

Template Outline for DRPM Country Report

Title: Investigation of the Legal, Policy and Institutional Feasibility of Establishing a Durable River Protection Mechanism (“DRPM”) in Croatia

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

A ‘Durable River Protection Mechanism’ has the following components:

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

b. **Brief Overview of the Government Structure and the Legal and Institutional Framework in Croatia**

Provide a brief overview of the government structure in Croatia.

The sovereign state of Croatia (Republic of Croatia) is a republic governed under a parliamentary system. Croatia is a member of European Union since 2013. Government powers in Croatia are divided into legislative, executive and judiciary powers. The President of the Republic (Croatian: *Predsjednik Republike*) is the head of state, directly elected to a five-year term and is limited by the Constitution to a maximum of two terms. In addition to being the commander in chief of the armed forces, the president has the procedural duty of appointing the prime minister with the consent of the parliament, and has some influence on foreign policy. The most recent presidential elections were held on 11 January 2015, when Kolinda Grabar-Kitarović won. The Government is headed by the Prime Minister, who has four deputy prime ministers and 16 ministers in charge of particular sectors of activity. As the executive branch, it is responsible for proposing legislation and a budget, executing the laws, and guiding the foreign and internal policies of the republic. Since 19 October 2016, Croatian Prime Minister has been Andrej Plenković.

A parliament (*Sabor*) holds legislative power.

The last parliamentary elections in Croatia were in 2016 when the ruling party, HDZ (Croatian democratic Union) gained 55 of 151 seats in Parliament. The second biggest party, SDP (Social Democratic Party) currently has 31 seats in the Parliament with several of his former members leaving the party but remaining in the Parliament as independent. Current Prime Minister Andrej Plenkovic is the 12th HDZ Prime Minister and HDZ has led 12 out of 14 Croatian governments since 1990. The Prime Minister Tihomir Oreskovic, who led the HDZ coalition government following the 2015 general elections, was only 146 days in the office. The former HDZ president Tomislav Karamarko resigned in 2016 following allegations for corruption.

Most Croatian Prime Ministers did not politically survive to have a second mandate. The only exception is Ivo Sanader who did win the second term but did not finish it. He resigned to be later accused, arrested, charged, tried and sentenced in the first instance rulings for corruption and embezzlement of public funds. Sanader is now in the process of several appeal procedures to the first instance court decisions and was just recently sent to prison.

In addition to divergence of the Prime Minister with many conservative forces in the country, including the President, when it comes to a number of political and social issues in the country, the center of the political debate in 2018 in Croatia was an economic hardships of the near bankruptcy of the largest Croatian company Agrokor in 2017. Problems of keeping afloat shipbuilding industry in Croatia culminated also in 2018 and continued in 2019. Also in 2018 ministry of economy Martina Dalic had to resigned and one of the regional bosses in HDZ, Darko Milinovic gave his resignation in protest after the appointment of a new director of the Plitvice Lakes National Park because the selected director was not the choice of the regional HDZ office but was nominated in Zagreb by the central leadership¹.

Although, all aforementioned is creating a substantial political burden for the Prime Minister it seems as if the opposition in Croatia is weaker than ever before. According to the polls, every political party is losing support of the voters. SDP members in the Parliament are resigning and becoming independent and it seems that Plenkovic and his government, despite constants pressure from different angles – political, economic, social issues and foreign policy challenges – are successfully avoiding ambushes.

¹ Žaklina Kuljanac, Croatia in 2018: a political year under review, Stability of government and HDZ despite crises (December, 2018) <https://china-cee.eu/2018/12/20/croatia-political-briefing-croatia-in-2018-a-political-year-under-review-stability-of-government-and-hdz-despite-crises/#>

How are laws enacted in the country? Are there other official actions that have the force of law? (e.g. executive orders, legislative proclamations, agency administrative designations?)

Croatian law is divided into two principal areas—private and public law. By the time EU accession negotiations were completed on 30 June 2010, Croatian legislation was fully harmonized with the Community acquis.

The highest piece of legislation is the Constitution adopted on December 22, 1990. The Constitution was amended 10 times and the last amendment was in 2014.

Parliament holds a legislative power in Croatia so all laws (zakoni) are enacted by it. The Government of the Republic of Croatia as the head of the executive power is the main initiator of the adoption of legislation adopted by the Croatian Parliament as the legislator. According to the Constitution of the Republic of Croatia, every member of the parliament, parliament parties, working bodies of the Croatian Parliament and the Government have the right to propose legislation.

Also, the Government issues specific legislative acts which are regulations (uredbe), decisions (odluke), conclusions (zaključke) and solutions (rješenja).

In addition to aforementioned, each Ministry issues ordinances (pravilnike) for area of their responsibility and according to different laws.

Describe the Legislative, Executive and Judicial branches of government and how they interact with one another.

The Government proposes laws and other acts to the Croatian Parliament, as well as the state budget and the annual accounts, it executes laws and other decisions by the Croatian Parliament, adopts regulations for the implementation of laws, conducts foreign and internal policies, directs and supervises the work of state administration, takes care of the economic development of the country, directs the activities and development of public services and performs other tasks prescribed by the Constitution and the law.

The **Croatian Parliament** decides on the enactment and amendment of the Constitution, enacts laws and the National Budget, declares war and proclaims peace, passes declarations that express the policies of the Croatian Parliament, adopts the national security and defense strategy for the Republic of Croatia, conducts civilian oversight of the armed forces and security services of the Republic of Croatia, decides on changes to the borders of the Republic of Croatia, calls referendums, and pursuant to the Constitution it elects, appoints and dismisses—and oversees the work of—the Croatian Government and other bodies vested with public authority accountable to the Croatian Parliament. The Parliament is authorised to make decisions if a majority of members are present at sessions, except in cases specified otherwise by the Constitutions of the Republic of Croatia or the Standing Orders. Sessions of the Croatian Parliament are public. Besides plenary sessions, the work of the Croatian Parliament is also

carried out by its working bodies, which are established in accordance with the Standing Orders of the Croatian Parliament.

The main national courts are the **Constitutional Court**, which oversees violations of the Constitution, and the **Supreme Court**, which is the highest court of appeal. In addition, there are also Administrative, Commercial, County, Misdemeanor, and Municipal courts. Cases falling within judicial jurisdiction are in the first instance decided by a single professional judge, while appeals are deliberated in mixed tribunals of professional judges. Lay magistrates also participate in trials. State's Attorney Office is the judicial body constituted of public prosecutors that is empowered to instigate prosecution of perpetrators of offences.

How are legislative representatives elected? How are agency or department officials appointed?

According to the 1990 Constitution, the Croatian Parliament may have a minimum of 100 and a maximum of 160 members, who are elected directly by secret ballot based on universal suffrage for a term of four years. Parliamentary terms of office are not binding, while members have legal immunity.

Currently the Croatian Parliament has 151 members who were elected on 11 September 2016. Their mandate began on 14 October 2016.

How are administrative arrangements established to implement policy objectives?

In Croatia, state administration bodies are ministries (ministarstva), state administration organisations (središnji državni uredi), state administration offices (državne upravne organizacije) and state administrative offices in counties (uredi državne uprave u županijama). Ministries, state administration organizations and state administration offices are central state administration bodies, while state administration offices counties are established as state administration offices of the first instance in regional self-government units. The activities of the state administration defined by a special act may be transferred to bodies of local and regional self-government units or other legal persons vested with public authority based on law. The activities of the state administration include the immediate implementation of acts, issuing regulations for their implementation, carrying out administrative oversight and other administrative and professional activities².

For the purpose of carrying out specific state administration activities within the competence of central state administration bodies, regional units may be established in counties, cities and municipalities.

For the purpose of carrying out specific state administration activities within the competence of state administration offices in regional self-government units, branch offices may be established in cities and municipalities.

² Act on the State Administration system (Zakon o sustavu državne uprave) (O.G. [150/11](#), [12/13](#), [93/16](#), [104/16](#))

Currently, there are 20 ministries in Croatia, 6 state administration organizations and 5 state administration offices³.

Describe the political dynamic in the country and how political forces influence legal and institutional arrangements for environmental protection in the country.

Political forces have large influence on different institutions as well as on legislation process. As described above the ruling parliament party currently is HDZ (Croatian democratic Union). It is important to mention that this political party has been the ruling party for almost 20 years since 1991 when Republic of Croatia declared independence from Yugoslavia since it lost parliament elections (from SDP) only 2 times. Current minister of Environment Protection and Energy is member of HDZ and he was appointed to that position in June 2017. In those 2 years many of projects with major influence to environment were approved such as hydro-power plant Kosinj on river Lika which is a controversial project planned more than 40 years ago.

