above) to finance annual water management programmes.[190]

There is no precise data available on the precise share of revenues directed to the river and/watershed protection and conservation purposes or mitigation-related activities. However, according to the annual water management plans **no or rather insignificant portion of money goes to the remediation or pollution mitigation related projects.**

[182] The Government's Decision on the establishment of the Green Fund of the Republic of Serbia, *Official Gazette of the RS*, no. 91/2016 and 78/2017.
[183] Ibid.
[184] The Government's Regulation on the establishment of the Water Management Program in 2015 "Official Gazette of the RS", no. 21/2015 and 109/2015
[185] The Government's Regulation on the establishment of the Water Management Program in 2016" Official Gazette of the RS no. 28/2016 and 108/2016
[186] The Government's Regulation on the establishment of the Water Management Program in 2017" Official Gazette of the RS no. 17/2017, 42/2017 and 110/2017
[187] The Government's Regulation on the establishment of the Water Management Program in 2018" Official Gazette of the RS no. 13/2018, 52/2018 and 94/2018
[188] The Government's Regulation on the establishment of the Water Management Program in 2019", Official Gazette of the RS no. 12/2019
[189] The Government of the Republic of Serbia, "Transposition and Implementation of Environmental and Climate Change Acquis - CHAPTER 27: STATUS AND PLANS", Belgrade July 2015, p. 19.
[190] Annual water management programme must not be confused with multiyear WMPs based on the water basin approach which were not adopted.

For example, in 2019 75.500.000,00 RSD (app. €635.055,00) shall be dedicated to the water protection from pollution. Out of that 30.000.000,00 RSD (app. €254.055,00) in 2019 shall be dedicated to the project construction of sewage sludge line to the wastewater treatment facility in the city of Šabac that started in 2017 and 45.500.000,00 (app. €254.055,00) to ongoing miscellaneous/non-specified pollution reduction activities.

More than 90% of the revenues from water charges are dedicated to the maintenance of the existing flood protection infrastructure and to for water supply infrastructure projects (dams for water accumulation, and water supply networks).[191]

Therefore, **revenues coming from the water charges are not available to finance the conservation or mitigation-related activities**.

PORTION OF THE REVENUES THAT COULD BE DEDICATED TO RIVER CONSERVATION OR MITIGATION-RELATED ACTIVITIES

The Use of Public Goods Charges Act[192] adopted in december 2018. codifies charges that had been scattered in separate legal instruments. This act establishes legal basis for introducing types of charges for different water uses and use of natural resources. It also defines the scope, users that may be covered and criteria for reducing or exempting users from the charges.

Revenues collected from users of the designated protected belongs to the managing entity.[193] As a result, during 2019, the managing entities of 20 designated protected areas adopted decisions on charges for use of these protected areas.[194] Some of the protected areas protects sections of rivers (Ovčar-Kablar Gorge, Pčinja

[191] The Government's Regulation on the establishment of the Water Management Program in 2019", Official Gazette of the RS no. 12/2019

[192]Official Gazette of the RS, no. 95/2018

[193] The Use of Public Goods Charges Act, Art. 110.

[194] ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENIH PODRUČJA SP „RESAVSKA PEĆINA" I SP „LISINE" I CENI USLUGA UPRAVLJAČASl. glasnik RS 20/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA NACIONALNOG PARKA „FRUŠKA GORA"Sl. glasnik RS 14/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA PARK PRIRODE „GOLIJA"Sl. glasnik RS 21/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA PARK PRIRODE „RADAN"Sl. glasnik RS 21/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA PARK PRIRODE „SIĆEVAČKA KLISURA"Sl. glasnik RS 21/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA PARK PRIRODE „STARA PLANINA"Sl. glasnik RS 21/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA PARK PRIRODE „ZLATIBOR"Sl. glasnik RS 21/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA PREDELA IZUZETNIH ODLIKA „DOLINA PČINJE"Sl. glasnik RS 8/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA PREDEO IZUZETNIH ODLIKA „KAMENA GORA"Sl. glasnik RS 21/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA PREDEO IZUZETNIH ODLIKA „LEPTERIJA - SOKOGRAD"Sl. glasnik RS 21/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA PREDEO IZUZETNIH ODLIKA „OVČARSKO-KABLARSKA KLISURA"Sl. glasnik RS 7/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA PREDEO IZUZETNIH ODLIKA „OZREN-JADOVNIK"Sl. glasnik RS 21/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA PREDEO IZUZETNIH ODLIKA „VLASINA"Sl. glasnik RS 6/2019, 15/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA SPECIJALNI REZERVAT PRIRODE „JERMA"Sl. glasnik RS 21/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA SPECIJALNI REZERVAT PRIRODE „SUVA PLANINA"Sl. glasnik RS 21/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA SPECIJALNI REZERVAT PRIRODE „UVAC"Sl. glasnik RS 20/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA SPECIJALNOG REZERVATA PRIRODE „JELAŠNIČKA KLISURA"Sl. glasnik RS 21/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA SPECIJALNOG REZERVATA PRIRODE „PEŠTERSKO POLJE"Sl. glasnik RS 8/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA SPOMENIK PRIRODE „LAZAREV

