

Assessment of Applicable Laws and Institutions relevant to the Development of a ‘Durable River Protection Mechanism’ in Montenegro

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1 Introduction

The assessment presented in this study was undertaken in the framework of a wider initiative encompassing the EU Member States and Western Balkan countries neighbouring the EU¹. According to the Terms of Reference, the purpose of the initiative was *to assess the opportunity for the creation of a legal, institutional or policy mechanism that would provide a coherent, consistent, shared approach amongst the European Union, its Member States and its immediate neighbour countries in the Western Balkan region, as well as in the EU environmental community at large for a 'durable river protection mechanism' (DRPM) that could achieve assured protection of free-flowing rivers in Europe.* The intent was to *examine the existing legal context at the EU level, at the national level and at the local level of governments to determine how a DRPM can be implemented.*

The aim of the DRPM is to ensure that rivers (and their watersheds) with exceptional natural, landscape or recreational resources and values are left in their natural, free-flowing condition, with functional/ preserved ecosystems and low-level uses that are compatible with the long-term river protection goals.

In Europe, countries like Sweden and Finland have adopted legislation (during 1980s) to protect selected rivers/ sections of rivers from developments (most notably from construction of hydropower plants) that could jeopardise their natural, free-flowing conditions. In the US, the Wild and Scenic Rivers Act (WSRA) is in force since 1968 to ensure preservation of rivers with outstanding natural, cultural and recreational values in a free-flowing condition for the enjoyment of present and future generations. To protect special character of rivers designated as wild, scenic or recreation ones, the WSRA prohibits construction of dams and other activities that would harm the rivers' natural conditions, water quality or outstanding resource values. The designation however does not mean rivers need to be completely undeveloped. Protection is provided through voluntary stewardship by landowners and river users and through government regulation and programmes. The WSR designation² does not affect existing water rights or the existing jurisdiction over waters, and the land within the designated areas boundaries is not always publicly owned.

The study for Montenegro was prepared during April and May 2019. The situation was primarily analysed through a review of applicable laws– particularly water management and nature protection legislation – including a review of competencies for their implementation. Relevant policies, strategies and plans were also examined, and interviews conducted with representatives of nature protection, water management and local administrations for consultative and information collection purposes. As regards the local administrations, interviews were conducted with representatives of two local self-government units (Podgorica and Danilovgrad) that were involved in recent/ ongoing initiatives for the protection of two rivers (Cijevna and Zeta) under the nature protection legislation.

¹ The regional initiative supported by The Nature Conservancy (TNC) included preparation of studies on legal and institutional arrangements for the protection of rivers in Bosnia and Herzegovina, Croatia, Montenegro, Serbia and Slovenia. The analysis is also prepared at the EU level looking into provisions of the relevant legislation including Water Framework and Birds and Habitats Directives.

²Designation procedures are initiated by the Governors of respective States; competent authorities for designation are Congress or the Secretary of Interior (the administering government agency). The eligibility and suitability criteria need to be fulfilled for designation, including local interest in protecting the river, local governance for land, water and environmental management, and private landowners' willingness to cooperate for the attainment of protection goals.

Montenegro is the EU Candidate Country since 2012; negotiations on environment and climate change chapter (chapter 27) have been opened recently (in December 2018). Legislative and institutional changes in the country's environment sector (including water and nature protection) during the past 10 – 15 years are largely driven by the EU accession requirements. The available EU reports often highlight a slow progress in this area (especially for water management), despite formal commitments to environmental improvements and the concept of 'ecological state' which is integrated in the country's Constitution³. Overall, harmonisation with the EU environmental *acquis* has reached an advanced stage, while the implementation is still weak.

Total costs of approximation (i.e. of transposition and implementation of the EU environmental legislation) for the period 2015 – 2035 have been estimated at around EUR 1,430 million. Close to 60% of the total estimated amount is for water management sector, with improvements in wastewater treatment being one of the costliest items. The approximation costs for nature protection have been estimated at around EUR 34 million (2.4% of the total).

2 Institutional arrangements for nature protection and water management

Environmental management legislation (as well as other laws in Montenegro) are drafted, adopted and implemented/ enforced through state (national) and local level administrations; their roles and responsibilities (briefly described in the subsequent sections) are regulated under the Law on State Administration (Official Gazette of Montenegro No. 078/18).

Legislative and executive branches – embodied in Montenegro's Parliament and the Government, have the main roles in developing and passing legislation.

Parliament is an elected body with 81 members. The main responsibilities of the Parliament are to: adopt laws; adopt other regulations and general acts (resolutions, conclusions, declarations, and recommendations); adopt development plan and national spatial plan; call national referendums; appoint/ dismiss the Government and its members; confirm international treaties; etc. A law can be proposed for adoption by a member of the Parliament, Government and/ or by 6,000 citizens (with voting power).

Government (comprising a Prime Minister, one or more Deputies and Ministers) is responsible for internal and foreign policy, implementation of laws and other acts, adoption of bylaws (decrees, decisions and other acts needed to implement the laws), preparation of development plan and of national spatial plan, etc.

2.1 National level administration

Ministries and other administration bodies perform various state administration duties.

Ministry responsible for the environment (currently Ministry of Sustainable Development and Tourism – MSDT) is a state administration body competent for: development of environmental protection and climate change policies; cooperation with environmental non-governmental organisations (NGOs); determination of environmental protection measures and coordination and

³ The constitutional provision is based on the 1991 Parliamentary Declaration on Ecological State adopted in recognition of the country's valuable natural resources and in an attempt to set high protection goals, resounding global sustainable development ambitions in the run up to the 1992 Earth Summit in Rio de Janeiro.

supervision over their implementation; preparation, coordination and implementation of environmental strategies; international cooperation, including cooperation with the European Commission, and exchange of environmental information. As regards the topics pertinent to the present study, MSDT is responsible for regulating/ coordinating communal affairs (including provision of drinking water and collection, treatment and disposal of municipal wastewaters) as well as for protection of marine environment. Its competencies also comprise nature protection and integrated environmental protection and sustainable use of natural resources, including coordination, planning and setting of procedures for the establishment of Natura 2000 ecological network. Moreover, MSDT holds competencies for environmental assessment procedures and spatial planning.

Nature and environmental protection agency (NEPA) is a state administration body responsible for environmental monitoring, information and reporting, communication and cooperation with relevant national and international organisations/ institutions; the NEPA also has responsibilities for implementation of environmental legislation. Water monitoring responsibilities are split between NEPA and Hydro-meteorological Institute, whereas NEPA is expected to formulate requirements for comprehensive reporting on water quality (in line with the European Environment Agency requirements). The Agency has an important role in the implementation of environmental assessment procedures too.

NEPA is the key institution for the implementation of nature protection regulations in Montenegro. Its responsibilities include monitoring of the state of natural habitats and species, preparation of protection studies in the process of establishment of protected areas, preparation and implementation of monitoring programmes, preparation and maintenance of environmental database (that includes biodiversity data) and issuance of all types of permits related to protection of nature. Moreover, the Agency collects data and prepares documentation for the establishment of ecological network.

Nature protected areas (PAs) are managed by different institutions, which are responsible for preparation and implementation of management plans and programmes, and ultimately for the protection, enhancement and promotion of protected areas. The PA manager with the longest experience in Montenegro is responsible for the five National Parks. It is a public enterprise (partly funded from the state budget), the transformation of which into a commercial entity is currently being considered. Another public enterprise – for maritime domain management – is responsible for the management of PAs located within the coastal zone.

With recent expansion of protected areas network, examples of new management structures have been seen. For example, management of the recently established Nature Park Piva was initially (in the proclamation act) entrusted to the competent local self-government unit (Pluzine municipality, as the initiator of proclamation) and then transferred to a limited liability company established through a transformation of local tourism development agency.

Ministry responsible for water management (currently Ministry of Agriculture and Rural Development – MARD) is tasked with a set of issues related to water management policies, water supply and use of waters, protection of waters from pollution, water management planning and protection from floods. This means MARD is also responsible for transposition and implementation of the European water legislation, most notably of the Water Framework Directive 2000/60/EC (WFD). Due to complexity of water management regulations, a strong cooperation and coordination is required on the part of MARD with other relevant ministries (including MSDT, Ministry of Health for drinking water quality, Ministry of Internal Affairs for responses to natural disasters, Ministry of Economy for the use of water resources, etc.). In practice, however, cooperation and coordination requirements are not always and fully implemented; collaboration/ harmonisation of activities with

MSDT, for example, has been highlighted as a matter of concern in several reports on the progress in the EU accession process.

Water Administration (WA) is a state administration body responsible, *inter alia*, for issuance of water permits and other water acts; preparation of plans, programmes and water management accounts; preparation of documents for determination of regional and city water supply sources, including determination of sanitary protection zones for the said sources; calculation of charges payable for the use and pollution of water; and establishment and maintenance of water information system. Upon adoption of the river basin management plans (which is expected by 2021), two new units will be established within the WA to provide for Danube and Adriatic watersheds management.

Hydro-meteorological Institute (HMI) is a public institution tasked with performance of surface and groundwater quality and quantity monitoring programmes, as well as with hydrological observations and floods forecasting, and issuance of warnings to institutions responsible for the management of flooding risks.

An independent advisory body – Water Council – has been established under the Law on Waters to provide expertise and guidance in water related decision making processes.

Administration for Inspection Affairs (AIA) is a state administration body that performs inspection supervision over the implementation of the entire body of environmental and water legislation. Limited capacities of the AIA are regularly pointed out as an obstacle to effective implementation of the laws: during the past years, for example, the number of inspectors in the AIA's Environmental Inspection Department was around five (plus/ minus one to two persons).

2.2 Local level administration

Local administration is organised at the level of 24 self-government units – 22 municipalities, the capital town of Podgorica and the old capital Cetinje.

Competences (of interest for the present study) of administration organised at the level of self-government units include general environmental management, proposal and development of environmental measures, preparation and coordination of environmental plans, programmes and projects. These overall competences include nature protection whereas local self-government units have responsibilities for the establishment and management of certain types of protected areas (for example, nature parks and monuments of nature). Local administrations are also tasked with management of water resources of local significance (i.e. minor water bodies, usually located/spreading over the territory of a single self-government unit). Local level spatial planning and environmental assessment procedures are other important areas of competences for self-government units. Finally, part of the environmental inspection functions is performed at local level through communal inspections.