Actually, one project with major influence to environment and nature which is construction of LNG (liquefied natural gas) terminal on the island of Krk, can perfectly illustrate political dynamic in the country as well as political influence to decision making process in environmental matters. So, the Ministry of Environment Protection and Energy (MOEPE) is the institution which issues approval of the EIA for that project. One of the important conditions to start the EIA procedure is that the project is in line with spatial plans, regional and local. This project was not in line with the regional and local spatial plan, but the Ministry of Construction and Spatial Planning upon request from MOEPE issued a decision that the project is in line with the regional and local spatial plans. Also, this decision was later used as proof in the court procedure which was conducted before Administrative Court based on complaints from the County, municipality and 2 environmental CSOs. Besides that, since regional and local government, local community and several environmental CSOs were opposing the project, the MOEPE prepared the Law on LNG which was adopted by the Parliament and the Government adopted decision on financing the project which happened in the middle of the court procedure. Of course, all that presented the pressure on the Administrative Court, which rejected all the complaints and ruled in favor of the MOEPE.

c. Environmental Law:

Describe the framework for environmental law in the country.

There are 3 basic and the most important Acts in Croatia which regulate environment, nature and water management and protection on national level in Croatia and those are:

Environmental Protection Act (OG 80/13, 153/13, 78/15, 12/18, 118/18⁴) - A fundamental law not only for Croatia's environmental policy but also for Croatia's sustainable development policy; defines basic concepts related to sustainable development and defines state institutions, their

³ <https://gov.hr/ministarstva-i-drzavna-tijela/58>

⁴ http://narodne-novine.nn.hr/clanci/sluzbeni/2013_06_80_1659.html

powers and obligations in drafting relevant policy documents related to natural resources. This Act also contains provisions on fines for anyone who violates rules, obligations or powers provided in the Act.

Nature Protection Act (OG 80/13, 15/2018)⁵ - The basic law for Croatia's biodiversity management policy, but indirectly through other renewable natural resources such as water, soil, air and forests. This Act also contains provisions on fines for anyone who violates rules, obligations or powers provided in the Act.

Water Act (OG 153/2009, 63/2011, 130/2011, 56/2013, 14/2014, 46/2018⁶) - The basic law that provides the basic institutional framework for quality management policy and quantities of water resources. This Act also contains provisions on fines for anyone who violates rules, obligations or powers provided in the Act. It is important to mention here that Water Act was just recently amended again and according to this amendment gravel and sand extraction from rivers will be much easier and will not have to undergo strict environmental procedures as before. This was adopted upon pressure from several regions and reasoned with purpose of the protection from the flood. Environmental CSOs in Croatia believes that this is unconstitutional and that this amendment is not in line with the WFD so it presents additional threat to further degradation of river ecosystems.

Besides those 3 general acts there is a set of other different laws, ordinances and regulations which regulated other environmental subareas (air, climate, sea, etc.), different environmental procedures (EIA, SEA, environmental permit, etc.) and different threats to environment (waste, chemicals, energy, etc.).

How are environmental laws administered in the country?

Ministry of Environment Protection and Energy⁷ is the main state administrative body responsible for environmental laws implementation. The scope of the Ministry covers activities related to protection and preservation of the environment and nature in accordance with the policy of sustainable development of the Republic of Croatia, activities related to water management and administrative and other activities in the field of energy. Current minister is Mr Tomislav Ćorić and he has 3 state secretaries (državni tajnici) which are Mile Horvat, Ivo Milatić and Mario Šiljeg. There are also 5 assistants to minister (pomoćnici ministra) responsible for different sectors and those are:

Mr Igor Čižmek, Assistant Minister for Climate Action, Sustainable Development and Protection

⁵ http://narodne-novine.nn.hr/clanci/sluzbeni/2013_06_80_1658.html

⁶ <https://www.zakon.hr/z/124/Zakon-o-vodama>

⁷ <https://mzoe.gov.hr/>

of Air, Soil and Light Pollution, Elizabeth Kos, Assistant Minister for Water Management and Maritime Protection, Igor Kreitmeyer, Assistant Minister for Nature Protection, Anamarija Matak, Assistant Minister for Environmental Impact Assessment and Sustainable Waste Management and Domagoj Validžić, Assistant Minister for Energy.

The Ministry also has administrative oversight and supervision over professional work of:

The Environmental Protection and Energy Efficiency Fund (FZOEU)

State Hydrometeorological Institute (DHMZ)

Croatian waters (Hrvatske vode) and

National parks and nature parks⁸ (note: described later in the text)

The Environmental Protection and Energy Efficiency Fund⁹ (FZOE) was established under the provisions of Article 60, paragraph 5, of the Environmental Protection Act (OG [82/94](#) and [128/99](#)) and Article 11 of the Energy Act (OG [68/01](#)). In accordance with the provisions of the Environmental Protection Act, the Fund is established for the purpose of securing additional resources for the financing of projects, programmes and similar activities in the field of conservation, sustainable use, protection and improvement of the environment. Under the provisions of the Energy Act, the Fund is established for participating with its resources in the financing of the national energy programmes, with a view to achieving energy efficiency and use of renewable energy sources.

Croatian Waters¹⁰ (Hrvatske vode) are the main legal entity in Croatia responsible for water management and implementation of water policy (drafted by the Ministry of Environment and Energy). However, due to a high concentration of resources, both material and human resources, within the Croatian Waters their role in Croatian water policy is significantly more important than just policy implementation. *De facto* Croatian water policy creation is heavily influenced by Croatian Waters and their vested interests.

Croatian Meteorological and Hydrological Service¹¹ (DHMZ) is a government body, which manages the meteorological and hydrological infrastructure, air quality monitoring infrastructure, as well as the national archives of meteorological, hydrological, air quality and other relevant data.

Besides aforementioned institutions set at national level, each regional level government - county (županija) - has its own responsibility related to environment in general, including

⁸ <https://www.parkovihrvatske.hr/parks>

⁹ <http://www.fzoeu.hr/>

¹⁰ <https://www.voda.hr/>

¹¹ <https://meteo.hr/>

responsibilities for water and nature management. There are 21 counties and each of them has either separate departments for environment (nature and water included) either these sectors form parts of other departments, e.g. spatial planning or similar. Based on the same principle, cities and even some municipalities, i.e. local level government, have their departments for environment and those departments are responsible for water and nature management, too.

Is there a process for conducting environmental assessments of the environmental impacts of major infrastructure projects in the country?

According to current legislation in Croatia there are several procedures in which different impacts of major infrastructure project to environment are assessed. The most important one is the **Environmental Impact Assessment**¹² (OG 80/13, 153/13, 78/15, 12/18, 118/18), which is the assessment of possible significant effects of the specific interventions on the environment, i.e. the impact on: soil, water, sea, air, forest, climate, people, wildlife, landscape, material assets, cultural heritage, taking into account their interrelationships (EIA). This procedure is determined by Environment Protection Act but also details of the procedure, responsible authorities and the list of projects for which EIA is mandatory (or at least the screening) is regulated by **Regulation on environmental impact assessment** (OG 61/14, 3/17).

Also, according to EPA there is procedure of **strategic environmental impact assessment**¹³, which is the assessment of possible significant effects on the environment that may come into existence by the implementation of a strategy, plan or program (SEA). In this procedure cumulative impact environmental impact of different projects determined in, for example, spatial plan, is assessed. In addition, EIA procedure can be implemented within SEA procedure.

In addition to this, there is also important to mention the process of the adoption of the spatial plans since all documents of spatial planning during the process of adopting must undergo the procedure of public debate on the draft spatial plan, which includes the participation of government bodies, lower levels of government, legal persons with public authorities and citizens. It is crucial to note that the process of adopting a spatial plan is the first in a series of procedures by which decisions on the environmental matters are made. Namely, in the spatial plan possible locations for specific interventions to the environment are determined, and a basis for possible conversion of the land and similar issues is prepared. So, it is very important to be involved in the process of making, changing or modifying spatial plan because it is the basis for all other procedures in environmental matters, in which public participation is possible.

¹² <https://mzoe.gov.hr/puo-spuo-4012/4012>

¹³ <https://mzoe.gov.hr/puo-spuo-4012/4012>

d. Water Resource Management:

What is the current system of river or watershed planning, designation, monitoring, enforcement and stakeholder involvement functions for freshwater conservation?

Are there examples of river basin commissions in the country? (or similar kinds of institutions that bring together stakeholders to oversee river management?) (either local, regional, or national?)

There are no examples of river basin commission in the country but Croatia has experience with river basin commissions at international level. Croatia is part of the Danube international RBD and the Sava river basin, a sub-basin of the Danube international RBD. Both the Danube and the Sava have permanent bodies that oversee cooperation and the preparation of their RBMPs: Croatia is a full member of the International Committee for the Protection of the Danube River¹⁴, and also of the International Sava River Basin Commission¹⁵. Further on, regarding transboundary water management, Croatia signed bilateral agreements with bordering countries (Bosnia and Herzegovina, Hungary, Montenegro and Slovenia). All these bilateral agreements have set up joint committees or commissions for water management.