River Valley, Sićavačka Gorge, Jelašnička Gorge, Lazarev Canyon, Đerdap Gorge, etc.) or have (section of) reivers or streams within their territory (Stara Planina, Fruška Gora, Golija, Vlasina, Zlatibor, etc.). Therefore, some improvements in day-to-day financing of protection and conservation measures of riparian areas within the protected areas may be expected.

Revenues collected from water users belong the budget of the Republic and to the budget of the APV (for revenues collected in the territory of the APV). As described above, no significant cash flow towards protection of rivers can be expected from these financial resources.

However, according to Article 69 of the NPA designated area may be financed through the budgets of Republic, LSGs and APV and from the Green Fund. For example, the charges for conservation and improvement of the environment may be introduced by the LSGs to finance local programs for environmental protection which may include protected areas. In addition, **as of 1 January 2020 provisions of the Use of Public Goods Charges Act establishing water pollution charges will enter into force**. Revenues thereby collected will belong to the budget of the Republic. It still not clear if the money from the water pollution charges will go to the ME and Green Fund, however. If that will be the case, **indeed, some portion of revenues collected from the water pollution charges may become available to river conservation or mitigation-related activities as of 2020**.

PRE-ACCESSION FUNDS

In period 2010-2014, EU, through the Instrument of Pre-Accession (**IPA**) and bilateral donors allocated nearly €189 million for entire Serbian environmental sector.[195] IPA contributed with €140.9 million and bilateral donors with €48.05.

Similar level of funding from foreign sources in environmental sector can be expected in 2015-2020 period. IPA 2014-2020 made available €72 million for recovery from the floods that hit the Republic of Serbia in 2014 and for taking measures to prevent floods in the future.[196] App. €28.6 million is made available to waste water treatment and waste water management systems at the local level projects.[197]

INCENTIVES TO DEVELOPERS AND USERS TO STIMULATE PROTECTION OF RIVER CORRIDORS AND WATERSHED LANDS

There are incentives in force to encourage developers to avoid free-flowing rivers and to locate such facilities in more appropriate locations. This would probably violate the State Aid Act which prohibits financial advantages provided to the economic operator from public resources except if exempted by the Commission for the State Aid Control.

As of 1 January 2020, however, a developer/operator will have its water pollution charge reduced by 50% during the entire period of investment project to develop new waste-water treatment facility or reconstruction

KANJON"Sl. glasnik RS 21/2019; ODLUKA O NAKNADAMA ZA KORIŠĆENJE ZAŠTIĆENOG PODRUČJA SPOMENIK PRIRODE „PRERASTI U KANJONU VRATNE"Sl. glasnik RS 21/2019

[195] The Government of the Republic of Serbia, "Transposition and Implementation of Environmental and Climate Change Acquis - CHAPTER 27: STATUS AND PLANS", Belgrade July 2015, p. 20.

[196] The Ministry of European Integration http://www.mei.gov.rs/eng/funds/eu-funds/ipa-instrument-for-pre-accession-assistance/instrument-for-pre-accession-assistance-2014-2020/ accessed 1 April 2019.

[197] Ibid.

of the existing waste-water facility.[198] Indeed, this is a form of the state aid, which in principle must be cleared by the Commission for the State Aid Control.

However, in case of nature protection measures which may reduce the value and increase operating costs of the land or business within the protected area the NPA envisages the possibility to introduce monetary compensations or more favorable means of financing nature protection measures.[199] The financial instrument must be made operational by implementing act of the Government.[200] However, general or specific instrument has not been introduced so far, neither for protected areas nor for protection of river corridors and watershed lands.