As a rule, local administrations' capacities for environmental management (including nature and water) are weak; water management tasks are, for example, performed by a single person in most of the municipalities.

3 Protection of rivers in Montenegro: existing situation and relevant initiatives

There are few rivers in Montenegro that are protected based on national regulations or international agreements. Relevant national acts include Parliamentary Declaration on the protection of Tara River from 2004 and a more recent (from 2017) Act on Declaration of a part of Cijevna River as a monument of nature. Despite designations, there is no active management to ensure protection of these rivers as yet. An exception is part of Tara River that lies within Durmitor National Park (details in section 3.1 below) while it remains to be seen if the new initiative to protect Zeta River will yield effective management solution.

It is also worth mentioning that the so far work on identification of future Natura 2000 sites⁴ covered several watercourses and river canyons in the northern part of the country (see section 3.2).

3.1 Current protection status

Tara River is the only watercourse in Montenegro that is protected based on provisions of international agreements:

- the entire basin (182,899 ha) has been protected as the World Biosphere Reserve (UNESCO's Man and Biosphere Programme) since 1977, based on the Convention concerning the Protection of the World Natural and Cultural Heritage (UNESCO);
- part of the Tara River canyon in the Durmitor National Park has been protected since 1980 as UNESCO's World Natural Heritage Site based on criteria N (ii), (iii) and (iv) of the Convention concerning the Protection of the World Natural and Cultural Heritage.

Moreover, Parliamentary Declaration on the Protection of Tara River was adopted in 2004 (Official Gazette of the Republic of Montenegro No. 78/04) in response to the plan to develop a large hydropower plant at Buk Bijela location in Bosnia and Herzegovina. The plan entailed flooding of some 18 km of the river course in Montenegro. The Declaration was submitted to the Parliament by non-governmental organisations following a petition to protect the river signed by around 11,000 citizens. Through the Declaration, Montenegrin Parliament discarded a possibility for any intervention in the Tara River canyon while reaffirming the river's significance and its protected status. The Declaration calls for a referendum on any possible future decision that would lead to changes of the river's values.

The provisions of the 2004 Declaration did not prove effective in preventing significant infrastructural works in the Tara's riverbed that were seen in 2018 and 2019 as a part of a highway construction project. In the project planning and environmental assessment phase, the route was not designed in a way as to avoid the river course. In the construction phase, the flow was temporarily dislocated at a specific location, large concrete pillars (to support the highway) were built in the river's natural watercourse, and a vast quantity of excavated materials and other wastes was deposited along the river banks thus permanently altering a section of its flow and causing (at least short-term) negative impacts for the plant and animal species downstream. This example is interesting as it illustrates that even in cases when high protection requirements are set in the relevant regulations and decisions, due attention is not paid to their practical application.

⁴ Including a detailed mapping of habitats and species at nine pre-selected key biodiversity areas (KBAs).

Despite the Man and Biosphere designation for the entire basin and the 2004 Parliamentary Declaration (focused on halting the specific hydropower project), a management body has not been established to provide for the river's protection. As already mentioned, an exception is the section of the river included in the area of the National Park Durmitor, which is covered by the management plans and programmes and protection measures implemented by the public enterprise responsible for the management of all the national parks in the country.

Lack of management structures and/ or active management is not only characteristic of Tara River but is also seen with a number of other protected areas. Appointment of a management body is mandatory under the current nature protection legislation, but it was not required in the past. For this reason, a number of 'old' PAs do not have a nominated body responsible for their management; this flaw is addressed through an ongoing revision of the status of protected areas. In some cases, even when the manager of a PA is formally appointed, active management is not performed due to various reasons (most frequently the cause are insufficient capacities), and the managers only have a role 'on paper'. At the moment, managers are identified for a total of 41 protected areas, whereas active management is only performed for a limited number of larger and more significant PAs⁵. Difficulties in setting up effective management structures for the existing PAs should be born in mind in any new initiative aiming to provide for long-term protection of rivers.

As of 2017, a part of Cijevna River canyon has been protected under the Law on Nature Protection (Official Gazette of Montenegro No. 054/16)⁶ due to its exceptional landscape characteristics and significant biodiversity characterised by floristic richness, endemic and rare species, specific fish and amphibian species, etc. The basis for protection was also found in the Spatial Plan of Montenegro until 2020⁷ (which had recognised landscape values of the area) as well as in the fact that the canyon had previously been identified as an Emerald site (an explanation on Emerald sites provided in section 3.2 below). The protection procedure was initiated by the self-government unit – capital town of Podgorica and Tuzi municipality which was at the time (protection was initiated in 2014) a part of Podgorica administrative area. A total surface of 2,022 ha has been designated as a monument of nature with three protection zones.

Protection goals stipulated in the proclamation act include:

- implementation of adequate measures for protection and sustainable use of biological resources;
- preservation and enhancement of biological diversity (genetic, species and ecosystem diversity), especially for endemic species and their habitats;
- preservation of natural characteristics of all the environmental media (soil, water, air);
- prevention of harmful activities that could jeopardise special or significant biodiversity components;

⁵ Including five national parks (Prokletije, Durmitor, Biogradska gora, Skadar Lake, Lovcen), nature park Piva, regional nature park Komovi, nature reserve Tivat Saltpans, and a number of protected beaches (beaches are managed by the public enterprise responsible for maritime domain, but not necessarily or not predominantly for protection purposes).

⁶ Procedures for protected areas proclamation described in section 5.2.1

⁷ Spatial planning system used to have a very important role in planning and establishing PAs through determination of various land uses and provision of guidelines; special purpose spatial plans were also prepared for the national parks territories. With the adoption of the new law on spatial planning and construction of objects in 2017, major changes were introduced as regards the types and coverage of spatial plans, but many of the elements relevant for protected areas were retained (details on the new spatial planning law provided in section 5.4.4)

- renewal and upgrading of degraded habitats and maintaining favourable status of populations of wild plant, animal and fungi species;
- establishment of a monitoring system.

The first (strict) protection zone covers an area of 1,803 ha (89% of the total protected area) with natural, almost intact habitats of exceptional functional and ecological significance that enable natural biological process, preservation of habitats and living communities integrity, as well as preservation of valuable cultural assets. Within this zone, use of natural resources and construction of objects is prohibited. Activities that are allowed in the strict protection zone include research, monitoring, educational and recreational visits, and implementation of protection and remediation measures.

In the second protection zone (encompassing partly changed natural and semi-natural terrains) the allowed activities and uses include, for example, marking of trails and development of infrastructure for visitors, all the forms of active tourism that do not threaten values of the monument of nature, tourist accommodation and catering, collection of forest fruits and medicinal plants for personal use, sustainable use of forests (in line with management plans), construction of roads and communal infrastructure, etc. Construction of new objects (permanent or temporary) is not allowed.

The third protection zone (encompassing built up areas and agricultural land) is one with the least strict protection regime, where construction of new objects is allowed in line with protected area management plan and relevant spatial plans. Sustainable use of forest products and medicinal herbs is also allowed in this zone.

Under the proclamation act, Tuzi municipality is nominated as a manager for Cijevna PA. At the time of proclamation, Tuzi municipality was a part of the capital town of Podgorica but has meanwhile become an independent municipality. Due to administrative changes and the new organisational set up, there were no moves during 2018 towards establishment of appropriate protected area management body and implementation of related measures (preparation of management plans, establishment of ranger service, etc.). The proclamation act also calls for the establishment of an advisory body – Cijevna Canyon Monument of Nature Council – which is not in place yet.

Funds for the operation of the Cijevna Canyon manager are to be provided from the local budget (of Tuzi municipality), fees paid for the use of protected area, donations and other sources. The fees can be charged for the protected area visits, provision of specific services, bird watching, collection of herbs and forest products, sports fishing etc.

The zoning regime and related prohibitions seem to represent an adequate mechanism for the lasting protection of the section of Cijevna River (with surrounding areas) designated as a monument of nature and for preservation of its resources. However, it remains to be seen how provisions of the proclamation act will be implemented in practice. Another important aspect that will affect prospects for long-term protection of Cijevna River is the destiny of current plans for construction of small hydro-power plants upstream in neighbouring Albania.

In 2019, initiative to protect Zeta River was launched by Danilovgrad and Podgorica municipalities where middle and lower parts of the watercourse are situated. Municipality of Niksic (with the upper part of the river flow) has not expressed interest to take part in the initiative so far. The root for the protection initiative is found in the spatial plans that have recognised the river's values and significance already a decade ago. In line with the overall aim of the EU WFD (on the attainment of good status i.e. low pollution levels and ecosystem health) the idea is to introduce a protection

regime that would lead to a reversal of negative water quality trends, ensure biodiversity protection and achieve chemical and biological parameters as they were some 20 years ago.

The most important natural values of the river refer to: hydrological specificities (numerous springs, meandering); characteristic plant communities, fish and insect species; and landscape and cultural values. The main pressures include pollution (from communal wastewaters, farms and from stone production) and unsustainable fishing (including illegal fishing).

Preparation of the protection study is underway, in line with provisions of the Law on Nature Protection (Official Gazette of Montenegro No. 054/16); the study will propose geographical scope of protected area including type of protection and appropriate protection regimes for various parts of the river/ its watershed. Danilovgrad and Podgorica municipalities will be responsible for the protected area management, either through some of the existing local administration bodies or (more likely) through the establishment of a special entity/ PA manager. The PA managers can be organised as public institutions, non-governmental organisations or commercial entities.

In parallel with the local governments of Danilovgrad and Podgorica, civil society has launched an initiative for the protection of upper part of the river course. One of the most significant features in the upper Zeta River is Gornjepoljski vir – a large estevelle⁸ which is protected as a monument of nature.

3.2 Initiatives relevant for protection of freshwater resources

An important contribution to the process of identification of natural areas worthy of protection was provided through the project funded by the Council of Europe (for the Balkan countries), implemented in 2005 – 2007. The project resulted with determination of 32 Areas of Special Conservation Interest (ASCIs) i.e. of Emerald sites in Montenegro, in line with the Convention on the Conservation of the European Wildlife and Natural Habitats (Bern Convention). The Standing Committee of the Bern Convention adopted proposal of the 32 Emerald sites in 2011, following a dedicated biogeographical seminar. More than a quarter of the identified sites refers to river sections and/ or their canyons and valleys⁹.