Is there a requirement for river basin management plans to be prepared? Who prepares such plans? For which rivers are plans prepared? Once a plan is prepared and approved, how is the plan enforced? What are the river basin governance mechanisms that exist once a plan is prepared? Are there examples of River Basin Commissions that oversee the management issues for the river?

River basin management plans (RBMP) are prepared on the level of river basin districts (RBDs)¹⁶. Croatia has two river basin districts: the Danube RBD and the Adriatic RBD¹⁷. RBMP is enacted for a period of six years, after which period is amended for the following six year period¹⁸. Nonetheless, RBMP can be supplemented with detailed management plans for sub-basins, small basins and sectors or plans related to other issues of interest for water management¹⁹.

The Government of the Republic of Croatia enacts RBMPs for the RBDs²⁰. Hrvatske vode (Croatian Waters)²¹, the national institution responsible for water management, is responsible for the

14 <https://www.icpdr.org/main/>

15 <https://www.savacommission.org/index.php?l=hr>

16 Article 36(1) Water Act

17 Article 31(1) Water Act

18 Article 36(4) Water Act

19 Article 36(6) Water Act

20 Article 36(1) Water Act

21 Article 186(2) Water Act

preparation of planning documents for water management, *inter alia*, RBMPs. Further on, their responsibility is the enactment of detailed management plans and programmes for sub-basins that complement river basin management plans²². A Strategic Environmental Assessment is carried out for Croatia's RBMP. It is important to state that in current RBMP there is no Future Infrastructure Projects (not any HP project is listed there), so the DRPM is not full and realistically designed, and is not fully meeting the requirements of WFD.

The public and interested parties were involved during the preparation of the RBMP. The consultation documents were available via download (only) for the required six months. For both Croatia's RBMP, there was international coordination of public participation. The following stakeholder groups were actively involved in the development of the second RBMP (in both RBDs): agriculture/farmers, energy/hydropower, fisheries, aquaculture, industry, local/regional authorities, navigation/ports, NGOs/nature protection and water supply and sanitation. Active involvement took place via two mechanisms: involvement in drafting and regular exhibitions. For both RBMPs, public consultation had the following impacts: addition of new information, adjustment to specific measures, changes to selection of measures, commitment to action in the next RBMP and commitment to further research²³.

RBMP is prepared for two river basin districts in Croatia. In June 2013, Croatia's government adopted a single RBMP that covers both the Danube and the Adriatic RBDs²⁴. The RBMP was revised in 2015, on the same time frame as those in other EU Member States²⁵. The RBMP has a sub-plan for the construction of infrastructure for municipal water services²⁶ and a second sub-plan, for infrastructure investment in irrigation as well as flood protection²⁷.

22 Ibid.

23 Second River Basin Management Plans - Member State: Croatia, European Commission, 2019., <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=SWD:2019:43:FIN&qid=1551205988853&from=EN>

24 Croatia RBMP 2013-2015, http://digured.srce.hr/arhiva/263/105478/narodne-novine.nn.hr/clanci/sluzbeni/2013_06_82_1737.html

25 Croatia RBMP 2016-2021, http://digured.srce.hr/arhiva/263/152833/narodne-novine.nn.hr/clanci/sluzbeni/2016_07_66_1623.html

26

https://www.voda.hr/sites/default/files/nn_117_2015_visegodisnji_program_gradnje_komunalnih_vodnih_gradevina_0.pdf

27

https://www.voda.hr/sites/default/files/nn_117_2015_visegodisnji_program_gradnje_regulacijskih_i_zastitnih_vodnih_gradevina_i_gradevina_za_melioracije.pdf

Prior to the RBMP, Croatia had prepared pilot management plans for two sections of the Danube RBD and two small river basins in the Adriatic RBD²⁸²⁹.

Once a plan is prepared and approved, competent authorities for the implementation of the Croatia's RBMP 2016-2021 are the Croatian Waters and Directorate for Water Management and Protection of the Sea, central administrative body responsible for water management within the Ministry of Environment and Energy.

Croatian Waters has the following main roles: the monitoring and assessment of groundwater and surface water; pressure and impact analysis; economic analysis; preparation of RBMP and Programme of Measures; reporting to the European Commission; and implementation of measures. Hrvatske vode has the following supplementary roles: public participation and co-ordination of implementation.

The Directorate for Water Management has recently moved from the Ministry of Agriculture to the Ministry of Environment and Energy. The Directorate's main roles are enforcement of regulations, public participation and co-ordination of implementation.

A report on the implementation of RBMP is submitted to the Croatian Parliament every three years³⁰. The RBMP was approved by a regulation of the national government: as such, it is binding on government bodies but not on individuals or enterprises.

Are there mechanisms in law to provide legally enforceable protections for all or sections of important rivers in the (country.)

Use of water

Use of water in Croatia is regulated by the Water act. According to the Water Act, we can differentiate between three basic types of water usage. There are general water use and free water use. General use regulates basic human consumption of water, while free use regulates water rights based on land ownership. For any other usage (*"outside the extent of general and free water use"*), you need to get a concession agreement or water rights permit for water first³¹.

Regarding water protection, Croatian Water Act defines goals and sets measures for achieving these goals³². However, among defined goals, there is no clear obligation that stipulates the

28 Krka Draft RBMP 2007, https://www.unece.org/fileadmin/DAM/env/water/meetings/Sarajevo_workshop/presentations/session4/Adriatic_Sea_group/Krka.pdf

29 Mirna Draft RBMP 2007, <https://www.irmo.hr/en/projects/development-mirna-river-basin-management-plan/>

30 Article 36(8) Water Act

31 Article 79 Water Act

32 Article 40(1) Water Act

prohibition of water quality deterioration³³. Goals are exercised, inter alia, by “enacting implementing regulation..., supervision of water quality status and sources of pollution, prohibition of discharging pollutants into water and prohibition of other acts and behaviors that may cause pollution of the aquatic environment and the environment in general, and other measures aimed at the preservation and improvement of water quality and suitability for use”.

For surface waters and groundwater, there is a prescribed obligation for “systematic monitoring of water status”. Monitoring is carried by Croatian Waters. The monitoring report is delivered to the responsible Ministry and to the Croatian Institute for Environment and Nature Protection. Classification of the water bodies according to the water status is part of RBMP.

Water quality standards for surface waters and groundwater are prescribed by the regulation³⁴.

When monitoring shows that it is unlikely that the objectives of protection for a water body shall be achieved, there is an obligation for an investigation into causes of the possible failure and an obligation to take additional measures for achieving the specified objectives³⁵.

Water Act Protected Areas

Water act distinguishes between six types of protected areas:

- protected areas - areas of special water protection³⁶,
- sensitive and less sensitive areas (for the prevention from the pollution related to the urban wastewater treatment levels),
- vulnerable areas (water pollution from nitrates from agriculture)³⁷,
- protection of bathing water quality³⁸,
- protection of land containing shellfish³⁹, and
- fisheries⁴⁰.

Protected areas – areas of special water protection are:

- zones of sanitary protection of drinking water;
- areas designated for the protection of commercially significant aquatic organisms;
- bathing and recreation areas;

33 L. OFAK, Usklađivanje hrvatskoga zakonodavstva s pravom EU-a u području... Zbornik Pravnog fakulteta Sveučilišta u Rijeci, vol. 39, br. 1, 269-300 (2018), p. 278.

34 Uredba o standardu kakvoće voda (NN 073/2013,)

35 Article 55 Water Act

36 Article 48

37 Article 49-50

38

39

40

- areas prone to eutrophication and areas vulnerable to nitrates;
- areas designated for the protection of habitats or species where maintenance or improvement of the status of water is an important factor in their protection in compliance with this Act and/or water protection regulations, and
- areas with poor water exchange with coastal waters, of which the sensitivity is assessed in relation to urban wastewater discharge⁴¹.

Registry of areas of special water protection is a part of the RBMP.⁴²

Water Act prescribes that at the level of a specific project, environmental impact assessment procedure (EIA) triggers the assessment of the project effects on the water bodies (so-called applicability assessment)⁴³. If there is no obligation to carry an EIA procedure, project effects on the water bodies are assessed during the procedure for granting a permit for water use. The relationship between “applicability assessment” and EIA is clear, however, there is no clear relationship with SEA or appropriate assessment provided in the Water Act.

Without obtaining the due authorization, water usage that exceeds general and free water use, is covered through different administrative offenses for which an administrative fine is imposed according to the Water Act⁴⁴.

NPA Protected Areas (PAs)

According to the Croatian NPA *“protected area means a clearly defined geographical space designated for the protection of nature and managed to achieve the long term conservation of nature with associated ecosystem services.”*⁴⁵

There are nine national categories of protection⁴⁶. Designation category has an effect on the type of activities that are allowed or prohibited within the protected areas (PAs).

