EU FOR NATURA 2000 IN SERBIA – CONTINUED SUPPORT TO IMPLEMENTATION OF CHAPTER 27 IN THE AREA OF NATURE PROTECTION (NATURA 2000)
(EU FOR NATURA 2000 IN SERBIA)

Harmonization of Legislation in Serbia with EU Requirements for Natura 2000

RECOMMENDATIONS FOR LEGISLATIVE ACTIONS

ON THE FURTHER TRANSPOSITION OF EU REQUIREMENTS

FOR NATURA 2000 IN SERBIA

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Table of Acronyms

AA	Appropriate Assessment
APV	AP Vojvodina
Art.	Article
BAT	Best Available Techniques
BD	Birds Directive
EC	European Communities
EIA	Environmental Impact Assessment
ELV	Emission Limit Value
EQS	Environmental Quality Standard(s)
EU	European Union
HD	(Fauna and Flora) Habitats Directive
IED	Industrial Emissions Directive
IPPC	Integrated Pollution Prevention and Control
IROPI	Imperative Reasons of Overriding Public Interest
IQ	Implementation Questionnaire
LAP	Law on Air Pollution
LEIA	Law on EIA
LF	Law on Forests
LFS	Law on Sustainable Use of Fish Stock
LGH	Law on Game and Hunting
LMGR	Law on Mining and Geological Research
LNP	Law on Nature Protection
LPD	Law on Planning and Development
LSEA	Law on SEA
LW	Law on Waters
MAFWM	Ministry of Agriculture, Forestry and Water Management
MEP	Ministry of Environment Protection
PoM	Programme(s) of Measures
SAC	Special Area of Conservation
SCI	Site of Community Importance
SEA	Strategic Environmental Assessment
Sec.	Section
SPA	Special Protection Area
ToC	Table of Concordance
ToR	Terms of Reference
WFD	Water Framework Directive (EU)
WMP	Water Management Plan

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Executive Summary

This document presents recommendations for legislative actions to bring Serbian legislation fully in line with the requirements from EU legislation on the establishment and conservation of the Natura 2000 network, contained in the EU Birds Directive (BD) and the EU Fauna Flora Habitats Directive (HD). The recommendations are based on a detailed assessment of Serbian legislation with EU requirements for Natura 2000 which the project has prepared and in which the gaps in existing Serbian legislation were identified. This Assessment Report recognized that Serbia had already made considerable efforts in the past to transpose the EU legislation on Natura 2000, especially in the legislation on nature protection (Law on Nature Protection and bye-laws). Still, a number of gaps were observed which need to be filled to make the transposition of EU legislation comprehensive and correct.

The gaps were identified not only in the legislation on nature protection but also in sectoral legislation which is relevant – and actually essential – for the establishment and conservation of the Natura 2000 network. It is, more specifically, the legislation on planning and project permitting, on forests, hunting, fisheries and water resources management which has been analysed in the Assessment Report and which is considered in need to be amended, adjusted and partly also corrected to be fully in compliance with EU legislation requirements. Indeed, the Assessment Report and the recommendations submitted here rely fundamentally on the concept that both, nature protection legislation and relevant sectoral legislation must equally comply with the EU Natura 2000 requirements; sectoral legislation must be harmonized with the EU requirements, must not be in conflict with but rather conducive to the conservation objectives of the Natura 2000 network.

This is the reason why the recommendations concern, to a large extent, amendments of relevant sectoral legislation which should be given more attention in the future, and which is to complement and support nature protection legislation transposing the EU requirements for Natura 2000.
As the conclusions below put it: Nature protection legislation and sectoral legislation must be in harmony, otherwise the protection of the network is bound to fail; even the best nature protection legislation cannot ensure the coherence and integrity of Natura 2000 if sectoral legislation does not follow.

The recommendations submitted are numerous and detailed, especially those for amending the legislation in the sectors. They cannot be summarized in a few sentences or paragraphs. However, the document is compact and clearly structured according to the various areas (nature protection, planning and projects including IPPC and mining, forestry, hunting, fisheries, water resources) so that the recommendations can easily be located.

Nonetheless, several main recommendations should be generally highlighted.

- The existing Law on Nature Protection (LNP) already transposes a number of EU requirements for Natura 2000. However, it does so in a way that Natura 2000 is not addressed specifically but in context with other requirements for area and species protection. In order to strengthen Natura

2000 in Serbia and to reflect adequately the importance of the network for the country it is recommended to amend the LNP so that Natura 2000 requirements are dealt with specifically either in a separate section of the law or in separate sub-sections of the sections concerning protected areas and protected species. In this way the importance of Natura 2000 is underlined and the rules can be tailored precisely to the requirements. The Natura 2000 sites merit to be considered a particular category with particular rules. The same holds true for the species protected through the EU BD and HD; they too, are worthy to be protected by particular and clearly identified rules. Since the LNP needs further implementation through secondary legislation, with regard to areas and species, secondary legislation should also provide specific and tailored rules for Natura 2000.

- With regard to species protection according the EU requirements, a further distinction should be made in the LNP between bird species and other wild species. Especially the rules on derogations from protection requirements should be differentiated taking into account and transposing correctly the specific derogation requirements of the BD.

- Crucial is a revision of the rules on Appropriate Assessment (AA) which is a key instrument of conservation of Natura 2000 sites. The HD contains strict requirements in this respect: If plans and projects may have significant negative impacts on a Natura 2000 site threatening the integrity of the site the plans and projects, as a matter of principle, cannot be approved. The findings of the AA are binding; negative findings that a plan or project may threaten the integrity of a site means that the plan or project cannot go ahead. Only in very specific circumstances and if “imperative reasons of overriding public interests” so require, approvals can be given. These rules deviate considerably form the rules of environmental assessments for plans (SEA) and projects (EIA) which generally foresee a balancing of interests.

- Consequently the legislation on environmental assessment must be harmonized with the AA requirements from the HD; whenever a Natura 2000 site may be affected, the AA rules apply with all implications. There must be a clear and separate assessment of the possible impacts on the site, and the procedural and institutional provisions must ensure this. Clearly, AA can be combined with SEA and EIA procedures; however, the AA procedure and results must be identifiable so that the specific findings of the AA can correctly be respected.

- In addition, the planning legislation and the legislation on permitting of projects must be in line with the AA requirements. How this can be ensured is described in detailed recommendations below. Generally, it is essential that (1) the AA requirement is respected, (2) it takes place in time before any permit or approval or consent is given, (3) the competent authorities for AA are assessing the possible impacts on a Natura 2000 site, and (4) the findings of the AA are respected as the Natura 2000 rules require and that no plan and project is carried out if the integrity of the

site is threatened, except in the very narrowly defined cases where “imperative reasons of overriding public interests” are at stake.

- Detailed recommendations are being made to adjust and amend hunting and fisheries legislation. The rules on hunting and fisheries are crucial to implement the requirements of species protection in the HD and BD. The prohibition and the management obligations must be comprehensively and correctly transposed and implemented; the derogations from the obligations must be in line with the detailed requirements in the Directives paying particular attention to the protected bird species. The recommendations below on hunting and fisheries legislation, in addition to plans and programmes, deal with adjusting the legislation on hunting and fishing grounds and on taking of species and the means of hunting and fishing. Also considered are the necessary rules on sanctions (penalties) so that effective implementation of the rules is ensured.

The recommendations suggested here for legislative actions require a considerable effort from the legislators and the governmental law-makers. However, adequate legislation is needed if the Natura 2000 network is to be established, conserved and protected as it should be. Reforms of nature protection legislation and reforms of sectoral legislation need to go hand-in-hand and need to be undertaken at the same time. Natura 2000 relies on both pillars. Reforms should not be delayed but initiated right away. It is well known that effective nature protection involves dealing with many different interests; these interests need to be accommodated. Accommodating society interests needs consultations and consultations need time.

There is no time to wait.

1 Introduction

Background

The recommendations on legislative actions to close the gaps in existing legislation in Serbia and to bring it in line with the EU Birds and Habitats Directives and other legislation relevant for the implementation of Natura 2000 respond to the task described in the ToR of the Project under Result 3.

The recommendations submitted here are based on the findings of the assessment report prepared by the Project.[1] The Report paid particular attention to the approach that nature protection legislation and relevant sectoral legislation were addressed. *It reflects the understanding that for effective protection of the Natura 2000 network the EU legislation needs to be transposed completely, correctly and effectively in nature protection legislation and that in addition, the relevant sectoral legislation is in harmony with it.*

Therefore, the assessment analysed both, the nature protection legislation and the sectoral legislation relevant for nature protection, covering in particular:

- the Law on Nature Protection (LNP) and its major bye-laws – the Decree on the Ecological Network and the Rulebook on the Strictly Protected and the Protected Species -,
- the legislation on planning of development plans and projects,
- forestry legislation
- hunting legislation
- fisheries legislation
- water legislation

The recommendations follow the same and structure and propose legislative actions in all these areas.

Furthermore, in each chapter, the recommendations are, to the extent possible and appropriate, organized according to:

- designation of Natura 2000 sites
- conservation measures for the sites
- strict species protection
- species protection through management and control of uses, and
- derogations from protection rules.

[1] Report on Assessment of Serbian Legislation with regard to EU requirements for Natura 2000, December 2020

Methodology

The ToR of the Project requires the description of recommended legislative changes; the ToR does not require fully drafted versions of recommended legal acts. Accordingly, the workplan of the Project had foreseen a descriptive compilation of recommended legal changes based on the assessments done and presented in the Report on assessment of Serbian legislation with EU requirements for Natura 2000.

In the following the recommendations flowing from this assessment of Serbian legislation are presented. In addition, recommendations are included which were given by the Project legal experts during the procedure to prepare certain amendments to the LNP, a procedure started after the submission of the prepared Report. The amendments do not concern the entire LNP; only certain chapters and provisions were addressed. Therefore, the following text does also present the recommendations made by the Project in the discussion of the draft amendments.

2 Recommendations on legislative changes of nature projection legislation (Law on Nature Protection and bye-laws)

General recommendations on the overall structure of the LNP

General findings of the assessment

In the past, the Republic of Serbia has already transposed, to some extent, the EU legislation on Natura 2000, i.e. the Directives on Birds and Habitats. Basic rules relevant for the Natura 2000 network in Serbia are included in the LNP. There are gaps which need to be filled. As to the structure of the LNP, the assessment showed that the existing LNP included relevant provisions on Natura 2000 in the respective chapters of the LNP dealing with the requirements from the EU Directives in context. Therefore, the LNP does not have, so far, one specific chapter on Natura 2000, and in the specific chapters on site designation and management and on species protection, both strict protection and management and control of uses of species.

Recommendations

It is a valid approach to deal with EU requirements for Natura 2000 in context and addressing Natura 2000 sites and species together with other sites and species, protected or to be protected under national or international law. On the other hand, Natura 2000 is a very special network, and it may be considered the most important network of protected nature sites and protected animal and plant species. There are good reasons to devote a separate chapter to Natura 2000 in nature protection legislation, or at least separate sections (sub-chapters) in the chapters dealing with site protection and species protection. Such a

regulatory approach would have two advantages: It would underline the importance of Natura 2000 and would appropriately deal with the specifics of the conservation and protection regime for Natura 2000. At the same time, it would allow to address appropriately the conservation and protection needs of other sites and species which are not Natura 2000 sites and species, according to their respective characteristics. The differentiation of regimes may ensure more adequate and tailor-made protection.

In particular, it will be more practical and effective if national legislation provides distinct chapters/sections-sub-sections dedicated specifically to the EU requirements dealing with:

- scientific criteria and designation of Natura 2000 sites
- managing and conservation measures for the Natura 2000 sites
- strict species protection
- species protection through management and control of uses, and
- derogations from protection rules.

Indeed, a more Directive-specific approach to transposition, following, closely, structure, order and particular terminology of EU requirements and distinguishing EU from other national concerns, will help prioritizing administrative resources to effective implementation and enforcement of Directives' requirements, while avoiding watering down of EU requirements by ostensibly similar yet less workable national rules, thus, limiting effective reach of the EU rules. This recommendation might be considered once an overall revision of the LNP and the related bye-laws will be undertaken. The following chapters may indicate how specific rules on Natura2000 could be integrated in the respective chapters on area and species protection.

Recommendations on site selection and designation rules

Assessment findings

The major problem identified in the assessment with regard to Nautra2000 site selection and designation is the general approach in the current LNP which applies to all types of areas requiring protection, be they of national, European or international interest. This allows a protection also of Natura 2000 sites, to some extent; habitat type protection and habitat of species protection are enabled through the establishment of protected areas. However, the existing nature protection legislation is rather general and broad to treat Natura 2000 sites (SPA and SCI) adequately. Existing legislation generally addresses areas in need of protection, without differentiating between categories which have different criteria, different objectives, different goals of conservation, as well as different procedures of establishment and management. Natura 2000 sites – their selection, their modalities of establishment and eventually, their methods of conservation and protection deserve a special regime and treatment.

The Report on assessment concluded:

"The existing Serbian legislation on nature protection is general and addresses, in principle, the requirements of the EU Natura 2000 legislation. It provides generally for habitat type protection and for species habitat protection. The protection is, however, not sufficiently comprehensive and complete. For complete transposition of the Habitats and Birds Directives it is considered necessary to include in nature protection legislation, especially in the Law on Nature Protection (LNP), more targeted provisions which address directly the Natura 2000 requirements.

For habitat type protected under the Habitat Directive the LNP should foresee the establishment of SAC. The provisions of the LNP on the ecologic network should specifically address the Natura 2000 sites and should establish that the ecological network consists of the sites to be included in the Natura 2000 network and other ecological important areas. The Law should lay down the criteria for the Natura 2000 sites. The Decree on the ecological network would also differentiate between the Natura 2000 sites and the other ecologically important sites. Consequently, the provisions on the procedure for establishing protected areas would differentiate between Natura sites and other sites, thus transposing the particular requirements for establishing Natura 2000 sites, also in the time of accession and before membership. In this way and by addressing Natura 2000 sites specifically, the EU requirements can be transposed comprehensively and correctly."[2]

Recommendations

It is recommended that the LNP, in the provisions on the ecological network, includes explicitly the Natura 2000 sites to protect habitat types, habitats of species, including the bird species habitats. Then, in order to provide adequate protection regimes specific rules on the identification, selection and designation of Natura2000 sites should be created, possible in a sub-chapter dealing with Natura 2000.

As prerequisites, it would be necessary that the LNP, in the provision on the **scope of application** states that the LNP also addresses the commitments and obligations of the Republic of Serbia as a candidate country for EU accession with regard to relevant EU legislation. Similarly, the **objectives** of the LNP should have a clear reference to the transposition and implementation of relevant EU legislation. Furthermore the **definitions** included in the LNP should cover all relevant terms from the EU legislation, especially the terms: natural habitat, natural habitat type, priority habitat type, habitat of species, conservation status of habitats and species, species of community interest, priority species, site of Community Importance, and Special Area of Conservation. It would be appropriate to follow the definitions contained in the EU Directives.

Another prerequisite for an adequate Natura 2000 regime would be that the **lists** of habitat types, habitats of species and the species protected under EU legislation, also by Serbia as a candidate country, are incorporated in Serbian legislation. Incorporation in national legislation can be done in two ways: Either a general or global reference is being made to the external (international) legal rules or by explicit

[2] Ibid, p.25

incorporation *in toto* of the external (international) rules. If, for legal reasons of nomo-technical rules, the general or global reference is not possible or not advisable, the incorporation of the lists from the EU legislation is the option. The listing could be done in annexes to the LNP. If for nomo-technical rules, this is not feasible, the listing could be done in secondary legislation under the LNP; in this case the LNP would need the appropriate enabling provision(s), best for a decree/ regulation to be adopted by government. The lists should be taken from the EU Directives; they may be complemented by habitats and species considered to be essential as part of the Natura 2000 network in Serbia.

The selection and designation of sites as Natura 2000 sites must be done on the basis of the **criteria** contained in the EU legislation for the site selection by the Member States (stage 1). These criteria should be incorporated as they are. It is recommended to incorporate the criteria in the LNP itself.

The specific provisions on the Natura 2000 should, furthermore, provide the **procedure** for designation of the sites. The procedure according to the EU legislation is a special one and the national rules should be accordingly. The designation of Natura 2000 sites is special and special rules are in order. The procedural steps foreseen in EU legislation should be followed; in particular, the communication actions of the Serbian national authorities with the competent EU authorities need to be foreseen to identify the appropriate sites of European interest/ importance.

Finally, the specific rules on Natura 2000 rules must provide the establishment of **special areas of conservation** (SAC) for the sites as required under the EU legislation.

Contributions made to the ongoing process of LNP amendment (2021)

The ongoing initiative to amend the LNP which is intending a partial revision of the law proposed also amendments to some of the provisions concerning the ecological network. The Project experts contacted made recommendations in order to take into account some of the aspects outlined above.

For the amendment of the **current Article 38** it was recommended to add the following:

"(3) areas of European importance which, in the bio-geographical region or regions to which they belong, contribute significantly to the maintenance or restoration at a favourable conservation status of natural habitat types or of a species and may also contribute significantly to the coherence of the Natura 2000 network, and/or to the maintenance of biological diversity within the bio-geographic region or regions concerned, in accordance with the commitments of the Republic of Serbia as a candidate country for accession to the European Union.

The areas of European importance referred to in paragraph (3) point (3) of this Article shall be classified according to the following criteria:

(1) for the protection of habitat types:

- degree of representativity of the natural habitat type on the site,

- area of the site covered by the natural habitat type in relation to the total area covered by that natural habitat type within national territory,
- degree of conservation of the structure and functions of the natural habitat type concerned and restoration possibilities, and
- global assessment of the value of the site for conservation of the natural habitat type concerned.

(2) for the protection of habitats of species:

- size and density of the population of the species present on the site in relation to the populations present within national territory,
- degree of conservation of the features of the habitat which are important for the species concerned and restoration possibilities,
- degree of isolation of the population present on the site in relation to the natural range of the species, and
- global assessment of the value of the site for conservation of the species concerned.

(3) for protection of wild bird species, including regularly occurring migratory species

- bird species in danger of extinction;
- bird species vulnerability to specific changes in their habitat;
- bird species considered rare because of small populations or restricted local distribution;
- bird species requiring particular attention for reasons of the specific nature of their habitat;
- trends and variations in population levels;
- breeding, moulting and wintering areas and staging posts along their migration routes with particular attention to the wetlands of national and of international importance."

Smaller amendments were proposed by the Project also to Article 39 (Ecological Network Protection) and Article 40 (Ecological Network Management), in order to include references to the protection and management needs of Natura2000 sites.

Recommendations on site conservation rules

Assessment findings

The EU legislation on Natura2000 sites requires a variety of conservation measures for designated sites. The measures include the establishment of protected areas for the sites (Special Areas of Conservation for habitats, Special Protection Areas for bird sites). The protected area must have the appropriate protection regime. The Habitats Directive and the Birds Directive provide for obligations to take conservation measures to ensure that the ecological requirements are fulfilled, if need be through the adoption and implementation of management plans. The Habitat Directive provides for both, habitats and birds sites, the obligation to prevent the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated. Also, plans and programmes

must be appropriately assessed to ensure that they do not jeopardize the conservation objectives of Natura 2000 sites and do not adversely affect the integrity of Natura 2000 sites (Appropriate Assessment (AA) requirement). Only under very strict conditions and in specified cases exemptions from this rule are possible.

The existing LNP provides a basic protection regime for protected areas, also for Natura 2000 sites. The rules are included in several chapters of the LNP, dealing generally with protection measures, the various categories of sites, their characteristics and needs of protection, the procedures of establishment and their management. These rules would also apply to Natura 2000 sites. Again, there is no specific set of rules on Natura 2000 sites to address the specific requirements under the EU legislation. In particular, the AA is included in the general chapter on nature protection, and the AA is a requirement for the whole ecological network established, not specifically for the Natura 2000 sites even though the obvious background is the respective provision of the Habitat Directive. Also, the assessment noted a sometimes problematic interplay between the requirement of the nature protection conditions issued by the nature protection institutes and the requirement of the AA.

Recommendations

It is recommended that the LNP should have **specific rules addressing the conservation obligations from the EU Directives.** These rules can be in one chapter of the LNP on the conservation of Natura 2000 sites – which could be an easier and more practical solution - or in sub-chapters of other chapters of the LNP if the current structure of the law is to be maintained.

There would, then, also be **specific rules on the AA for Natura 2000 sites**, following the requirements of the Habitats Directive. There are good reasons to apply the relatively strict rules from the EU Directives to the Natura2000 sites, and provide a separate set of rules for other parts of the ecological network. Again, the differentiation of the regimes for Natura2000 sites and other sites can lead to adequate and tailor-made measures.

The current **rules on AA should be revised** to ensure that the AA requirements of the Habitat Directive are comprehensively and correctly followed, especially the strict rules for the cases in which a negative result of the AA can be overruled because of over-riding other public interests. The criteria must be clear, and the procedure to decide whether or not overriding public interests exist and should prevail, should guarantee that the decision is objective and unbiased and does indeed balance the interests involved in a fair manner.

Also, the **relationship between the AA on the one hand and existing procedures on EIA and SEA** must be addressed and regulated. There are good reasons to include AA in existing EIA and SEA procedures; it should be ensured however, that the AA is a separate part of the procedure, that the nature protection authorities and institutes are involved, and that the result of the assessment of possible impacts on the Natura2000 site is binding. It must be clear that a negative finding of the AA, i.e. adverse impacts on the Natura2000 site can only be overruled under the strict and narrow conditions included in Article 6(4) of the Habitat Directive which must be completely and correctly transposed in the LNP.

It is also necessary to **harmonize all sectoral legislation concerning planning and projects with the LNP** rules on AA. The sectoral legislation which needs amendments in this context will be dealt with in considerable details below.[3]

Contributions made to the ongoing process of LNP amendment (2021)

The Project legal experts submitted **a first set of comments and proposals** with regard to the amendment of the LNP provisions on AA (January 2021).