Finally, if an operation has been consented but subsequently affected due to the restrictions ordered by the competent authority in order to safeguard the natural resource the operator has right to seek compensation from the State proportional to the harm sustained before the court.[201]

i. Conclusions and Recommendations:

CONCLUSION

Legal, institutional or policy instruments, as they stand now, do not provide a coherent, consistent, shared approach to create the DRPM that could achieve assured protection of free-flowing rivers in the Republic of Serbia (Serbia).

The NPA sets eligibility criteria for designation and rules prohibiting and restricting developments and operations within the protected area. Indeed, some eligibility criteria are comparable to the concept of outstanding remarkable values (ORVs) of the Wild and Scenic Rivers Act. However, rivers as such and **the free-flowing condition of rivers or section of rivers is not protected subject-matter by the NPA.** Furthermore, **the free-flowing condition of rivers or section of rivers is not the protected subject matter of the Water Act** and WMPs.

Indeed, the sections of river may form part of the area designated as protected by the NPA. For example, the protected area may be designated for purposes of protecting aquatic ecosystem as a protected subject-matter by the NPA. Furthermore, depending on the predominant value protected/purpose, a section of river and riparian areas may be protected as being part of a strict nature reserve, a special nature reserve, National park, a monument of nature, protected habitat, a landscape of exceptional qualities, and park of nature. In addition, such section of the river must be identified as a body of surface water within the protected area for the

[198] The Use of Public Goods Charges Act, 163.1.
[199] The NPA, Art. 108.1
[200] The NPA, Art. 108.2
[201] The NPA, Art. 11.

purposes of the integrated management of waters within the WMPs applicable to the water basin district and for setting additional measures of protection of the body of water in accordance with the PoMs.

Nevertheless, protection of the river or section of the river as part of the designated protected area does not prevent all developments and activities that may modify the free-flowing condition. Namely, the protected area is divided into zones with different degrees of protection. The strict protection, prohibiting all activities and developments, is available in limited ranges of the designated protected area. As a result, developments and activities that modify the flow of river are still possible in the zones of second- and third-degree regime of protection within the protected area. Therefore, developments, such as construction of power facilities and mini hydropower plants with a maximum power of up to 5 MW, or up to 30 MW are still possible in zones of second- and third-degree regime of protection, respectively.

The NPA does not provide for participation of the public concerned in the procedure for issuing the conditions of nature protection by the competent nature protection institute regarding the individual projects. As a result, the conditions of nature protection allowing such developments may not be challenged by the environmental CSOs before the Administrative Court.

Indeed, the hydropower plants were developed, or their development is ongoing in watercourses within the park of nature "Stara Planina" with only 3.23% of the area under the strict regime of the protection.[202] Moreover, development of hydropower plants within the protected area were consented following the procedure in accordance with the NPA[203] and EIA Act.[204]

Therefore, the NPA, the EIA Act and Water Act (as they stand now) do not provide adequate, coherent and consistent protection against developments modifying free-flowing condition of (sections of) rivers even within the designated protected area.

RECOMMENDATIONS

THE BUSINESS AS USUAL SCENARIO*, I.E. TO KEEP THE THINGS AND PRACTICE AS THEY STAND NOW, FALL SHORT FROM THE DRPM. AS A RESULT, THE FOLLOWING SCENARIOS TO MOVE FORWARD FROM THE BUSINESS AS USUAL SCENARIO TO THE DRPM WITH DIFFERENT DEGREE OF INTERVENTION COULD BE RECOMMENDED:*

1. *MODIFICATIONS OF EXISTING DECISION-MAKING PRACTICES WITHIN THE UNCHANGED REGULATORY REGIME;*
2. *MODIFICATIONS WITHIN THE EXISTING REGULATORY REGIME TO ACCOMMODATE THE DRPM;*
3. *ADOPTION OF THE NEW REGULATORY REGIME REGULATING SPECIFICALLY THE DRPM AND FREE-FLOWING CONDITIONS OF RIVERS WITH ALL ELEMENTS (PLANNING, DESIGNATION, ENFORCEABILITY, STAKEHOLDER INVOLVEMENT, AND ADEQUATE FUNDING);*
4. *ADOPTION OF THE ACT DESIGNATING INDIVIDUAL RIVER(S) AS FREE-FLOWING AND REGULATING SPECIFICALLY THE DRPM AND FREE-FLOWING CONDITIONS OF DESIGNATED RIVER(S).*