NPA differentiates between PAs of national importance and PAs of local importance which entails different levels of governance and management of the PAs.

Governance authority over PAs of national importance lies with the Ministry while authority for PAs of local importance lies with the administrative bodies of a county.

41 Article 48 Water Act

42 Ibid.

43 Article 54 b.

44 Article 241-242 Water Act

45 Article 9(54) NPA

46 Article 111 NPA

PAs are managed by Public Institutions (PIs). PIs managing national park and nature park are established by the Republic of Croatia (central level), while public institutions responsible for managing other types of PAs are established by a county assembly (local level).

PAs category and management rules are determined by the designation act, which is founded on an expert base document (baseline study) by the Croatian Institute for Environment and Nature protection. Specific management of a PA is further elaborated by secondary legislation acts⁴⁷.

For projects in the PAs there is a requirement to obtain the authorization for a project from the responsible ministry (PAs of national importance), or from the administrative body of a county (PAs of local importance)⁴⁸. Carrying out a project in the PAs without obtaining the due authorization is an administrative offense for which an administrative fine is imposed⁴⁹.

The Ministry defines and issues nature protection requirements which will be included into the location permit for projects requiring the location permit pursuant to the Physical Planning Act when those projects are to be carried out in a national park, special reserve and nature park (PAs of national importance)⁵⁰.

Natura 2000 and Appropriate assessment

NATURA 2000 is the EU ecological network composed of the most significant areas for conservation of species and habitat types established through the Habitats and Birds Directive (*Nature Directives*). Croatia transposed obligations arising from the EU Nature Directives by the NPA.

NPA requires to take measures within Natura 2000 areas to maintain and restore the habitats and species in favorable conservation status, avoiding activities that could significantly disturb these species, result in deterioration of their habitats or damage habitat types⁵¹.

NPA lays down the procedure to follow when planning new developments that might affect a Natura 2000 site. Thus, an “appropriate assessment” of any plan or project that is likely to have a significant effect on the conservation objectives of a Natura 2000 site must be carried out⁵².

e. Water Rights:

47 Article 111-136 NPA

48 Article 143 NPA

49 Article 228 NPA

50 Article 141 NPA

51 Article 54-56 b. NPA

52 Article 24-51 NPA

Is there a system of ownership of water (e.g. water rights) in the country? How are water ownership rights asserted? How are water rights allocated? Is there an agency responsible for allocating water rights?

Can ownership of water rights be held separately from the ownership of land? Or is the right to water included in the ownership of land?

There are several sources of law in relation to water rights. Hierarchically the highest are the provisions of the Croatian Constitution. The Constitution contains various provisions some of which are relevant for waters.

Roughly speaking, for the purposes of this analysis, provisions with relevance for water could be distinguished by two criteria. First, those aimed at regulating commercial uses of waters, and second, those aimed at preserving and protecting water as a good. Using the same criteria we can differentiate between different pieces of legislation in relation to waters.

Waters Act, Act on Concessions, and Ordinance on the Conditions for issuing Concession for Commercial Use of Waters are the most relevant pieces of legislation regulating commercial use of waters.

Environment Protection Act, Nature Protection Act, and accompanying ordinances and regulations based on those acts, are the most relevant from the perspective of protecting water as a good. Provisions of Waters Act are also pertinent from this perspective. Given that Waters Act is the sectoral law, meaning that it is the main law governing water issues, it somewhat escapes the above set provisional distinction (commercial use vs. protection aim).

CROATIAN CONSTITUTION

Article 52 of the Croatian Constitution prescribes the following:

“The sea, seashore, islands, waters, air space, mineral resources, and other natural resources, as well as land, forests, flora and fauna, other components of the natural environment, real estate and items of particular cultural, historical, economic or ecological significance which are specified by law to be of interest to the Republic of Croatia shall enjoy its special protection.

The manner in which any resources of interest to the Republic of Croatia may be used and exploited by holders of rights thereto and by their owners, as well as compensation for any restrictions as may be imposed thereon, shall be regulated by law.”

From the above cited article of the Croatian constitution two main conclusions are to be drawn. First, based on this provision, and also based on the traditional legal theory of rights, in Croatian legal system water is considered to be a common good (*lat. res extra commercium*). Second, rights and obligations for water usage and protection must be prescribed by law.

However, these should be further explained. Water as a common good means that water bodies, water in its free-flowing state and water springs are inept of being an object of ownership. (Following traditional legal theory this is also true for the sea, seashore and air space.) However, even things outside the regime of ownership, given that they are physical objects, need a steward. For the common goods this steward is the State and the State grants different rights on common goods to other subjects.

Most common instrument of granting rights on the common goods is a system of concessions. It is to be noted that although the State grants these rights, and although the State is a steward of common goods, the state as well its not the owner of these goods. These goods belong to everybody.

WATER ACT

In principle, and in law (Water Act), everybody can use water for their own personal use and in the amounts which do not preclude all others from doing the same. This is called the **General Water Use**. It includes abstraction of surface water and groundwater from the first water-bearing strata up to 10 m of depth for drinking, cooking, maintaining cleanliness, sanitary and other purposes in households and use of surface water for bathing, sport and recreation and other similar purposes.

Free Water Use refers to the rights of a land owner, or a third party bearing rights on the land, in relation to waters on that land. The limits to excessive use of these rights are defined as a free utilization and use of:

- storm water collecting on the land,
- water springing on the land and not creating a watercourse by the boundary of the lot, i.e. not flowing outside the boundaries of the lot, within the limits of general use of water, and
- groundwater on the lot, within the limits of general use of water

Any usage of water exceeding the General Water Use and Free Water Use is subject to approval by the authorities. These approvals are given through **Concession Agreements** and **Water Rights Documents**. Works on and/or around Water Estate are permitted by a special types of approvals.

Other types of water use recognized by Water Act are:

- abstraction of surface water and groundwater, including spring, surface water and groundwater for various purposes (water supply, sale of water on the market in original or processed form in bottles or other packaging, sanitary and technological purposes, health and balneological needs, heating, irrigation, etc.),
- use of water for the production of electrical energy and operating purposes,
- use of water capable of sustaining freshwater fish and other aquatic organisms,
- use of water for navigation,
- use of waters for floating, including the use of waters for rafting, navigation of canoes and similar vessels
- use of water for sport, bathing, recreation and other similar purposes, and

- use of waters for placement of floating or sailing objects on waters (excluding farming facilities in mariculture).

There are three types of Concession Agreements recognized by the Croatian Concessions Act:

1. Concession for the right to exploit a common good or other goods,
2. Public works concession, and
3. Public service concession.

Waters can be subject to a Concession for the right to exploit a common good (waters). Public works concessions and public service Concessions are only exceptionally granted (e.g. for pumping and transport of wastewater from septic tanks and sump pits and for irrigation and/or the right to execute or plan and execute the works within the activities of public irrigation). Concessions for water services (water delivery and sanitation) are forbidden and water services are provided as a public service.

A concession for water use is required for:

- use of water power for the production of electrical energy,
- abstraction of water for use for technological and similar purposes if it exceeds 10.000,00 m³ per year,
- abstraction of mineral and geothermal waters, except if for human use by the public service provider,
- abstraction of water for human consumption, including mineral and geothermal waters, for placement on the market in its original form, or in a processed form, bottled or otherwise packaged (excluding public water supply and export to foreign markets in quantities exceeding 3,5 million m³ per annum),
- Gravel and sand dredging from renewable sources for the purposes of maintaining water regime.

However, except for the concessions for the use of water for electricity production, when water is used by the Croatian State, local and regional self-government units or legal persons where the Republic of Croatia or local or regional self-government units are the majority stockholder, shareholders or founders with majority voting control, water rights documents are issued.

Concessions are awarded depending on the type of project in question by different authorities and for a different time period:

- for electricity production facilities of 20 MW and more by the Croatian Parliament for up to 60 years,
- for electricity production facilities of 5 MW up to 20 MW, for abstraction of mineral and geothermal waters (except if for human use by the public service provider), and for abstraction of water for human consumption, including mineral and geothermal waters, for placement on the market in its original form, or in a processed form, bottled or otherwise packaged by the Croatian Government for up to 30 years,
- for electricity production facilities of up to 5 MW, for abstraction of water for use for technological and similar purposes if it exceeds 10.000,00 m³ per year, both up to 30 years, and

temporally unspecified for Gravel and sand dredging from renewable sources for the purposes of maintaining water regime, all issued by the competent Ministry (Ministry of Environment Protection and Energy).

Water Rights Documents are issued with the purpose of meeting the management goals of the Water Act, among those the protection of water as a resource and/or good, and meeting the protection goals of Water Act.