Generally, it was recommended on the proposed amendment of Art 8(2) that it was important that the procedures for nature protection conditions or, if required, for Appropriate Assessment are carried out according to the LNP, and that the competent authority approves the plan, project etc according to the Law when all is in line with the Law. This should be the overall rule. On the amendments of Articles 9 and 10 of the LNP it was generally recommended that the interplay between nature protection conditions and the Appropriate Assessment must be clear; the cases when conditions apply and the cases when Appropriate Assessment applies must be clearly stated. Also, it should be ensured that that the Appropriate Assessment whenever it is required is not bypassed, takes place in time, at the competent authority, with the procedure foreseen, and that no implementation happens before the assessment procedure is carried out as it must be.

As the law stands now Institutes for Nature Conservation of Serbia and of the Vojvodina province may authorize the project before the implications of the project are ascertained in the assessment which is deemed "appropriate". Namely, the Institutes have power to issue *the nature protection conditions* (LNP, Art. 9), as part of regular permitting practice, which is the procedure that precedes the AA (LNP, Art. 10). However, Institutes are not placed under clear legal duty to direct the project to the AA in any case the project is suspected of site-specific implications.

The AA must be completed prior to *any* decision being made to authorise a plan or project (Art. 6(3) of the HD).

Therefore, it was recommended that amendments to the LNP rules governing procedure for issuing nature protection conditions clearly define

- either that Institutes are in charge of performing the screening/pre-assessment stage of the AA in full capacity, or
- to place Institutes under a clear and unambiguous legal duty to direct the plan/project to the Ministry of Environmental Protection/APV authority competent for environmental protection if on the basis of data supplied by the plan/project holder in the procedure for issuing the nature protection conditions they cannot rule out potential significant impacts to the protected sites[4]; and

[3] See chapter on planning and development legislation below.

[4] Since the procedure for issuing of the nature protection conditions (Serb. uslovi zaštite prirode) precedes the AA procedure it was recommended that LNP clearly define the role of the Institutes for Nature Conservation in relation to the AA to avoid that projects/plans are cleared by the institutes and conditions are issued (on the basis of predefined criteria) before the significance

- that in any case a decision of the Institutes to issue the nature protection conditions before the AA should be subject to the legal challenge by *the public concerned*[5] before the court on the claim of potential failure to comply with the AA requirement.[6]

In addition, institutes should be in position to ask additional data from the applicant in case usual information is not sufficient for them to decide on potential impacts of a proposed plan/project to the sites concerned.

Furthermore, specific recommendations were provided:

- To introduce the **precautionary approach** as guiding principle of the decision-making in the AA procedure. Hence, the concept of the precautionary principle was recommended to be introduced in Art. 5 of the LNP as the guiding rule for the interpretation of the provisions governing AA of plans and projects and nature protection decision-making[7], in particular, in case there is a scientific doubt in relation to the significance of implications that activity proposed may cause to the protected sites. Therefore, where there is a threat of significant reduction or loss of biodiversity, or where there is a threat of significant adverse impact on the conservation or integrity of the protected sites, the lack of complete scientific evidence must not be used as a reason to delay or fail to avoid, prevent or mitigate such a threat.

- That the LNP clearly defines that the **AA must be carried out before authorities in charge for the permitting issue a location conditions, development permit, or other form of individual consents** that allow for the start of the project. At the same time, it was recommended that LNP explicitly, place planning authorities/project holders proposing the plan/project, which satisfies the definition of Art. 6.3 of the HD[8], under a clear legal duty to file for the AA to the AA authority

of implications of the proposed activity to the ecologically important sites are ascertained in the assessment which is "appropriate", individually, on the case by case basis. In particular, it was proposed that the institutes are charged with legal duty to perform the full screening of the plans/projects and decide if the complete AA is required, or, alternatively, that they are placed under a clear and unambiguous legal duty to direct the project holders/planning authorities to file for the AA if on the data supplied institutes cannot rule out significant implications of implementation of proposed projects/plans to the integrity of protected sites beyond reasonable scientific doubt in accordance with the precautionary principle.

[5] Within the meaning of Art. 2.5 of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

[6] Therefore, it must be clear that Institutes shall not issue to nature protection conditions to the plan/project with likely significant implications to the protected site (within the meaning of Art. 6(3) of the HD) before the AA is carried out, since effectively it would mean a trespassing into the competences of the AA authority. That said should the institutes, as expert bodies, share the AA competences with the designated AA authority (Ministry of Environmental Protection and APV environmental protection authority) or otherwise act as mandatory consultees to the AA authority, they must be placed under the clear legal duty to enforce the AA requirement within their competences, by either carrying out (the part of) the AA (for example screening) or by being placed under duty to issue AA directing order to the developer/planning authority to submit the AA application in case of doubt of potential significant implications to the sites. Likewise, it must be legally possible to challenge the conditions issued in circumvention of the AA requirement by a public concerned (for example, by site managers or environmental CSOs).

[7] Namely, as confirmed in number of CJEU decisions operation of Art. 6(3) of the Habitats Directive is guided by the precautionary principle.

[8] "Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives." (Art. 6(3) of the HD).

for their clearance, subject to appropriate penalties in case of the failure to comply. The application is to be surrendered with the statement/report detailing the data on the site-specific impacts of implementation of the proposed plan/project.[9]

- It was recommended to prescribe the **AA procedure in the LNP as a clearly staged process** where the outcome at each successive stage determines whether a further stage in the process is required.[10] As a result, three-stage process is recommended, with the clear distinction between the (1) screening phase, (2) final appropriate assessment, and (3) IROPI stage, whereas each having the distinct tests and outcomes clearly defined. It was recommended that the IROPI stage itself is subdivided to 4 distinct tests requiring a project to proceed with:(1) existence of a negative AA decision (2) absence of less damaging alternative solutions to the site (3) all compensatory measures necessary to ensure that the overall coherence of the Natura 2000 network and (4) decision of the Government that the project is indeed necessary for imperative reasons of overriding public interests.

- To avoid conflict of interest, it was recommended that the **competence for carrying out the AA** should, in principle, follow the level of jurisdiction at which the site designation took place. In other words, the competence to carry out the project selection (screening) and AA should be decoupled from the legal criteria for distribution of competences for permitting the project between national and local level.[11] Since sites of ecological importance (future SPAs/SACs) are designated by the Serbian Government's Decree, the screening of projects and Appropriate Assessment should be in principle implemented by the Ministry in charge of the environmental protection and/or by the Institutes for Nature Conservation.[12] In the same time, it was recommended, that the final decision on the basis of the criteria for implementation of IROPI[13] exemption (Art. 6(4) of the HD) should be left to the state level given the fact that such decisions must be reported to the European Commission (EC), or be subject to the EC's opinion.

[9]That said, the LNP should as well define the scope of the AA requirement in accordance with Art. 6.3 of the HD. To that end it was proposed that LNP is equipped with the enabling clause empowering the Government or Ministry to set criteria for clarifying when the proposed project/plan satisfies AA requirement within the meaning of Art. 6(3) of the HD and to prescribe the required content and quality of the site-specific impact statement. The criteria for application of Art. 6(3) of the HD would also set appropriate conditions/benchmarks to distinguish plans/projects directly connected with or necessary to the management of the site from similar plans/projects that while connected to the site, nevertheless, must be assessed. In particular, legislation governing forestry may require from the manager of the site to come up with the forest management plan/programme. Such plan may or may not be directly connected with management of the protected site depending on circumstances of an individual case. Therefore, the appropriate criteria to guide the authority when distinguish in former from latter would be needed.

[10] The Commission's methodological guidance (EC, 2002) promotes a four-stage process to complete the AA, and outlines the issues and tests at each stage.

[11] Namely, as the law stands now (Art. 10.2 of the LNP), it is possible that the authority competent for issuing the development permit at the level of the local self-government is at the same time in charge of selecting the projects which would be subject to the AA and of carrying out the AA of the project's impacts to the site designated by the Decree of the Government of Serbia. Equally, the consents based on the conditions satisfying IROPI is left to the local authorities in case they are in charge of the project permitting. As a result, local self-government is currently in place to approve the project which may affect the protected site designated by the Government.

[12] In case of the sites within the territory of AP Vojvodina the competence to carry the screening and the AA could be left to the Regional Government and Institute for Nature Conservation of Vojvodina Province.

[13] Imperative reasons of overriding public interest.

- To provide **enabling provision empowering the Government to set the criteria** for establishing legal duty to initiate the AA, criteria for assessment of the impact reports, criteria for applying legal tests for decision-making in each stage of the AA, criteria for application of IROPI criteria, manner of consultation of public concerned, etc.

In a **second round of providing comments and proposals** (April 2021), following a public consultation event, the Project experts made further recommendations.

Generally, it was recommended on the amendment of LNP articles concerning AA:

The procedure for the AA must ensure that, in which context ever the AA is carried out, within SEA, EIA or in a separate procedure, **the nature protection authorities and the nature protection institutes have the competence to decide on the determination of the impacts of plans and projects on Natura 2000 sites.** Where they are not the lead authority they must be involved and their positions with regard to the impacts on the sites, i.e., the result of the AA procedure must be accepted.

There must be **criteria for determining the impacts** on the site. From draft amendments it can be understood that the criteria will be set in a governmental act of secondary legislation (decree) which is in order in our view. The type of decree is necessary and sufficient according to the jurisprudence of the ECJ.

Crucial is the **determination of "overriding public interest"** which according to the HD can over-rule the findings of the AA if there are imperative reasons. This is the most crucial issue in the AA procedure, and it is absolutely essential that there are strict rules which ensure that the AA is not undermined and rendered useless in the end.

There must be criteria to determine the general and ambiguous term "overriding public interest". There are various techniques to specify the criteria:

- government decree (secondary legislation to be adopted by government),
- binding administrative instructions by the government for the authorities to decide on the issue,
- guidelines for the practice of the authorities adopted by the government, or
- a combination of these instruments.

From the proposed amendments it can be understood that the decree which is foreseen will also determine the criteria of the "overriding public interest". If this understanding is correct, it would be an acceptable solution. The criteria can hardly be specified in the Law itself, it must be a secondary legislation instrument. The law needs to be at least as detailed as the HD (Article 6) itself, i.e. addressing the type of public interest, e.g. health, but the specifications must be in other legal instruments.

The procedure needs to ensure that the **AA findings and the public interest(s) are balanced fairly and appropriately.** The proposed amendments make actually a good step in this direction requiring that

the public interest is decided by the Government and not by the authority deciding on the plan or project. In our opinion, this is an acceptable approach. A higher level would be a decision of the Parliament but this would be rather far-reaching, and I wonder if the Serbian legal system foresees acts or decisions of the Parliament which concerns specific plans or projects. Some countries know of these kinds of parliamentary legislative acts but it is rare.

It would be useful to consider including in the AA provision the **requirement to inform the EU Commission**, an obligation that member states have in cases of HD Art 6(4), i.e. overriding public interests. This could be included even before accession if Serbia wishes to do so. At least an information requirement could be included; it would help strengthening the AA findings as decisions would be known at the EU level, they could be discussed, and recommendations could be made and taken into account. Even before membership Serbia is expected to establish Natura 2000 sites and implement conservation to the extent possible. Thus, a communication with the EU Commission about the European network of Natura 2000 might be a good idea.

Public information, participation and access to justice are essential. The LNP should be in line with the relevant EU legislation (if already transposed) but in any case with the Aarhus Convention of which Serbia is a party. It would be helpful if the LNP contains, here in the AA provisions, the reference to the applicable legislation on information, participation and access to justice, in order to underline the importance. The public involvement is especially crucial in the procedures where AA findings and overriding public interests are to be balanced (as described above). I would strongly recommend that these procedures are as transparent and as participatory as possible.

In addition and more specifically the legal experts of the Project recommended that, indeed, it must be clear that competence of the AA authorities and national rules governing the AA procedure take precedence over all national procedures governing issuing of planning and development consents and that content of decisions made in the **AA procedure must bind unequivocally the national authorities** in charge of permitting plans/projects subject to the AA requirement.

Namely, as recognized by the *Report on assessment of Serbian legislation with EU requirements for Natura 2000*, the Law on Planning and Development (LPD), as it stands now, does not guarantee that requirements of Art. 6(3) shall be observed by the authorities charged with power to adopt plans or permit development projects.

Similar findings are also made in relation to national legislation governing water management permits, mining, forestry, fishery, waste management, etc.

Therefore, the Project – along the lines worked out in specific chapters of this report below[14] - recommended amendments to the Law on Planning and Development (LPD) and relevant sectoral

[14] See chapters on recommendations for sectoral legislation below, chapters 3 *et seq*

legislation aimed **at establishing principle of illegality** of the planning/development consents issued to the plans/projects subject to the AA requirement, **before** the plan/project is cleared in the appropriate assessment procedure carried out by the competent authority.

In particular, regarding national **provisions governing the issuing of development consents** to the project, the following has been recommended:

- to introduce adequate legal provisions in the Law on Planning and Development (LPD) putting the authorities charged with the competence to issue development permits under clear and unambiguous legal duty to observe the competence of the AA authority to decide on the projects subject to the AA requirements and any outcome of the AA procedure before issuing any consent enabling start of the implementation of such projects;
- to equip the LPD with clauses requiring the planning authorities to withhold with the issuing of any development consent to the project subject to the AA requirement, before the AA procedure is carried out and to refuse to issue the development consent in case of the negative final AA decision is adopted;
- that the LPD and implementing legislation governing the procedure for issuing the development consent provide for an explicit duty of the developer to surrender the positive AA clearance with the development application as a pre-condition for issuing the development consent to the project subject to the AA requirement;
- to equip the LPD rules governing the content of a development permit with the requirement to set mitigation conditions of the AA decision as mandatory element of the development permit.

Regarding the national LPD provisions governing the procedure for adoption of spatial and urban planning documents the following has been recommended:

- the setting of the explicit legal duty of the planning authority to obtain the AA clearance and to withhold with adoption and implementation of the planning documents subject to the AA requirement, before the positive clearance from the authority competent for the appropriate assessment is obtained in the AA procedure;
- the specific legal duty of the planning authority to integrate any conditions set in the decision adopted by the AA competent authority to clear the proposed planning document/project (mitigation/monitoring conditions).

In addition, it has been recommended that changes with comparable legal effect should be introduced in the legislation governing **permitting mining activities**, **industrial facilities, waste management operations, and water use.**

In relation to the legislation governing **uses of natural resources** such as forestry, fishery, game and hunting it has been recommended that adequate provisions are introduced in sector legislation to guarantee that sustainable exploitation of such resources is governed primarily by the nature protection legislation and provisions establishing the system of strict protection of animal species, plant species and wild birds applicable to their entire natural range and in accordance with strictly supervised derogation conditions set by the Directives.

To facilitate the smooth compliance with the duty to observe the AA requirements by the planning authorities and developers alike it has been recommended that the Ministry of Environmental Protections come up with a **guidance document** explaining the purpose of the AA procedure and typical situations where duty to subject the planning document/project to the AA occurs.

Finally, recommendations were made to the Ministry concerning the **issue of licensing experts** to prepare statements on AA of plans and projects. The comparative experience from other countries and possible option were presented.

Recommendations on species protection rules / strict protection

Assessment findings

It may be considered problematic that the qualifying of a species as strictly protected depends upon the agreement between the Ministry of Environment and Ministry of Agriculture, as a basis for the Rulebook on proclamation. While effectively the Rulebook may cover all relevant species as required by the Directives, there is the risk that the protection may be lifted by administrative measure.

The provisions on species protection are backed-up by a rather inadequately defined offence in Article 126.1(11) open to interpretation which may modify effective reach of the Directives.

The real and crucial question for species protection in Serbia is whether the rules provided for in sectoral legislation and in line with the rules of nature protection legislation, and to the extent that this is not (yet) the case, whether the rules in the nature protection legislation must be clearer and stronger to ensure that sectoral legislation is in line. Problems are raised by Articles 38, 48 and 76 of the LNP. These provisions do not clearly and unambiguously provide the primacy of nature protection legislation over, in particular, game and hunting, forestry and fishery legislation, with regard to species protection, be it strict species protection or species protection.

Recommendations

The LNP must be given priority with regard to strict protection of species and it must provide the guidance and orientation of the relevant sectoral legislation.

Any reference to “special laws” to be complied with should require that the special laws – sectoral legislation on species protection - must be in line with the LNP. A provision like the existing Article 76 (2) LNP saying: “The management of populations of protected wild species that is not regulated by rules concerning hunting and fisheries shall be implemented on the basis of a permit issued by the Ministry in accordance with law “might wrongly be understood as deferring the regulation of management of hunting and fishing – including the protection of these resources - to the sectoral legislation on hunting and fishing. From a nature protection and especially Natura 2000 point of view, such understanding is not acceptable.

The rules on hunting and fishing can be in sectoral legislation, and they practically are; however, the rules must be in line with nature protection legislation requirements and the EU requirements which nature protection legislation transposes.

As has been said above in the context of designation of a sites, **institutional arrangements** are essential which make sure that nature protection legislation can effectively mainstreamed into sectoral legislation. This needs to be ensured –also though legal rules in the LNP – by nature protection authorities which must have the competences to be involved in all relevant decision-making on species protection.

Recommendations on species protection rules / protection through management and uses

Assessment findings

The issues of protection are abundantly addressed in existing nature protection and sectoral legislation. The rules of the LNP and the Rulebook on proclamation and protection of species generally provide the necessary protection regime.

Again, the crucial issue is whether rules of sectoral legislation (forestry, hunting, fisheries) are in line with the regime in nature protection legislation. One point must be clear: Nature protection legislation – i.e. LNP and bye-laws – must assume the leading function and ensure that sectoral legislation complies with the requirements of the EU directives. No contradictions and conflicts should be possible. Or in other words: Sectoral legislation must be guided by nature protection legislation transposing generally the EU directives.

Recommendations

The current nature protection legislation, especially the respective provisions of the LNP should be improved to be **clearer and stronger**. Especially:

- Article 36 LNP leaves the regulation of all species which are not regulated in the LNP to **special regulations**. This is basically in order; however, it should be ensured that the special regulations do not jeopardize the objectives of species protection as laid down in the LNP and that the special regulations are in line with it.
- **Enabling provisions for secondary legislation on species protection should give priority to nature protection legislation.** Article 48 LNP is the enabling provision to enact the secondary legislation on strictly protected species and protected species. The provision rightly requires that management of strictly protected species and protected species must be in line with “this law”, meaning the LNP. However, the text continues to say: (in line with) “special laws”. This can be understood in a way that sectoral legislation must also be complied with which may be a problem if different rules are provided

in nature protection and sectoral legislation. In such cases, which legislation prevails? In the logic of transposition of HD and BD it should be nature protection legislation, and this may need to be clearly stated in the law.

- A major problem is Article 76 (2) LNP providing: "The management of populations of protected wild species that is not regulated by rules concerning hunting and fisheries shall be implemented on the basis of a permit issued by the Ministry in accordance with law." The problem is that this rule can be understood as deferring the regulation of management of hunting an fishing to the sectoral legislation on hunting and fishing, and that the nature protection legislation in the LNP and the Rulebook on protection of species is subsidiary. Clearly, the detailed rules on hunting and fishing can be in sectoral legislation, and they practically are; however, **sectoral hunting and fishing rules must be in line with nature protection legislation and the EU requirements** which the nature protection legislation transposes. This must clearly be said in the LNP, and therefore, an amendment which undoubtedly says that is in order.

Recommendations of species protection rules / derogation

Assessment findings

The major issue with regard to the existing derogation rules –well known and recognized as problem for quite some time in Serbia - is that they do not differentiate between derogations concerning bird species and other wild species. The EU legislation contains rather differentiated rules concerning both categories, and these requirements should be transposed and implemented separately to establish adequate derogation regimes. Thus, separate sets of rules would be in order, following *in detail* the relevant EU legislation.

There were smaller issues identified in the Report on assessment, one of them being that the discretion of administrative authorities when granting permissions to use species is too broad and that decisions are not transparent and open to scrutiny. These are valid concerns.

Recommendations

Generally, it should be considered:

- The current LNP does not differentiate for the derogations from strict species protection requirements between bird species and other wild species which require strict protection. The **differentiation between bird and other wild species** is considered crucial, as has been stated in a previous report: "Special emphasis should be paid to the proper transposition of "derogation provisions" pursuant to Art. 9 of the Birds Directive and Art. 16 of the Habitats Directive. The current status of transposition is unsatisfactory. Account must be taken of the fact that the requirements for birds and "non-birds" differ; thus, relevant national provisions must reflect

these differences." Derogations from each of the EU Directives should ideally be addressed separately. Also, legislation should provide for the necessary information and notification procedures. This would ensure clear transposition of the BD and HD requirements with regard to derogations, especially from strict species protection requirements.

- The differentiated rules on **derogations should be in the LNP**, in the section on species protection. The essential rules on derogations need to be in the LNP as the major statute to transpose the EU Natura requirements; the LNP is the leading statute also for derogations.
- **The rules need to be strict to prevent excessive use**. Derogations require justification; legislation must ensure this. Where authorities are granted discretion in establishing derogations, they need to be obliged to exercise discretion wisely. This again, must be a legal requirement. Legislation should also foresee those decisions on derogations, including the discretionary ones, are subject to administrative and judicial control within the framework of general administrative law in Serbia.
- The provisions on derogations in the LNP need to ensure that **derogations in sectoral legislation – especially in hunting and fisheries legislation – are in line with the derogation rules in the LNP** transposing adequately the EU requirements. This applies to both, derogations from strict species protection rules and derogations from species protection rules. As stated above: Also for derogations, the nature protection legislation must have the lead. As a procedural consequence, nature protection authorities must be given the right to be involved in decision-making about derogations in the sectors, through information, consultation and intervention in cases where the derogation rules are considered not adequately applied. This again, should be addressed in institutional provisions in the legislation on nature protection.