In 2016, implementation of the project entitled *Establishment of Natura 2000 network* started, encompassing part of the terrestrial environment of the country based on proposed Emerald locations. This is an IPA¹⁰ project aimed at providing technical assistance to MSDT and NEPA to enable them to carry out necessary activities for laying down the foundations of the future Natura 2000 network in Montenegro, in accordance with the requirements of the EU Birds and Habitats Directives.

Main elements of the project and related activities refer to the:

- correction of the existing boundaries of the biogeographical regions;
- organisation and training of the expert teams and the coordination body which should be positioned in NEPA (including a proposal for gradual increase of staff);
- work on preselected areas and their relation to the completion of the network;

⁸ A ground orifice which, depending on weather conditions and season, can serve either as a sink or as a source of fresh water, usually found in karstic regions.

⁹ Including Bojana, Cijevna, Mala rijeka, Mrtvica, Komarnica, Piva, Lim and Cehotina rivers, as well as Tara River within wider Durmitor area.

¹⁰Instrument for Pre-Accession Assistance – the EU funding mechanism.

- relation of designing Natura 2000 sites towards other national and international designations (e.g. Ramsar sites, Emerald sites, World Heritage sites, UNESCO MAB, etc.), as well as results of different initiatives (such as Important Plant Areas – IPAs, Key Biodiversity Areas – KBAs);
- management of the ecological network and relation to the management authorities of other protected areas in the country.

The nine pre-selected areas surveyed and mapped for presence of Natura 2000 habitats and species are listed below, including an indication on which of these areas have been previously identified as KBAs and ASCIs:

1. KBA Prokletije and ASCI the Lim River Valley;
2. KBA Moracke mountains;
3. KBA Komovi and ASCI Canyon of the Mala rijeka River;
4. KBA Hajla and ASCI Hajla;
5. KBA Durmitor, ASCI Durmitor and valleys of rivers Komarnica and Pridvorica;
6. KBA Maglic, ASCI part of the Piva River Canyon, and ASCI Bioc, Maglic and Volujak;
7. KBA Ljubisnja and ASCI the Cehotina River Valley;
8. KBA Cemovsko field – Cijevna and ASCI the Cijevna River Canyon; and
9. Moraca Valley from approximately 8 km upstream of Podgorica to Moraca monastery.

Mapping of these areas was completed by spring 2019. The project emphasised it is of utmost importance to gradually increase national financing in order to establish a stable national implementation structure for Natura 2000. Along the lines of this recommendation, nationally funded surveying and mapping work is expected to continue in 2019/ 2020. Another IPA project and the UN Environment project (the latter addressing coastal and marine PAs) are also expected to contribute over the course of the next few years, allowing for establishment of Natura 2000 network by the time of the country's accession to the EU.

Another IPA project – *Strengthening of capacities for the implementation of Water Framework Directive in Montenegro* – is underway (until February 2020) with the specific objective to prepare River Basin Management Plans (RBMPs) for Adriatic and Black Sea watersheds in Montenegro (covering definition and delineation of water bodies; characterisation of river basins; reference conditions; monitoring systems; definition of impacts and pressures, preparation of plans and definition of programmes of measures). The initiative is also expected to strengthen administrative capacities for data collection and other requirements as set out under WFD for the preparation river basin management plans, including setting up of a water information system.

Main activities implemented under the project include:

- Analysis of river basin district characteristics;
- Assessment of environmental impacts of human activity and identification of heavily modified and artificial waters;
- Definition of reference conditions;
- Economic analysis of water use;
- Establishing a register of protected areas;
- Procurement of monitoring equipment in order to achieve water monitoring system in accordance with WFD requirements;
- Preparation, definition, development of Adriatic Sea and Black Sea basin management plans including programmes of measures.

Adoption of the two RBMPs is expected by 2021 (strategic environmental assessments will be prepared for the two plans too). Even through preparation of RBMPs is now in an advanced stage, an intervention in the second half of 2019 and in the beginning of 2020 could be useful as a follow up to the present assessment – possible in the form of an advocacy campaign for durable river protection – and by utilising results of the national and the EU DRPM assessments.

4 Main policies relevant for river protection and related pressures

Even though it did not lead to a breakthrough in development and implementation of environmental policies in Montenegro and was (rightly so) subject to critical views as regards its validity and effectiveness, it is worth mentioning that since 1992, all the Montenegrin constitutions contained a provision defining the country as (*inter alia*) an ecological state. This provision could be used as an argument for developing and implementing a DRPM.

Development of the key national planning documents and strategies during the past decade has been accompanied with extensive debates on comprehensive plans to use water resources for hydropower generation as opposed to protection goals, but without effective policy coordination outcomes and practical solutions. The interests remain high and disparate views are likely to mark the future policy cycles too. An NGO-led initiative to agree on the ‘no go zones’ few years ago was met with a lack of interest on the part of responsible institutions and did not yield results. Cooperation between environmental and water administration cannot be quoted as an example of coordinated and effective work, whereas Ministry of Economy has traditionally had a strong saying in various water related policy processes due to its competences for the issuance of concessions for the use of water for energy generation. Tourism sector could be a potential partner in advocating for a DRPM due to tourism promotion concept utilised in recent years (referring to Montenegro as a country of Wild Beauty) and the fact that tourism products related to free flowing rivers and their natural, recreational and landscape values have gained importance.

Strategy for the Development of Energy Sector by 2030 (adopted in 2014) entails extensive plans for development of large hydropower plants (HPP), prioritising four successive HPPs on Moraca River with the total installed capacity of 238 MW, and a HPP on Komarnica River with the installed capacity of 168 MW. Both river courses have been included in the recent IPA project on the establishment of Natura 2000 network as areas surveyed under the initiative. Previous plans for development of HPPs on Tara River are not included in the Strategy’s final scenario for the energy sector development due to the 2004 Parliamentary Declaration on the protection of the river, which is a positive development but still not a guarantee that under given circumstances, large hydropower projects on Tara River would not be approved.

It is worth mentioning that since the adoption of the Strategy five years ago there was no progress towards implementation of prioritised hydropower projects on Moraca¹¹ and Komarnica rivers. The responsible Ministry – Ministry of Economy – and the Government still promote these projects but there are no practical steps forward, presumably due to a lack of potential investors’ interest.

On the other hand, a significant progress (if it can be labelled as such, having in mind problems recorded in construction and operation of these facilities) was seen with development of small HPPs

¹¹ In 2010, detailed spatial plan for construction of Moraca HPPs was developed and a strategic environmental assessment (SEA) prepared. Both were much disputed, and the SEA process was inconclusive as regards the assessment of environmental impacts of the proposed plan: amongst other stakeholders, the NEPA (as the competent authority for the approval of the environmental report) pointed out insufficiency of data used for the assessment of impacts on biodiversity and hydrology.

over the past decade. The Energy Strategy planned for a total installed capacity of around 120 MW and annual generation of around 390 GWh from small HPPs by 2025. Electricity generation from small HPPs more than tripled recently – from around 30 GWh in 2010, to over 100 GWh in 2018.

According to information obtained recently from the Ministry of Economy, 36 concession agreements for the development of small HPPs have been concluded over the period 2007 – 2019. Half of the concessions agreements have been issued based on tender procedures, and the other half based on the shortened procedures/ energy permits¹². These concession agreements refer to 33 watercourses and entail development of a total of 55 small HPPs, with a planned installed capacity of 96 MW and annual production of 313 GWh. Out of the 55 small HPPs subject to issued concession agreements, 13 are already operational, 30 are in the construction phase, and for the remaining 12, preparation of technical documentations is underway.

The expansion of small HPPs often came at a grave cost: due to environmental and water management weakness¹³, major disturbances and negative impacts were seen at several water courses where small HPPs started operating. A strong resistance of local population to the development of new small HPPs was also seen for a number of watercourses where concession agreements have been issued. It is worth mentioning that many of the 33 river courses encompassed under the concession agreements for small HPPs during the past decade are rivers (even though small) with exceptional biodiversity and landscape values, highly important for the livelihoods of local communities. Consequently, an NGO-led initiative supported with a petition signed by more than 6,000 citizens was submitted to the Parliament in May 2019 calling for a moratorium on the development of small HPPs and questioning legitimacy of a significant share of issued concession agreements.

Spatial Plan of Montenegro until 2020 (adopted in 2008) as the key land use and development document¹⁴ recognised potential and actual conflicts in the use of space due to sectoral development aspirations on one, and the need to protect natural resources and ensure their sustainable use on the other hand. The Plan however falls short of providing effective mechanisms for resolving these conflicts and remains at overall recommendations on how the planning should be approached.

Rational use of natural resources is, for example, one of the operational goals of the Plan, to be achieved, amongst other things, through incentives for the use of renewable energy resources – primarily hydro potential – whenever this is spatially acceptable. The requirement for determination of ‘spatial acceptability’ of proposed interventions does leave room to put forward river protection agenda, however in reality protection interests are often neglected and voices of stakeholders advocating protection overruled.

Treatment of some sectoral goals in the Spatial Plan of Montenegro is of interest for the present study too. As regards the energy sector goals, the Plan favours use of hydro potential for electricity

¹² Tender procedures are used when planned HPPs have installed capacity of 1 – 10 MW. For smaller plants i.e. for the installed capacities of 0 – 1 MW, concession agreements are concluded with investors that obtain energy permits from the Ministry of Economy.

¹³ Including: insufficient data on flows, weak environmental impacts assessments, inadequate supervision, weaknesses in the issuance of concession contracts (favouring investor’s interest over river and ecosystems protection), and similar.

¹⁴ National spatial plan is adopted by the Parliament and together with a set of lower level planning documents, it used to form a hierarchy of spatial plans that had a power of a law in Montenegro. The spatial planning system has undergone significant changes with the adoption of the new spatial planning law in 2017, but the main approaches (including preparation of the national spatial and lower level plans) were retained.

generation and states that suitable locations (for HPPs) must be secured and freed from other potential uses that contradict or interfere with foreseen energy uses. On the other hand, the Plan also emphasises the need for a careful selection of locations for electricity generation in order to protect natural resources and their values in the immediate and wider surroundings. The need for the assessment and recording of long-term and wide-ranging impacts of considered projects is also underlined as a basis for consenting to planned investments.