Water management goals are:

- ensuring sufficient quantities of water of adequate quality for water supply to the population
- ensuring sufficient quantities of water of adequate quality for various commercial and private needs
- protection of people and assets from floods and other adverse effects of water, and
- achieving and maintaining the good status of water for the protection of human life and health, protection of assets, and protection of aquatic and water-dependent ecosystems.

Water protection goals are:

- preventing further deterioration, protecting, and improving the state of water ecosystems, and, taking into account the need for water, land ecosystems and wetland areas directly dependent on water ecosystems,
- promoting sustainable use of waters based on long-term protection of available water resources,
- better protection and improvement of aquatic environment, inter alia by way of specific measures for gradual decrease of pollution discharge, emissions, and release of harmful controlled substances (priority list), and their cessation or gradual discontinuation,
- ensure gradual decrease of groundwater pollution and prevent their further deterioration, and
- contribute to mitigating adverse effects of drought and floods

Water Rights Documents issued for the purposes of meeting these goals are:

- Water rights conditions,
- Binding water rights opinion,
- Water rights confirmation,
- Water rights permit,
- Special conditions of connection,
- Confirmation of compliance with special conditions of connection.

Most important to mention here are the Water rights Conditions and Water Rights Permits. Water Rights Conditions are issued either as a legal document called Administrative Act (*cro: upravni akt*) or Non-administrative Act (*cro: neupravni akt*). The difference between them is that the Administrative Acts are issued in a separate and independent administrative procedure where a right of a certain party is decided upon. This has the consequence of these acts being liable to being revoked as an independent document. Non-administrative acts are acts by which the administration is undertaking certain actions which do not include the resolving of one's subjective right.

Water Act prescribes the situation when Water rights conditions are issued as an Administrative Act or as a Non-administrative Act. However, from the protection perspective this is somewhat of a lowering of standards since until the recent changes of the Water Act all Water rights Conditions and Water Rights Permits were considered Administrative Acts and therefore open to stronger scrutiny.

f. Land and Property Rights:

Describe the land tenure or land ownership system in the country.

What type of property rights may be held by private entities? Are there certain rights retained by the government?

Croatian legal system is a system with the closed number of property rights relations, i.e. rights of real property, also referred to as the *numerus clausus* system of property rights. This means that the types of rights on real-property are predetermined by the law in a set number of models. These models, or more precisely the rights on real property, are the following:

1. Ownership rights,
2. Easements,
3. Lien,
4. Real Burden Right,
5. The Right to Build.

Perhaps the most interesting from the perspective of Nature protection are the Easements. Easements could be used to dedicate property / or part of it to the nature conservation purposes. Easements are in Croatian legislation known as servitudes (cro. služnosti). There are different types of servitudes in Croatian legislation. It is important to distinguish between **statutory servitudes** (Act on Ownership and Other Real Rights, Art. 185) and **servitudes** proscribed in the Croatian Act on Ownership and Other Real Rights (hereinafter: servitudes). The main feature of the statutory servitude is that it exists as an integral part of the ownership title, it is, so to say, internal or intrinsic to ownership. Servitudes, on the other hand, exist as part of a legal relationship in which one's right of ownership co-exists with other's subjective right on the same thing.

Servitudes are further divided into Real Servitudes (appurtenant easement) and Personal Servitudes (easements in gross). **Real servitudes** (Act on Ownership and Other Real Rights, Art. 186) are connected to properties- they enable the owner of the dominant property to use the servient property in a specified manner whilst the owner of the servient property must allow such usage and/or restrain from exercising rights otherwise implied in ownership title to repudiate such usage. The rights arising from them are connected to property, i.e. they are independent of owner (they belong to, so called, everyday owner). The law adopts a principle of Freedom of Contract – all servitudes which are possible, and not in contradiction to cogent (mandatory) norms, are allowed. Consequently, servitudes aimed at nature conservation, would be admissible under these provisions.

Personal Servitudes (Act on Ownership and Other Real Rights, Art. 199) are connected to persons entitled to use the rights granted to them by personal servitude in relation to the servient thing (movable or immovable). For personal servitudes the law adopts a numerous *clausus* principle- the types of personal servitudes are exhaustively listed in the law. They are: Usufruct (the right to the fruits/products of a thing), Right of use (the right to use a thing in a specified manner), and Habitation (the right to use a real-estate or its part for housing).

Acquisition of real servitude may be effected through legal transaction, court decision or a decision of another competent authority, and based on legal provisions (Act on Ownership and Other Real Rights, Art. 218, paragraph 1). Personal servitudes are acquired through a legal transaction made by the owner of the servient property in favour of the benefactor of the personal servitude (Act on Ownership and Other Real Rights, Art. 218, paragraph 2).

Servitudes may be registered in the Land Register with specific restrictions for the owner of the servient property. Registering property servitude in the Land Registry is a constituent part of its acquisition (Act on Ownership and Other Real Rights, Art. 220, paragraph 1). Benefactors of the property servitudes acquired by means of court decision or decision of another competent authority (Act on Ownership and Other Real Rights, Art. 223, paragraph 4), and of property servitudes acquired by the force of law (Act on Ownership and Other Real Rights, Art. 228, paragraph 1), are authorised to request its registration in the Land Register.

In relation to servitudes (easements) Land registration Act prescribes that “the substance and scope of such rights shall be entered as specifically as possible” (Land Registration Act, Art. 33, paragraph 1). Supporting documents on the content of servitude are explicitly prescribed only for the purposes of determining the spatial scope for consuming rights granted by the property servitude (Land Registration Act, Art. 33, paragraph 1). However, since the determination of the spatial scope of property servitude rights are submitted as part of the document “based on which registration is requested” (Land Registration Act, Art. 33, paragraphs 2 and 3), implicitly, this document could be used to specify other (non-spatial related) elements of the property servitude (e.g. those pertaining to nature conservation). Servitudes impress upon the owner of the servient property an obligation only to refrain from fully exercising her ownership rights by way of allowing third party's subjective, servitude granted, rights on its property. The scope and level of detail at which servitudes will be described in the Land Register will depend on the practice of those registering property servitudes.

Servitudes (easements) can be based on the voluntary agreement and rights so created can be registered in the Land Register (provided they refer to property servitude). Servitudes in gross (easements) can be concluded for specific, exhaustively listed, reasons which do not include nature conservation *per se*. However, insofar as nature conservation goals can be achieved through Usufruct and Right of use institutes it could be maintained that nature conservation servitudes can also be concluded as servitudes in gross.

All previously being said, it should not be forgotten, that rivers in their free-flowing state, water, and water springs are not subject to property rights. However, property surrounding them, in the scope defined by the Water Act, is called the Water Estate and is a part of the property regime. Water Estate is defined as a Public Property Subject to Common Use, meaning everyone has the right to use things that are owned by the Republic of Croatia and that are intended to be used by all in a way determined in order to achieve their prescribed purpose by the body or institution entrusted with their administration, that is, the body competent to determine the purpose that administers them directly.

Describe the concession process for riparian areas, river access and river management.

See under section Water Rights.

Are there partial interests in land such as a leasehold interest for river areas that provide control over use rights or development rights in river areas? Which agency(ies) are responsible for the granting of such concessions or leases? May such concessions be granted to any private party for any use or are there limitations on permitted grantees and permitted uses? May such concessions be granted to NGO's established for conservation and to hold interests in land?

Does the law provide for the conveyance of partial interests (e.g. less than the owner's entire interest or specific rights) in the land? Is there a mechanism under law for restrictions to be placed on the use of land so that the land is limited in its use for conservation purposes?

Can land be owned by a non-governmental organization (NGO) if held primarily for conservation purposes? Are there specific examples of NGO's owning land for conservation purposes?

Can land be acquired and owned by the local government to keep the land undeveloped permanently?

Legal regime applicable to water as a resource is different to a legal regime applicable to physical area connected to and dependent of water. As mentioned above water as resource is a common good and therefore legally inept of being an object of ownership. Water Estate however, is an object of ownership rights. Depending on the type of the Water Estate different restrictions of ownership are applicable, in comparison to regular ownership regime.

WATER ESTATE

Firstly, a concept of Water Estate should be explained.

Water Estate is a legal concept applicable to different plots of land which are in various ways connected to water. Waters Act (Article 8) defines the following plots of land as Water Estate:

- surface water channels- both water bearing and abandoned channels,

- floodplains- both regulated and unregulated,
- an area needed for the physical protection of water spring from which water is used for, or intended for, human consumption,
- an area needed for the physical protection of water spring with a daily profusion of at least 10 m³ of natural mineral, thermal and natural spring water,
- aits (eyots; river islands).

Water Estate is owned by private owners – individuals or legal persons. **Public Water Estate** on the other hand is a Water Estate owned by the State. Public Water Estate is a *public good subject to common use* (words in *italics* designating a specific ownership regime), unless it is designated as a *public good subject to public use*.