3 Recommendations for changes in planning and development legislation

Assessment findings

The Habitats Directive (HD) places strict legal obligations on Member States, with the outcomes of AA fundamentally affecting the decisions that may lawfully be made. Plans and projects, is to be authorized only if it will not adversely affect the integrity of that site. It is a basic responsibility of all agencies of the state, including planning authorities, to act diligently to ensure that their decisions in the exercise of their functions.

Authorities competent for adopting plans and permitting projects (**planning authorities**) in accordance with the Law on the Planning and Development (LPD), are considered competent national authorities within the meaning of Art. 6 of the HD, subject to the requirement to adopt the planning document and/or issue a development consent/permit to a project only after having ascertained that it will not adversely affect the integrity of the site concerned.

The Law on Planning and Development (**LPD**)[15] is a key legal reference point for the planning authorities.

However, appropriate assessment (**AA**) is not directly integrated in the procedure for adoption of spatial, urban and land-use planning documents and permitting individual development projects.

In particular, the LPD lacks explicit proviso requiring planning and development authorities to withhold with adoption of *the planning document*[16] *or with* issuing development permits before AA procedure is carried out, to observe the final AA decision and reject the permit application in case of the negative assessment, or to enforce the conditions of the positive AA/IROPI clearance of the proposed project by the authority competent to enforce Art. 6.3-4 of the HD. Due to a lack of specific reference to the AA, the LPD and its implementing instruments do not provide sufficient guarantees that the AA requirements and a step-wise nature of the requirements of Art. 6(3) and 6(4) of the HD will be observed in practice by the competent planning authorities and investors as users of the LPD in all relevant cases.

Besides, the Law on the Strategic Impact Assessment (LSEA) and Law on the Environmental Impact Assessment of projects (LEIA) lack sufficient legal safeguards that the site specific impacts of the planning document/project to the sites concerned will be assessed *appropriately* as a separate legal consideration (instead bundled with other environmental impacts to other factors of environment like air, soil, water, human health) and consent refused accordingly in case the adverse impacts to the protected sites cannot be reasonably excluded on the basis of such assessment.

[15] "Official Gazette of RS", no. 72/2009, 81/2009-corigendum, 64/2010-DCC 24/2011, 121/2012, 42/2013-DCC, 50/2013-DCC, 98/2013-OUS, 132/2014, 145/2014, 83/2018, 31/2019 and 37/2019-other law

[16] For the purposes of the recommendations term „planning document" applies to the spatial planning documents (spatial plan for the Republic of Serbia , regional spatial plans , spatial plans of local self-governments units and spatial plan for areas for specific purposes, planning basis for village), urban planning documents (general urban plan , general regulation plan , and detailed regulation plan), specific urban-technical documents (urban project, plot amendments and subdivision of the plot project) and programmes for implementation of spatial planning documents.

Finally, the sector legislation governing permitting geological research and mining activities, industrial facilities, water use, etc. lacks appropriate safeguards that the competence of the AA authorities to decide on projects/activities with likely significant impacts to the sites concerned shall be observed in all individual cases.

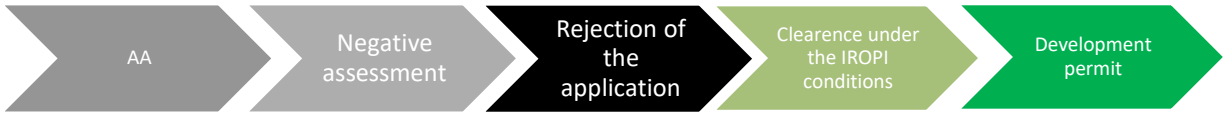
Recommendations on mainstreaming the AA/IROPI requirements in planning and development consenting procedures governed by the LPD

The Habitats Directive requires that the Member States carry out the appropriate assessment (**AA**) of plans/projects/works which may have significant impacts to conservations objectives and integrity of the *protected sites*[17] (Art. 6(3) of the HD).

Competent national authorities shall adopt the planning document and/or issue a development consent/permit to a project **only after having ascertained that it will not adversely affect the integrity of the site concerned**. In other words, if significant adverse impacts to the protected site may not be excluded beyond reasonable scientific doubt authorities are required to refuse plan or a development consent to the project.

In exceptional circumstances, a plan or project may still be approved despite it having an adverse effect on the integrity of one or more protected sites, if, in the absence of more favourable alternative solutions, the plan/project must nevertheless be carried out for imperative reasons of overriding public interest (**IROPI**), provided all the conditions are satisfied and procedural safeguards laid down in the Habitats Directive are followed (Article 6.4).

The approval of the plan/project on the basis of the IROPI exemption may not be initiated before the competent authority carries out the AA (step-wise nature).[18]



In essence, **the AA and IROPI are permitting procedures, part of the planning and development legislation as much as they are measures for protection of natural sites, and they must be treated as such by national rules governing adoption of plans and projects**.[19]

[17]The protected sites shall mean Special Areas of Conservation (SACs), including proposed Sites of Community Importance (SCIs), and Special Protection Areas (SPAs).

[18] The exemption of the plan/project on the basis of the overriding public interest is legally void if the AA is not carried out prior to the IROPI procedure.

[19] The appropriate assessment carried out under Article 6(3) of the Habitats Directive, despite having many similarities, is distinct from the environment impact assessment required under the EIA and SEA Directives. In the case of the EIA or SEA assessments, the authorities have to take the impacts into account. For the appropriate assessment, however, the outcome is legally binding for the competent national authority and conditions its final decision.

In principle, the Member States may opt to correctly implement the requirement of Arts. 6(3) and 6(4) of the HD by:

- integrating the AA/IROPI, directly, in provisions governing general procedures for adoption of planning documents and/or issuing the development consents (joint AA/IROPI and planning/consenting procedure);
- by coordinating planning/development consenting procedures with the special national rules governing AA/IROPI procedures (coordinated procedures); or
- combination of the above two approaches.

Serbia has a mature and fully functioning system for adoption of spatial and urban planning documents and unified/integrated procedure for consenting the projects governed by the LPD.

The LPD provisions (Arts. 8-8đ), in particular, places an authority competent for permitting the projects as, *de facto*, coordinator/integrator of all specific procedures required by the special legislation, including Law on Nature Protection (LNP), for issuing the development consent to a particular project.

In particular, Ministry of Construction, Transport and Infrastructure has exclusive competence when it comes to coordinating unified permitting procedure and issuing development permits to projects within areas of national parks and protected sites within the meaning of the LNP, except in case of smaller household and agricultural developments in villages.[20]

At the same time, Ministry of Environmental Protection, authority of the Autonomous Province of Vojvodina in charge of environmental protection, and the Institutes for Nature Conservation have been already envisaged as authorities in charge of implementing AA in accordance with the LNP.

Therefore, **the introduction of the fully coordinated planning and development consenting procedures with AA/IROPI is recommended** as more easily adjustable to the Serbian circumstances, **allowing for specialization of the authorities in charge of the enforcement of the AA procedure, while placing the planning/development authorities under the clear legal duty to observe the overriding jurisdiction of the AA authorities over the plans/projects subject to the AA requirement prior to their adoption/approval without risking regulatory stability achieved by the already established unified permitting procedures**.

All mainstreaming options, nevertheless, presume that **national rules transposing HD requirements in Art. 6 must override the general procedures for adopting planning documents and issuing the development consents in case of the plans/projects with likely significant impacts to the protected sites**.[21]

In other words, in order to claim that the correct transposition of Art 6 of the HD has been achieved, it is assumed that **national rules governing AA must have capacity to override any planning/development**

[20] LPD, Art. 133.1.9-9a

[21] That said, it must be understood that a general consenting procedure does not supersedes the AA by simply invoking of overriding public interest. The contrary is true. Equally as AA, the IROPI procedure overrides the general development consenting procedure. In other words, before consenting the project/plan on the basis of overriding public interest the strict conditions prescribed by Art. 6(4) of the HD must be met the satisfaction of which must be established by the authority competent to implement IROPI procedure.

consenting procedure/and annul any plan or development consent issued to the developer circumventing the AA requirements.

Hence, to achieve fully coordinated procedures appropriate amendments in the LPD and its implementing legislation shall be needed (for particular amendments proposed please refer below).

Recommendations for amendments in the LPD governing procedures for adoption of the planning documents and LSEA (AA for plans)

The **appropriate assessment (AA) should be adequately streamlined** in the procedure for adoption of the planning documents governed by the Law on Planning and Development (**LPD**) it is implementing bylaws and within the framework of the Law on the Strategic Impact Assessment (**LSEA**).

Regarding the **LPD** provisions governing the procedure for adoption of spatial and urban planning documents the following amendments are recommended:

1. To insert **a general provision requiring planning authorities to submit the proposed *planning document*[22] likely to have a significant effect, either individually or in combination with other plans or projects, to appropriate assessment of its impact to the *sites concerned*[23] in accordance with national rules transposing the AA requirements**. Namely, Art. 6(3) of the HD requires that the competent authority shall approve the plan only after having ascertained that it will not adversely affect the integrity of the site concerned. The LPD lacks a specific legal provision placing the planning authorities competent for preparation, adoption and/or authorization of the *planning documents* under the clear legal duty to observe the AA requirements governed by the specific law transposing Arts. 6(3) and 6(4) of the HD. Hence, the duty of the planning authority to submit the planning document to the AA in accordance with special legislation transposing Art. 6(3) of the HD must be made vivid, clear and unambiguous by the LPD provisions governing procedure for drafting and adoption of planning documents. Therefore, the provisions governing procedures for adoption of the planning documents within Title II *Spatial and Urban Planning*, Section 16. *Procedure for Adoption of the Planning Documents* of the LPD) should be subject to the specific requirement demanding the planning authority to obtain the clearance from the AA competent authority before authorization/adoption of the planning document in all duly qualified cases.

[22] For the purposes of the recommendations term „planning document" applies to spatial and envisaged by Articles 10-13 of the LPD applies to the spatial planning documents (spatial plan for the Republic of Serbia , regional spatial plans , spatial plans of local self-governments units and spatial plan for areas for specific purposes, planning basis for village), urban planning documents (general urban plan, general regulation plan, and detailed regulation plan), specific urban-technical documents (urban project, plot amendments and subdivision of the plot project) and programmes for implementation of spatial planning documents as envisaged by Articles 10-13 of the LPD

[23] For the purposes of the document the „sites concerned" refer to the *sites of ecological importance* (ekološki značajn područja, Serbian) designated in accordance with the scientific criteria compliant to the HD and BD. Namely, it is our understanding that it is intention of Serbia to propose sites of ecological importance to be put on the list of SCIs and designated as future SACs within the meaning of HD, or as SPAs (within the meaning of the BD), respectively.

2. To insert an **explicit legal requirement placing the planning authority under a legal duty to obtain AA clearance of a *planning document*** from an authority competent for carrying out appropriate assessment in order to comply with AA requirements. The content of the legal duty should be both positive and negative. The LPD should envisage a duty to (**1**) submit a planning document subject to the AA requirement to the AA authority before its adoption in accordance with the specific law governing appropriate assessment procedure, and (**2**) duty to refrain from placing the planning document subject to the AA requirement in the procedure for its adoption and/or to withhold with the adoption and implementation of the planning documents, before the clearance from the authority competent for the AA is obtained in the AA procedure.
3. To place the authority competent for adoption of the spatial and urban planning document[24] under clear and unambiguous **legal duty to reject the planning document** (1) prepared and submitted in circumvention of the legal duty to request the AA or (2) that received negative assessment of its implications for the sites concerned following the AA procedure.
4. The LPD and by-laws should envisage the specific legal **duty of the planning authority to comply with and integrate any conditions** (mitigation measures/monitoring conditions) **set in the decision adopted by the AA competent authority** to clear the proposed planning document/project from negative adverse implications to the sites concerned.
5. To **limit powers of the competent planning authority under the LPD to adopt/authorize a plan with negative adverse impacts for the site concerned, on the basis of overriding public interest, only if the plan is compliant with all the pre-conditions set in Art. 6(4)**[25] and such compliance is established by the competent authority under the procedure envisaged by the law transposing Art. 6(4) of the HD.
6. To establish principle of illegality of the consent issued to the plans subject to the AA requirement, before the plan is cleared in the appropriate assessment procedure or in the specific IROPI procedure carried out by the competent authority. The rule should be enforceable, i.e. coupled with appropriate sanctions and fines and subject to the appropriate legal remedy. The *public concerned*[26] should have the opportunity **to challenge the legality of a decision to adopt/approve** the plan in circumvention of the AA/IROPI duty before the administrative court.[27]
7. Serbia should make sure that **all *planning documents*** (LPD, Arts. 11 and Art. 20a)[28], including *documents for implementation of planning documents* – Serb. *Dokumenti za sprovođenje*

[24] LPD, Art. 35 regulates the competence for adoption of the planning documents.
[25] The absence of alternative solutions to the plan more favourable to the protected site, a plan or project must be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, and all compensatory measures are envisaged necessary to ensure that the overall coherence of Natura 2000 network is protected.
[26] Within the meaning of Art. 2.5 of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).
[27] While indeed, plans as such may be considered as general acts that may not be challenged before the administrative court, decision of the competent authority adopting a plan capable of affecting the sites and in circumvention of the AA procedure should be considered as individual act capable of affecting legal interest of public concerned protected by law. For example, right to access to the environmental decision-making protected by the law governing the AA/SEA procedure would be made meaningless if the decision adopting the plan without prior assessment could not be challenged.
[28] Spatial and urbanistic plans (Serb. prostorni i urbanistički planovi), including planning documents for small settlements (for example, basis for spatial arrangments of village – Serb. uređajna osnova za selo).

prostornih planova (LPD, Art. 12)[29] and *urbanistic-technical documents* – Serb. urbanističko-tehnički dokumenti (LPD, Art. 13)[30] are **subject to the AA in case of the likelihood of significant effects** of their implementation to the *sites of ecological importance* (future SACs/SPAs/pSCIs)[31] before their adoption and to the duty to observe and comply with the final AA/IROPI decisions including to integrate conditions prescribed in the decisions in their content.

8. LPD provisions governing content of the planning document[32] should envisage the **report on the site-specific impacts of the plan on *the sites of ecological importance*** (future SACs/SPAs/pSCIs) as an integral part of the documentation basis of the planning document along with the report on the strategic environmental assessment.
9. In case of *the* ***spatial plan of special purpose areas*** (LPD, Art. 22)[33], to which the strategic impact assessment is made mandatory in any case[34], it must be made clear that duty to observe the AA requirement exists as the self-standing legal requirement along with the SEA requirement, without prejudice, to the possibility for the environmental protection authority to carry-out joint SEA/AA assessment, should such joint assessment is required or, otherwise, made possible as an option, by specific legislation governing the SEA and the AA procedures, respectively.
10. The LPD provisions governing content of the planning documents and *Rulebook on the content, manner and procedure of drafting spatial and urban planning documents governing the content and manner of drafting the planning documents* should **explicitly accommodate habitats, species and site-specific HD/BD conservation objectives as an explicit, precise, unambiguous and self-standing planning consideration**. Namely, the planning documents provide hierarchical planning basis for issuing *information on location* (LPD, Art. 53)[35] and *location conditions* (LPD, Art. 53a)[36], which provide information to the developer on pre-requirements for designing the project documents necessary to obtain the individual development permit. Indeed, the introduction of data on spatial distribution of protected sites (in particular sites of ecological importance) and applicable conservation regime, may serve as a first indicator on the potential existence of the regulatory to obtain the AA clearance before the development permit is obtained. Furthermore, the authority in charge of the preparation of the planning document shall be aware of the legal requirement to integrate and promote general and site-specific conservation objectives of the Directives (as referred to in Articles 2, 3 and 10 of the HD), if requirements to accommodate conservation objectives of the species and sites protected in accordance with Directives are

[29] Program for the implementation of the Spatial Plan of the Republic of Serbia (Serb. program implementacije Prostornog plana Republike Srbije) and regional spatial plan implementation program (Serb. program implementacije regionalnog prostornog plana).
[30] Urbanistički projekat Projekat preparcelacije i parcelacije,
[31] See futnote no. 22.
[32] See in particular, Arts. 15, 18, 20, 20a, 22 governing content of the Spatial Plan of Republic of Serbia
[33] Prostorni plan područja posebne namene
[34] See Art. 22.2
[35] "The location information contains data on the possibilities and limitations of construction on the cadastral parcel, i.e., on several cadastral parcels, based on the planning document" (LPD, Art. 53.1).
[36] "Location conditions contain all urban, technical and other conditions and data necessary for the development of the conceptual design, project for issuing of the development permit and construction project, in accordance with this law and are issued for the cadastral parcel that meets the requirements for the construction plot" (LPD, Art. 53a.1). Location conditions contain the name of the planning document and the urban project on the basis of which the location conditions and building rules for the zone or whole in which the subject parcel is located are issued as well as information on need to surrender the clearance of the study on the environmental impacts in the environmental impact assessment procedure (See Art. 55).

explicitly envisaged as part of the appropriate spatial, urban and land-use planning practice aimed at avoiding deterioration habitats and disturbance of protected species and pro-actively „improving the ecological coherence at the Natura 2000 network“ (HD, Art. 10). In other words, appropriate improvements to the planning documents content should be introduced to promote both legal and policy awareness regarding the need to integrate Directives' regulatory and policy requirements to avoid harm and promote *pro-active conservation objectives*[37] in the early planning phase.

11. The **LSEA must be aligned with Article 3.2 (b) of the SEA Directive** requiring impact assessment of "all plans or programmes which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of HD". Hence pre-assessment/screening stage of such should not be required, since the impact assessment of plans/programmes with likely effects to the sites protected by HD and BD is presumed. That said, provisions governing the pre-assessment stage of plans and programmes which determine the use of small areas at local level and minor modifications to plans and programmes must place the competent authority under duty to decide if the AA must be carried out together with the SEA. Likewise, in the scoping stage of the impact assessment, it must be clear that the LSEA unequivocally places the competent authority under legal duty to decide if the AA must be carried out together with the SEA. The LSEA should introduce appropriate arrangements in order that the data on site-specific impacts are readily distinguished from information on other impacts of the plan surrendered by the proponent of the plan in the impact report. Conclusions on site-specific impacts made by the AA authority must be as well readily distinguishable from other impacts identified in the impact assessment in the rationale of the decision. It must be clear that the plan/programme shall be rejected by the planning authority in all circumstances if the adverse impacts to the sites concerned may not be ruled out beyond reasonable scientific doubt. Decision to consent to the plan should be subject to the judicial control. Likewise, the appropriate arrangements enabling integration of any measures and conditions set by the AA authority to clear the planning document and monitor compliance during its implementation must be in place.

Indeed, planning documents are subject to the AA requirement only in the case of likelihood of significant effect to the protected sites within the meaning of Art. 6 (3) of the HD. While it must be clear that adoption/authorization of the planning document with likely significant impact to the sites protected in accordance with the HD/BD is illegal, and that the AA of such plans is mandatory, in practice, it may not always be clear in which circumstances the duty to subject the plan to the AA exists. Therefore, **the LPD could provide the ground for the planning authority to request for the *AA direction/opinion* from the AA competent authority** on the need to carry out the appropriate assessment of the planning document under contemplation (perhaps, Art. 46 of the LPD could be amended to handle the issue, or new self-

[37] In particular Art. 10 of the HD prescribes that „Member States shall endeavour, where they consider it necessary, in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence at the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora. Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems for marking field boundaries) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species".

standing provision could be introduced). It is advised that the AA direction is defined as a flexible non-mandatory/optional tool subject to modification in case of the material alterations in the planning document compared to the initial direction/opinion. Hence, the AA competent authority must be left free to revise its position in the light of additional data.[38] Indeed, the AA direction must not serve as the substitute to the AA requirement. It should be only a facilitating tool available to the planning authority to establish existence of the legal duty to submit the plan to the AA, possibly, in the very beginning of the planning exercise, without prejudice to the legal duty to subject to the AA procedure in case significant impacts to the protected sites are likely. The Ministry of Environmental Protection could consider issuing specific guidance on minimum data and environmental information needed to come up with the AA direction/opinion.

To facilitate the smooth compliance with the duty to observe the AA requirements by the planning authorities it is recommended that the Ministry of Environmental Protection, in cooperation with the Ministry of Construction, Transport and Infrastructure (and with participation of the public concerned), comes up with **a guidance document** explaining the purpose of the AA procedure, manner of compliance with the AA requirements, and typical situations where duty to subject the planning document to the AA occurs.

The Ministry of Environmental Protection could as well consider introducing **a mechanism for early consultations** on the request of the authorities in charge of preparing particular planning documents. These soft measures may help in avoiding redundancy in case of clearly innocuous planning documents, while also taking full advantage of planning synergies and minimising the time needed for authorisation of the plan.

Recommendations for changes in the LPD provisions governing procedures for permitting the development projects (AA for projects)

The following recommendations are made:

1. Introduce provisions in the LPD that guarantee full coordination of development consenting procedures with AA/IROPI placing planning and development authorities under a clear legal duty to observe the overriding jurisdiction of the AA authorities over the projects subject to the AA requirements

[38] For example, it is reasonable to assume that more data on potential impacts will be available in the later planning stage (for example, when the draft of the plan is available compared to the initial phase of decision to commence with designing of the planning document). That said, the AA directions/opinion, of the authority competent to carry out (any of the phase of) the AA, on its need must be based on the sufficient data provided by the planning authority on geographical coverage of the planning document, description of nature and purpose of land use envisaged, description of potential (site-specific) impacts of implementation, mitigation measures (if anticipated), etc.

Serbia has a mature and fully-functioning *unified permitting procedure* for consenting the projects governed by the LPD – Serb. *Objedinjena procedura u postupcima za izdavanje akata u ostvarivanju prava na izgradnju i korišćenje objekata*.

The LPD provisions (Arts. 8-8đ) place an authority competent for permitting projects as a, *de facto*, coordinator/integrator of all specific procedures required by special legislation for issuing the development consent to a particular project.