Principles and goals for the protection of natural and cultural heritage are addressed through elaboration of general goals of spatial development in Montenegro. Adoption of European approaches (as laid down in respective directives and conventions) to water management, nature and landscape protection is endorsed. Moreover, the Plan explicitly calls for locations for large development capacities and infrastructure (including transport infrastructure, landfills, water accumulations and similar) to be primarily planned outside protected areas, especially those of international significance. The Plan also calls for a revision of the status of the existing protected areas (to strengthen their protection), declaration of new protected areas as well as for establishment of a network of protected areas in line with Natura 2000.

The time horizon of the current Spatial Plan is 2020. Having in mind the fact that spatial planning legislation (details in section 5.4.4) has recently undergone significant changes, it is likely that preparation of a new national spatial plan (and/ or general regulation plan) will be initiated in the near future. This process could be a good opportunity to engage in a discussion on the need for durable river protection mechanism and/ or to carry out awareness raising or advocacy campaigns.

Water Management Strategy was adopted in 2017 in accordance with provisions of the Law on Waters. Even though the Strategy endorses water management principles and approaches of the EU water legislation (most notably of the EU WFD), the overall impression is that the document is mainly focused on water uses and less so on the protection aspects in managing water resources. The following are the goals of the Strategy:

- Establishment of legal framework for efficient functioning of the water sector;
- Provision of economic stability to enable sustainable development of the water sector;
- Ensuring sufficient quantities of good quality water for water supply and economy needs;
- Protection of population and material assets from flooding and other harmful impacts of water;
- Management of watersheds in order to protect water use and other systems, as well as the environment;
- Protection of water and attainment of good water status in order to improve the environment and biodiversity;
- Setting up of monitoring, management and information technologies support for the implementation of water use goals;
- Determination of linkages between water plans and spatial and environmental protection requirements (and vice versa), provision of more reliable planning for positioning of other facilities and systems while respecting limitations and possibilities of water infrastructure;
- Organisation improvements for integrated management of water resources; and
- Providing for public participation in water management.

As regards protection of water resources, the Strategy integrates the WFD concept of attaining good status of waters and proposes a set of measures to prevent pollution of surface and groundwater

from different sources¹⁵, and manage waters in protected areas (in order to protect: drinking water sources; waters intended for swimming and recreation; vulnerable and zones prone to eutrophication; areas important for preservation of habitats and species, including Natura 2000 network; and commercially significant aquatic species). The Strategy does not elaborate on water protected areas of significance for specific habitats and species but makes a reference to related activities implemented under the Law on Nature Protection. It also emphasises the need to establish a register of protected areas in line with the Law on Waters.

National Strategy of Sustainable Development (NSSD) was adopted in 2016 with a time horizon until 2030. The Strategy addresses a wide range of economic and social development topics as well as the environmental protection needs, and links national goals and measures to the global 2030 Agenda for Sustainable Development. Overall, the Strategy's goals and measures are conducive to durable protection of water resources, however the document does not contain specific elements that could be used to advocate for or develop a DRPM.

The main NSSD goals and measures that are of interest for the present study include:

- Halting degradation of renewable natural resources' values through efficient protection of designated areas, ecologically valuable habitats, forest, water and coastal ecosystems, protected species, air and soil; and improved biodiversity, water, air and soil monitoring;
- Efficient management of renewable natural resources through identification and valuation of important habitats and ecosystems (including a revisions of the status of existing protected areas); development of capacities for integrated management of protected and ecologically valuable areas; and providing for a resource-efficient use of waters.

The revision of the status of existing protected areas (called for in the Spatial Plan and NSSD) is underway, mainly for small protected areas that were declared a long time ago based on legal provisions different from those that are currently in force (as already discussed in section 3.1). It is not particularly relevant for the DRPM, with the main challenges being linked to the status of protected areas in the coastal zone.

5 Regulations on protection and use of natural resources

Legislation development is in general strongly influenced by the EU accession process, and the same applies to regulations on environmental protection, nature and water management. Negotiations on chapter 27 on environment and climate change opened in December 2018, which is expected to further accelerate the process of transposition of the EU legislation.

Provisions on public participation and access to information and justice are regularly included in environmental, water, nature protection, spatial planning and other pertinent legislation. Formal requirements are normally adhered to, but the public participation procedures sometimes fall short of delivering their objectives and remain on *pro forma* level rather than allowing.

5.1 Environmental protection

The Law on Environment was adopted in 2016 and published in the Official Gazette (OG) of Montenegro No. 052/16, regulating principles, instruments and measures for environmental protection and sustainable development. The Law 052/16 encompasses for a meaningful inclusion of

¹⁵ The main pressure being the untreated wastewater.

various stakeholders in policy and decision-making processes the principle of preservation of natural resources (Article 5.3) and stipulates that:

- Natural resources are used under conditions and in a manner that provides for preservation of geodiversity, biodiversity, protected natural assets and landscape values;
- Renewable natural resources are used under conditions that provide for their permanent and efficient renewal and continuous enhancement of their quality;
- Non-renewable natural resources are used under conditions that provide for their long-term rational and sensible use, including limitation of use of strategic or rare natural resources¹⁶ and their substitution with other available resources, composite or artificial materials.

Other environmental protection principles stipulated in the Law include principle of cooperation, polluter/ user pays principle, prevention and precautionary principles, access to information and public participation as well as principle of protection of the right to healthy environment and access to justice¹⁷.

In addition to the Law on Environment, environmental protection and sustainable development are regulated in more detail under specific laws addressing individual environmental themes and media, including nature and water. Article 17 sets out basic provisions for the protection of water, calling for implementation of protection measures to improve conditions of water and water ecosystems and to manage water resources in an integrated manner. According to Article 20, nature protection is achieved through preservation of geological and biological diversity, landscape values and biodiversity, as well as through protection of natural values.

Moreover, the Law 052/16 prescribes preparation of national and local environmental and sustainable development strategies, plans and programmes, and sets a basis for detailed regulation of a range of environmental protection instruments (such as environmental assessments, including nature appropriate assessment; environmental quality standards; spatial plans; and others). Sections VIII and IX of the Law are dedicated to environmental monitoring, information and reporting on the state of the environment, sections X and XI to environmental information system and informing/ involving the public in environmental decision-making, and ensuring access to information and justice.

As regards the financing (provisions contained in section XII), the Law provides a list of potential sources to finance environmental protection including national and local budgets; revenues from environmental taxes and charges; environmental fund receipts; loans and donations; financial instruments and funds of the EU, UN and other international organisations; foreign investments for environmental protection; and other sources. Establishment of an environmental fund (Eco-fund) to *inter alia* support projects aimed at preservation of biological, geological and landscape diversity as well as rational use of natural resources is regulated under Article 76. The Eco-fund is to collect revenues from environmental taxes and charges (including air emission charges, charges on imports of ozone depleting substances and charges for generation and disposal of hazardous wastes).

¹⁶ Even though the provision on limiting the use of strategic or rare natural resources refers to non-renewable resources and is thus not necessarily applicable to rivers, it is worth noting down that such a requirement is included in the Law on Environment.

¹⁷ Article 5.13 prescribes the right of a citizen, group of citizens, their associations, and of professional or other organisations to influence the environmental decision-making processes and to have access to justice in environmental matters.

Finally, the Law regulates authorisations and responsibilities of environmental inspection and prescribes other enforcement measures and mechanisms (including administrative supervision, levels of fines in case of non-compliance and similar).

Information on environmental protection financing

The Eco-fund has been established in November 2018, however it is not fully operational yet. In the past period, total expenditures for environmental protection were below the level of 1% of GDP, whereas an increase to 1 – 1.5% is envisaged under the NSSD by 2020 and further to 1.5 – 2% by 2030. Total environmental expenditures for the period 2008 – 2014 are shown in table 5-1.

Table 5-1: Environmental expenditure 2008 – 2014 (in million EUR)

	2008	2009	2010	2011	2012	2013	2014
State budget	5.7	10.0	9.3	9.0	6.2	5.3	7.8
Local budgets*	32.7	47.4	42.9	12.5	10.7	3.0	3.0
Other national sources**							12.0
TOTAL	38.4	57.4	52.2	21.5	16.9	8.3	22.8
Share of GDP (%)							0.68

* Estimated amounts for minimum structural investments for 2013/ 2014

** Estimate based on the experiences of other southeast and central Europe countries (referring to expenditures of NGOs, commercial entities, private donors and individuals)

Source: National Strategy for Transposition, Implementation and Enforcement of the EU Environmental and Climate Change *Acquis*

A large share of environmental investments in the period 2008 – 2012 was provided by local administrations/ municipalities for infrastructure (water, wastewater, and waste) improvements. The main source of these investments were loans, which significantly reduced future borrowing capacity of municipalities.

Available IPA sources (programming period 2014 – 2020) are EUR 44.13 million (including EUR 16.68 million for water and EUR 3 million for nature).

The National Strategy for Transposition, Implementation and Enforcement of the EU *Acquis* identified a significant funding gap to reach the set approximation goals, which will need to be closed from various sources (including EU grants, financial institutions' loans, other donors, private national investments and public sector sources – state and local budgets, budgets of other public institutions, and economic instruments/ Eco-fund).

5.2 Nature protection

The basic provisions for nature protection are set under the Law on Environment (OG 052/16), while the Law on Nature Protection (OG of Montenegro No. 054/16) adopted in 2016 with related bylaws provides for detailed regulation. The Law OG 054/16 specifies the following measures for the protection and preservation of nature: protection of natural assets; sustainable use of natural resources and natural assets, and control of their use; preservation of the ecological network areas; and preparation and implementation of relevant documents¹⁸.

¹⁸ Including national biodiversity strategy; local biodiversity action plans; and management plans for protected natural assets with annual management programmes.

Article 15 of the Law on Nature Protection stipulates that natural resources and natural assets can only be managed and used based on relevant spatial plans and technical documentation, or management plans and programmes for the use of natural resources in sectors such as mining, energy, transport, maritime navigation, water management, forestry, hunting, fisheries, tourism and other sectors that may have an impact on nature. All these documents should include nature protection guidelines and conditions, whereas it is forbidden to use space and natural resources and assets in a way which causes permanent disturbances to biological diversity.

The Law requires economic activities be planned and performed in a way as to avoid or minimise threats and damages to nature; legal or natural persons that cause damages to protected species and natural habitats must implement remediation measures.

Section V of the Law 054/16 regulates protected natural assets. According to Article 20, parts of nature can be designated as protected natural assets on the grounds of exceptional biological, geological, ecosystem and landscape diversity. Protected natural assets include protected areas and parts of ecological network.