MODIFICATIONS OF EXISTING DECISION-MAKING PRACTICES WITHIN THE UNCHANGED REGULATORY REGIME

[202] Government's Regulation on protection of Nature Park "Stara planina", "Official Gazette of the Republic of Serbia" No. 23/2009 (act of designation of the protected area), art. 4.2.
[203] Decision of the Nature Protection Institute of the Republic of Serbia 03 no. 019-291/8 of 18 December 2013.
[204] Decision of the Ministry of Environmental Protection No. 353-02-1374 / 17-16 dated 18.07.2017

This scenario provides soft changes to the enforcement practices in accordance with the NPA, without amending the regulatory regime as such. This would mean advocating more stringent interpretation of NPA's Art. 57 prohibition of developments and activities affecting the protected areas by the competent nature protection institutes and by the ME within their existing discretionary powers conveyed by the NPA and by the EIA Act.

As explained, the nature protection institutes may recommend to the designating authority that certain developments and activities must be prohibited (which are otherwise only restricted) in accordance with the act on designation of the protected area even in the zones of second- and third-degree if they endanger the core values which were the reason of designation. Furthermore, they are in charge of issuing the conditions of nature protection within the development/activities consenting procedures. In addition, proper interpretation of the EIA act would mean that any project that satisfies Art. 57 of the NPA and other provisions of the NPA with similar effect may not be consented.

In particular, the advocating would be directed at institutes to accommodate the DRPM and safeguard free-flowing conditions of sections of rivers within the protected area:

1. To initiate new designations and introduce changes in the protection regimes in force in already designated protected areas:

   1.1 by using their power to propose prohibitions covering more developments and activities (including small HE power plants) and with wider territorial scope applicable to entire section of river and its riparian area within the proposed protected area in accordance with the future draft acts on designation of the protected areas;

   1.2 to propose extended scope of prohibited developments and activities and their territorial coverage in existing protected areas by proposing amendments of acts of designation in force to the competent authorities to include prohibition of small HE plants;

2. applying more stringent criteria when issuing conditions for nature protection to prohibit small HE plants and similar hard-core modifications to the entire section of rivers within the protected area by direct application of Article 57 of the NPA and similar provisions of the NPA (for example Articles 18.4 and 32.3 prohibiting activities that endanger aquatic ecosystems or protected habitat).

In addition, the advocating would be directed at the ME as a competent authority to:

1. seek, in accordance with its powers to control information gathering exercise EIA procedure, additional reports from nature protection institutes on applicability of Art. 57 of the NPA (and other provisions of the NPA with similar effect) to any proposed modification of free-flowing conditions of the entire section of river within the protected area;

2. to directly apply Art. 57 of the NPA against proposed projects on entire sections of rivers within the protected area as a legal base to refuse the consent to the EIA study for proposed development of small HE;

3. to recommend to the APV and LSGs the same approach for developments for which they are EIA competent authority.

The obvious advantage of this scenario is that it does not require going through the long procedures needed to amend existing legal regime. If welcomed by the competent authorities it may be a least time-consuming scenario. However, the approach relies on the discretionary power of competent authorities, it may have a limited reach, inconsistent results, and it is exposed to policy changes and changes in preferences of competent authorities. In addition, changes in protection regime may be unpopular with authorities in areas where modifications of free-flow conditions are already consented as it means dedicating financial funds for compensating operators. Finally, **the individual decisions against developments are subject to the legal remedies available to the developers**. On the other hand, the **NPA does not provide legal avenue to the environmental CSOs to challenge the decisions of nature protection institutes on the conditions to protect environment in the development/activity consenting procedure**.

Nevertheless, **the approach may be considered as a short-term measure/am immediate next step complementary to other proposed scenarios**, **pending the changes in the regulatory regime**, given that some rivers within the protected areas are exposed to the modifications as we speak.

Therefore, **one can identify**

1. **indicative list of exposed (section of) rivers with the free-flowing and ORVs potential**
2. **check if there are pending consent procedures before the ME and institutes and advocate refusal of consents;**
3. **consider available legal remedies; and**
4. **initiate designations and/or modification of existing protection regimes applicable to the protected area (with river sections) to prevent immediate harm by the most worrying activities pending the introduction of genuine DRPM regulatory system**.