Ownership restrictions applicable to Water Estate are based on the legally established status of Water Estate as good of State interest and are specified in the Water Act. Ownership restrictions applicable to Public Water Estate are based on the general restrictions applicable to public goods and on specific restrictions established for the Public Water Estates in the Water Act. The details of these specific provisions and restrictions are discussed later in the text.

Water Act prescribes the ways in which a Water Estate can become a Public Water Estate. This can either happen *ex lege* (automatically by the force of law) or following an acquisition of Water Estate by the State. Put simply, *ex lege* creation of Public Water Estate is envisaged for various situations of Water Estate formerly being managed in various public stewardship regimes (before 1995, a year of this provision being put into force) or not being designated as owned or managed by anyone.

Water Estate can be expropriated by the State or acquired for the State following a procedure prescribed in the Water Act. When electricity producing facilities are to be built on the Water Estate an investor needs to acquire for the State (buy off and transfer) all plots of land where such facilities are to be built, including water supply and water drain components of the facility.

The purpose of the concept of Water Estate is maintenance and improvement of the water regime. However, it should be noted that in specifying the water regime maintenance and improvement interventions the Water Act is focused on those interventions which aim at preventing damages from waters. Damage to waters is only mentioned in the context of protecting water springs used for or intended to be used for human consumption. Protection of waters *per se* is clearly not a priority. It should however be noted that the list is only indicative, not exhaustive, and that the general aim of establishing a Water Estate is to maintain and improve the water regime.

GOODS OF STATE INTEREST

The basis for the restrictions regarding Water Estate are grounded in the fact that the Water Estate is declared by law to be of State interest. Certain things or goods are of State interest because they are already in the Constitution declared as of State interest, or because they are declared as such by the law based on the constitutional mandate to do so.

The water as a resource is already in the Constitution declared as a good of State interest (and also as a common good which is a separate institute and should not be confused) whereas Water Estate is declared as good of State interest by Water Act.

A state interest good is a type of good on which restrictions in use can be put, for the purposes of achieving a higher interest, regardless of the type of ownership regime that good is governed under. So, a State interest good can be a common good, a public good (both subject to common use and subject to public use) or a good subject to regular ownership regime (tradeable, commercial). The consequence of this is that the restrictions and obligations connected to State interest goods are proscribed in a separate act regulating the management of these goods (Water Act for Water Estate). Restrictions and obligations of the general ownership regime are of subsidiary relevance for these goods.

PUBLIC GOODS

Unlike the Common goods regime under which goods are not owned, public goods are a special kind of ownership regime. These are goods owned by the State. Their use can be designated as one subject to common use, i.e. use by everybody, or as subject to public use, i.e. use by State institutions.

When a public good is designated for common use the conditions under which it is managed and used are set by law (or by the public institution mandated by the law to do so). Public Water Estate is managed by the public institution *Hrvatske vode* (eng. Croatian Waters). *Hrvatske vode* designate how Public Water Estate is to be used in compliance with the law (Water Act).

Public Water Estate designated for common use can however be granted for other uses as well, namely use for commercial or personal purposes. When granting use for other purposes the main purpose of the Water Estate concept, namely maintenance and improvement of the water regime, should still be secured. Except through concessions, which were explained in other parts of this study, instruments for granting other uses are the right of lease, right of servitude and right to build on part of the public water estate.

RESTRICTIONS

Restrictions regarding Water Estate are, of course, connected to a type of Water Estate. Water Estate (as a private estate) is least subject to restrictions. The main restriction connected to rights arising from the Water Estate ownership is the right of pre-emption by the State in case of its sale. This pre-emption right is noted in the land register.

Regarding the management of the actual Water Estate the owner is obliged to allow temporary use of its Water Estate for the purposes of maintaining and improving the water regime. Other restrictions are listed as actions forbidden on the Water Estate because of their potential of endangering the achievement of the Water Estate purpose (e.g. a ban on building houses to close to the river bank).

Public Water Estate regime is much more restrictive for legal dispositions in relation to it. Public Water Estate cannot be sold to third parties – it is inalienable. Third parties cannot, by usucaption or in any other way, acquire the right of ownership over Public Water Estate. In this respect it comes as close as possible to the concept of common good (*res extra commercium*).

Public Water Estate can however be declared as not being a Water Estate anymore. This can be done once it can no longer meet the Water Estate purpose - maintenance and improvement of the water regime.

Management requirements for Public Water Estate are to a great extent similar to those required by the private owner.

How are parks owned and managed? What agencies of government are responsible for park ownership and management? What procedure must be followed if land devoted to parks is proposed for conversion to a non-park use?

Does land use regulation exist? How is it administered? By which agencies? Are there riparian zoning regulations in the country?

Is there a system of designating certain areas as 'protected?' How are such protections enforced?

Describe the protected areas programs in the country and the legal enforcement mechanisms that exist to ensure that protection goals are achieved. Do those mechanisms apply to rivers within protected areas?

Parks designation and management is regulated by the Nature Protection Act (NPA).

There are nine categories of protected areas in Croatia, listed hierarchically starting with the highest category of protection:

1. Strict Nature Reserve,
2. National Park,
3. Special Reserve,
4. Nature Park,
5. Regional Park,
6. Natural Monument or Feature,
7. Significant Landscape,
8. Forest-Park,
9. Monument of Park Architecture.

First four categories are protected areas of national significance. The 5 latter ones are areas of local significance.

National Parks and Nature Parks are designated through a legal Act by the Parliament. Reserves, Strict Nature Reserve and Special Reserves, are designated via Ordinance by the Government. All others are designated by the regional authorities with the approval of competent authorities at the national level.

Designation proposal is based on the Statement by the designating authority of funds secured for the designation process and for the management of the protected area, and on the supporting expert documents which establish values to be protected and a management model for their protection. Geomaps are also required in order to precisely determine the protected area and to register it in the land registers. Supporting expert documents are produced by the competent Ministry (in all cases).

The proposal is put for public discussion for a minimum of 30 days.

The same authorities are responsible for the lifting of designation. The lifting of designation will be proposed when protected values for which an area was designated as protected are no longer present. The lifting of designation for the protected areas of national significance is based on the expert supporting documents produced by the competent Ministry. For other cases the Ministry only needs to approve the proposal. This proposal is also put for public discussion for a minimum of 30 days.

Protected Areas are managed by Public Agencies (*Cro*: Javne ustanove). National Park and Nature Park management Public Agencies are established by the Government via Ordinance. All others are established by the decision of competent regional authorities. Regional Authorities have the mandate to transfer the management of protected areas to local authorities where these protected areas are situated.

Protected Areas Public Agencies are entrusted with the protection, maintenance and the promotion of protected values in the protected areas with the aim of preserving its authenticity, they take care of the overall coherence of natural processes, monitor the implementation of nature protection measures and do data reporting and monitoring.

They are governed by an external, non-employee management board of maximum five people. This body is entrusted with the strategic managing of the protected area. Public Agencies are ran by the Director. Expert work is managed by the expert leader/manager, appointed by the management board.

National Park and Nature Park areas are arranged via a special type of spatial plans called Special Features Area Spatial Plan (*Cro*: Prostorni plan područja posebnih obilježja). All protected areas are managed based on the *Management Plan*. This plan is adopted for the period of 10 years, but it can be amended after 5 years upon its adoption. This plan is adopted by the management board. The plan draft has to go through a regular public consultation procedure.

Protected areas management can be contracted out to a third party via public tender. The exception are state owned forests because the Agency entitled by law for their management is Hrvatske šume.

Contracting out protected areas management might be, in the context of this analysis, an interesting entry point for interested NGOs. However, it is up to this point unknown to the authors of this analysis that any such case would be implemented in practice. Another impediment for

greater NGO involvement is the fact that protected areas designation process lies with the public authorities and is therefore heavily dependent on politics.

g. Regulatory Structure: Mitigation/Offsets:

Some governmental regulatory arrangements require landowners to produce conservation outcomes to comply with government permits or to offset the impacts of the proposed project. This is referred to as “mitigation” or ‘offset’ arrangements. Describe the existence or use of the ‘mitigation hierarchy’ (e.g. avoid, minimize, offset) in the country, if any. Have mitigation or offset programs been used to provide resources for river protection? Please cite examples.

Nature Protection Act (hereinafter: NPA) is the main legal instrument protecting nature which is defined as a totality of biodiversity, landscape diversity, and geo-diversity (geological diversity).

The goal of the NPA is the protection of habitats and species. In its provisions it closely follows the logic and obligations set by the two EU directives – Habitats Directive (Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora) and Birds Directive (Directive 2009/147/EC of The European Parliament and of the Council on the conservation of wild birds).