There are six types of protected areas (PAs) envisaged under the Law on Nature Protections: strict nature reserve; national park; special nature reserve; nature park; monument of nature; and landscape with exceptional qualities.

Strict nature reserve is an area with exceptional or representative ecosystems and undisturbed/ unchanged (or minimally changed) nature where it is forbidden to perform any activities except for education, research and monitoring. Visits to strict nature reserves must be approved by the PA manager.

National parks (NPs) are areas designated to protect ecological integrity of one or more ecosystems for current and future generations; the aim is to prevent inadequate use of natural assets and other harmful activities in the NP areas i.e. to prohibit activities that could jeopardise the original natural values of the area.

Special nature reserves are areas of outstanding importance for the uniqueness, rarity and representativeness of their natural values. The special reserves encompass habitats of endangered species where humans live in harmony with nature; these areas are protected to preserve natural conditions and values. The Law on Nature Protection provides (Article 23) a list of prohibited activities in special nature reserves that *inter alia* include development of objects and transport infrastructure, and changes in the area's natural values. Other activities can be allowed based on permits that are issued in accordance with the management plan.

Nature park is a large natural or partly cultivated area characterised by a high level of biological diversity and/ or geological values with significant landscape, cultural, historical values and ecological features of national and international importance. Activities that pose a threat to the features, values and role of nature parks are prohibited.

Monument of nature is an area that has one or more natural and cultural forms with ecological, scientific, aesthetic or educational values; it can be located in natural, semi-natural or anthropogenic areas. Activities that pose a threat to the features, values and role of the monuments of nature are prohibited.

Landscape with exceptional qualities is an area where over the time, interactions between human activities and nature have formed specific/ recognisable features of the area with significant

aesthetic, ecological and cultural values in addition to high biological diversity. Activities that could threaten the features due to which the landscape was protected in the first place are forbidden.

Other provisions included in the Law on Nature Protection relevant for protected areas refer to monitoring, reporting, financing, ranger services (their rights and duties), and administrative and inspection supervision over the implementation of the law (including provisions on the rights and duties of environmental inspectors). The Law also prescribes fines for misdemeanours. A number of articles referring to the declaration and management of the ecological network will only come into force when Montenegro joins the EU.

5.2.1 Procedures for protected areas and ecological network establishment

A protected area designation procedure comprises the following steps:

1. Request to prepare protection study for the considered area; it can be placed by a ministry or local self-government unit.
2. Preparation of protection study by the competent state administration body (currently the Nature and Environmental Protection Agency, which can engage other organisations/ experts, as necessary); the study is funded by the entity that places the request/ initiates the process, and the funding sources include budgets, the EU funds, donations and other sources. Preparation of the study usually takes one to one and a half years and it entails informal consultations with various stakeholders. Following a completion of the study, public debate is organised.

The protection study provides for the main elements of the act on protected area proclamation (described in point 3). The following information is provided in the study: description of natural, man-made and landscape characteristics; description of specific values of the area; existing conditions of resources with an estimate of the level of their use; mapped distribution of the most significant habitats and species to which the protection goals apply; evaluation of the overall conditions in the area; an opinion on the proposed protection including a proposal of the protection type and category based on the area's significance; proposal of protection regime/ zoning; mapped proposal of outer boundaries and boundaries of different protection zones based on cadastre data; concept of protection, advancement, sustainable development and of management of the considered area; proposal of protection measures and conditions for protection, including proposal of activities that may be conducted in different protection zones; consequences that will follow proclamation, especially with a view to property rights and existing economic activities; approximate financial resources needed to implement the act on proclamation of the site as a protected natural asset; and other elements of importance for protection.

3. Preparation of the act on protected area proclamation based on the findings of the protection study. Protection status (type and category of protected area), boundaries, zoning, lists of prohibited/ allowed activities and management arrangements are some of the key elements proposed in the proclamation act. A public debate is organised for the proposal of the proclamation act (in practice, the two public debates – for the protection study and for the act on proclamation – are usually organised together).
4. Adoption of the act i.e. proclamation of protected area takes place after public debates and finalisation of the documents (whereas NEPA is responsible for taking into account received

comments and suggestions and for finalisation of the protection study and proclamation act). National parks are proclaimed by the Parliament (i.e. the Parliament adopts a law on the proclamation of a national park). For strict and special nature reserves, the act on proclamation is adopted by the Government. When located on the territory of a single self-government unit, the acts on proclamation of nature parks, monuments of nature and landscapes with exceptional qualities are adopted by respective self-government units, otherwise (when PAs spread on the territory of two or more self-governments) the Government adopts them.

Articles 29 – 31 of the Law on Nature Protection provide guidelines on the evaluation and categorisation of PAs as well as on the zoning. Seven categories of PAs are envisaged, starting from category Ia which refers to strictly protected areas where outside impacts are strictly controlled and limited, to category VI for areas meant for preservation of ecosystems and habitats (with supporting cultural values and traditional ways of managing natural resources) where natural resources are managed and used in a sustainable manner.

Protection zones within PAs include: zone I with strict protection regime (where for example use of natural resource and construction are prohibited); zone II with active protection regime (allowing interventions intended to improve conditions in the PA as well as limited use of natural resources); and zone III with sustainable use regime (where, for example, settlements and supporting infrastructure can be developed provided such development does not undermine the basic values of the area). A buffer zone can be established outside the PA boundaries in order to prevent and/ or mitigate external negative impacts.

PAs may be used in accordance with the protection study, special purpose spatial plans (so far prepared for national parks territories), PAs management plans and based on permits. Article 40 of the Law on Nature Protection stipulates that competent administration body may issue permits for activities to be performed in the PAs (if not included in the management plan), but this only refers to activities that are not subject to environmental impact assessment/ appropriate assessment procedures (otherwise, permitting is subject to approval of assessment studies).

Articles 41 – 51 regulate identification of areas and establishment of ecological network in Montenegro (including implementation of appropriate assessments) in line with the EU Birds and Habitats Directives. Protection measures are implemented in ecological network areas to preserve or restore conditions of target habitats and species (the list of habitat types/ priority habitat types and the list of priority species is published by the relevant ministry). Ecological network is identified through a sequence of steps involving collection of data, creation of a database, preparation of ecological network proposal, public debate, and eventual proclamation (by Government). Parts of the ecological network that overlap with PAs or are located in their immediate vicinity will be managed by PA managers; for other ecological network sites, managers will be determined in the proclamation act.

The Law on Nature Protection (Articles 52 and 53) describes how overriding public interest can be determined and what compensatory measures¹⁹ need to be implemented when project, plan or programme detrimental to the ecological network is approved.

¹⁹ Including establishment of a new area with the same characteristics as the damaged one; establishment of another area significant for preservation of the same target habitat types and target species; and creation of favourable conditions within an existing ecological network area for target habitat types and species.

So far, there are no practical experiences with implementation of compensatory measures under the Law on Nature Protection, nor any other form of mitigation and offsets schemes.

5.2.2 PAs and ecological network management

Protected and ecological network areas' managers are determined in the proclamation acts. The conditions that need to be met for an entity to qualify as a PA manager are set out in Article 55 of the Law on Nature Protection and in the Rulebook on the detailed conditions to be met by the protected areas managers (Official Gazette of Montenegro No. 035/10) from 2010. The requirements are set in a way to ensure adequate staffing and qualifications are available for the management of different types of PAs and that a ranger service is organised (with at least one ranger per 3,000 ha of protected area). There are no specific requirements as regards the organisational form of the PA managers²⁰. Consequently, there are no obstacles for an NGO to be entrusted with PA management.

Managers are obliged to prepare and implement management plans and programmes (the purpose and contents of which are described in detail in the Law on Nature Protection), and to protect, improve and promote PA and/ or ecological network area. Work of the PA managers is funded from the national or local self-government budgets, fees paid for the use of PAs/ ecological network sites, donations and other sources. Fees for the use of PAs can be levied for visiting the PAs (entrance fees), for provision of various services to visitors, birdwatching, filming, using the PA sign and name, renting of facilities and/ or equipment, camping, rafting etc. The Law also prescribes a possibility for the establishment of payments for ecosystem services (to be regulated through a contract between the PA manager and user of the ecosystem services).

Information on PAs and ecological network financing

National Strategy for Transposition, Implementation and Enforcement of the EU Environmental and Climate Change *Acquis* (from 2016) envisaged more than a six-fold increase in expenditures for protected areas management would be needed over the period 2016 – 2020: from around EUR 2 million to EUR 13.4 million. According to the Strategy, funding will predominantly come from local and state budgets in the short run. In mid- and long-term, it will be of vital importance to increase the role of user charges as a funding source. This points to a conclusion that for protected areas proclamation and management in general, including plans and/or aspirations for long-term river protection, it would be very important to carry out targeted research to gather more information on economic benefits of protection. Importance of development of pilot measures for agriculture and environment (that could also be used for Natura 2000 network) in the framework of IPARD (the EU Instrument for Pre-accession Assistance for Rural Development) programmes is also emphasised, and so is tapping of other funding opportunities including cross-border programmes, national research programmes, and donors other than the EU.

Owners of properties located within a PA/ ecological network area intending to sell their properties have to offer them to the Government/ local self-government unit first (i.e. national/ local governments have a priority purchase right). Property rights for real estates within PAs can be limited and properties can be expropriated (in accordance with provisions of the law regulating expropriation).

²⁰ The so far practices show that common organisational forms for the PA managers in Montenegro are public and commercial enterprises (limited liability companies). As already mentioned, for a number of protected areas that were established earlier (before designation of managers became mandatory as a part of proclamation acts), managers have not been appointed (i.e. there is no active management of these protected areas).

Article 66 of the Law on Nature Protection regulates the right of the owners of properties located within PAs to be compensated for possible limitations of the rights to use their possessions; the compensation is commensurate to the decrease of revenues that might occur due to proclamation and introduction of a special management regime. The owners of properties are obliged to allow the PA managers and other authorised bodies to perform activities in the PAs in line with management plans and other relevant documents. In case of inflicting damages to the PA, owners of properties are obliged to implement remediation measures.

5.3 Water management

The Law on Waters was adopted in 2007, published in the Official Gazette (OG) of the Republic of Montenegro No. 027/7. Meanwhile, the Law was changed and amended on several occasions, the last time in December 2018. These changes were published in the Official Gazettes of Montenegro No. 073/10, 032/11, 047/11, 048/15, 052/16, 055/16, 002/17 and 084/18. The successive changes and amendments helped reach a high level of alignment with the EU Water Framework Directive.