Ministry of Construction, Transport and Infrastructure and APV have competence over enforcement of the unified permitting procedure and issuing development permits to projects within areas of national parks and protected sites, except in case of smaller household and agricultural developments in villages.[39]

Therefore, the introduction of **the fully coordinated development consenting procedures with the AA/IROPI is recommended as more easily adjustable to the Serbian circumstances**, allowing for specialization of the authorities in charge of the enforcement of the AA procedure, while placing the development authorities under the clear legal duty to observe the overriding jurisdiction of the AA authorities over the plans/projects subject to the AA requirement prior to their approval in accordance with the LPD without risking regulatory stability achieved by the already established unified permitting procedures.

Notwithstanding the practical administrative arrangement, introducing a fully coordinated development consenting and AA/IROPI procedure assumes placing the authorities in charge of issuing the location conditions, all types of development permits and operating permits under a clear legal duty to observe the overriding jurisdiction of the AA authorities over the projects with likely significant effects to sites of ecological importance.

The overriding jurisdiction of the AA authorities over projects with likely significant impacts to the sites must be clear both from the provisions of the LPD and LNP, respectively.

Since the planning legislation in practice is usually first (and often the only) reference point used by planning authorities to navigate permitting procedures, **inserting appropriate and explicit provisions in the LPD directing the planning and development authorities to the legal duty to observe the competence of the AA authority is recommended**.

2. Establishing the duty to observe the AA requirements and AA procedure before the decision on the issuing of the location conditions and/or development permits is made

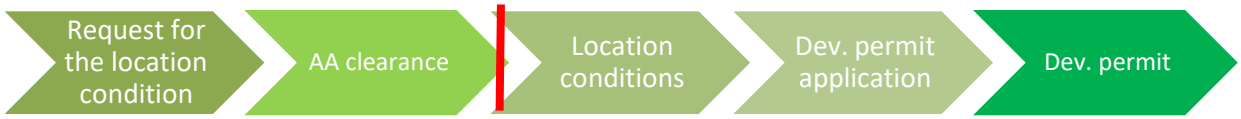
Development permits for projects likely to have significant impacts to the sites within the meaning of Art. 6.3 of the HD must not be issued before the authority competent for enforcement of the AA assesses the impacts *appropriately*.

Before the issuance of the permit, *the location conditions* set all urban, technical and other conditions and data necessary for the development of *the conceptual design* (Serb. idejni nacrt), *the project for issuing of*

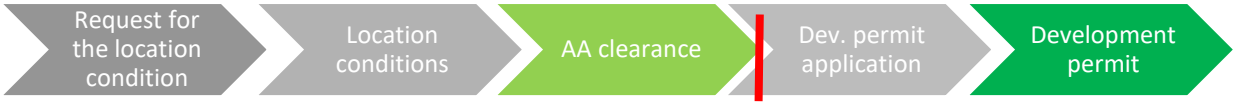
[39] LPD, Arts. 133.1.9-9a and 134.1

the development permit (Serb. projekta za građevinsku dozvolu) and *project for carrying out of the construction* (Serb. projekat za izvođenje) (LPD, Art. 53a.1).

Therefore, it is appropriate to fix *location conditions* only after the absence of significant negative impacts to the protected site is ascertained by a competent authority in charge of enforcing AA procedure and taking into account any mitigation and monitoring measures set as pre-conditions for positive clearance of the implementation of the project by the AA authority.



Alternatively, the LPD may provide that the location conditions contain the information on need to surrender a document proving the clearance of the AA authority as pre-requirement for issuing the development permit (See Art. 55).



That said, competent authorities should retain the legal power (**1**) to recall location conditions already issued and to direct the project holder to the AA procedure in any stage of the permitting procedure that follows the issuance of the conditions and precedes to the issuance of development permit, and (**2**) to require adjustments in permit application in case the project proposed is not compliant with the conditions prescribed in the positive AA decision by the AA authority.

Namely, the authority in charge of handling applications for issuing location conditions and the AA authority alike may not be in position to declare if the AA shall be required on the basis of limited data surrendered by an applicant in the location condition stage of the permitting. In addition, some projects and works do not require issuing location conditions in accordance with the LPD, or otherwise, the project prepared for issuing the development permit may deviate from project design surrendered for the purposes of the issuing location conditions.[40]

Likewise, authorities should reserve the power (**3**) to require additional information to assess the gravity of potential impacts of the proposed project and to decide on the AA requirement in all stages of the procedure that precede to the issuance of development permit.

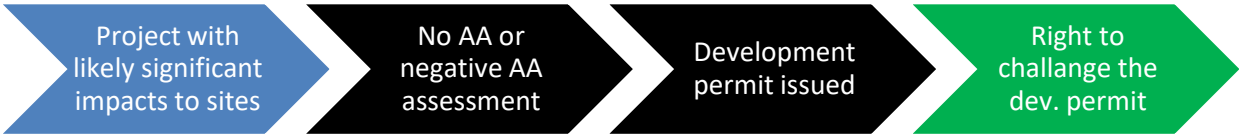
Therefore, the authority competent for issuing the location conditions and development permits must be placed under the legal duty to observe the AA regulatory requirements *ex officio* up until the decision to

[40] See Art. 118a.2 of the LPD

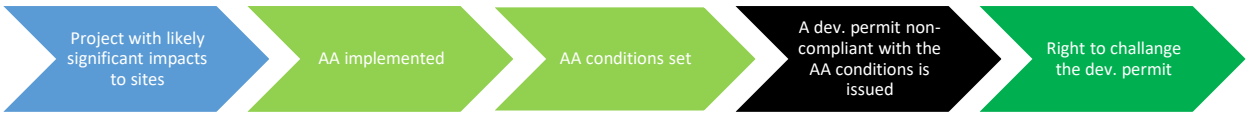
approve the project is made, which should correlate to **availability of appropriate legal remedies to the *public concerned*[41] to challenge the permit issued on the ground that it failed to do so in individual case**.

In particular:

- right to challenge the permit in case the permit is issued to the project with likely significant impact to the site without the prior AA or contrary to the negative assessment:



- or, in case the permit is issued to the project contrary to the decision of the AA authority:



3. To achieve fully coordinated procedures appropriate amendments in the LPD and its implementing legislation it is further recommended:

- To facilitate the mainstreaming of the AA requirements in the integrated project permitting procedure, **definitions of the key concepts relevant to the protection of the sites of ecological importance (future SACs/SPAs/SCIs) should be introduced in the LPD (Art. 2).** In particular, the definitions of concepts of *sites of ecological importance*[42], *appropriate assessment,* and *projects subject to the AA requirement* (i.e. projects not directly connected with or necessary to the management of the site but likely to have a significant effect to the sites of ecological importance) compliant with the Habitats Directive and Birds Directive and the law governing the nature protection. The concepts, as reference

[41] "'The public concerned' means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest." (Zakon o potvrđivanju Konvencije o dostupnosti informacija, učešću javnosti u donošenju odluka i pravu na pravnu zaštitu u pitanjima životne sredine Zakon je objavljen u "Sl. glasniku RS" – Međ. ugovori, broj 38/2009 od 25.05.2009. godine.).

[42] Future SACs/SPAs/SCIs

points, should help permitting authorities and investors to get familiar with the AA requirements and facilitate their enforcement in the permitting procedures.

- Provisions of the LPD governing issuing and the content of the location conditions[43] should place the issuing authority under a legal duty to **direct the applicant to obtain the clearance from the AA authority** in relation to the construction of the object or the execution of works with likely impacts to the protected sites.[44]
- Any provision of the LPD and the applicable by-law capable of **overriding the decision made in the AA procedure[45] or otherwise capable of limiting the capacity of the AA authority to decide on its competence[46] should be made devoid** of such effect in case of the projects with likely significant effect to the sites protected in accordance with the criteria of the Directives.
- The LPD must ensure that **conditions set in the decisions of the AA authority are mandatory** element of the development permit and that all the permit conditions comply with the conditions prescribed by the AA decision. Hence, the LPD (and relevant by-laws governing the content of location conditions/development permits/operation permits) should enable and facilitate full enforcement of pre-conditions in the project design set in the decision of the AA authority (duty to implement mitigation measures/monitoring conditions during any phase of the project) clearing the proposed project from negative adverse implications to the protected sites. That said, the LPD should guarantee full traceability of the AA decisions and identity of the project proposed in the application for development permit with the project approved in the AA procedure. Indeed, the LPD and implementing legislation governing the content of the development permit could provide an explicit duty of the project holder to surrender the positive AA clearance with the permit application coupled with appropriate evidence that project proposed complies with the AA decision as a pre-condition for issuing the development permit. [47] However, to enable capacity of the AA authority to follow-up

[43] LPD, Art. 55; Decree on the Location Conditions, Art. 3.

[44] Indeed, it is assumed that the planning documents which provide basis for issuing of the location conditions already integrated information on spatial distribution of the sites of ecological importance and applicable conservation regimes.

[45] LPD, Art. 57.10 and Art. 9.4 of the Decree on the Location Conditions provide that the conditions submitted by other authorities "shall not be in conflict with the conditions from the planning document" on the basis on which the location conditions are issued, "nor they shall change the established urban parameters" set thereby. The said requirement that conditions issued by nature protection authorities should comply with pre-defined conditions of the planning documents and parameters appear capable of overriding the AA requirement, since it may divert the project with likely significant effect to the sites from the AA, on the mere formal basis, that the AA requirement is in conflict with the planning document, or that the conditions set in the AA decision do not comply with pre-defined "urban parameters." In addition, the requirement that the authorities in charge of the AA/EIA (including the Institutes for Nature Conservation) must issue the enabling act to the project holder (for example, nature protection conditions – *uslove zaštite prirode*), within 15 to 30 day (Art. 8b, LPD) subject to potential prosecution and penalties (Art. 211a, LPD), must not be applicable in case of the projects subject to the AA and EIA requirement. That said, it is recommended to amend or provide for the non-application of Arts. 8 b and 211 a of the LPD in case of the projects subject to the AA/EIA requirement.

[46] See for example LPD's art. 56.5.

[47] The LPD, provides that the authority competent for issuing the development permit or other consents enabling the start of the project, is limited in its assessment of the application to the question "whether all documentation prescribed by this Law and by-laws adopted on the basis of this Law are attached to the request, i.e. application" (LPD, Art. 8đ.2(4)). The LPD, however, does not require, explicitly, the surrendering of a consent of the authority competent for the AA, in case of the projects subject to the AA requirement within the meaning of the Habitats Directive. That said, it is recommended that the provisions of the LPD and implementing by-laws that govern the documents required to be surrendered by the applicant as pre-condition for issuing the location conditions,

compliance of the project with the AA decision in all stages of development permitting procedure additional arrangement for checking compliance of project documentation surrendered with the development permit application with the AA decision should be also considered.[48] In other words, the permitting authority should be placed under legal duty to assure that, besides formal clearance from the AA authority (**1**) there is a sufficient identity between the project applied for development permit with the project approved in the AA procedure[49] and (**2**) to integrate the conditions set in the AA decision in the development permit, and/or to (**3**) assure that permit conditions comply with the conditions set in the AA decision.[50] Finally, (**4**) the competent authorities must be placed under the duty to hold project developer accountable in case of any non-compliance with the conditions set in the AA decision during time of the implementation of the project and before the permit enabling exploitation of the project is issued (operating permit)[51];

- A*ll types of consents enabling project holder/developer to start, carry-out and exploit the project*[52] (Serb. *akata u ostvarivanju prava na izgradnju i korišćenje objekata*), which are subject to the AA requirement, **issued before the project is cleared in the appropriate assessment procedure carried out by the competent authority must be considered illegal, and subject to the legal challenge**. Therefore, the LPD should introduce clauses equipped with *unquestionable binding force* requiring the planning authorities to reject or withhold with issuing of the consent to the project subject to the AA requirement, before the AA procedure is carried out and to refuse to issue the development consent in case of the negative final AA decision is adopted, including any type of permit other than the development permit, that entitles the developer to proceed with the project. That said, authority

development permits, temporary development permits (or other form of consents that enable start of the project envisaged by the LPD), stipulate the duty to surrender appropriate proof of compliance of the application with the AA requirement prescribed by the law regulating nature protection in case the project with likely significant effect to the protected sites within the meaning of the HD art. 6(3).

[48]The planning authority must be supplied with power to check compliance of a project application and project documentation (surrendered with the application) with conditions set in the approval of the project in the AA procedure. The appropriate checks of the project documentation compliance with the AA decision could be done by the permitting authority or it could be left to the AA authority to do so through appropriate procedural arrangements in order to guarantee that the compliance of the project design with conditions set in the AA decision shall be observed in all stages of the permitting procedure. However, notwithstanding the particular administrative arrangement, the LPD should guarantee full traceability of the AA decisions and identity of the project proposed in the application for development permit with the project approved in the AA.

[49] In other words, the authority should assure that there is a sufficient identity between the project applied for with the project approved in the AA procedure.

[50] The LPD and implementing by-laws governing the mandatory content of the development permit should place the planning authority under the legal duty to integrate mitigation measures set as a condition to the AA approval by the competent AA authority as the element of the development permit binding the investor/developer. Namely, mandatory conditions of the AA decision attached to the design of the project, size, location, manner of carrying out and exploitation of the project should find its place in the permits issued in accordance with the LPD.

[51] The LPD may leave the effective monitoring and checking of compliance of any project phase to the AA authority, yet it must be clear from the LPD provisions that the consents it issues do not conflict with the findings and decisions of the AA authority, and serve as a form of „permit – defence "against the AA requirements. Indeed, the AA authority must be also able to enforce measures „to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive "(Art. 6(2) of the HD). That would require the power of the authority to intervene even if the project holder complies with the conditions in case that is necessary step to avoid deterioration of sites.

[52] LPD, Art. 8.

issuing *location conditions* [53] (Serb. lokacijski uslove/dozvole), *development permits* [54] (Serb. građevinske dorzvole), and *operation permits* (Serb. upotrebne dozvole) must be exposed to the duty to observe the AA requirements prior to their issuing. That said, all types of consents that enable effective start of works must be subject to the AA requirements, as well. Therefore, consents issued in case of the modifications of the projects (Serb. *izmena lokacijskih uslova, odnosno rešenja o građevinskoj dozvoli*)[55] and all other forms of authorizations enabling start of works (including cases where development permit is not a pre-condition for start of works)[56], must be considered illegal if issued in circumvention of AA requirements.

- The LPD should ensure that the permitting authorities are under **duty not to encroach the powers of the authorities in charge of implementing Articles 6(4) of the HD**. That said, the authority in charge of issuing the development permit must be placed under the clear precise and express **legal duty to reject the application for the project dismissed in the AA procedure and not approved under the IROPI procedure**. In other words, planning authorities must not decide on the existence of the overriding public interest to implement the project on its own volition and outside procedure that transposes Art. 6(4) of the HD.
- The authority in charge of permitting the project must be placed under **legal duty to check compliance of a project application and project documentation** (surrendered with the application) with conditions set in the approval of the project in the **IROPI procedure**. The appropriate checks of the project documentation compliance with the IROPI decision could be done by the planning authority or it could be left to the IROPI authority. However, notwithstanding the particular administrative arrangement, the LPD should guarantee full traceability of the AA and IROPI decisions and identity of the project proposed in the application for development permit with the project rejected in the AA stage and approved in the IROPI procedure.
- In order to provide the **enforceable duty to observe the AA requirements** the LPD should be equipped with appropriate legal avenues for challenging the legality of *all types of consents enabling project holder/developer to start, carry-out and exploit the project*. in case of incompliance and with appropriate sanctions and fines. That said, *the public concerned*[57] should have the right **to challenge the legality of a decision to adopt/approve** the plan in circumvention of the AA/IROPI duty before the administrative court.[58]

[53] LPD, Arts. 53a, and 55.
[54] LPD, Arts. 133-142
[55] LPD, Arts. 8.3, Art. 142.
[56] Beside the development permits LPD envisages issuing of temporary construction permits, permits for performance of preparatory works, decision on approval for performance of works, approvals in special cases of construction, or performance of works without obtained construction permit.
[57] Within the meaning of Art. 2.5 of the UNECE Aarhus Convention.
[58] While indeed, plans as such may be considered as general acts that may not be challenged before the administrative court, decision of the competent authority adopting a plan capable of affecting the sites and in circumvention of the AA procedure should be considered as individual act capable of affecting legal interest of public concerned protected by law. For example, right to access to the environmental decision-making protected by the law governing the AA/SEA procedure would be made meaningless if the decision adopting the plan without prior assessment could not be challenged.

4. In addition to amendments in the LPD some complementing soft-law approaches may also be considered:

- To help developers (and authorities in charge of preparation of the planning documents and permitting the projects) to identify applicability of the AA regime and jurisdiction of the AA authorities early on, it is recommended that the Ministry for Environmental Protection develops (in cooperation with authorities in charge of the planning and permitting projects and consulting the interested CSOs) and issues **guidelines** explaining the purpose of the AA procedure and indicating typical situations where duty to submit the project/plan to the AA may arise;[59]
- The Ministry of Environmental Protection could devise the ***open doors* policy** for project holders and *public concerned* enabling informal *online* or *face to face* consultations on applicability of the AA regime to the contemplated project.
- The Ministry of Environmental Protection could consider introducing a mechanism for issuing **non-binding *AA directions*** on the request of the authorities in charge of preparing particular planning documents and/or permitting individual projects on the basis of information supplied with the request.

Recommendations with regard to the Law on Environmental Impact Assessment

In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from the EIA Directive[60] and the HD the **amendments of the Law on Environmental Impact Assessment (LEIA) must assure that a project can be authorised only after the competent authority have ascertained that it will not adversely affect the integrity of the site** protected in accordance with the HD and BD. While the AA may be conducted separately from the EIA, or jointly with the EIA, it must be clear that the final decision made by the authority complies with the findings of the AA or applies the legal test/standard required by Art. 6.3 of the HD. Therefore, in case the project proposed is assessed to have negative impacts to the site protected, in accordance with the HD criteria, the discretion allowed by the current Art. 24 of the LEIA regarding approval of the project must be clearly restricted. In other words, the amendments of the LEIA must place the authority implementing the single AA/EIA assessment (or otherwise if charged by law with duty to coordinate AA/EIA) under a clear and unambiguous **legal duty to reject the project proposal** in all individual cases when negative impacts to the sites of ecological importance may not be excluded beyond the reasonable scientific doubt.[61]

[59] Guidelines could assist both the planning/permitting authorities and project holders in identifying if plan or project would be considered likely to have a significant effect thereon, either individually or in combination with other plans or projects, in the early planning phase within the meaning of the law transposing Art. 6.3 of the HD. This may help developers to anticipate and potentially save costs by reconsider location/nature/size of their investment before applying for the permit. Likewise the authority in charge of the preparing the spatial/urban planning document would be able to spot early on the need to consider potential impacts to the sites and to consult the AA authority on need to carry on the AA of the plan before it is submitted for adoption.

[60] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment Text with EEA relevance

[61] See Case C 418/04 Commission v Ireland, paragraphs 229-231

The requirement of the **AA to be conducted as part of the scope of the environmental assessments** needs to be established early on. To make information relevant for deciding on the need of the AA be readily identifiable the provisions governing the screening and scoping stage of the EIA procedure should require that data on potential impacts of the project to the species and habitats protected under Birds and Habitats Directives, including to the sites of ecological importance protected in accordance with Directives' criteria, are supplied by the applicant. Hence, it is recommended to equip provisions of the LEIA and related by-laws governing the content of screening/scoping application and screening/scoping application forms with explicit references requiring the applicant to supply data on potential impacts of the proposed project to the protected FFH and sites of ecological importance. In addition, in case the authority decides on the need to carry out the AA in the screening phase of the EIA information relevant to the AA must be readily identifiable in the content and rationale of the screening decision.

The provisions governing the **content of the environmental impact report**[62] should provide for the duty of the applicant to supply information on impacts of the proposed project to the sites of ecological importance which would be readily identifiable from other impacts and sufficient for the authority to identify, describe and assess impacts to the sites of ecological importance separately. The duty may be discharged by requiring applicant to surrender a distinct report from environmental impact report on the impacts to the sites for purposes of the AA, or otherwise by requiring that the environmental impact report provides information on site-specific impacts for the purposes of the AA which is clearly distinguished from information on other relevant impacts (air, water, soil, human health, climate, etc.).

The provision of the LEIA governing the assessment stage of the EIA should provide for the **duty of the authority to identify, describe and assess the site-specific impacts separately** from other relevant impacts of the project. In addition, expert commission[63], which assists the authority with appraisal of the relevant impacts, must be charged with duty to appraise and report on their findings re. the site-specific impacts separately from other relevant impacts of the project.

In case of a single (AA and EIA) assessment the decision of the authority must contain a **reasoned conclusion of the competent authority on the significant effects of the project on the sites of ecological importance** (sites protected in accordance with the Directives' criteria[64]). That said, the rationale of the decision identifying main reasons, i.e. describing and assessing the direct, indirect and cumulative significant effects to such sites, on the basis of which the decision to approve or to reject the project has been made, must be easily discernible from conclusions regarding significant impacts to other the environmental factors (population, human health, air, water, soil, climate, material assets, cultural heritage, the landscape etc.). Hence, it is recommended that appropriate amendments of the LEIA require from the authority to give to the impacts to sites protected in accordance with the Directives' criteria a separate concern in the decision's main reasons.

The LEIA must provide clear legal guidance to the EIA authority to accept the **compensatory measures, as a form of offsetting of the adverse impacts and losses** of the sites natural services, only under the

[62] Serb. *studija o proceni uticaja* as defined by the LEIA.
[63] Namely, the LEIA provides that the expert commission shall be established for purposes of assessment of the information supplied by the project holder in the environmental impact assessment report which report its findings to the EIA authority.
[64] Having in mind that the formal designation of SPAs/SACs/pSCIs depends on the status of Serbia as a Member States, the term *Directives' criteria* should be understood as a scientific concept.

condition that the project and compensatory measures are cleared by the competent authority in accordance with HD, Article 6.4 criteria in the absence of more favourable alternative solutions and following the fully implemented IROPI procedure.