MODIFICATIONS OF THE EXISTING REGULATORY REGIME TO ACCOMMODATE THE DRPM

This scenario proposes amendments to the existing NPA to accommodate the DRPM in the existing system of the nature protection. The NPA, as it stands now, does not recognize free-flowing conditions of (section of) rivers as a specific subject-matter worthy of protection and scientific basis for designation of the protected area. However, the NPA has existing apparatus which is operational and covers all phases required by the DRPM, planning, designation, enforceability, stakeholder involvement and funding and it is integrated with other legal instruments such as the EIA act and the SEA Act. Therefore, missing elements of DRPM could be grafted on the existing NPA structure.

Following amendments to the NPA would be suggested:

1. Introduction of a new provision/separate article within Section 2 (Protected Subject-Matter) of Title II of the NPA (Protection of Nature) defining the free-flowing conditions of (section of) rivers and ORVs as a specific subject-matter and self-standing ground to designate certain (section) of river as

protected area. The specific elements of the concept of the free-flowing condition could be developed by the ME through explicit power to adopt the rule-book.

2. Introduction of (section of) river in the free-flowing condition as new genuine and self-standing type of protected area besides existing ones (strict nature reserve, a special nature reserve, National park, a monument of nature, protected habitat, a landscape of exceptional qualities, and nature park). This would require amendment of art. 27 within Title III (Protected Natural Goods) of the NPA to introduce new type of the protected area and addition of a separate article within Section 1 (Protected Areas) of Title III defining main features of the free-flowing rivers as a protected area and prohibited developments and activities. The details regarding main features and classification (wild, scenic, recreational) could be left to the ME to be developed in the rule-book.

3. Introduction of the rivers in the free-flowing condition in the separate article within Section 1 (Protected Areas) of Title III must be supplied with the directly applicable prohibition of all developments and activities that may harm free-flowing condition within the entire area protected as a river in the free-flowing condition (the proviso should include exempli cause any HE power plant big or small and any other free-flowing modifying developments as automatically prohibited even if proposed with mitigating measures and notwithstanding the classification of the river section as (wild, scenic, recreational)).

4. Introducing more explicit provisions giving more robust powers to the institutes for nature protection and to the ME to refuse consent to the developments/activities within the (section of) rivers designated as free-flowing. Namely, current wording of the NPA and the EIA Act do not clearly state in which circumstances the consent must be refused in any case, notwithstanding any proposed mitigating measure ("**zero tolerance clause**"). Therefore, link between Art. 57.1 of the NPA prohibiting activities that modify protected property of the free-flowing river and power to refuse consent by competent authorities must be clear.

5. Introduction of legal basis for environmental CSOs to challenge decisions of the nature protection institutes that allow harmful developments/activities (conditions on the nature protection) within and the (section of) rivers designated as free-flowing and in buffer zones.

6. Extending the SPECIAL ADMISSIBILITY ASSESSMENT PROCEDURE (SAA) to the (section of) rivers designated as free-flowing.

The approach could be qualified as realistic, a change that competent authorities and stakeholders like MAFWM, PWMCs and MME may swallow now. Furthermore, the drafting of amendments may be less time-consuming then drafting the specific DRPM instrument.

The potential setback to the approach is that competent authorities may drag their feet in the process of designation of the (section of) rivers in the free-flowing condition under pressure of the interested stakeholders. Indeed, the MAFWM and PWMCs may see the designation as loss of their power to control and permit activities in certain waters, and loss of potential revenues (at least for some proposed rivers). The MME may be prone to the regulatory capture by the small HE power plant developers.

In addition, the degree of amendments achieved may provide less sophisticated DRPM regime.

ADOPTION OF THE NEW REGULATORY REGIME REGULATING SPECIFICALLY THE DRPM AND FREE-FLOWING CONDITIONS OF RIVERS WITH ALL ELEMENTS (PLANNING, DESIGNATION, ENFORCEABILITY, STAKEHOLDER INVOLVEMENT, AND ADEQUATE FUNDING)

Adoption of the specific DRPM regime using US's Wild and Scenic Rivers Act, Swedish legislation enacted in 1983 or Finish Wild River Act of 1987 as models or any other source of inspiration. Indeed, this is a straightforward approach.