The Law regulates legal status and ways for integrated management of waters, water and riparian grounds and water objects; conditions and ways of performing water use activities; and other elements of importance for water management such as:

- Territorial management (water of national and local importance, water areas, strategies and water management plans, etc.);
- Use of waters (for water supply, irrigation, bottling, fish production, electricity generation, navigation, sports and recreation, etc.);
- Protection of water from pollution, including definition of specially protected water areas, sensitive and vulnerable areas as well as plans for protection from pollution and monitoring plans;
- Protection from harmful effect of waters (definition of flooding risk areas, risk assessment and management, protection from erosion and torrents, protection plans and measures, monitoring, etc.).

Among the basic principles of the Law on Waters (last amended in 2018, OG 084/18) are the ecosystem approach to water management and attainment of good status of waters, as well as sustainable use of water based on long-term protection of water resources. The main principles for water management include sustainable development, integrated management, polluter and user pays principles, public participation and others.

According to Article 21 of the Law on Waters, two river basin areas – Black and Adriatic Sea river basins – are determined as the basic water management units; they are further divided into sub-basins.

The main documents for water management are Water Management Strategy (WMS) and River Basin Management Plans (RBMP). The RBMPs *inter alia* contain: mapped information on the monitoring network and mapped monitoring results, including surface waters status (ecological and chemical) and groundwater status (chemical and quantitative), with protected areas and reasons for possible deviations; a list of priority environmental goals for surface and groundwater with protected areas, including reasons for possible deviations; economic analysis; etc. The RBMPs may prohibit or limit special water uses that *inter alia* threaten natural equilibrium of water and riparian ecosystems and of protected areas. According to the Law on Waters, competent administration body (Water Administration) is responsible for preparation of the RBMPs, and the Government adopts them. For

both the WMS and RBMPs, strategic environmental assessment is needed. Public participation in the preparation of water management documents has to be ensured.

Based on the RBMPs and in order to achieve or maintain good status of water, programmes of measures are adopted.

The Law on Waters calls for establishment and maintenance of water information system (Article 159) and water cadastres (Articles 130 and 131)²¹. Water information system is to contain data on the state of water quality, categories and classes of water bodies (surface and groundwater), water documentation, water management measures etc. Water cadastres are kept in order to provide data needed for water management i.e. for the use of water, protection of water from pollution and protection from harmful effects of water; it is envisaged that water cadastres form a constituent part of water information system.

The Law (last amendments OG 084/18) differentiates between general and special water uses, whereas general use refers to the usage of water for personal and household needs, swimming and recreation, for firefighting and protection purposes, and for navigation. For any other i.e. special use of water, water rights must be obtained (based on water permits or concession agreements). Two important sections of the Law – 5.2 and 5.3 – refer, respectively, to protection of waters from pollution, and protection from harmful effects of waters.

Article 74a regulates determination of protected areas (within each river basin) to provide for protection of surface and groundwater and for preservation of habitats of plant and animal species dependent on water. Water protected areas have to be registered and mapped (such information has to be reflected in RBMPs), and they *inter alia* include areas intended for the protection of habitats and species where maintenance and improvements of water status represent important conditions for their survival and reproduction in accordance with Natura 2000.

Water acts – water conditions, water consent, water permit and water order – determine conditions and ways of exercising water rights in order to ensure unique water regime, integrated management and equitable access to water.

As a rule, water acts contain the following information: information on the holder of water right; description of location, type, scope, and purpose of water right, ways and manners for wastewater disposal and performance of other activities; period to which the water right refers; ways of use and measures that must be implemented by the holder of water right (for prevention or mitigation of negative impacts); information on water right fees; conditions that must be met by the holder upon expiry of water right; and other obligations of the water right holder.

Water conditions must be obtained by investors intending to construct new/ reconstruct the existing objects, to perform geological surveys or other activities that may cause permanent, occasional or temporary changes to water regime; water conditions are used for preparation of technical documentation for intended interventions. For water uses that remain within category of general use of water (e.g. for construction of housing units, wells for individual water supply and similar small scale activities), water conditions are not necessary. This water act expires one year following the issuance unless the investor files a request for issuance of water consent; exceptionally, shorter or longer validity periods for water conditions may be determined. Articles 115 and 116 list all the objects and works for which water conditions are necessary. Competences for the issuance of water

²¹ Water cadastres and water information system have not been established yet; the ongoing IPA project is providing assistance to Water Administration to implement relevant provisions of the Law.

permits are shared between state and local administration bodies, depending on the type of water body (whether it is of national or local importance) and the type/ size of objects and works.

Water consent must be obtained before construction or other works (subject to issuance of water conditions) are initiated. This water act determines if the technical documentation for intended works has been prepared in line with water conditions. Water consent is issued by the same administration body that issues water conditions. Without approval of the competent body, water consent cannot be transferred to another person. Period of validity of water consent is set depending on nature and complexity of construction; period of validity of construction permit is also taken into account when deciding on how long a water consents is valid. In principle, validity period does not exceed two years.

Before starting to use the objects and facilities requiring water consent, investor is obliged to procure water permit. This water act confirms that objects and facilities have been constructed in line with water consent. Water permit determines ways, conditions and level of water uses; allowed quantities; limit values; ways and conditions for wastewater discharges; ways and conditions for storing and disposing dangerous and other substances that can cause water pollution; and conditions for other activities/ works that can influence water regime.

Water permit is issued by the same administration body that issues water consent, based on a report of a qualified person, committee or scientific/ professional organisation. It is issued for a limited period of time not longer than 10 years. Exceptionally, water permits for the use of hydro-accumulations are issued for 30 years periods.

The right acquired based on a water permit cannot be transferred to another person without competent body's consent. A request for prolongation of water permit has to be placed at least two months before the valid permit expires.

Article 122 lists works that do not require a water permit. Examples include use of water from public water supply network, wastewater discharges into public sewers, use of atmospheric water collected at own land (or land with the right of use) if such use does not affect priority rights of others, and similar.

In case of concession contracts lasting for more than 10 years, water permit has to be renewed at the end of each 10 years period. Water permits ceases to apply upon expiry; if its holder renounces the water right regulated under the permit; if water right is not used for longer than one year (unless justified reasons are provided for not using the water right); if the permitted activity is not performed any longer; if the user does not respect conditions set in the permit; etc.

Water order is issued to address hazards from potential or already occurred disturbances in water regime as well as to (re)establish conditions set in the water permit. This water act determines obligations of the permit holder that have to be performed within set time frames. Water order is issued by the same administration body that issues water permit.

5.3.1 Water rights

Water is considered a natural resource and an asset of public interest, therefore state ownership applies to all waters; they can be used in a way and under conditions prescribed under the Law. All waters are divided into waters of national and waters of local significance. Major watercourses fall into the first category, while smaller watercourses are designated as waters of local significance.

Water acts (described above) are issued in line with this distinction by the state administration or local authorities.

Water assets comprise natural and artificial water bodies as well as surrounding land i.e. water grounds. In case of rivers, water grounds comprises river bed for high waters including islands and riverbanks up to pronounced geomorphological change; abandoned riverbeds occasionally flooded with water are also considered water grounds. The same classification (as the one for waters) applies to water assets, hence there are nationally and locally significant water assets. Water grounds can be state and privately owned. Riparian land comprises a 15 m wide belt from the water grounds boundary for waters of national significance and a 10 m wide belt for waters of local significance. According to the Law, water grounds boundaries are determined by the competent administration body²².

Public water asset can be natural or man-made, whereas natural public water asset comprises water and water grounds. Public water asset (i.e. water asset owned by the state) cannot be sold but can be put to a limited use based on concessions or leases. Public water asset is for a general use meaning it can be used in a way that does not affect waters and riparian ecosystems in a detrimental way and does not limit equal rights of others. A right for special use of water asset can be obtained based on a concession contract and water permit. A private owner of water grounds intending to sell has to offer the property to the state and/ or local self-government unit first (they have priority purchase right).

According to Article 133 of the Law on Waters, concessions for the use of public water asset can be issued in order to enhance water systems; provide for sustainable use of waters based on long-term protection of available water resources; and to ensure proper, rational and efficient use of public water asset and provision of financial resources for water management. Details of concession awarding procedures are regulated under another law (currently the Law on Concessions, Official Gazette of Montenegro 08/09).

The following water uses are subject to concessions: public water supply systems for settlements with more than 200 inhabitants; use of water in production of beverages; water bottling and provision of water to foreign vessels; electricity generation; use of water for technological purposes in excess of 86 m³ per day; groundwater abstraction in excess of 86 m³ per day; use of water for irrigation in excess of 175 m³ per day; fish and shellfish production in excess of 150 t annually or on a surface large than 2.5 ha; extraction of river sediments if the estimated quantity of deposited sediments is more than 1,000 m³. Concessions are not needed for works and objects (their construction and use) integrated in the plans of authorities competent for water management if the investments and works are performed by commercial companies established by public administration bodies in order to perform public functions for which public water assets can be used.

Decisions on issuance and cessation of concessions are made by the Government, based on proposals from the competent state administration body (currently Water Administration) and with previously obtained opinions of the competent ministry (currently MARD); this applies to cases where water acts are issued by the state administration body. Proposals for concessions for the use of water for electricity generation are submitted by the state administration body responsible for energy (currently Ministry of Economy), in cooperation with Water Administration and with previously obtained opinion of MARD (Ministry of Agriculture and Rural Development). For construction, maintenance and use of water objects where water acts are issued by local

²² Categorisation and delineation of water bodies according to the Law on Waters (last amendments OG 084/18) has not been completed yet; the same applies for determination of water grounds boundaries.

administrations (i.e. for water assets of local significance), decisions on issuance and cessation of concessions are made by competent municipal authorities.

Rights and obligations of concession holders are determined in concession agreements. Concession can be withdrawn if concessions fees are not paid regularly, in cases of violations of pertinent regulations, if measures ordered by competent inspector are not followed or if requirements stipulated in water order are not fulfilled. Concessions are also withdrawn if concession holder is convicted for environmental criminal offenses related to performance of activities subject to concession.