The LEIA must place authorities in charge of permitting the project/activity in accordance with sectoral legislation under a clear and unambiguous **legal duty to reject the project application in case of a negative AA assessment.**

Amendments of the LEIA (together with appropriate provisions of the LPD and LNP) should provide a mechanism for **integrating the competent authority's reasoned conclusion into development consent**, including any conditions attached to the decision under which the project was assessed as acceptable on the basis "that it will not adversely affect the integrity of the site concerned"[65]. Therefore, for the purposes of the AA implemented jointly with the EIA the LEIA should hold authority permitting the project bound by a description of any required features of the project and/or mitigating measures envisaged by the AA decision as condition to clear the project from adverse impacts to sites' concerned.

Recommendations with regard to the IPPC legislation

With regard to the IPPC legislation the following recommendations are made:

- That the Law on Integrated Pollution Prevention and Control (**IPPC Law**)[66] provides an explicit legal basis for **integrating the measures set by the AA authority** for clearance of the project from the risk of adverse impacts to the protected sites (i.e. sites of ecological importance designated in accordance with the BD and HD criteria) in the integrated permit conditions for *new* or *existing* installation, such as mitigation and monitoring measures[67] to ensure the compliance with the AA requirements.
- Likewise, it must be clear that the IPPC Law places the **permitting authority under legal duty to observe the AA requirements** and to withhold with or refuse to issue the integrated permit in case the project submitted with application for issuing the integrated permit is likely to have significant impacts to the protected sites and/or the AA authority issued a negative assessment of site-specific impacts.

- It is recommended that the IPPC law provides legal basis empowering the authority that issued the integrated permit or nature protection authority alike to **modify permit's conditions**, and/or power to take or demand the "appropriate steps" from the operator of the IPPC installation to avoid the deterioration of protected habitats or disturbance of protected species for which the

[65] HD, Art. 6.3
[66] Official Gazette of the RS, Nos. 135/2004 and 25/2015
[67] The duty of employment of measures identified by the relevant environmental impact studies in accordance with Art. 16 of the IPPC Law does not guarantee that an installation shall not adversely affect the integrity of the protected site. Indeed, the EIA and the assessment of current environmental impacts may not serve as a substitute to the full enforcement of the AA to the permitting procedure (see Case C-98/03 Commission v Germany, paragraphs 49-52.).

SACs/SPAs are designated[68], to assure immediate compliance proportional to identified risks to protected sites and species within the meaning of Article 6(2) of the HD[69] even if despite the operator's compliance with the permit conditions issued in accordance with the IPPC law the risk of significant harm nevertheless occurs.

- Mutatis mutandis, the above recommendation should equally apply to the **requirements related to the strict protection of species** listed in Annex IV of the Directive set under Article 12.1(d)[70] demanding prohibition of non-deliberate destruction or deterioration of breeding sites or resting places of protected species within the entire territory of the Member State and similar requirements stemming from Art. 5(b) and (d) of the Birds Directive. Indeed, full enforcement of Art. 12.1(d) of the HD and Art. 5(b) and (d) of the BD would require integration of the relevant concerns as the explicit legal consideration when setting the conditions for permitting the industrial operations. Likewise, the IPPC Law should empower nature protection authorities to monitor impacts, to order immediate suspension of permitted industrial activities and/or to order modification of permit conditions to comply with the Directives' requirements.

Recommendations with regard to mining legislation

With regard to mining legislation, it is recommended:

- In order to **mainstream the AA requirements in the permitting procedures** governed by the Law on Mining and Geological Research (LMGR)[71] it is recommended for the LMGR to include the specific reference to the AA procedures and to place the competent authorities under the legal duty to observe the competence of the AA authority to verify implications of proposed mining activities (research, exploitation and mining waste management operations), alone or in combinations with other plans and projects, to the sites satisfying designation criteria of the Directives, before issuing any permit/consent to the mining activity. Namely, it must be clear that the LMGR places the permitting authority under legal duty to observe the AA requirements and to withhold with or refuse to issue the permit consenting the mining activities likely to have significant impacts to the protected sites and before AA authority clears the activity from adverse negative impacts. The duty to withhold or refuse the permit to the mining activity subject the AA requirement must be independent from the fact if the mining activities subject to the permit take place within or outside the protected site.[72] Likewise, the legal duty to observe the competence

[68] For example, to order the temporary suspending of activities, or other immediately effective preventive measures.
[69] See Case C-241/08, Commission v French Republic, paragraph 76
[70] To that regard, see in particular Case C-98/03 Commission v Germany, paragraphs 53-56.
[71] Official Gazette of the RS, Nos. 101/2015 and 95/2018 – another act.
[72] LMGR, Art. 6 The LMGR provides that *in the area that represents a protected area of nature* "geological research and exploitation of mineral reserves and geothermal resources, may be approved only under *conditions* issued in accordance with a special law by the competent authorities and organizations for issuing conditions for spatial planning, nature and environmental protection." Indeed, the provision appears to distinguish between measures taken outside or inside a protected area which is not compliant with Article

of the AA authority must cover all the activities subject to the permitting in accordance with the LMGR.

- It is recommended that the LMGR provides an **explicit legal basis for integrating the measures set by the AA authority for clearance of the mining activities from the risk of adverse impacts to the protected sites** (i.e. sites of ecological importance designated in accordance with the BD and HD criteria) in the permit conditions for mining activities, such as **mitigation and monitoring measures** to ensure the compliance with the AA requirements. All the activities subject to the permitting in accordance with the LMGR should be covered by the duty to comply with the conditions set by the AA authority. Indeed, permitting authority should be able to check if the project documentations surrendered with permit application complies with the conditions set by the AA authority, hence, appropriate arrangements for assessing compliance of the proposed activity should be in place.

- It is recommended that the LMGR provides legal basis empowering the nature protection authority with power to demand the "appropriate steps" from the operator of the mining activity to avoid the deterioration of protected habitats or disturbance of protected species[73] and to assure immediate compliance proportional to identified risks to protected sites and species within the meaning of Article 6(2) of the HD[74] even if despite the operator's compliance with the permit conditions issued in accordance with the LMGR the risk of significant harm nevertheless occurred. Otherwise, it must be clear that provisions of the nature protection legislation transposing the requirements of the Directives prevail over the LMGR.

- *Mutatis mutandis*, the above recommendation should equally apply to the requirements related to the **strict protection of species** listed in Annex IV of the Directive set under Article 12.1(d)[75] demanding prohibition of non-deliberate destruction or deterioration of breeding sites or resting places of protected species within the entire territory of the Member State and similar requirements stemming from Art. 5(b) and (d) of the Birds Directive. Indeed, full enforcement of Art. 12.1(d) of the HD and Art. 5(b) and (d) of the BD would require integration of the relevant concerns as the explicit legal consideration when setting the conditions for permitting the mining activities. Likewise, the LMGR should empower nature protection authorities to monitor impacts, to order immediate suspension of permitted mining activities and/or to order modification of permit conditions to comply with the Directives' requirements. Otherwise, it must be clear that provisions of the nature protection legislation transposing the requirements of the Directives prevail over the LMGR.

6(3) of the HD (See Case C-98/03 Commission v Germany, paragraph 32) The only relevant criteria for requiring compliance with the requirement to subject the mining activity to the AA before permitting its implementation must relate to the likelihood of significant impacts to the protected site.

[73] For example, to order the temporary suspending of activities, or other immediately effective preventive measures.
[74] See Case C-241/08, Commission v French Republic, paragraph 76
[75] To that regard, see in particular Case C-98/03 Commission v Germany, paragraphs 53-56.

4 Recommendations for amendments in forestry legislation

Assessment findings

The forest management plans govern activities and management practices that may cause serious pressure to protected sites, such as clear felling plans[76], plans amending forest structure through selective removal of particular tree species or trees in particular age, abandonment of wooded pastures, removal of deadwood, homogenization of forest stands, etc.[77]

The forest management plans, which serve as the basis for the clear felling, are not subject to any stage of the AA and IROPI derogation procedure governed by the Law on Nature Protection (**LNP**) *with sufficient precision and clarity*[78].

Forest areas development plans (*plan razvoja šumske oblasti*, Serbian),[79] *forest management programmes* (*program gazdovanja šumom*, Serbian) *forest management basis* (*osnove gazdovanja šumom*, Serbian) *the annual forest management plan* (*godišnji plan gazdovanja šumama*, Serb.) *the forest management implementation project* (*izvođački projekat gazdovanja šumama*, Serb.) *special project for raising plantations of short production cycles* (*projekat za podizanje zasada kratkog proizvodnog ciklusa*, Serb.), *rehabilitation plan,* etc. must be governed by the national rules transposing Art. 6 of the HD and be adopted/approved only after the nature protection authority verifies implications of their implementation to the sites of ecological importance following the AA.

Furthermore, the LF's rules governs the system of permitting the *clear felling of forests*.

- felling in accordance with the forest management plan – Art. 9.1(3) of the LF
- *clear felling* in accordance with *the forest management plans* for the purposes of the development of the forest areas and of the forest infrastructure (forest roads, fire-fighting lines and other facilities used for forest management) - Art. 9.2 and Articles 63-66 of the LF
- clear felling specifically authorized by the MAFWM for certain purposes (averaging of aisles for the execution of geodetic works, geological surveys, scientific explorations, installation of *PTT* pipelines, electrical and other lines and similar works; landfill reuse and ash landfill sites previously reforested in reclamation projects; control of plant diseases and pests, etc.) – Art. 9.3 of the LF
- felling as a consequence of the loss of the status of the forest land - Art. 10 of the LF
- felling in accordance with the rehabilitation plan - Art. 27.3 of the LF
- felling in accordance with rules for selection, marking and recording of trees for felling – Art. 57 of the LF

[76] See LF, Art. 59.1
[77] Rulebook on the content of forest management basis and programs, the annual contractual plan and the provisional annual private forest management plan, Art. 45; Rulebook on the content of the plans for development of forest area, and the plan for development of forests in the national park, Article 16.
[78] Case C-418/04, *Commisssion v Ireland*, para. 225 and paras. 229-231.
[79] LF, Art. 21.4

- felling of trees under strict protection if „they are a source of infection from diseases and pests, or if they endanger people and objects "– Art. 13.1 of the LF, etc.

Such activities may take place in areas where known populations of animals, birds or plant species protected by Directives may be involved.

However, the clear felling consenting regime is not unquestionably subordinated to provisions of the LNP governing the system of strict protection of the animal and plant species listed in Annex IV (a) and (b) (HD, Art. 12-13) in their entire natural range and enforcing limited and stringently supervised grounds for derogation from strictly prohibited conducts (HD, Art. 16).[80]

There is a specific concern that consents to different forms of felling issued by the MAFWM[81] in accordance with criteria distinct from the nature protection regime, may serve as a defence against liabilities stemming from national provisions transposing Articles 12, 13 and 16 of the HD and Articles 5 and 9 of the BD.

Recommendations

Therefore, it is recommended that the **Law on Forests**[82] (**LF**):

- Provides **explicit nexus with the provisions of the LNP governing the AA requirements** placing forest management planning authorities and forest managers under the legal duty equipped with the *unquestionable binding force*[83] to observe the competence of the AA authority and to subject the proposed forest planning documents with likely significant impacts to the sites of ecological importance to the appropriate assessment procedure prior to their adoption and to reject approval of the planning document in case of the negative assessment by the AA authority;

[80] Indeed, the felling operation in practice may produce deteriorating effect to breeding sites or resting places, or deliberate disturbance, prohibited by the Directives, even if compliant with the LF. Hence such operations may be exempted from the prohibition only under strictly limited grounds and monitored conditions within the meaning of Art. 16 of the HD and Art. 9 of the BD.

[81] In particular Arts. 9.2 of the LF and 59 of the LF, provides general exemption from the prohibition of the clear felling for the purposes of building forest infrastructure. Furthermore, Article 9.3 provides that MAFWM may authorize the clear felling not envisaged by the forest management plan "if this does not jeopardize the priority functions of the forest" for the purpose of averaging of aisles for the execution of geodetic works, geological surveys, scientific explorations, installation of PTT pipelines, electrical and other lines and similar works, landfill reuse and ash landfill sites previously reforested in reclamation projects, control of plant diseases and pests, etc. However, forest management plans are not subject to the AA or any of the derogation procedure governed by the Law on Nature Protection (LNP), which are introduced with the aim to transpose and implement Arts. 6, 12, 13 and 16 of the HD and 5 and 9 of the BD. Furthermore, the LF appears to empower the MAFWM to exempt clear felling from prohibition outside of the nature protection regime and under criteria that are not compliant with Art. 16 of the HD or Art. 9 of the BD.

[82] "Official Gazette of the RS", no. 30/2010, 93/2012, 89/2015 and 95/2018-other act

[83] Art. 25.4 of the LF requires issuing an opinion of the Ministry of Environmental Protection before the approval of the forest management basis and forest management plans covering protected areas. The provision of the *opinion* clearly falls short from the more specific and strict rules of Art. 6.3 of the HD requiring carrying out appropriate assessment of all likely impacts to the sites, notwithstanding the if the proposed plan/project is planned outside or within the protected area, and rejection of the plan/project in case likely significant impacts to the integrity of the protected site may not be ruled out (see Case C-159/99 Commission v Italy [2001] ECR I-4007, para. 32.)

- Provides **adequate nexus to nature protection provisions** empowering the nature protection authority to order the "appropriate steps" from the operator of the forest management activity with aim to avoid deterioration of protected habitats or disturbance of protected wild or plant species[84] and to assure immediate compliance proportional to identified risks to conservation species for which the sites were designated within the meaning of Article 6(2) of the HD[85];

- **Subordinates the forest management plans and forest management activities to conservation measures** governed by national nature protection legislation and aimed at protection of the natural habitat types in Annex I and the species in Annex II present on the sites (Art. 6(1) of the Habitats Directive) as well as Annex I birds and regularly occurring migratory birds species (Article 4 of the Birds Directive);[86] and

- Provides that the **all clear felling activities must be compliant with the nature protection regime** aimed at protection of wild animals and plant species, bird species transposing the HD and BD and monitored and cleared by the competent nature protection authorities under conditions compliant with the Directives.

Regarding Article 10 of the LF governing the grounds and procedure for change of the status of a property from a forest land to an agricultural or development land, the MAFWM or other competent planning authorities must be placed **under the legal duty to observe the requirement** to:

- agree to the change of the purpose of the forest land **only after having ascertained that the project/activity that supports the change "will not adversely affect the integrity of the site** concerned" subject to the AA (Art. 6(3) of the HD) or in accordance with conditions of the IROPI procedure (Art. 6(4) of the HD),
- to assure that the decision to **land use change will not go against requirements** of Art. 6(2) of the HD, and
- not to encroach the prohibitions set in accordance with Arts. 12 and 13 of the HD and Art. 5. of the BD.

Namely, it should be clear that any such potential loss of natural resource due to the **change of regime of the land use is made in compliance with the competences of the AA authority** in charge of the protection

[84] For example, to order the temporary suspending of activities, or other immediately effective preventive measures.

[85] See Case C-241/08, Commission v French Republic, paragraph 76. Provisions of the LF governing grounds for issuing consents and approvals for clear felling, forest rehabilitation plans, forest infrastructure development projects, forest works, activities and uses and change of the status of a property from a forest land to an agricultural or development land are in particular prone to cause conflicts with Article 6(2)-(4) of the HD and/or potential reduction of forest habitats or fragmentation of Natura 2000 site designated on other grounds or as important corridor, buffer zone

[86] Namely, articles 19-31 of the LF do not place the MAFWM, APV and forest managers under the clear legal duty to align *the plans for development of forest areas*, *forest management programmes* and *forest management basis* (**the forest management plans**) with conservation measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites, and Annex I birds and regularly occurring migratory species, respectively (Art. 6(1) of the Habitats Directive, Article 4 of the Birds Directive).

of the integrity of the sites of ecological importance and implementation of the system of strict protection in accordance with the Directives.

Finally, the Forestry Development Strategy of the Republic of Serbia and the provisions of the LF and by-laws governing the content of the forest planning documents should **mainstream measures aimed at safeguarding the ecological coherence of the Natura 2000 network** and the management of forests features of major importance for wild fauna and flora, as part of the planning practice within the meaning of Article 10 of the HD (such as measure to protecting and enhance forests' function as stepping stones essential for the migration, dispersal and genetic exchange of wild species).

5 Recommendations for changes in hunting legislation

Assessment findings

Hunting and hunting-related actions are form of use of natural resources and constitute activities that may affect population and cause (significant) disturbance or having such an effect[87] to the animal and bird species placed under the protection in accordance with the Directives.

Hunting activities must not be performed unchecked against their compliance with the relevant population conservation criteria and monitoring requirements of the Directives as a form of an exception to the national nature protection regime transposing the Directives.

That said, the nature protection legislation must prevail over game and hunting provisions in relation to the habitats and animal, plant and bird species protected by the Directives.

This is not the case at the moment.

Critical gaps are detected, which may affect smooth implementation of requirements related to site-specific management measures, species protection/prohibitions, allowed uses and derogations.

On the strategic level overlapping of wild species and wild *game* population management between legislation governing the nature protection and legislation governing hunting activities is a key concern.

The Law on Game and Hunting (**LGH**)[88] provides for the specific legal regime[89], which encroaches in the species management territory, thus, making coherent and smooth enforcement of the Habitats Directive (**HD**)[90] and Birds Directive (**BD**)[91] by competing national regimes, rather, difficult.

The LGH applies its own system of prohibitions and exemptions, different from the LNP, which is applied by the Ministry of Agriculture, Forestry and Water Management (**MAFWM**) and the Forest Directorate. As a result, hunting and game population management activities regulated by the LGH appears to be to a large extent shielded from the enforcement of the LNP rules transposing HD's and BD's system of strict protection species, prevention of overexploitation and surveillance of compliance.

The LGH regime of the game population management is by no means subordinated to the Law on Nature Protection (**LNP**)[92], which is considered the main vehicle for the HD and the BD.[93]

[87] Case C-241/08, *Commission v France*, paragraphs 39
[88] Official Gazette of the RS, No. 18/2010 and 95/2018-other statute
[89] LGH, Article 3; Law on Ministries, Art. 5.6.
[90] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora
[91] Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds
[92] Official Gazette of the RS, No. 36/2009, 88/2010, 91/2010-corrigendum., 14/2016 and 95/2018-other statute, see Art. 48.2.
[93] "Monitoring transposition and implementation of the EU environmental acquis", Republic of Serbia Table of Concordance, Year 19 (2016) COUNCIL DIRECTIVE 92/43/EEC; "Monitoring transposition and implementation of the EU environmental acquis", Republic of

The roles must be reversed.

The nature protection provisions transposing the requirements of the Directives must lead the charge and assume the main power point for governing compliance of the hunting policies and practices with nature protection objectives.

General recommendations on the amendment of the LGH and by-laws (principles)

The following **principles of reforming hunting legislation** are recommended:

1. **All hunting practices must be carried in compliance with nature protection legislation** transposing HD and BD.
2. The legal **concept and the list of animal and bird species** placed under the system of protection in accordance with the Directives **must be set by the nature protection legislation**, instead subject to an agreement between nature protection and hunting authorities.[94]
3. The **hunting regulation** including designation and management of hunting areas, hunting grounds, hunting activities, all forms of taking and related uses of species protected by the HD and BD must be **under umbrella and comply with the system of species protection, conditions for permitted uses, and site-specific conservation objectives** set by the national nature protection legislation transposing the Directives and enforced by the competent nature protection authorities in charge of taking the requisite measures to maintain or adjust the population of the protected species in favourable conservation status.
4. All forms of taking concerning species listed in Annex IV(a) of the HD and bird species not listed in Annex II envisaged by the LGH shall be subject to the **prior decision of the nature protection authorities** in charge of enforcing derogations on grounds in compliance with Art. 16 of the HD and 9 of the BD, respectively. That said, all forms of taking of strictly protected species based on certain legitimate ground(such as selective taking, protection from diseases, to prevent serious damage in particular to crops, livestock, forests, fisheries and water and other types of property, including hunting grounds and game) must be governed exclusively by national rules transposing Art. 16 of the

Serbia Table of Concordance, Year 19 (2016) DIRECTIVE 2009/147/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 November 2009 on the conservation of wild birds (codified version) as amended by Directive 2013/17/EU.

[94] Indeed, which wild animal and bird's species shall be considered as huntable or non-huntable *game* species is defined by the LGH and the Rulebook on Declaring the Hunting Ban of Protected Game Species. As a result, the non-huntable mode is not governed by the status of the animal species as protected wild animal or bird species under the LNP (which is the main vehicle for transposition of the HD and the BD) but it must be specifically constituted as non-huntable under the LGH, a special legal regime governing hunting activities, by no means subordinated to the LNP. As a result, LGH implies that Annex IVa wild animal species and Annex I bird species can be considered as game species under the LGH and hunted outside the system of derogations governed by the LNP. Namely, if the wild animal and bird species are *huntable* depends on the Rulebook on Declaring the Hunting Ban of Protected Game Species adopted on a basis of a separate agreement between ministries in charge of the nature protection and hunting and not upon the list of protected species set forward in accordance with the nature protection law.

HD and Art. 9 of the BD. No additional exceptions outside the grounds set by provisions of the LNP transposing Art. 16 of the HD and Art. 9 of the BD, should be allowed.

5. Compliance is to be secured with the **criteria set by the national nature protection legislation** transposing Directives' **allowed hunting activities** and related practices must be monitored by the competent nature protection authorities and subject to measures requisite to maintain or adjust the population of the species in favourable conservation status.[95]
6. The **nature protection regime must be observed in entire natural range or distribution area** (i.e. naturally occurring in the wild state in the entire territory of Serbia as a future Member State) of the species protected in accordance with Directives' requirements. That said, the Directives' requirements must be fully and equally enforceable, throughout the entire geographical territory of Serbia.[96] Therefore, the LGH must recognize the need of full enforcement of nature protection measures within hunting areas and grounds, without any (territorial) exception, outside those permitted under strict limits of Directives.