Habitats and species are protected under different protection regimes provided by NPA. The Ecological Network Natura 2000 in Croatia is established by the *Regulation on Ecological Network* (Official Gazette #124 from 2013). The Regulation brings, in its Annex II, two reference lists: Reference List of Habitat Types (Part 1 of Annex I) and Reference List of Birds and Other Wild Species (Part 2 of Annex I). These reference lists are lists of those habitats types and birds and wild species recognized as those of EU importance, according to relevant EU Directives, which are present in Republic of Croatia. Criteria of selection, provisioned in Annex I, are then applied to those reference lists to establish a Natura 2000 network in Croatia. This network is listed in Annex III of the Regulation. It is made up of Special Protection Areas (Part 1 of Annex III) and Special Areas of Conservation (Part 2 of Annex III). The coherence of the Natura 2000 network is secured through Nature Impact Assessment which is conducted for strategies, plans, programs, and projects, through implementing protection measures and management plans and by legislative, administrative and contractual measures.

Natura 2000 network consists of Special Protection Areas (SPAs, Croatian: POP) and Sites of Community Interest (SCI; Croatian: vPOVS) which, when selected, are designated as Special Areas of Conservation (SACs; Croatian: POVS). SPAs are established to protect bird species listed in Annex I of Birds Directive and migratory species. Its legal basis is Article 4 of the Birds Directive.

SCIs, which will later be designated as SACs, are proposed for the protection of habitat-types listed in Annex I and species listed in Annex II of the Habitats Directive. First the SCIs are proposed and are either confirmed or, if needed, changed (expanded) in dialogue with the Commission through the biogeographical seminars. Legal basis for SCIs and SACs are articles 3 and 4 of Habitats Directive.

The logic behind the designation process is that SCIs are to be proposed for all habitat types and species listed in Annexes of the relevant Directive. They are submitted to the Commission on a Standard Data Form passed by the Commission Implementing Decision of 11 July 2011 concerning a site information format for Natura 2000 sites (2011/484/EU). Its goal is to "maintain and restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest".

Criteria for the designation of SCIs and later SACs are given in Annex III of Habitats Directive. These are transposed to Croatian legislation in the Annex I of the *Regulation on Ecological Network*.

Special Protection Areas are especially significant for the protection of wetlands as their purpose is the protection of EU important wild birds and their habitats including the migratory birds and wetlands habitats of international importance. The goals and measures of protecting birds in the Natura 2000 Network are proscribed in the *Ordinance on Goals and Main Measures for Protecting Birds in the Ecological Network* (Official Gazette #15 from 2014). These measures are to be implemented by different levels of public authorities (including local and regional authorities) through different nature management plans but also through spatial plans.

However, the Ecological Network does not cover all habitats in Republic of Croatia. All habitat types are listed in the Annex I of the *Ordinance on List of Habitat Types, Habitat Charts and Rare and Endangered Habitat Types* (Official Gazette #88 from 2014). Those rare and endangered habitats of EU importance present in Republic of Croatia are listed in Annex II and those with relevance to Natura 2000 Network in Annex III of the Ordinance. National Habitats Classification, last updated in 2017, defines 10 main types of habitats in the Republic of Croatia and one type encompassing complex habitats.

And finally Strictly Protected Species are determined via Ordinance based on the proposal for their inclusion in the Red Book List by the Environment Agency. The *Ordinance on Strictly Protected Species* (Official Gazette #144 from 2013) was passed in 2013.

A most significant NPA implementation document is the Strategy and Action Plan for the Protection of Nature (Croatian: Strategija i akcijski plan zaštite prirode). It is the cornerstone of planning nature and biodiversity protection in Croatia. It is a medium-term instrument renewed

every 5 years based on the findings of the *State of the Nature Report* which is updated every five years by the Environment Agency.

The latest Strategy was adopted for the period from 2017 to 2025 (*Strategy and Action Plan for the Protection of Nature 2017 – 2025*, Official Gazette #72 of year 2017). The goal of the 2017 – 2025 Strategy is to achieve the implementation of Croatia's international obligations stemming from different documents: (Global) Strategic Plan for Biodiversity (the Nagoya process), including the Aichi Biodiversity Targets, for the 2011-2020 period and the EU 2020 Biodiversity Strategy. Worth mentioning is that the EU targets are in line with global targets developed in the framework of the Convention on Biodiversity (Rio de Janeiro, 1992), later continued through the Nagoya process and the Aichi Biodiversity Targets.

The aforementioned values are to be protected by way of implementing the Assessment procedures, in line with the EU requirements (Natura 2000). The aim of the Assessment is to establish whether a planning document (plan, program or strategy) or a single project (hereinafter: the intervention) will adversely affect values protected as part of the Natura 2000 network, namely its effect on the “protection goals and the integrity of Natura 2000 network” (*Cro: ciljeve očuvanja i cjelovitost područja ekološke mreže*).

In a nutshell there are three steps in the Assessment procedure:

1. **Screening** (*Cro: Prethodna ocjena*) – establishing whether the planned intervention (plan, program, strategy, project) can potentially have adverse negative effects on the protection goals and the integrity of Natura 2000 network. This is established by the opinion issued by the competent authority.

If NO (negative effects can be excluded), the intervention is acceptable for the Natura 2000 network.

If YES (negative effects can be expected), the intervention needs to undergo the following step in the assessment procedure, the Appropriate Assessment;

2. **Appropriate Assessment** (*Cro: Glavna ocjena*) – is conducted based on the Nature Impact Study which is submitted together with the request to conduct the Appropriate Assessment. The study goes through public consultation process the results of which need to be taken into account when passing a final decision. The decision is about whether the proposed intervention will, upon the implementation of **mitigation measures** proposed in the study, adversely affect protection goals and the integrity of Natura 2000 network.

If NO (no adverse effect if mitigation measures are implemented), the intervention is acceptable for the Natura 2000 Network.

If **YES** (adverse effects cannot be avoided even with the implementation of mitigation measures), the intervention is unacceptable for the Natura 2000 network but can undergo a procedure of establishing whether there is an overriding public interest in approving such intervention;

3. Overriding Public Interest (*Cro*: Prevladavajući javni interes i kompenzacijske mjere) – The procedure can be initiated before the expiry of one year after the passing of the decision that an intervention will adversely affect the protection goals and the integrity of Natura 2000 network. The investor needs to demonstrate that it has analyzed appropriate alternatives to the intervention, provide reasons of overriding public interest which justify that the proposed intervention should still go ahead, and propose compensatory measures capable of rectifying the adverse effects to the protection goals and the integrity of Natura 2000 network (together with deadlines, implementation plan, and monitoring and reporting plan).

The aim of the compensatory measures is to secure the overall coherency of the Natura 2000 network. The law mentions several ways how this might be achieved:

- by restoring habitats and/or establishing better ecological conditions in the existing Natura 2000 site,
- by restoring or establishing habitats or establishing better ecological conditions in the newly formed or expanded Natura 2000 site,
- by introducing a new area to Natura 2000 network or expanding an existing site which has been compromised in quality.

These provision are clearly a non-exhaustive list of measures and only serve as an illustration of the logic behind the compensatory measures. It can however be expected that the competent authorities will interpret them as an exhaustive list of measures.

Are there examples of transfer of development rights programs? (e.g. one area is designated for protection while another area is designated for development at a more intensive level than would otherwise be permitted.)

No such program as a policy instrument is in force. In practice certain areas are under greater environmental pressures than others, but in theory spatial planning instruments are supposed to level the distribution of burden and ensure, together with environment and nature protection instruments, that no single area is overburdened by environmental pressures. However, the above described Appropriate Assessment procedure and the establishing of overriding public interest - when impacts on Natura 2000 network are unavoidable but acceptable provided there are satisfactory compensatory measures - could be understood as a type of development right program.

h. Sources of Funding

What are the amounts and sources of direct funding that are dedicated to the functions involved in river and/watershed management?

Are all or a portion of any concession fees (related to concessions for water use) are or could be dedicated to conservation or mitigation-related activities?

What are the amounts and sources of domestic funding versus international funding (EU, pre-accession funds, GEF, etc.) (it is noted that this may be time consuming to obtain, as not all information is readily transparent or available.)

Are there examples of citizen votes or 'ballot initiatives' having been used to create funding for conservation programs or purposes?

Are there tax and/or other incentives that could be used to stimulate protection of river corridors and watershed lands?

Are there incentives or subsidies provided to developers of dams that could be used to incentivize developers to avoid free-flowing rivers and to locate such facilities in more appropriate locations?

i. Institutional systems and arrangements

Which institutions are most relevant for freshwater protection and management? (Government agencies, Parliament, public institutions)? Which – if any – are the key agencies, ministries, departments, or institutions which are the current custodians or provide oversight of freshwater conservation?

Water Management

Since the Water Management Directorate moved from the Ministry of Agriculture, the **Ministry of Environment and Energy** is responsible for policy development and compliance assurance in both areas related to freshwater conservation: water management and environmental protection.