In order to provide for general use of water assets and to ensure that rights established in water consents can be exercised, property rights over water grounds, riparian or other land can limited or appropriated under conditions and in a manner prescribed under the law on expropriation.

5.3.2 Water management financing

Law on Water Management Financing (Official Gazettes of Montenegro No. 65/08, 74/10 and 40/11) regulates provision and use of funds for water management, ways of calculation and payment of water use and water protection charges, and other pertinent matters; The Law is based on user and polluter pays principles.

Charges paid by users of waters and water assets and by polluters of water, as well as other sources prescribed by the Law, are used to fund water management in line with water management plans and programmes of measures. Collected funds can be granted to providers of communal services (water supply, collection and treatment of wastewater) to stimulate construction of water use and water protection objects. Economic value of water is determined based on economic analysis of expenditures needed to ensure its availability and protection; water pricing is also used to provide incentives for rational use of waters. In the Water Management Strategy's assessment of water financing practices in the country, it is however noted that water pricing is well below cost-recovery level and that use/ pollution charges do not reflect full (economic and environmental) costs of water uses.

The following financing sources are stipulated in the Law:

- Water charges, including:
 - Water use charges,
 - Water protection/ pollution charges,
 - Charges for extraction of materials from watercourses;
- Fees for obtaining water rights;
- Fees from leasing public water assets, water objects and systems;
- Donations and other sources.

The water use charges are paid based on the quantity (in m³) of abstracted, used or delivered water, quantity (in kg) of produced fish, generated electricity (in kWh) or installed capacity of the plant (in kW), and similar.

Water charges and fees are paid into the budgets (state and local) and are disbursed (according to annual programmes prepared by the Government/ local administrations) for maintenance and improvements of water regime; construction, maintenance and reconstruction of water objects; protection from flooding, erosion and torrents; and for water supply and protection of water from

pollution. Management of protected areas/ measures to ensure protection of aquatic habitats and species are not specifically mentioned as possible uses of collected funds, but can be addressed if included in the annual financing programmes.

Water supply and wastewater disposal are funded from municipal utility companies' revenues/ payments for provision of these services, as well as from local self-government budgets. Construction of new water supply and wastewater disposal systems is to a large extent co-financed from dedicated state budget lines (so called capital expenditures budget), as well as from loans and donations.

Water related concession fees are usually shared between state (30% of the fee) and local (70%) budgets.

Total amounts of water charges and fees calculated over the period 2011 – 2017 were in the range of EUR 2.1 – 2.4 million annually. In 2018, the state budget expenditures for water management were at the level of EUR 1.25 million. Important source of funding are the EU programmes and instruments: through the IPA project *Strengthening of capacities for the implementation of Water Framework Directive in Montenegro* alone, EUR 1.9 million is provided. The GEF-SCCF²³ West Balkans Drina River Basin Management Project also provides significant contribution to current water management financing needs in Montenegro.

5.4 Other pertinent legislation

5.4.1 Land and property rights

Law on Property Rights (Official Gazette of Montenegro No. 19/09) regulates ownership and other property rights. Like any other physical or legal person, the state can hold property rights. According to the Law, ownership rights can be limited; a physical or legal person can be deprived of ownership rights only in cases of established public interest and with a fair compensation. The Law also regulates easements i.e. rights of real estate owners to use in a certain manner properties of other owners or to ask them to withhold from certain uses on their own properties.

Article 20 of the Law refers to assets of common interest. The Law provides for special protection of assets of common interest such as natural resources, assets in general use, cultural assets, maritime domain, national parks and other assets of common interest. Construction and agricultural land, forests and forest land, protected parts of nature, exceptionally public maritime domain, plant and animal species, objects of cultural, historical and ecological significance and other assets of similar purpose can be a subject to private ownership and other property rights. Owners and holders of other property rights over assets of common interest are obliged to exercise their rights in a special way, in line with provisions of applicable laws.

The Law on State Property (Official Gazette of Montenegro No.21/09) regulates use, management and property rights over objects and other assets that belong to Montenegro or local self-government units. State property rights can be subject to legal transactions, nevertheless natural resources and assets in general use (i.e. public assets) cannot be privately owned.

The Law distinguishes between assets of common interest (including natural resources such as water springs, natural and artificial lakes and living and non-living resources within them, watercourses and

²³ Global Environment Facility – Special Climate Change Fund

ground water of significance for Montenegro) and assets in general use (such as air space, transport infrastructure, etc.). Among other assets of common interests listed in Article 13, state property within nature protected areas – national parks, as well as plant and animal communities, are explicitly mentioned.

Local assets of common interest comprise water springs and smaller watercourses (water bodies of local significance), raw materials (gravel, sand and stone), river and lake shores to which local-level detailed spatial planning documents apply, and other natural resources of local significance. Local assets in general use refer to local infrastructure systems, green and recreation areas, as well as to water grounds of local significance.

Special use rights for public assets can be obtained, based on concessions, BOT (build – operate – transfer) and other public-private partnership arrangements, or leases.

Law on Non-governmental Organisations (Official Gazette of Montenegro No. 039/11 and 037/17 regulates establishment, registration, status, financing and other matters important for operation of non-governmental organisations (NGOs). NGOs can perform commercial activities, if duly registered. Article 28 of the Law regulates how NGOs can gain property (through membership fees, voluntary contributions, gifts, donations, legacy, interests, dividends, revenues from commercial activities and in other ways which are not in contradiction with law). Purchase of land is not explicitly mentioned in the Law, but also not excluded.

5.4.2 Issuance of concessions

Law on Concessions (Official Gazette of Montenegro No. 08/09) regulates conditions, ways and procedures for concessions granting. The following are the goals of the Law:

- Concessions are granted under equal, transparent and non-discriminatory conditions for the use of natural resources, assets in general use and other assets of common interest, as well as for performance of activities of public interest and for infrastructure improvements;
- Concessions are granted in order to:
 - provide for accomplishment of public interest, increased employment, introduction of new technologies and accelerated economic development, as well as to ensure revenues for the concession holder,
 - provide for rational, appropriate and efficient use of natural resources, of assets in general use and other assets of common interest,
 - ensure technical and technological improvements and provide for integrated infrastructure systems,
 - improve activities that are subject to concessions,
 - improve construction, reconstruction and modernisation of objects significant for provision of public services;
 - provide for competition in the area subject to concession granting,
 - provide for environmental protection and improvements.

Concessions can be issued for research or exploitation of mineral resources; use of watercourses and other water bodies; construction, maintenance and use of water objects; use of forests, development of hydro-amelioration systems and extraction of materials from water grounds; use of river and lake shores; development of energy generation, transmission and distribution facilities; construction and use of objects in areas with natural therapeutic properties and other natural values; use of radio-frequencies; development of infrastructure; etc.

Concessions are granted based on an annual plan adopted by the Government/ competent local administration unit. The plan determines the area and specific sites where concessions will be granted, subject of concessions, and deadlines for announcing public advertisements for the issuance of concessions.

Concessions are granted based on public advertisements through: open procedures, two steps procedures (which includes a pre-qualification step), or shortened procedures.

Even though environmental protection improvements are listed as one of the goals for concessions granting, experiences have shown concession were frequently linked to negative environmental impacts and environmental degradation, especially in case of concession for the use of materials from watercourse, construction of small hydropower plants and use of forests. So far, there were no examples of concession being awarded for management of protected areas.

5.4.3 Environmental assessments

Impact assessments (EIA) are undertaken in accordance with the Law on Environmental Impact Assessment. The Law was passed in 2005 (and came into force in 2008) and amended on several occasions, as published in the Official Gazettes of Montenegro No. 040/10, 073/10, 040/11, 027/13 and 052/16. The new, codified Law on Environmental Impact Assessment was adopted in November 2018²⁴. Strategic assessments (SEA) are regulated by the Law on Strategic Environmental Assessment, which was also passed in 2005 (and came into force in 2008) and amended in 2011 and 2016 (Official Gazettes of Montenegro No. 040/11, 059/11 and 052/16). In addition to the EIA and SEA laws, a number of bylaws has been adopted to regulate in detail the assessment procedures. Basic provisions of pertinent legislation are presented in **box 5-1**.

Box 5-1: Areas of application of impact assessments

Subject to EIA are projects that are planned and implemented which may have significant impact on the environment or human health. Environmental impact assessment is carried out for the projects in the areas of industry, mining, energy, transport, tourism, agriculture, forestry, water management and utilities, as well as for all the projects planned in nature protected areas or in protected surroundings of immovable cultural assets.

Decree on the projects for which EIA is carried out sets out the lists of projects: 1) for which EIA is obligatory; and 2) for which EIA may be requested. Competent body decides on whether it is necessary to undertake EIA in each particular case for the projects referred to in item 2).

SEA is undertaken for plans and programmes if there is a possibility that their implementation will have consequences for the environment. Its preparation is obligatory for the plans and programmes:

- 1) in the areas of agriculture, forestry, hunting, energy, industry including mining, transport, telecommunications, tourism, regional development, urban and spatial planning or land use, coastal zone management, water management, waste management;
- 2) which provide framework for development of the future projects for which environmental impact assessment is required;
- 3) which, given the area in which they are implemented, might have impact on protected areas, natural habitats and conservation of wild flora and fauna.

Strategic environmental assessment may be requested for the plans and programmes related to the use of smaller areas at the local level, as well as for minor amendments to the plans and programmes.

²⁴Harmonising national legislation with the Directive 2014/52/EU amending the EIA Directive 2011/92/EU.

Nature and Environmental Protection Agency (NEPA) is the competent EIA authority at national level; on the local level, competent authorities are environmental departments in local administrations. Similar division of competences is in place for the SEA procedures: NEPA is competent for carrying out the procedure for granting/ refusing consent to the SEA report at national level, while local administration environmental departments have the same powers at local level. The SEA itself is carried out by administration bodies responsible for the preparation of strategic documents, plans and programmes.

Administrative capacities for implementation of the EIA and SEA laws are deemed insufficient, particularly at the level of local self-governments. Even though these instruments have played an important role in the decision making processes over the course of the past decade and their significance has been widely recognised, there are still numerous weaknesses that diminish their overall effectiveness. These weaknesses include but are not limited to: lack of data (especially for water and biodiversity) to support sound assessments; tendency to formalise the assessments/ produce and approve environmental reports of insufficient quality; weak assessment methods, especially for cumulative impacts; poor treatment of alternatives; insufficient follow-up to enforce mitigation measures; etc. One of the most visible examples where environmental assessments did not prove their effectiveness in ensuring high level of environmental protection are small HPPs for which EIAs were prepared and approved, yet major and irreversible negative environmental impacts were recorded once the plants started operating. Public participation procedures are formally adhered to, nevertheless much remains to be done to ensure effective and meaningful involvement of public in EIA and SEA processes.