Applying these principles the following particular recommendations are submitted.

Specific recommendations for changes in the LGH provisions governing adoption and approval of the hunting planning documents

1. The LGH should provide a general proviso that the planning documents envisaged by the LGH shall be subject to the AA requirements.

Programme for the development of hunting area and, in particular, *the hunting basis* as a planning document adopted for management of the hunting ground by the hunting ground operator (*korisnik lovišta*, Serb.), may provide ground for measures, practices and uses that may have significant impacts to the sites of ecological importance protected in accordance with Directives' criteria. game taking plan (plan odstrela divljači, Serb.).

Namely, the hunting basis provides the *game taking plan* (plan odstrela divljači, Serb.), *the annual hunting ground management plan, the management programme for the fenced part of the hunting ground*[97] (*program gazdovanja za ograđeni deo lovišta*, Serb.) *the game introduction programme*[98] (program nastanivanja divljači, Serb.), and other hunting ground management measures implementation of which

[95] In particular, with regard to the fundamental surveillance and monitoring obligations, such as those imposed on national authorities by Articles 11, 12(4) and 14(2) of the HD and Articles 5 and 7 of the BD.
[96] For example, Arts. 47.2 and 52 of the LGH provides that the operators and users must comply with the nature protection legislation in case the hunting grounds are within protected areas, which may imply that outside these areas hunting legislation prevails over nature protection requirements.
[97] The concept of the *management programme for the fenced part of the hunting ground* stands is not defined by the LGH. However, *Rulebook on the content and manner of preparation of planning documents in hunting* defines it as an element of the hunting basis for the hunting ground.
[98] Ibid.

should be subject to the power of the nature protection authorities in charge of the appropriate assessment of implications of any plan to the sites concerned.

Indeed, to avoid any issues regarding the competences of nature protection and hunting authorities, the LGH should be amended in order to provide for a correct mainstreaming the appropriate assessments in the provisions governing adoption of the hunting ground planning documents by referencing to the LNP provisions governing the AA procedure.

In addition, the LGH should make it clear that notwithstanding if hunting ground for which the planning document applies is located within or outside sites of ecological importance the AA requirement applies to it as long as there are likely significant impacts to the sites concerned.[99]

2. The LGH should explicitly place competent hunting authorities under legal duty to agree with the planning document subject to the AA requirement only after the AA authority "ascertained that it will not adversely affect the integrity of the *site concerned*"[100].

Indeed, the purpose of Art. 6.3 HD requirement is to assess appropriately the potential impacts of the implementation of proposed plan to the protected sites before it is adopted and carried out.

To complement the above recommendation, it must be made clear that LGH does not provide for the situation that the planning document for development of hunting areas/managing the hunting grounds with likely significant impacts to the sites of ecological importance may be adopted or approved by the competent hunting authorities prior to the AA authority scrutiny and decision on the impacts of the plan to the sites concerned.

Therefore, it is recommended that the LGH provides explicit nexus with the provisions of the LNP governing the AA requirements placing hunting management planning authorities and hunting ground operators under the legal duty equipped with the *unquestionable binding force*[101] to observe the competence of the AA authority and to:

- subject the proposed planning documents with likely significant impacts to the sites of ecological importance to the appropriate assessment procedure prior to their adoption; and

[99] Indeed, the LGH provides that the hunting basis for the hunting grounds located in national parks and other protected natural assets must be "harmonized with the legislation governing protection measures and the manner of use of the national park and with the legislation governing nature protection" (LGH, Art. 46.2). However, Art. 6.3 of the HD applies to any plan implementation of which alone or considered together with other plans or projects may have significant impacts to the protected sites. That said, the AA regime equally applies to any plan envisaged outside the protected sites as long as it is likely to have significant effects to the sites concerned.
[100] HD, Art. 6.3. Within the meaning of the HD the scope of the concept of the *sites concerned* includes SACs, SPAs and pSCIs. For the purposes of the document site concerned should encompass the sites designated in accordance with the scientific criteria compatible with the Directives, i.e. sites of ecological importance which Serbia intends to propose as part of Natura 2000 network.
[101] Art. 25.4 of the LF requires issuing an opinion of the Ministry of Environmental Protection before the approval of the forest management basis and forest management plans covering protected areas. The provision of the *opinion* clearly falls short from the more specific and strict rules of Art. 6.3 of the HD requiring carrying out appropriate assessment of all likely impacts to the sites, notwithstanding the if the proposed plan/project is planned outside or within the protected area, and rejection of the plan/project in case likely significant impacts to the integrity of the protected site may not be ruled out (see Case C-159/99 Commission v Italy [2001] ECR I-4007, para. 32.)

- to reject approval of the planning document in case of the negative assessment by the AA authority.

Specific recommendations for changes in the LGH provisions governing day-to-day management of hunting areas and hunting grounds

1. It is recommended that measures envisaged in the management plan for the future SACs/SPAs (sites of ecological importance) and/or measures specifically designed for the habitat types and species concerned in accordance with ecological requirements, are integrated in contracts licensing hunting grounds to the operators of hunting grounds envisaged by the LGH as a contractual measure.

The right to use a hunting ground can be granted by means of public contract up to 20 years to hunting ground operators, albeit, under no specific legal duties attached in relation to need to observe national rules transposing the HD and the BD, respectively – Articles 38-52 of the LGH

The reach of national rules governing designation and protection of sites hosting important habitats and/or species in relation to process of designation of hunting grounds and capacity to govern the contract granting rights to legal entity to use and manage hunting grounds and game population is uncertain.

That said, in case the area of hunting ground overlaps with the sites of ecological importance, the LGH provisions governing content of the planning documents and contracts should introduce provisions allowing for the flexible arrangements for mainstreaming of conservation requirements envisaged in management plans sites of ecological importance (future SACs/SPAs/pSCIs) in contracts and hunting ground management plans/programmes including integrating measures specifically designed for purposes of improving or maintaining the favourable conservation status of protected species.

The arrangements should be flexible allowing for modification of hunting ground practices adjusted to the needs and current data on the conservation status of a particular species and allowing for ongoing cooperation with the entities in charge of management of the sites of ecological importance and nature protection authorities.

In addition, in case the hunting ground do not overlap with the sites of ecological importance, yet the species protected by Directives are naturally occurring in hunting areas/grounds, the LGH provisions governing content of the planning documents and conditions for licensing a hunting ground to a hunting ground operator should also integrate in contracts and hunting ground management plans/programmes measures aimed at preventing disturbance, deterioration or destruction of breeding sites or resting places, or other averting measures to comply with system of strict protection of HD, Annex IV(a) species (HD, Art. 12) and general protection of BD, Annex I bird species and regularly occurring migratory species (BD, Art. 5).

2. It is recommended that the LGH provides adequate nexus to nature protection provisions empowering the nature protection authority to order the "appropriate steps" from the operator of the hunting grounds with aim to avoid deterioration of protected habitats or disturbance of protected wild

animal, bird or plant species[102] for which the sites of ecological importance (future SACs/SPAs/pSCIs) have been designated and to assure immediate compliance proportional to identified risks to conservation species within the meaning of Articles 6(2) and 12 of the HD[103] and Articles 4.4 and 5 of the BD.

Article 1.2 of the LGH provides that the game is *used under the conditions and in the manner provided by this law.*

Indeed, article 52 of the LGH provides that "protection, management, hunting, use and improvement of game populations *within national parks and other protected natural assets* shall be performed in accordance with [the LGH], legislation governing nature protection and a special law governing protection measures and the manner of using the national park."

In particular, *a hunting basis* (the planning document adopted by hunting ground manager for management of a hunting ground) must be *harmonized* with the regulations governing protection measures and use of the national park and with the regulations governing nature protection if the ground is *located in national parks and other protected natural assets*.[104]

However, by restricting geographically applicability of nature protection rules to locations designated as protected the LGH clearly overrides the nature protection rules in *hunting areas* and *hunting grounds* placed outside protection areas when it comes both the general and site-specific wild (birds) species protection.

Besides, a loosely defined duty to *harmonize* planning documents with the nature protection legislation hardly place hunting ground managers under legal duty to adopt or to comply with:

- *necessary conservation measures* which correspond to the ecological requirements of the protected site within the meaning of Articles 6.1 of HD; or
- to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the wild (bird) species within the meaning of Art. 6.2 of the HD (and Art. 4.4 of the BD) including areas satisfying SPA criteria and pSCIs listed in the proposal (national list) submitted to the European Commission.[105]

[102] For example, to order the temporary suspending of activities, or other immediately effective preventive measures.
[103] See Case C-241/08, Commission v French Republic, paragraph 76.

[104] LGH, Art. 47.2. While in accordance with the LNP *protected natural assets* can be *movable* and *immovable* (LNP, Art. 4(27)) the use of *words* within and *located in* by Articles 52 and 47.2, respectively, effectively limits a parallel applicability of nature protection rules and game and hunting legislation to game species to immovable protected natural assets.

[105] Case C-244/05 *Bund Naturschutz in Bayern eV and Others v Freistaat Bayern*

Indeed, Annex II/IV species benefit from protection in accordance with the measures envisaged under Article 6, and the strict protection system envisaged under Article 12 of the HD. Likewise, Annex I wild bird species and regularly occurring migratory species benefit from both site-specific measures of the BD (Art. 4) and from measures providing general protection in accordance with Art. 5 of the BD.

Clearly, the hunting areas and grounds day-to-day management activities must comply with these requirements.

That said, the nature protection authorities must be placed in the position to effectively implement both site-specific conservation measures related to the habitat types and/or wild animal, bird and plant species and measures providing strict physical protection of species concerned within the designated sites.

Therefore, appropriate amendments are recommended that would make sure that LGH provisions governing the hunting ground management requirements (Articles. 33-44, 50-52 and *Rulebook on the manner of establishing the hunting area and hunting ground conditions for conducting hunting management*) are without prejudice to any obligation stemming from the nature protection legislation transposing Art. 6.2 of the HD and related powers of the nature protection authorities to enforce these requirements upon hunting ground operators and users.

The nature protection authorities should **have access to particular hunting grounds** to perform the monitoring and surveillance tasks, verify the facts and data, **and enjoy the power to order implementation of certain conservation measures** to the hunting ground operators, enforce temporary or local prohibition, or take other preventive actions to avoid deterioration or disturbance of the protected species.

In other words, it must be clear that the LGH provisions do not exclude the hunting ground management activities and operators from the full reach of the nature protection regime governing site-specific conservation requirements and from powers of nature protection authorities to enforce them.

3. It is recommended that the LGH provides adequate nexus between provisions governing the content of hunting ground planning documents (and in particular game taking plans) and duties of hunting ground operators with rules of nature protection legislation governing surveillance, reporting and monitoring compliance of exploitation of protected species as game with requirement to maintain them at a favourable conservation status.

While taking of certain species is allowed by the Directives, hunting practices still must be governed by nature protection legislation transposing EU requirements aimed at controlling such exploitation with aim to maintain such species at a favourable conservation status.

Measures aimed at implementing these requirements are not geographically limited and must be capable of being enforced within hunting areas and grounds equally as in any other part of the country when that is deemed necessary for attainment of conservation goals.

Therefore, it is recommended that LGH provides that hunting ground management plans/programmes, and in particular hunting rules, game taking plans, licenses or quotas shall be fixed in compliance with the principles of wise use and ecologically balanced control and conservation objectives of populations prescribed by nature protection authorities in accordance with nature protection legislation.

In addition, the LGH provisions should allow for unconstrained performance of surveillance and assessment of the conservation status of protected species by nature protection authorities within hunting areas and grounds.

Specific recommendations in relation to regulation of the game species population management, bans, periods and/or regimes of taking game species

1. It is recommended that LGH provides appropriate safeguards that all forms of taking of the animal species listed in Annex IV (a) of the HD and bird species not listed in Annex II of the BD prescribed by the hunting legislation comply with grounds for derogation prescribed by the Directives and are allowed only subject to the prior authorization by nature protection authorities in accordance with provisions of nature protection legislation transposing Art. 16 of the HD and Art. 9 of the BD.

The LGH provides number of legal grounds enabling game and hunting authorities and hunting ground managers to adopt measures affecting the protected population without prior authorization in accordance with national rules transposing Art. 16 of the HD and Art. 9 of the BD.

In particular:

- The LGH (Article 21) and the Rulebook on Declaring the Hunting Ban of Protected Game Species provide an administrative basis for upfront placing of Annex IV(a) animal species and non-Annex II bird species on list of huntable species on grounds divorced from the HD and BD's criteria for derogation[106]. At least two Annex IV(a) species are not subject to the permanent hunting ban on their entire natural range (*Felis silvestris* and *Canis lupus*).[107] Furthermore, *Accipiter gentilis* and *Ardea cinerea* and *Phalacrocorax carbo* are listed as huntable by the Rulebook on Declaring the Hunting Ban of Protected Game Species (Article 2 and Annex) as fish-stock damage-causing

[106] Currently, *Accipiter gentilis* and *Ardea cinerea* and *Phalacrocorax carbo* are listed as huntable by the Rulebook Article 2 and Annex under non-binding *guidance provided in footnote* of the Rulebook providing that the hunting ground managers may hunt them for the purpose of preventing damage to a hunting ground or to a registered fishpond within the hunting ground, in accordance with the annual hunting ground management plan. The fact that bird species are listed as huntable on basis of predefined administrative act based on discretionary agreement between competent authorities which is easily alterable and devoid from any legal control and legal certainty is in clear transgression of Article 9.2 of the BD.

[107] Indeed, it must be clarified if some Annex IV(a) species are covered by the request for adjustment of Annex IV(a) and Annex V of the Habitats Directive in accordance with Serbian Chapter 27 Negotiation Position. However, even if that is the case, this would not change the fact that it is effectively possible to sidestep provisions transposing Article 12 and Article 16 of the HD by force of the rulebook agreed between the ministries.

species during all seasons. The Rulebook therefore provides an open-ended legal ground for adoption of unsupervised measures by hunting ground managers, not previously tested against satisfactory alternatives by nature protection authorities, which may be applied in periods that may "coincide unnecessarily with periods in which the directive aims to provide special protection"[108] and with "no guarantee that the capture of certain species of birds would be limited to the strict minimum."[109]

- The LGH provides various grounds (Articles 22-28, 48, 50, 52, 68, 69, 87, 91) for lawful taking that may apply to animal and bird species population protected by the Directives, including selective killing, sanitary taking, killing and capturing for scientific purposes, trade in live or dead birds parts or derivatives thereof, etc. that fit to the description of restricted acts under Articles 12, 14, 15 of the HD and Articles 5-8 of the BD. However, measures are authorized by game and hunting authorities on legal grounds different, or at best that do not fit neatly in derogation grounds allowed by Article 16 of the HD and Article 9 of the BD. As a result, measures are implemented as legally *unsupervised*[110]actions, hence falling short from required standard of Article 16 of the BD and Article 9 of the BD;[111]

That said, status of the species as strictly protected and compliance of lifting of the ban of any form of their capturing and killing should be, exclusively, **governed by nature protection legislation**[112] and subject to the **prior assessment by nature protection authorities** if conditions and grounds for derogation are satisfied in particular case.[113]

Likewise, any form of management of population prescribed by the LGH of game species placed under strict protection in accordance with the Directives must fit the grounds for derogation set by the Directives and must be governed by nature protection provisions governing criteria and procedure for enforcement of derogations for exempting certain forms of taking from prohibition.[114]

[108] Case C-118/94, Associazione Italiana per il World Wildlife Fund and Others v. Regione Veneto, paragraph 23
[109] Case C-118/94, Associazione Italiana per il World Wildlife Fund and Others v. Regione Veneto, paragraph 23
[110] Case C-557/15 European Commission v Republic of Malta, para. 92
[111] C-339/87, Commission v the Netherlands, paragraph 28
[112] The legal status of species as strictly protected must not be diluted by sectoral legislation and/or agreement of the competent authorities.
[113] Art. 21 of the LGH provides that status of the species as huntable, bans and hunting seasons are based on mutual understanding reached by authorities. The agreement thereby may serve as a ground to lift a hunting ban for certain species in certain areas and/or periods. Such practice is not necessarily based on a due legal process and scrutiny of relevant scientific data and facts, and does not provide controlled environment of implementation of derogations in a manner not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

[114] Namely, the LGH provides number of self-standing grounds (see Articles 21, 23-28, 49-52, 68, 69, 87, 91) for lawful implementation of unsupervised species population management measures adopted and implemented by managers of hunting grounds which may not fit necessarily in grounds prescribed by Art. 16 of the BD and Article 9.1(a-c) of the BD and which are not subject to any prior and ex-post legal scrutiny by nature protection authorities. See for example, C-339/87, Commission v the Netherlands, paragraph 28.

Namely, even if for some grounds for taking species concerned could be said that roughly fit into the grounds for derogations prescribed by the Directives (such as sanitary taking, protection of crops, etc.), the LGH must, nevertheless, allow for the nature protection authorities to check:

- if ground for taking strictly protected species is appropriately invoked in particular case,
- that there is no satisfactory alternative to the proposed measure/no other satisfactory solution,
- and that the proposed derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range/to limit derogations to what is strictly necessary in individual case[115].

Furthermore, any **decision to derogate** from the prohibition of any form of capturing and killing should satisfy criteria set by Art. 16 of the HD and Art. 9 of the BD and provide information on:

a. the species which are subject to the derogations and the reason for the derogation, including the nature of the risk, with, if appropriate, a reference to alternatives rejected and scientific data used;
b. the means, devices or methods authorized for the capture or killing of animal/bird species and the reasons for their use;
c. the circumstances of time and place under which such derogations are granted;
d. the authority empowered to declare and check that the required conditions obtain and to decide what means, devices or methods may be used, within what limits and by what agencies, and which persons are to carry but the task;
e. the controls/supervisory measures used, and the results obtained.

Clearly, lifting the ban on hunting species under strict protection on the basis of the mutual agreement of nature protection and hunting authorities[116] without any legal scrutiny of evidence, data and facts ensuring that all the pre-conditions set by Article 16 of the HD and Article 9 of the BD are satisfied before a form of taking of particular species is allowed, clearly falls short from the EU requirements. [117]

Likewise, all hunting practices affecting population of the species concerned, prescribed by the LGH, must as well be **based on grounds, conditions and data satisfying requirements of derogation provisions** of the Directives.

[115] Case C-118/94, Associazione Italiana per il World Wildlife Fund and Others v. Regione Veneto, paragraph 21. See also judgements in Case 247/85 Commission v Belgium [1987] ECR 3029, paragraph 7, and Case 262/85 Commission v Italy [1987] ECR 3073, paragraph 7.

[116] Art. 21 of the LGH provides that status of the species as huntable, bans and hunting seasons are based on mutual understanding reached by authorities. The agreement thereby may serve as a ground to lift a hunting ban for certain species in certain areas and/or periods. Such practice is not necessarily based on a due legal process and scrutiny of relevant scientific data and facts, and does not provide controlled environment of implementation of derogations in a manner not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

[117] "[M]ere administrative practices, which by their nature may be changed at will by the authorities, cannot be regarded as constituting proper compliance with the obligation on Member States to which a Directive is addressed, pursuant to Article 189 of the Treaty" (See judgment of 23 February 1988, Commission v Italy, Case 429/85, ECR p.843, paragraph 12; judgment of 11 November 1999, Commission v Italy, Case C-315/98, ECR p.8001, paragraph 10; judgment of 13 February 2003, Commission v Luxembourg, Case C-75/01, ECR p.1585, paragraph 28.

Therefore, it is recommended that LGH provide that any (temporal/territorial) lifting of the hunting ban and all forms of taking envisaged by hunting legislation (such as planned taking, sanitary taking, population optimization measures etc.) concerning animal species listed in Annex IV(a) of the HD and bird species not listed in Annex II of the BD, are **subject to the authorization and monitoring by competent nature protection authorities i**n accordance with nature protection provisions transposing Art. 16 of the HD and Art. 9 of the BD and on basis of scientific information and conditions safeguarding maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

Furthermore, in case of failure to obtain an authorization from nature protection authorities, or in case of failure to comply with the conditions of the authorization, hunting authorities and hunting ground managers should be subject to **adequate fines,** and, where appropriate, to a duty to remedy the potential harm.

While offences could be prescribed by the LNP, it must be clear that the LGH does not shield the entities concerned from liability in case of incompliance with Art. 16 of the HD and Art. 9 of the BD.

2. It is recommended that all types of taking (hunting, planned taking, population "optimization", sanitary taking, etc.) and taking plans permitted in accordance with the LGH of the animal species listed in Annex V(a) of the HD and bird species listed in Annex II of the BD are subject to the continuous surveillance and modification with the view of maintaining/adjusting population to the requisite ecological requirements in accordance with the nature protection legislation in compliance with Art. 14 of the HD and Art. 7 of the BD.

The system of authorization of hunting ground (annual) plans and planning basis, sanitary taking, and other types of "optimization" of game population are governed by **criteria set by the legislation** governing hunting as recreational use of game and by veterinary legislation administered by the game and hunting authorities which are not bound by conservation objectives of the HD relevant to the species concerned (Annex V species) and by principles of "wise use" and "ecologically balanced control" of the birds species listed in Annex II of the BD when consenting planning documents of the hunting ground managers.

As a matter of fact, population management of species is actually governed by (annual) planning documents of hunting ground operators[118], subject to blanket authorization by game and hunting authorities[119] based on legislation governing hunting and veterinary medicine[120] and on non-binding, unenforceable and loosely defined criteria.

Therefore, it is critical to safeguard that the population management activities prescribed by the LGH (hunting, planned taking, population "optimization", sanitary taking, etc.) also comply with ecological and conservation criteria set in accordance with the Directives and transposed by nature protection legislation.