However, the drafting may be time-consuming and difficult task for the ME, whose capacities are limited and dragged by the EU accession agenda.

To take the MAFWM on board will be difficult and it would take time as well. MME may oppose the draft legislation too.

In addition, even if the draft once finished gets the green light, its effective coverage may be limited through the process of designation of rivers. Indeed, the opposition by interested stakeholders may exist in the designation phase as well.

ADOPTION OF THE ACT DESIGNATING INDIVIDUAL RIVER(S) AS FREE-FLOWING AND REGULATING SPECIFICALLY THE DRPM AND FREE-FLOWING CONDITIONS OF DESIGNATED RIVER(S).

This option is like the previous one, except, the instrument would designate (section of) river(s) as free-flowing upfront and apply the DRPM regime immediately upon adoption of the act. Indeed, the instrument may be open for designation of additional rivers, as well. The approach, in other words, allows to skip the designation procedure.

The potential setbacks are comparable to the previous option. In addition, ME and institutes for nature protection may be skeptical with upfront designation without proper expert studies.

On the other hand, it may happen that certain scientific data are already available and that they can be used for identifying (sections of) rivers satisfying *prima facie* the free-flowing condition criteria. Indeed, the designation of the existing protected areas are supported by the expert studies of the institutes. Information available in such documents could be a useful starting point to identify (section of) rivers with the free-flowing potential.

Annex 1 Examples of projects subject to the EIA process

List 1 Projects examples

- Thermal power plants, heating plants, gas turbines, internal combustion engine units and other combustion plants including steam boilers with a power of 50 MW or more
- Municipal waste landfills for over 200,000 inhabitants.
- Exploitation of groundwater or enrichment of groundwater in which the annual volume of exploited or enriched water is equal to 10 million m^3 or more
- Wastewater treatment plants in settlements of over 100,000 inhabitants.
- Dams and other objects intended for the retention and accumulation of water in which water that touches, or additionally retains, or accumulated water exceeds the amount of 10 million m^3
- Inland waterways where an international or interstate navigation regime applies, as well as ports and ports located on an inland waterway with an international or interstate navigation regime, regulation works on inland waterways allowing the passage of vessels to over 1350 t.
- Activities and installations subject to the integrated permits (IPPC permit)

List 2 Projects examples

- Thermal power plants, heating plants, gas turbines, internal combustion engine units and other combustion plants including steam boilers with a power from 1 to 50 MW
- **Hydropower plants with over 2 MW of power**
- Systems for irrigation and drainage - meliorative systems covering more than 20 ha area
- All surface mining sites projects not listed in List 1
- Pipelines for the transport of wastewater over 10 km long
- Shipyards (manufacture and / or repair of ship hulls or engines or parts of the ship) for ships 20 m long or longer
- Installations for groundwater abstraction and processing, filling and packaging
- Facilities for intensive cattle breeding with capacity of 200 or more
- Animal slaughtering plants with apacity from 3 t to 50 t per day
- Marinas with accompanying facilities, the area of closed water surface exceeds 1,000 m^2 or has at least 100 berths
- Inland waterways not subject to international or interstate navigation, as well as ports and ports located on an inland waterway not subject to an international or interstate navigation regime, including ports or ports intended for loading and unloading passengers or goods.
- Channels, embankments and other facilities for flood protection
- Dams and other objects intended to retain or accumulate water
- Facilities for public water supply - water supply sources with water intakes, transport of drinking water, water treatment plants

Annex 2 Prohibited operations

Prohibited operations under strict regime of protection (the first degree protection)

- All developments and all type of uses of natural resources

Prohibited operations under active regime of protection (the second degree protection)

- the construction of industrial, metallurgical and mining facilities
- the contruction of asphalt bases
- the construction of refineries, as well as facilities for storage and sale of oil and liquified petroleum products
- the construction of thermal power plants and wind turbines,
- the construction of ports and commodity centers, airports, service warehouses, warehouses and cold storage facilities
- the construction of week-end houses and other family holiday facilities
- exploitation of mineral resources
- exploitation of peat and materials of river beds and lakes
- natural lawn harvesting, commercial fishing, introduction of invasive allochthonous species
- construction of facilities for recycling and waste incineration and waste landfills

Prohibited operations under proactive regime (the third-degree protection)

- the construction of oil refineries, chemical industry, metallurgical and thermal energy facilities
- the construction of storage for oil, petroleum products and gas
- introduction of invasive allochthonous species and development of landfills