The **Water Management Directorate** at the Ministry is responsible for issues related to integrated management of water resources. Its **Sector for State Water Inspection, Administrative Supervision and Appeals Procedure** is responsible for supervising the implementation of the requirements established by the Water Act Act on Water Management Financing. It also participates in coordinated inspection supervisions with other related inspections.

Croatian Waters, which are subordinate to the Ministry, are the main executive body in the water sector. Regarding policy development, division between the responsible Ministry and Croatian Waters is not really clear. The main tasks of Croatian Waters are the preparation of draft water management strategies, river basin management plans and water management programmes and plans, protection from water pollution, regulation of watercourses and other water bodies, and protection from adverse effects of water. Croatian Waters is competent to monitor water quality, collect water-related data and issue water permits. It also implements measures to ensure

rational water use, water protection and flood protection as well as construction, co-financing and development of the water infrastructure. Unfortunately, Croatian Waters do not have a strong environmental background⁵³.

Water monitoring is set out in several pieces of legislation: the Water Act, Environmental Protection

Act and Act on Water for Human Consumption. The Water Act and its by-laws regulate the monitoring and assessment of ecological status and chemical status of surface water (including transitional and coastal water), the chemical status and quantitative status of groundwater, and the water status in protected areas. The responsibilities for water monitoring are shared between: Croatian Waters, Meteorological and Hydrological Service, and the Ministry of Environment and Energy. Monitoring of emissions released into water, wastewater, PRTR and IPPC is the responsibility of the Ministry of Environmental and Nature Protection.

Environmental Protection

Ministry of Environment and Energy's Directorate for Environmental Impact Assessment and Sustainable Waste Management *inter alia* carries out administrative and expert tasks related to environmental impact assessment, strategic environmental assessment of strategies⁵⁴, plans and programmes, prevention of and liability for environmental damage, integrated pollution prevention, and issues the environmental permit⁵⁵.

Ministry of Environment and Energy's Directorate for Nature Protection **is responsible for the management of Natura 2000 network in Croatia. Competences of the** Croatian agency for nature and protection, **expert body for nature protection (now defunct), were moved to the above mentioned directorate. Directorate for Nature Protection now** carries out expert tasks of nature protection for the Republic of Croatia, in particular: inventorisation; monitoring and assessing the state of nature; preparing expert base proposals for the protection of natural values; conserving parts of nature; establishing the conditions for nature protection; managing protected areas and the use of natural resources; developing expert base proposals for the assessment of acceptability of interventions in nature; reporting on the state of nature; participation in the implementation of international agreements on nature protection and organizing and implementing educational and promotional activities in nature protection.

53 Environmental Protection in Multi-Layered Systems: Comparative Lessons from the Water Sector, Alberton and Palermo, p. 489.

54 These functions within the Ministry are performed by the Sector for Environmental Assessment and Industrial Pollution, which is part of the Directorate for Environmental Protection and Sustainable Development.

55 <https://www.mzoip.hr/en/environment.html>

Administrative enforcement and the inspection supervision of the Environmental Protection Act and Nature Protection Act is the responsibility of the **Environmental and Nature protection inspection**, which are now part of a newly founded **State Inspectorate of the Republic of Croatia** (previously under the Ministry of Environment and Energy). Environmental protection inspection is among other things responsible for the monitoring of the EIA permits and is obligated to undertake measures in order to prevent and reduce pollution and remove consequences of environmental pollution. Nature protection inspection inspects protected areas and supervises the implementation of protection of strictly protected and protected animal and plant species and use of natural assets.

National Water Council, is a special body established pursuant to the Water Act, with members appointed by the Croatian Parliament. Its duties include systematic analysis of water management issues, coordination of different needs and interests, and proposing measures for developing and improving the water system.

Are there laws, guidelines or institutions impacting freshwater conservation being reviewed or will be reviewed soon? What laws and institutions are being reviewed and what is the timetable for such review?

Review of the Croatian Nature Protection Act and Water Act with accompanying bylaws is planned by Ministry of Environment and Energy for 2019⁵⁶. However, at the moment we are not certain what parts of these acts are going to be amended⁵⁷.

Are there institutions in other sectors that may significantly influence realization of river protection – do these institutions take water concerns into consideration in decision making process (e.g. in concessions for HPPs, waste water treatment, energy, etc.)

No. Competencies for the realization of river protection mechanisms are shared exclusively between Ministry of Environment and Energy and Croatian Waters. As already mentioned, after the last organizational change, Ministry of Environment and Energy is responsible for issues related to the water management, nature and environment protection, and the new developments in the energy sector.

j. Conclusions and Recommendations:

56 Plan propisa za savjetovanje s javnošću za 2019. godinu, https://www.mzoip.hr/doc/plan_propisa_za_savjetovanje_s_javnošću_u_2019_godini.pdf

57 Javno savjetovanje za prijedlog plana zakonodavnih aktivnosti za Ministarstvo zaštite okoliša i energetike za 2019. i obrazci prethodne procjene, <https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=9147>

State the recommendations for the most effective options (new legislation? Amend existing law? Administrative arrangements? Other?) to pursue to create a DRPM in the (name of country.)

Water Act should be amended in a way that it provides stricter rules for rivers and to envisage a possibility for creation of DRPM. There is a need for urgent change of recently adopted amendment of the Water Act related to gravel and sand extraction which was mentioned above.

What legislation might be needed or what legislative changes could be proposed for adoption by the country to create a DRPM. Assess or evaluate the prospects for securing enactment of such legislation.

The most important legislation in which possibility and conditions for creation of DRPM need to be envisaged is Water Act, but also other legislation related to environment and nature protection should also be in line with it, such as Environment Protection Act, Nature Protection Act, etc. This would be needed since those 2 Acts regulate specific environmental procedures for project; policies, plans and programs with impact on the environment/nature. It is hardly unlikely that current government in Croatia will accept to amend these acts and create possibility for creation of DRPM but it takes long time to achieve changes like this in the country which still does not see benefits from conservation of rivers and has plans for construction of many hydro-power plants.

Are there administrative changes that could be recommended to accomplish the goal of creating a DRPM in the country?

Apparently, there is a large pressure from the national government on regional and local levels, so it happens that projects which are declared as strategic national investments (according to Law on Strategic Investment Projects⁵⁸) are forced upon lower levels of government even when the government and community have valid arguments against it. It would be important to inform and educate regional and local governments which on DRPM mechanism and to support those of them which are the most interested to protect rivers in their area from the pressure from national government.

What stakeholder's groups are important to engage to secure enactment of the legislative or administrative changes needed for a DRPM in the country?

⁵⁸ <https://www.zakon.hr/z/681/Zakon-o-strate%C5%A1kim-investicijskim-projektima-Republike-Hrvatske>

Besides environmental CSOs operating on national level and leading national campaigns for improvement of environmental legislation in general, so also legislation related to water management, such as WWF and Zelena akcija, it is important to engage local CSOs such as Eko Pan which operates in Karlovac, city lying on 4 rivers. Also, there is small CSO Eko Kosiinj which is fighting against HE Kosiinj on river Lika, then initiative Ne daj se, Cetino! fighting for preservation of river Cetina, initiative Spasimo Koranu! which would surely be interested to engage in creation of DRPM.

Of course, it would be important to include different public institutions responsible for management of protected areas as well as environmental institutions on regional and local level since they all could use this opportunity to protect rivers in their area from different infrastructural project which could be imposed to them from the national government.

It would be important also to communicate to all parliamentary parties what is DRPM and what legislation and administrative changes are needed for its creation in Croatia. Maybe the best way to approach to them is via Committee on Environmental Protection and Nature of the Croatian Parliament⁵⁹.

Are there immediate next steps that should be pursued to advance the goal of enacting a DRPM in the country? Are there currently ongoing river protection initiatives in the country which could be supported to advance the cause of river protection in the country?

Currently, several important strategies are in different stages of adoption in Croatia and it is possible to suggest putting of creation of a DRPM as a goal in those strategies. Firstly, there is a National development strategy⁶⁰ (Nacionalna razvojna strategija) which is the highest hierarchical act of strategic planning in the Republic of Croatia and serves for the design and implementation of the development policies of the Republic of Croatia. The National Development Strategy contains a long-term vision for the development of the Republic of Croatia and the priorities for investment in the ten-year period (by 2030). Ministry of Regional Development and EU funds is coordinating the process of preparation of this strategy and it will be adopted by the Parliament, most likely by the end of 2019.

Also, Energy Strategy, Low Carbon Strategy, Strategy of adaptation to climate change are all in different stages of preparation and it is possible to set the goal of enacting a DRPM in those strategies. It is hard to tell when those strategies will be adopted since adoption of those documents is already very late since the plan was to adopt them already in 2018.

⁵⁹ <https://www.sabor.hr/hr/radna-tijela/odbor-za-zastitu-okolisa-i-prirode-9-saziv>

⁶⁰ <https://www.hrvatska2030.hr/plan-izrade/>