[118] Rulebook, Articles 3 and 5, 6 and 7(4).
[119] See LGH, Articles 49-52 and Rulebook Articles 2-7.
[120] See LGH, Articles 68 and 69 and Rulebook, Art. 5.1

That said, the LGH should provide that in general all plans for taking species hunting of which is allowed by the Directives comply with ecological and conservation criteria set by the nature protection legislation transposing the HD and the BD, respectively.

In addition, the nature protection authorities should **have access to particular hunting grounds** to perform the monitoring and surveillance tasks, verify the facts and data, **and enjoy the power to order implementation of certain conservation measures** to the hunting ground operators, enforce temporary or local prohibition if, in the light of the surveillance that is deemed necessary with their being maintained at a favourable conservation status.

In other words, population management activities governed by the LGH must not escape from a full reach of the nature protection legislation governing allowed uses and exploitation of particular species with the objective them being maintained at a favourable conservation status.

3. It is recommended that appropriate amendments in the LGH are introduced in order to safeguard that all hunting seasons/bans and quotas for animals/wild birds are set in accordance with ecological criteria, supported with ecological and scientific data, and subject to periodical assessments and modifications in light of the surveillance data and in accordance with principles of wise use and ecologically balanced control, with the view of maintaining or adjusting population of species concerned within ecological, scientific and cultural requirements. In addition, the LGH should, in particular, provide appropriate safeguards that the bird species to which hunting periods/quotas are applied are not hunted during the rearing season or during the various stages of reproduction and that the migratory species to which LGH applies are not hunted during their period of reproduction or during their return to their rearing grounds.

Currently, population management of Annex V species and Annex II bird species is governed by (annual) planning documents of hunting ground managers[121] subject to blanket authorization by game and hunting authorities[122] based on legislation governing hunting and veterinary medicine[123] and on loosely defined ecological criteria which are non-binding and unenforceable.[124]

In particular, the LGH (Article 21) and the Rulebook on Declaring the Hunting Ban of Protected Game Species (Article 2-7) provide legal mechanism for upfront setting of hunting seasons, or lifting temporal ban[125], that escape any *ex ante* and *ex post* assessment or otherwise allows game population management activities on basis of blanket authorization of hunting ground planning documents on loosely defined

[121] Rulebook, Articles 3 and 5, 6 and 7(4).
[122] See LGH, Articles 49-52 and Rulebook Articles 2-7.
[123] See LGH, Articles 68 and 69 and Rulebook, Art. 5.1
[124] See LGH, Art. 21 and Rulebook, Articles 3, 4(4-6), 5, and 7. The current system of setting hunting seasons, authorization of hunting ground plans governed by the LGH, and the Rulebook are based on loosely defined criteria and upon informal agreement between hunting and nature protection authority that does not safeguard that the populations of the species concerned will be maintained at a satisfactory level and that the hunting practice will not jeopardise conservation efforts.
[125] See in particular Articles 2.2, 4(4-6) and 5.

criteria, scientifically unverified and almost completely unsupervised hence departing from requirements set in in Art. 14 of the HD and Articles 7.1 and 7.4 of the BD.[126]

LGH lacks explicit reference to the need to adjust hunting population measures and practices with ecological criteria set in accordance with the nature protection legislation. Indeed, the requirement of compliance of the hunting practices with the ecological and scientific conservation criteria must have its place in the main body of the law.

Furthermore, the ecological and conservation criteria must be enforceable thus allowing for the competent nature protection authorities to assess *ex post* effects of bans and hunting practices in the light of the Directives' conservation objectives and to order implementation of certain conservation measures to the hunting ground operators, including temporary or local hunting bans, if in the light of the surveillance such measures are deemed necessary for maintaining a favourable conservation status of population.

Therefore, it is recommended that ecological and scientific criteria for managing population of species concerned by setting hunting seasons, temporal or permanent hunting bans, and hunting practices are **prescribed in the main body of law, rather than in the rulebooks**, equipped with appropriate legal tools for monitoring compliance and enforcement to guarantee "complete protection of the species concerned."[127]

For example, Art. 7 of the Rulebook on Declaring the Hunting Ban of Protected Game Species could find its place in the text of the law with appropriate modifications.

That said, the ecological and scientific criteria for managing hunting practices re. huntable populations must comply with requirements of Art. 14 of the HD and Articles 2 and 7 of the BD, respectively, and must be capable of being monitored and enforced by nature protection authorities.[128]

The LGH must, in particular, should provide explicit safeguards that the bird species to which hunting periods/quotas are applied are not hunted during the rearing season or during the various stages of reproduction and that the migratory species to which LGH applies are not hunted during their period of reproduction or during their return to their rearing grounds, subject to appropriate sanctions and fines in case of non-compliance by hunting ground managers and users.

[126]Case C-508/04 Commission v Austria, paragraph 31, Case 429/85 Commission v Italy, paragraph 12, Case C-315/98 Commission v Italy, paragraph 10; Case C-75/01 Commission v Luxembourg, paragraph 28.
[127] Case C-435/92 *Association pour la Protection des Animaux Sauvages and others v Préfet de Maine-et-Loire and Préfet de Loire-Atlantique*, paragraphe 13
[128] The system of authorization of hunting ground (annual) plans and planning basis are governed by criteria set by the legislation governing hunting as recreational use of game and by veterinary legislation administered by the game and hunting authorities which are not bound by conservation objectives of the HD and by principles of "wise use" and "ecologically balanced control" of the species listed in Annex II of the BD when consenting planning documents of the hunting ground managers.

Specific recommendations in relation to provisions prohibiting certain conducts, methods, and means of hunting in relation to animal species protected by the HD

1. It is recommended to adjust the description of conducts that contravene the LGH to the text and concepts prescribed by Art 12.1 (a)-(d) of the HD.

Namely, following issues have been indicated in the Project's Report:[129]

- not *all* forms of deliberate capturing and killing of specimens of game species are covered by the definition of prohibited conducts;
- the LGH does not specify if prohibitions shall apply to all stages of life of the animals and on entire natural range;
- the disturbance "during the period of breeding, rearing, hibernation and migration" of game species, as a specific form of disturbance, is left out from the scope of the LGH (Art. 12.1(b), HD).
- only *deliberate* form of "deterioration or destruction of breeding sites or resting places" is prohibited which is incorrect transposition of Art. 12.1(d) of the HD[130].
- the use of pesticides and biocides is prohibited *in quantities and doses that may cause damage to game species*[131], which requires a prohibitively high standard of proof, thus, the provision effectively leaves these conducts from the scope of Articles 12.1(d) and 16 of the HD[132];
- legal entities (except the category of entities managing or using hunting grounds) and natural persons are left out from the scope of offenders for all (or some)[133] offences prescribed to tackle prohibited conducts - see Articles 22 and 102-105, of the LGH[134];
- some conducts may be exempted from the prohibition by the authorization of the Ministry of Agriculture on grounds and manner which are incompliant with Article 16 of the HD[135] or may be otherwise deemed legal by reference to the authorized planning documents[136] – see Articles 21, 23, 47.4, 48.2, 50, of the LGH, and Rulebook on Declaring the Hunting Ban of Protected Game Species, articles 4, 5 and 7.

[129] Report on assessment of Serbian legislation with EU requirements for Natura 2000
[130] Case C-6/04, Commission v UK, paragraph 79: "[…] by prohibiting only the deliberate damaging or destruction of breeding sites or resting places of the species concerned, the legislation applicable in Gibraltar does not satisfy the requirements of Article 12(1)(d)." Also Case C-183/05, *Commission v Ireland*, paragraphs 47-49.
[131] LGH, Art. 22(9).
[132] Case C-98/03 Commission v Germany, paragraphs 63-69
[133] Individuals may not be convicted on the basis of offences prescribed to tackle conducts related to poisoning of game species, deliberate disturbance, and use of pesticides and biocides in quantities and doses that may cause damage to game species.
[134] Indeed, some natural persons may be convicted under Art. 269 of the Criminal Act protecting animal welfare as a general concern, albeit, to the limited extent. However, Art. 269 of the Criminal Act falls short from a requirement of a clear and precise transposition of Art. 12.1(a)-(d) – see Case C-103/00 Commission of the European Communities v Hellenic Republic, para. 29
[135] Case C-6/04 Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland, paragraphs 106 and 111
[136] Ibid.

Indeed, it is recommended that the LGH follows meticulously the wording and coverage of the prohibited acts as prescribed by Art. 12.1(a)-(d) of the HD.

The rules must be applicable to "all" conducts envisaged by the HD "to all stages of life" of the species concerned and within their entire "natural range", since any deviation in scope and territorial coverage risks incomplete transposition.

The above said is without prejudice to the possibility to introduce more precise definition of prohibited conducts within (or outside) categories prescribed by the Directive, perhaps, better adjusted to the conservation needs of a particular species, under condition that prohibitions are more or at least equally stringent as requirements of the HD.

Indeed, where HD prohibits conducts based on intent (deliberate conducts), Serbia may opt to include, in addition offences based on gross negligence (as a result of reckless actions), as a method to establish liability in particular case.

However, in any case, Serbia should make sure that the applicable standard of proof is prohibitively high, or otherwise more stringent from those required by the HD.[137]

Furthermore, it must be clear that *all* forms of taking, disturbance, destruction or deterioration envisaged by the Directives are subject to the prohibition, except if authorized in accordance with Art. 16 of the HD.

Namely, LGH should provide that in case they concern Annex IV(a) species, in order to be compliant with nature protection law, all forms of taking, otherwise permitted by the hunting legislation, must be subject to authorization by nature protection authorities, on grounds and under conditions prescribed by Art. 16. of the Directive.

That said, all public, private and natural entities should be subject to the enforcement against prohibited acts.

However, in case certain conducts of individuals and private entities, (like some of all forms of deliberate capture or killing of specimens of these species in the wild), are subject to criminal prosecution in accordance with the Criminal Act[138], it must be clear that definition of a crime covers all animal species concerned and apply within their entire "natural range", "to all stages of life", and to otherwise do not deviate from minimum standards of Art. 12 of the HD[139].

[137] For example, in the case of the requirement to prohibit the use of pesticides and biocides in quantities and doses that may cause damage to game species it may be onerously difficult to establish what quantities and doses satisfy the requisite standard of proof.
[138] Criminal Act, Art. 276
[139] The potential reason not to place all entities and natural persons within coverage of offences prescribed by the LGH may owe to the fact that legislator wanted to avoid overlapping with Art. 276 of the Criminal Act. However, the authority to prosecute crimes against is limited to the game species hunted outside hunting seasons and/or outside hunting grounds. Therefore, only incidental overlapping between the crimes prescribed by the Criminal Act and requirements of the Directives can be reported. In the same time, national law governing game and hunting and prohibiting certain indiscriminate methods of killing leaves individuals, i.e. hunters,

2. It is recommended to amend the LGH in order to prohibit "use of *all* indiscriminate means capable of causing local disappearance of, or serious disturbance to, populations of" animal species protected by the HD and "*any* form of capture and killing from the modes of transport" in accordance with Art. 15 and Annex VI of the HD.

The LGH prohibits some but not *all* indiscriminate methods or means capable of causing local disappearance of, or serious disturbance to, populations does not therefore preclude the emergence of all, including yet unknown means of indiscriminate capture and killing.[140]

Furthermore, Articles 76 and 77 of the LGH governing prohibition of the means and methods of hunting sometimes is directly conflicting or otherwise capable of modifying the scope of the EU requirements, in particular:

- natural persons and legal entities (except entities managing or using the hunting ground) are left from the scope of the offenders of offences prescribed to enforce prohibition of certain means and methods – See Articles 102-105 of the LGH;
- the wording of the LGH provisions allows for a possibility of a temporal interpretation of provision linking the use of prohibited means or methods to the concept of hunting ban periods (*lovostaj zaštićena divljač*, Serb.) or to the stage of life of an animal;
- allowing for possibility to hunt wild boar, wolf, jackal and fox with artificial light sources, dazzling devices, devices for illuminating targets,
- prohibiting use of crossbows under condition that such means are not allowed in the particular hunting ground,
- instead general prohibition of use of moving motor vehicles, the prohibition is limited to shooting from the mode of transport, or by running over by means of motor vehicles,
- applicable to the game species protected by the temporary hunting bans (*lovostajem zaštićena divljač*, Serb.), hypothetically, wild species listed in Annex V(a), etc.

Indeed, it is recommended that the LGH follows meticulously the wording and coverage of the prohibited acts as prescribed by Art. 15 and Annex VI of the HD.

The rules must be applicable to "all" means of capture and killing "capable of causing local disappearance of, or serious disturbance to, populations of" animal species concerned.

Also rules must apply to "*any* form of capture and killing from the modes of transport" capable of causing local disappearance of, or serious disturbance to, populations of" animal species concerned.

Therefore, it must be clear that prohibitions under LGH covers all means and any form of hunting from modes envisaged by Annex VI are included, as well as to keep the list open for mean and forms not listed

farmers and other physical persons, to a large extent outside of the coverage of prescribed offences and from the effective jurisdiction of a competent inspection.

[140] C-6/04, Commission v. United Kingdom

in Annex VI but, otherwise, “capable of causing local disappearance of, or serious disturbance to, populations of” the protected species.

The rules must be applicable “to all stages of life” of the species concerned and within their entire “natural range”, since any deviation in scope and territorial coverage risks incomplete transposition.

Specific recommendations in relation to provisions prohibiting certain conducts, methods, and means of hunting in relation to bird species protected by the BD

All recommendations provided in relation of provisions prohibiting certain conducts, methods, and means of hunting in relation to animal species protected by the HD are applicable *mutatis mutandis* to the requirement of faithful transposition to achieve compliance of hunting practices with Articles 5, 7-9 of the BD.

In addition, following changes in the LGH are recommended:

- that the LGH transposes requirements of the BD in relation to a general system of protection for all species of birds (Art. 5 of the BD) and prohibition of the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species (Art. 8 of the BD) separately from apparently comparable but fairly different requirements of the HD to avoid risk of incomplete transposition and confusion with the scope of protection provided to the animal species and bird species, respectively;

- that the LGH prohibits explicitly hunting of the bird species to which hunting laws apply during the rearing season or during the various stages of reproduction in accordance with Art. 7.4 of the BD while any lawful departure should be governed and permitted/licensed by nature protection authorities in accordance with nature protection legislation transposing Art. 9 of the BD. The prohibition should be equipped with adequate sanctions in case of the infringement by managers of hunting grounds, users or other entities or individuals;

- it is recommended that in the case of migratory species the LGH prohibits hunting during their period of reproduction or during their return to their rearing grounds in accordance with Art. 7.4 of the BD, while any lawful departure should be governed and permitted/licensed by nature protection authorities in accordance with nature protection legislation transposing Art. 9 of the BD. The prohibition should be equipped with adequate sanctions in case of the infringement by managers of hunting grounds, users or other entities or individuals.

Specific recommendations in relation to the hunting provisions governing keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild

It is recommended:

- The **keeping, transport and sale or exchange, and offering for sale or exchange,** of specimens of Annex IV(a) species taken from the wild must be prohibited, subject only to exceptions governed by nature protection legislation transposing Art. 16 of the HD. That said, other exceptions, outside those authorized in accordance with Art. 16 of the HD by nature protection authorities must not be allowed by the LGH.

- For all bird species naturally occurring in the wild state the LGH shall **prohibit the sale, transport for sale, keeping for sale and the offering for sale** of live or dead birds and of any readily recognisable parts or derivatives of such birds, except in respect of the species referred to in Annex III, Part A, provided that the birds have been legally killed or captured or otherwise legally acquired.
- For the bird species listed in Annex III, Part B Serbia may consider if their marketing should be authorized, provided that the birds have been legally killed or captured or otherwise legally acquired. If that is the case it is recommended that Serbia consult the European Commission with a view to examining jointly, whether the marketing of specimens of such species would result or could reasonably be expected to result in the population levels, geographical distribution or reproductive rate of the species being endangered throughout the Community.

- Employment of **closed list of tradable animal and bird species** compatible with the Directives should be considered.

- The introducing of offences based on **strict liability should be considered in case person is caught in possession or control of any live or dead wild animal or bird species** protected in accordance with the Directives, including of anything derived from them (see also recommendations below).

Specific recommendations in relation to monitoring compliance and enforcement of the HD/BD requirements to the hunting practices

It is recommended:

- The LGH should allow for performance of surveillance, monitoring of compliance of the hunting practices with the requirements of the HD and BD. That said, it is recommended that **monitoring of**

compliance of hunting practices with conservation requirements and ecological criteria in accordance with Art. 11 of the HD and Art. 7 of the BD **is carried out by nature protection authorities**. That said, the nature protection authorities should **be allowed access to particular hunting grounds** to perform the monitoring and surveillance tasks, verify the facts and data, **and enjoy the power to inspect** persons and objects (search individuals, search premises, examine and seize evidence, etc.) based on reasonable cause, **power to order implementation of certain conservation measures** to the hunting ground operators, enforce temporary or local prohibition, or take other preventive actions to avoid deterioration or disturbance of the protected animal and bird species, and where appropriate **to issue fines and order adequate restorative measures**;

- All individuals and legal entities should be subject to the **penalties** in case of non-compliance with the Directives.

- To facilitate enforcement, **particular offences and financial penalties** could be introduced targeting intentional obstruction (for example to provide access to areas, evidence, data, etc.) misleading competent authorities, or otherwise failing without reasonable excuse to assist competent authorities in exercising abovementioned powers.

- A system to **monitor the incidental capture and killing** of the animal species listed in Annex IV (a) and wild birds should be introduced. Appropriate arrangements in the LGH and LNP should be provided for reporting incidents involving species concerned.

Additional, recommendations to facilitate smooth enforcement of the Directives:

- Development of appropriate and dedicated **guidance documents** for hunting authorities, to managers of hunting grounds and hunters, and farmers, and general population, should be considered to create critical awareness, encouraging preventive approaches, enabling smooth compliance and enforcement of the requirements of the Directives. The guidance may be used to explain the legal regimes of protection applicable to hunting grounds to the users and/or as a tool to steer hunting and farming practices adjusted to the specific needs of protection of particular species.

- To achieve full enforcement of the Directives a simple reproduction of their provisions governing prohibited conducts will not suffice. Namely, "authorities need to anticipate the threats sites may face from human action and take measures to ensure that those likely to commit an offence (intentionally or not) are aware of the prohibition in force and act accordingly."[141] Therefore, a more proactive approach is needed, in particular, by **improving the general information** delivered to the hunters and general public likely to interface with the protected species such as introduction of visible signs, warnings, leaflets, guidelines, etc. within and in vicinity of hunting areas/grounds and

[141] The Commission, "Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC", p. 40

farming areas within natural range of species. Such approach is helpful for avoiding of harm to the protected species and incidental killing. However, delivery of targeted information to the individuals facilitates establishment the causal link between conducts without "direct intention", *i.e. with reckless disregard of the known prohibitions (conditional intent)*[142], and breaches of law prescribed in accordance with the Directives and the relevant case law[143].

[142] The Commission, "Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC", p. 36

[143] Following the Court in cases C-103/00 and C-221/04, the following definition could be proposed: "Deliberate" actions are to be understood as actions by a person who knows, in light of the relevant legislation that applies to the species involved, and the general information delivered to the public, that his action will most likely lead to an offence against a species, but intends this offence or, if not, consciously accepts the foreseeable results of his action.

6 Recommendations for changes in fishery legislation

Assessment findings

The Law on Sustainable Use of Fish Stock (**LFS**)[144] governs the commercial use of *fish stock*[145] in *fishery* waters and its protection in accordance with the principle of sustainability with an aim of preservation of diversity of ichthyofauna and ecological integrity of aquatic ecosystems[146].

The LFS, allows for application of nature protection legislation to designated *fishery waters* within the boundaries of protected sites and to protected fish species, *unless otherwise is provided* by the fishery legislation[147].

In other words, it appears that rules governing fish stock population management may potentially *trump* the nature protection rules in case of conflict[148].

That said, the possibility that LFS provisions governing economic use of fish stock overtake nature protection requirements in fishery areas would be inconsistent with the Directives.

While employment of LFS may effectively improve the fish stock quality it must be assured that on the top of the LFS's requirements protection provided by national rules transposing Directives apply fully and without modifications within entire natural range of the protected animal, fish and bird species.

Indeed, the pressures from fishing activities to sites and species protected by the Directives must be governed by specific national rules transposing the HD and the BD, including enforcement of any exceptions to the restrictions prescribed by the Directives, without modification of their effective reach by fishery legislation.

Having in mind the above, critical gaps are detected in the Legal Assessment Report which may affect smooth implementation of requirements of the Directives governing all aspects, i.e. selection of sites, site-specific management measures, species protection/prohibitions, allowed uses and derogations.

[144] Official Gazette of RS, No. 128/2014 and 95/2018-other statute
[145] "Fish fund are all species of fish, molluscs, crustaceans and other aquatic organisms that are protected and used sustainably" (LFF, Art. 2(25))
[146] LFS, Art. 1
[147] LFS, Art. 1.3. See also LFS, Article 3.5 and LNP, Art. 48.2
[148] See also Article 48.2 of the LNP which provides a similar dictum, declaring, indirectly, the fishery regime specific to the general nature protection regime.

General recommendations

It is recommended that **national nature protection provisions transposing HD and BD apply fully in areas designated as *the fishery waters* by the LFS** and to any pressure stemming from fishing activities to the conservation objectives set in accordance with Directives.

Therefore, appropriate **amendments to Art. 1.3 of the LFS** are needed to assure that nature protection provisions transposing the Directives apply in their entirety as overriding layer of rules governing all pressures (to protected wild animal and bird species and/or protected sites) stemming from fishing activities on the top of the general fish stock management requirements.

In addition, following changes in the fishery legislation are recommended as set out below.