Annex 3 Restricted operations

The restricted operations under the second-degree protection regime are:

- the regulation and reconstruction of watercourses, the formation of water accumulations in which water that touches or additionally retains or accumulates water limits the amount to a total of 10 million m3, melioration and other hydrotechnical works, to an area of up to a total of 5 ha;
- **construction of hydropower plants with individual power up to 5 MW;**
- the construction of bio-gas power plants and power plant up to a total of 1 MW, while the construction of solar power plants is limited to a capacity of up to 50 kW;
- facilities for tourist accommodation, catering, nautical tourism, tourist infrastructure, and the construction of smaller facilities for the presentation of natural values or traditional-style facilities that are in accordance with the needs of cultural, rural and ecotourism and maintenance of public ski resorts;
- construction of facilities for transport, energy, communal and other infrastructure of residential and economic facilities of agricultural and forest farms, only on facilities that do not adversely affect the favorable position of animal or plant species, their habitats, natural values, the beauty of the area, peat bogs;
- use of stone, clay and other materials in a traditional manner on the surface of the terrain up to 150 m2;
- facilities for the conventional cultivation of domestic animals and small animals within the existing rural households' capacity:
- up to 1,000 places for broilers,
- up to 500 places for livestock,
- up to 10 places for cattle;
- fishing on recreational and scientific research, while on certain parts of watercourses, which are important for reproduction, can be prohibited;
- hunting for sanitary hunting of wildlife, protection and improvement of game populations in hunting grounds and measures for improving game habitat;
- collection of mushrooms, wild plant and animal species only for collection on private plots;
- measures of forest management and forest land determined in the plans and bases of forest management, which ensure a moderate increase in the area under forest ecosystems and improvement of their composition, structure and health condition, preservation of the diversity and originality of trees, bushes and other plant and animal species in forest stands;
- maintenance of existing agricultural monocultures;
- the introduction of species of foreign species to the wild plant and animal world of the region in which the protected area is located;
- the use of chemical agents for the use of artificial fertilizers on arable land, and for chemicals for the protection of plants with the consent of the ME;
- collection and transport of non-hazardous waste.

The restricted opertations under the third-degree protection regime are:

- the construction of other industrial facilities, such as the construction of smaller facilities for predominantly local needs, as well as the **construction of power facilities and mini hydropower plants with a maximum power of up to 30 MW**;

- the construction of bio-gas power plants and the bio-gas power plant to a total of 5 MW, while the construction of solar power plants is limited to a capacity of up to 100 kW;
- construction of wind generators, and only for construction in significantly changed, anthropogenic areas in the marginal zones of the external boundaries of III degree;
- construction of asphalt bases on smaller plants, which can be disassembled, capacity up to 50 t per hour only in significantly changed, anthropogenic areas in the marginal zones of the external boundaries of III degree;
- construction of tourist accommodation facilities and public ski resorts, infrastructure networks and infrastructure facilities in accordance with the sustainable use of natural values and the capacity of the area;
- warehouses of industrial goods and construction materials and cottages, at the marginal parts of the protected area and along the existing settlements;
- exploitation and primary processing of reserves of mineral resources and geothermal resources at a distance greater than 2-3 km from zone I and II protection regime;
- development of waste management facilities, to smaller waste management facilities, which are used for the collection, storage and treatment of non-hazardous waste. Disposal of waste is prohibited within the boundaries of the protected area, in accordance with the law;
- the construction of settlements and the expansion of their construction areas, the construction within and around the existing settlements and the construction of individual residential buildings and small industrial and commercial facilities. It is not allowed to expand existing settlements in the direction of the areas in regime I and II of protection;
- fishing - on recreational, rehabilitation and scientific research, with the fact that on certain parts of the waterway, which are important for reproduction, it can be prohibited;
- hunting - the need to maintain optimal number and health status of hunting species populations;
- hunting - protection, management, hunting, use of game populations in hunting grounds, conservation and measures for improving game habitat and protection, editing and maintenance of hunting grounds;
- the formation of forest monocultures of allochthous species on forest land, except in order to prevent erosion and rehabilitation of devastated and infertile areas;
- maintenance of existing agricultural monocultures;
- the use of chemicals on the use of artificial fertilizers on arable land, and for chemical plant protection products with the consent of the Ministry.