5.4.4 Spatial planning

Spatial planning system is very important in Montenegro as it is used to regulate development and land use through different spatial plans – from strategic to detailed ones. The detailed spatial plans are used as a basis for issuance of construction permits (as a prerequisite for construction and use of objects). Special purpose spatial plans used to be prepared to regulate land uses in national parks. The system has undergone significant changes with the introduction of new legislation in 2017, the practical implications of which are still not completely clear (due to a short implementation period).

Among the goals to the Law on Spatial Planning and Construction of Objects (Official Gazette of Montenegro No. 064/17, 044/18 and 063/18), the following are particularly relevant for the present study:

- Rational and efficient use and preservation of spatial capacities and resources on land, at sea and undersea area, and protection of natural assets;
- Development of regional spatial specificities and preservation of landscape identities;
- Mutually harmonised distribution of human activities across space with preservation of core spatial values;
- Protection and enhancement of the state of cultural assets;
- Rational use of natural resources and energy, including energy efficiency improvements; etc.

The main planning documents are the Spatial Plan of Montenegro and the General Regulation Plan; adoption of both plans is the Parliament's responsibility.

The Spatial Plan of Montenegro is a strategic document which represents a general basis for spatial planning and determines national spatial planning goals and measures. The Plan sets out land use policy and programmatic projections of long-term development, and provides guidelines for:

preparation of the General Regulation Plan; environmental protection; landscape protection, management and planning; protection of cultural heritage; integration of climate change and adaptation requirements into the General Regulation Plan; energy efficiency improvements and use of renewable energy sources; for concession areas; and other guidelines for implementation of plans.

The General Regulation Plan defines in more detail goals and measures for spatial and urban development in Montenegro while taking into account specific regional needs. The Plan encompasses northern, central and coastal regions (parts of the country) as well as national parks and UNESCO designated protected areas.

Elements addressed in the General Regulation Plan include: land uses; conditions for planning, construction and use of space; infrastructure corridors and capacities; borders of construction areas within settlements; borders of construction areas outside settlements; extent and boundaries of the areas for which detailed urbanistic solutions are elaborated; areas for which detailed urbanistic projects are elaborated; and boundaries of protected areas up to IUCN category II, internationally protected areas and ecological network areas. The Plan provides planning and construction rules for different zones as well as a set of guidelines, including for nature and environmental protection.

The General Regulation Plan provides detailed urbanistic solutions for the centres of local self-government units. For the purpose of spatial development of rural areas and in order to support their sustainable development, the General Regulation Plan (taking into account geo-morphological differences as well as regional and traditional specificities) provides a basis for rural areas planning.

The Spatial Plan of Montenegro is adopted for a period of 20 years, and the General Regulation Plan for a period of 10 years.

In order to implement the General Regulation Plan, local self-government units adopt urbanistic projects for the areas defined in the Plan, including areas where significant and complex construction is expected, areas that represent specific planning units, areas damaged with illegal construction as well as for settlements and parts of settlements that represent immovable cultural assets of international and national significance. The urbanistic project contains urbanistic solutions that define spatial distribution of objects, their dimensions, spatial arrangements and basic infrastructure, as well as visualisation of objects/ settlements (all in line with the guidelines defined in the General Regulation Plan).

Competent administration bodies include ministry responsible for spatial planning (currently MSDT) and local level administrations.

6 Conclusions and recommendations

The assessment of the existing policies, legislative and institutional arrangements in Montenegro identified enabling conditions but also important challenges for a potential development and implementation of a durable river protection mechanism.

Among the enabling conditions, relatively favourable policy framework and progressive legislation stand out. Development of nature protection and water management legislation over the past years has led to integration of strong protection concepts and mechanisms (including provisions on protected areas/ ecological network and their zoning, and provisions on attainment of good status and integrated management for waters). Recent and current initiatives for the protection of rivers or their parts also contribute to enabling conditions for DRPM, and the same applies for the ongoing

planning processes (including preparation of river basin management plans and identification of Natura 2000 network).

On the other hand, challenges were identified as regards policy coordination, institutional arrangements and capacities, effectiveness of environmental assessments, implementation/enforcement of regulations, and protected areas management. Economic development and water use plans pose strong pressures for integrity and preservation of rivers and their natural, landscape and recreational values, most notably due to hydropower development projects and plans. The current plans for development of small HPPs alone entail 33 rivers and allow for development of 43 new plants (in addition to 12 small HPPs that are already in operation) based on concession agreements issued since 2007. Besides national plans and projects, those developed in the neighbouring countries can often have implications for the protection of rivers in the Western Balkans.

The following conclusions are drawn based on the assessment:

- 1) Montenegro has progressive legislation that is to a significant degree aligned with the EU environmental *acquis*, however implementation is weak and consequently high level of protection of water resources and nature is not secured.
- 2) The existing regulations do not contain specific provisions equivalent to those included in the legislation of countries that have mechanisms for durable protection of rivers in their free flowing state. On the other hand, basic elements that could be used to develop DRPM in Montenegro have been identified, including, for example, Article 5 of the Law on Environment on protection of natural resources, as well as Articles 74a (on water protected areas) and 133 (stipulating that concessions for the use of public water asset can be, *inter alia*, issued in order to enhance water systems and provide for long-term protection of available water resources) of the Law on Waters. Other relevant elements include constitutional provision on ecological state and Parliamentary Declaration on Tara River protection. The Declaration is similar in its intent to the DRPM as it protects the entire watershed from major interventions, but not in the implementation approach as it does not provide for active management of the area for the attainment of protection goals; adoption of similar acts for other rivers is not likely due to a special status of Tara River.
- 3) The main mechanism for river protection that is currently in place is the Law on Nature Protection. Under the provisions of this Law, part of Cijevna River was protected in 2017, and current initiative for the protection of a part of Zeta River launched. There are no obstacles for the PAs categorisation and zoning provisions of the Law on Nature Protection to be applied to entire rivers. Arguably, this means the Law on Nature Protections provides a framework for durable protection of rivers (if/ when they merit protected areas status), however there are still no practical experiences to show whether this would in fact be sufficient to provide for maintenance of their free flowing condition in the long run. It is important to bear in mind that while current protected areas/ zoning regulations (for zones I and II) can be assessed as equivalent to DRPM, implementation of strict protection regime for entire rivers and their watersheds is challenging and not likely given the so far experiences with PAs management in Montenegro. The management aspect should therefore be paid much attention in possible further efforts to develop/ implement DRMP, possibly by exploring possibilities for application of more flexible management options (similar to those implemented under the US Wild and Scenic River Act).
- 4) Policy coordination is an issue in Montenegro, and the so far practice showed that economic development goals often outweigh protection ones. Preparation of national and general regulation spatial plans is expected in the near future to follow recent changes in the spatial planning legislation, and could be used to advocate for durable protection of rivers.

- 5) Preparation of river basin management plans is underway, and the two RBMPs for Danube and Adriatic river basins are expected to be adopted by 2021; strategic environmental assessment for the RBMPs is to be conducted. These processes also represent an important opportunity to address the need for mechanisms for durable protection of rivers.
- 6) Preliminary mapping of sites likely to form future Natura 2000 network in Montenegro suggests several rivers/ sections of the river might be designated as Natura 2000. Ecological network is to be proclaimed at Montenegro's accession to the EU. Data collected in these processes could be used to identify/ agree on the rivers that merit durable protection.
- 7) Lack of data on biodiversity and hydrology has already emerged as an obstacle to preparation of good quality plans and strategies, as well as for effective environmental assessments in Montenegro. Water information system (required under the Law on Waters) is still not in place, and insufficient data should be kept in mind as a potential obstacle for development and implementation of DRPM.
- 8) There is a need to strengthen implementation of environmental assessments to ensure attainment of river protection goals in the long run.
- 9) Strengthening of protected areas management is also an area where substantial improvements are needed; the so far difficulties in setting up effective management structures for the existing PAs should be born in mind in any new initiative aiming to provide for long-term protection of rivers.
- 10) The existing institutional arrangements for river protection cannot be characterised as integrated and effective: coordination is insufficient and capacities of environmental and water management institutions, including PAs manager, are weak. Public participation in policy and decision making needs to be strengthened, and the same applies to solutions for collaborative and participatory PA management schemes (including provision of adequate financial resources).
- 11) The existing legal provisions do not prevent NGOs from owning/ managing land and acting as PA managers (although there are no practical experiences with the latter so far).
- 12) The EU accession process is the main driving force for environmental (including nature and water) protection and legislative changes. In such a context (with the existing capacity being focused on the harmonisation and implementation of the EU requirements) and due to administration inertia, support for the adoption of amendments to the existing or new legislation specifically addressing protection of rivers in their free flowing conditions, is not likely. Strong interest for utilisation of hydropower potential would presumably represent another disadvantage if such an initiative would be launched.
- 13) Tourism development stakeholders represent a possible ally in efforts to develop/ implement DRPM. Further research is needed on economic benefits of river protection in specific areas.
- 14) Possibilities to establish synergies with the current initiative to proclaim a moratorium on further development of small HPPs are also worth of exploring.

Based on the above, the following recommendations are provided:

1. Continuation of a national dialogue on the rivers worthy of preservation in their free flowing conditions could be useful to advance river protection agenda in Montenegro. Policy and planning processes that could be used to this end include expected preparation of national/ general regulation spatial plans, preparation of RBMPs and identification of Natura 2000 sites. Conducting an advocacy and/ or public awareness raising campaign supported with findings of other DRPM national and the EU assessments in parallel to these processes would be useful.
2. Support for the current initiative for Zata River protection could be another entry point to strengthen the case for establishment and implementation of DRPM in Montenegro. In

addition to public awareness raising/ activities, transfer of practical experiences and capacity building for protected rivers management would be useful.

3. Any activity aiming at legislative changes should be carefully planned and linked to developments on the regional and the EU level, and would probably need to have a mid- to long-term character.
4. Based on past experiences and having in mind geography and hydrology of the Western Balkans region, transboundary context is important and should be taken into account in the efforts to establish DRPM.