Recommendations in relation to the provisions governing design and approval of the programmes and plans for managing fishery areas and day-to-day management of fishery areas

The LFS should provide a general proviso that the **fishery areas management programmes** (being permanent, or provisional), **annual plans**[149] or **other planning documents** thereby envisaged[150] likely to have a significant effect to *sites of ecological importance* (future SACs/SPAs/pSCIs) within the meaning of Art. 6.3 of the HD, shall be **subject to the AA requirements**.

The LFS should explicitly place competent fishery authorities under legal duty to agree with the fishery area planning document subject to the AA requirement proposed by the operator of a fishery area only after they ascertain "that it will not adversely affect the integrity of the *site concerned*"[151]. Therefore, it is recommended that the **LFS provides explicit nexus with the provisions of the LNP governing the AA** requirements placing proponents of fishery areas planning documents and fishery authorities, alike, under the legal duty equipped with the unquestionable binding force to observe the AA requirements. A proposed planning documents with likely significant impacts to the sites of ecological importance must be subject to the appropriate assessment procedure prior to their approval, and authorities must be placed under the duty to reject approval of the planning document in case of the negative assessment of impacts to the site concerned.

[149] LFS, Arts. 17-19
[150] LFS, Art. 6.2 envisages submission of the investment plan by the potential licensee of the fishery area.
[151] HD, Art. 6.3. Within the meaning of the HD the scope of the concept of the *sites concerned* includes SACs, SPAs and pSCIs. For the purposes of the document site concerned should encompass the sites designated in accordance with the scientific criteria compatible with the Directives, i.e. sites of ecological importance which Serbia intends to propose as part of Natura 2000 network.

Overall, the managers of fishery areas should be placed (by means of appropriate statutory, administrative or contractual measures) under the clear and unambiguous **legal duty to observe, and adjust plans and activities to objectives that correspond to the ecological requirements** of the sites of ecological importance hosting the natural habitat types and/or species in Annex II present on the sites, and if required, adopt and carry out necessary conservation measures to adjust fishery area uses to the conservation objectives set for the sites concerned which correspond to the ecological requirements in accordance with rules of the LNP transposing Article 6.1 of the HD and Article 4.1-2 of the BD[152]. It is recommended that LFS provides appropriate arrangements requiring integration of measures specifically designed for the habitat types and species concerned and/or envisaged in a management plan for sites of ecological importance in conditions for licensing fishery area[153] as a contractual measure within the meaning of Art. 6.1 of the HD.

It is recommended that the **LFS provides adequate nexus with nature protection provisions** empowering the nature protection authority to order the "appropriate steps" from the operator of the fishery ground with aim to avoid deterioration of protected habitats or disturbance of protected wild animal, bird or plant species[154] for which the sites of ecological importance (future SACs/SPAs/pSCIs) have been designated and to assure immediate compliance proportional to identified risks to conservation species within the meaning of Articles 6(2) and 12 of the HD[155] and Articles 4.4 and 5 of the BD.

Recommendations in relation to the regulation of the bans, seasons and/or regimes of taking fish species and fish species stock management

It is recommended that the LFS provides adequate nexus with rules of nature protection legislation **governing surveillance, reporting and monitoring** compliance of exploitation of fish species listed in Annex V(a) of the HD with requirement to maintain them at a *favourable conservation status*[156]. Appropriate arrangements to existing monitoring requirements of the LFS provisions could be introduced to mainstream the duty to monitor conservation status of protected fish species on species-by-species basis as required by Art. 11 of the HD. The LFS should provide arrangement as well for reporting incidental capture or killing of Annex IV(a) fish species.

[152] Note that requirements of Article 6.1 of the HD and Article 4.1-2 of the BD are "not limited to avoiding external anthropogenic impairment and disturbance but must also, depending on the situation that presents itself, include positive measures to preserve or improve the state of the site" (Case C-441/17 European Commission v Republic of Poland, paragraph 209).
[153] LFS, Arts. 8-9 and 15.
[154] For example, to order the temporary suspending of activities, or other immediately effective preventive measures.
[155] See Case C-241/08, Commission v French Republic, paragraph 76.
[156] That said, LFS rules setting-up the system of fish population monitoring (Art. 3.10, 17.5, 39, 45) do not prescribe clear, precise and enforceable statutory duties to competent authorities and managers of fishery areas to undertake surveillance of the conservation status of fish species listed in Annex II, IV and V (a species-by-species approach) within the meaning of the HD, in order to guarantee that this surveillance is undertaken systematically and on a permanent basis to provide informational basis for assessment of effects of the measures on conservation status and keep uses compatible with requirement to safeguard their favourable conservation status.

It is recommended that the **definition of prohibited conducts** in the case of the fish species listed in Annex IV(a) follows strictly the wording of Art. 12.1(a)-(d) of the HD[157]. That said, the status of a fish species as protected should be left to the nature protection legislation transposing the HD, and not made reliant on the administrative decision of the fishery authority which may be subject modification on loosely defined legal grounds non-compliant with Art. 16. of the HD[158].

It is recommended that in case of the fish species listed in Annex IV(a) of the HD **any exception from the prohibited conducts** in Art. 12.1 of the HD is governed by and authorized, exclusively, **through provisions of nature protection** legislation transposing grounds and conditions for allowing derogation from prohibited conducts in Art. 16 of the HD[159].

In case of fish species listed in Annex V (a) of the HD it is recommended that the **system of monitoring and the regime of exploitation** of population (the bans, seasons and/or methods of taking of fish specimens governed by Articles 23 and 24 of the LFS) and of **licensing** of commercial and recreational fishing (Article 36 LFS) is **based on conservation objectives** set for particular species in compliance with Article 14.1 of the HD against the requirement their being maintained at a favourable conservation status. That said, the nature protection authorities should be placed in the position to order changes in exploitation regime to the managers of fishery area based on scientific data, and information on population status obtained through surveillance.

The **keeping, transport and sale or exchange,** and offering for sale or exchange, of specimens of Annex IV(a) fish species taken from the wild must be prohibited, **subject only to exceptions governed by nature protection legislation** transposing Art. 16 of the HD. That said, no other exceptions, outside those authorized in accordance with Art. 16 of the HD by nature protection authorities must not be allowed by the LFS[160]. Penalties based on strict liability should be considered in case person is caught in possession or control of any live or dead fish species protected in accordance with the HD, including of anything derived from them.

[157] LHS, Articles 22-25, 27 and 29

[158] In particular, in accordance with LFS, Art. 24 ME may lift the ban on hunting protected species on its own volition or on the basis of request of the user of the fishery ground on the basis of the indicated need ("na osnovu ukazane potrebe", Serb.), taking into account meteorological, hydrological and biological indicators and the applicable fishery area management programme. Clearly, grounds and conditions for lifting the ban are not in accordance with Art. 16 of the HD.

[159] LFS system of permanent ban of hunting certain fish species, on basis of administrative measure adopted by the competent authority "to preserve and protect the fish fund" (LFS, Art. 23), is a modifiable measure on grounds which are not compliant with Art. 16 of the HD (see LFS, Art. 24). The fact that the system of banned species is alterable by ME administrative order on loose grounds incompatible with Article 16 of the HD does not guarantee the enforcement of the system strict protection of Annex IV(a) fish species in their entire natural range and applicable to all stages of life.

[160] The LFS (Articles 50-52) fails to faithfully transpose Article 12.2 of the HD requiring prohibition of the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens of fish species listed in Annex IV(a) taken from the wild.

Recommendations in relation to provisions prohibiting certain conducts, methods, and means of hunting of fish species protected by the HD

The LFS prohibits use of some but not all indiscriminate means capable of causing local disappearance of, or serious disturbance to populations of priority fish species listed in Annex V(a) or for taking, capture or killing of fish species listed in Annex IV(a) subject to derogations of Article 16 of the HD. It is, therefore, recommended that **LFS transposes fully Article 15 and Annex VI of the HD** in order to capture all indiscriminate methods and prohibited modes of transport.[161]

Furthermore, it is recommended that authorization of use of all, potentially, indiscriminate means of **capturing and killing of fish species is governed exclusively by national nature protection provisions** transposing fully grounds and conditions for derogation in Article 16 of the HD.[162]

It is recommended that the **authorization** of repopulation and translocation of fish species[163], selective fishing[164], fishing and electro-fishing for scientific purposes[165], is governed by **ecological criteria** set in accordance with **nature protection legislation** and in accordance with provisions transposing Art. 16 of the HD in case they concern or, otherwise, may disturb population of species under Directives' protection.

It is recommended that the powers of Ministry of Environmental Protection to prescribe the manner, tools and means by which **commercial fishing is carried out are bound by the duty to observe nature protection legislation** provisions transposing Articles 15 and 16 of the HD[166].

Recommendations in relation to monitoring compliance and enforcement of the HD/BD

The LFS should allow for **performance of surveillance, monitoring of compliance** of the fish exploitation practices **with the requirements of the HD and BD**. That said, it is recommended that when monitoring of compliance of fishing practices with conservation requirements and ecological criteria the nature

[161] Indeed, the LFS does prohibit explosives, use of poison, and some other means, which is compliant with Annex VI(a) but not all indiscriminate means capable of causing local disappearance of, or serious disturbance to populations of priority fish species which is explicit requirement of the Directive. Other forms may be unpermitted subject to the specific administrative decision. However, the said falls short from requirement that all indiscriminate means must be prohibited under the meaning of Article 15 of the HD, which is an open clause.
[162] According to the LFS, Art. 22(12) the authorization of use of electro-fishing or other potentially indiscriminate means is based on grounds different from Art. 16 of the HD. Prohibition of use of certain means of hunting is not driven by the status of fish species as listed in Annex IV(a) or Annex V(a) of the HD but by location of found tools and by the status of the entity who hold such tools as being licensed or authorized to do commercial or fishing for scientific purposes.
[163] LFS, Art. 26
[164] LFS, Art. 31.7
[165] LFS, Articles 47-49.
[166] LFS, Art. 37.

protection authorities are allowed access to particular areas and enjoy the power to inspect persons and objects (search individuals, search premises, examine and seize evidence, etc.) based on reasonable cause, with power to order certain conservation measures to the fishery areas managers, enforce temporary or local prohibition, or take other preventive actions to avoid deterioration or disturbance of the protected animal and bird species, and where appropriate to issue fines and order adequate restorative measures;

All individuals and legal entities should be subject to the **penalties** in case of non-compliance with the Directives.

To facilitate enforcement particular **offences and financial penalties** could be introduced targeting intentional obstruction (for example to provide access to areas, evidence, data, etc.) misleading competent authorities, or otherwise failing without reasonable excuse to assist competent authorities in exercising abovementioned powers.

A system to **monitor the incidental capture and killing** of the animal species listed in Annex IV (a) and wild birds should be introduced. Appropriate arrangements in the LFS and LNP should be provided for reporting incidents involving species concerned.

Additional recommendations to facilitate smooth enforcement of the Directives

Development of appropriate and dedicated **guidance documents** for fishery authorities, to managers of fishery areas and users, should be considered, aimed at creating critical awareness, necessary preventive measures, and enabling smooth compliance and enforcement of the requirements of the Directives. The guidance may be used to explain the legal regimes of protection applicable to fishery areas to the users and/or as a tool to steer hunting, riparian, riverside/lakeside practices adjusted to the specific needs of protection of particular species.

To achieve full enforcement of the Directives a simple reproduction of their provisions governing prohibited conducts will not suffice. Namely, "authorities need to anticipate the threats sites may face from human action and take measures to ensure that those likely to commit an offence (intentionally or not) are aware of the prohibition in force and act accordingly"[167]. Therefore, a more proactive approach is needed, in particular, by **improving the general information delivered to the fishermen and general population** likely to interface with the protected species such as introduction of visible signs, warnings, leaflets, guidelines, etc. within and in vicinity of fishery/riverside areas within natural range of species. Such approach is helpful to avoid unnecessary harm to the protected species through incidental killings, deterioration of sites or disturbance. Moreover, delivery of targeted information to the individuals facilitates establishment the causal link between conducts without "direct intention", *i.e., with reckless*

[167] The Commission, "Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC", p. 40

disregard of the known prohibitions (conditional intent)[168], and breaches of law prescribed in accordance with the Directives and the relevant case law.[169]

7 Recommendations for changes in water legislation

Assessment findings

Critical gaps are detected, which may affect smooth implementation of requirements of the Directives governing aspects of habitat protection, i.e. selection of sites and site-specific management measures.

Important pieces in Serbian water quality management system are missing, which may affect compliance with requirements:

- to establish a coherent network of protected sites within the meaning of Article 3 of the HD (complying with selection criteria applicable to SACs and SPAs) in cases where the maintenance or improvement of the status of water is an important factor in their conservation; and
- to maintain or restore a favourable conservation status of relevant natural habitats and wild species and wild birds within the meaning of Article 2 of the HD and Article 2 of the BD, respectively, where their protection depends directly on water.

Clearly, water acts and other blanket water licenses govern plans and projects which may "on the basis of their specific characteristics" significantly affect site-specific interests of protected areas within the meaning of the HD and the BD. Nevertheless, these rules are not properly streamlined in national AA procedures, or otherwise do not provide *mandatory* mechanisms placing water management authorities under legal duty to observe outcomes of AA procedures or derogation procedures within the meaning of Articles 6.3 and 6.4 of the HD, or otherwise to hold water permit holders accountable against requirement to avoid deterioration of protected sites within the meaning of Art. 6.2 of the HD.

Criteria for issuing water acts, including water permits which govern technical performance of facilities, water intakes and discharges, are not explicitly based on need to comply with, waste water pre-treatment requirements, EQS and ELV applicable to the given body of water, nor with the general species and site-specific conservation objectives.

Crucial are institutional issues: The ME is in charge of monitoring of compliance of discharges with the applicable environmental standards and emission limits to the bodies of water. However, existing industrial installations' discharges are not effectively controlled, since full and effective enforcement of

[168] The Commission, "Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC", p. 36

[169] Following the Court in cases C-103/00 and C-221/04, the following definition could be proposed: "Deliberate" actions are to be understood as actions by a person who knows, in light of the relevant legislation that applies to the species involved, and the general information delivered to the public, that his action will most likely lead to an offence against a species, but intends this offence or, if not, consciously accepts the foreseeable results of his action.

rules regulating pre-treatment standards and quality of discharges into surface and groundwater quality have been postponed. Moreover, ME does not, on mandatory basis, participate in the procedure for issuing water conditions/approvals and permits which fix conditions to individual operator. The same applies to the nature protection institutes; their participation is not mandatory.
As a result, the ME as an authority in charge of monitoring compliance of discharges (1) is left out from the procedure of issuing approvals and water permits, and (2) does not effectively monitor water intakes and discharges from sewage and (existing) industrial installations.

Recommendations

1. in order to **mainstream the AA requirements** in the water permitting procedures governed by the Law on Waters (**LW**) it is recommended for the LW to include the specific reference to the AA procedures and to place the competent authorities under the legal duty to observe the competence of the AA authority to verify implications of proposed water uses, *water facilities* or other man-made modification of riparian land and watercourse, alone or in combinations with other plans and projects, to the *sites concerned* (i.e. sites of ecological importance designated in accordance with the BD and HD criteria), before issuing any water act. Namely, it must be clear that the LW places the water permitting authority under legal duty to observe the AA requirements and to withhold with or refuse to issue the permit consenting the water use before the AA authority clears the activity from adverse negative impacts to the sites concerned, including any water-related impacts. The duty to withhold or refuse the permit to the activity/project subject the AA requirement must be independent from the fact if the water uses subject to the permit takes place within or outside the sites concerned. Likewise, the legal duty to observe the competence of the AA authority must cover all the activities and water uses subject to the permitting in accordance with the LW.

2. It is recommended that the **LW provides a self-standing legal ground requiring that all water management authorities observe the competence of AA authorities before adoption of water management plans/programmes**[170] in all situations where doubt exists over lack of their site-specific impacts and to comply with AA authority's decision.

3. It is recommended that the **LW provides an explicit legal basis for integrating all the water related measures** set by the AA authority for clearance of the project from the risk of adverse impacts to the sites concerned in the water act, such as mitigation and monitoring measures to ensure the compliance with the AA requirements. All the activities and water use subject to the permitting in accordance with the LWs should be covered by the duty to comply with the conditions set by the AA authority. Indeed, permitting authority should be able to check if the project documentations surrendered with water permit

[170] Namely, it is not sufficient to subject the water managment programmes (WMPs), programme of measures (PoMs) to the strategic impact assessment to satisfy the AA requirement. While indeed tha SEA and AA assessments can be done jointly, the competent authorities must, nevertheless, assess and decide on impacts of proposed plans to the sites conserned, separately, giving full effect to the legal requirement not to agree to the plan in case negative adverse impacts cannot be ruled out. The above said equally applies to the legal requirement to assess *appropriately* impacts of plans governing protection against harmful impacts of water (flood risk management plan, general and operational plan for flood defence), river sediment extraction plan, before their adoption in case of likely significant effects to the sites concerned.

application complies with the conditions set by the AA authority, hence, appropriate arrangements for assessing compliance of the proposed activity by the AA authorities should be in place.

4. It is recommended that the **LW provides legal basis empowering the nature protection authority** with power to order the "appropriate steps" [171] from the operator of the water use activity to **avoid the deterioration of protected habitats or disturbance of protected species** and to assure immediate compliance proportional to identified risks to protected sites and species within the meaning of Article 6(2) of the HD[172] even if despite the operator's compliance with the water permit conditions issued in accordance with the LW the risk of significant harm nevertheless occurs.

5. *Mutatis mutandis,* the above recommendation should equally apply to the requirements related to the **strict species protection of species** listed in Annex IV of the Directive set under Art. 12.1 (d)[173] demanding **prohibition of non-deliberate destruction or deterioration of breeding sites or resting places** of protected species within the entire territory of the Member State and similar requirements stemming from Art. 5(b) and (d) of the Birds Directive. Indeed, full enforcement of Art. 12.1(d) of the HD and Art. 5(b) and (d) of the BD would require integration of the relevant concerns as an explicit substantive legal consideration when setting the conditions for permitting water intakes and discharges and other water-related uses. Likewise, the LW should empower nature protection authorities to monitor impacts, to order immediate suspension of permitted water uses and/or to order modification of permit conditions to comply with the Directives' requirements.

6. The LW provisions must be clear about the **general duty that all works/activities must be subject to the requirements of the Directives,** including certain activities that escape the scope of the general regime of water conditions/approvals[174][175], works and activities of water managing companies subject to the blanket license issued by the MAFWM/Water Directorate subject to the blanket licensing[176], consents to extraction of river sediments[177], etc. must be allowed and carried out only in compliance with the Directives' requirements. Indeed, it must be clear that provisions of the nature conservation legislation transposing the requirements of the Directives and competence of nature conservation authorities prevail over the LW provisions and competences of water authorities for the purposes of licensing and monitoring compliance of any works modifying surface and ground water bodies, exploiting riverbeds materials, extraction of river sediments, etc. in case they may interfere with conservation objectives set by the Directives.

7. The nature protection authorities should have **more prominent powers in procedures for setting the water use conditions and water permits** with the aim of avoiding harm to habitats and species

[171] For example, to order the temporary suspending of activities, or other immediately effective preventive measures.
[172] See Case C-241/08, Commission v French Republic, paragraph 76
[173] To that regard, see in particular Case C-98/03 Commission v Germany, paragraphs 53-56.
[174] Such as construction of a hydro-drainage system with an area of up to 1 ha, i.e., with the consumption of water for irrigation up to 2500 m3 in the vegetation period and use of flood and inundation area for pastures and meadows.
[175] LW, Article 117.4
[176] LW, Art. 112. For example, works related to maintenance of hydro melioration systems for drainage and irrigation, performance of remediation works and emergency interventions on protective and regulatory facilities, implementation of flood protection and other forms of protection against the harmful effects of water, etc.
[177] LW, Art. 89.

conservation status, to protect integrity of the sites concerned and to maintain or improve on conservation status.

8 Conclusions

This document on recommendations of legislative actions to fully transpose the EU legislation for the establishment and protection of Natura 2000 sites in Serbia recognizes that the country has already taken considerable steps to comply with the EU requirements. The Law on Nature Protection addresses these requirements generally, both with regard to protection of habitat types and habitats of species and the strict protection and management of species. Still, the project report on the assessment of current Serbian legislation – upon which the recommendations of this document are based – has shown that gaps continue to exist and need to be filled, and that there is also room for improvement of existing rules so that they can be stronger and protect more effectively the sites and species in the Natura 2000 network.

The recommendations to improve nature protection legislation and especially the Law on Nature Protection reflect the general concept that the protection of Natura 2000 sites and species should be addressed in particular rules, either in separate chapters or in separate sub-chapters so that the rules can be tailed to the requirements of Natura 2000. Natura 2000 sites and the wild species to be protected under the Habitats and Birds Directives are particular and merit specific rules. Also, national legislation should make the necessary distinction between bird species and other wild species and design the protection rules specifically, especially the rules on derogations from strict protection requirements and other management requirements. The EU legislation has specific requirements in this regard that need to be honoured.

The most important feature of these recommendations is that they address – as the assessment report already did - both, nature protection legislation and sectoral legislation which is relevant for the protection of the Natura 2000 network. Natura 2000 network protection is based on nature protection legislation *and* relevant sectoral legislation which must both be harmonized and must contribute to the objective of the Natura 2000 network. Sectoral legislation, especially on planning, forestry, hunting, fisheries, and water use must be in line with Natura 2000 requirements; otherwise the protection of the network is bound to fail. Even the best nature protection legislation cannot achieve the objectives if the relevant sectoral legislation is not in line with it and does not support the protection objectives.

This is the reason why much emphasis is put here on necessary sectoral legislation amendments. As can be seen from the recommendations, many legislative actions should be envisaged to harmonize sectoral laws and bylaws with nature protection legislation that transposes the EU requirements. It will bring a considerable workload for the law-makers, be it in Parliament, Government and Ministries; the work on sectoral laws and bylaws is, however, essential and should not be delayed. The regulatory regime for Natura 2000 rests on both pillars: the nature protection legislation and the conducive and supportive sectoral legislation.