



Strategic Partnership for the Mediterranean Large Marine Ecosystem

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Assessment of Impacts of the Ratification of the Mediterranean Protocol on ICZM on Croatian Legislation, with a Focus on Article 8

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LIST OF ACRONYMS

CAMP	Coastal Area Management Programme
EU	European Union
GEF	Global Environment Facility
GTZ	<i>Deutsche Gesellschaft für Technische Zusammenarbeit</i> (German Association for Technical Cooperation)
IDDRI	<i>l'Institut du développement durable et des relations internationales</i> (Institute for Sustainable Development and International relations)
ICZM	Integrated Coastal Zone Management
LME	Large Marine Ecosystem
MAP	Mediterranean Action Plan
PAP/RAC	Priority Actions Programme Regional Activity Centre
PCA	Protected coastal area
UNEP	United Nations Environment Programme

The Mediterranean Protocol on ICZM (hereinafter Protocol) was signed in Madrid, Spain on 21 January 2008 and is based on the fact that planning and management of coastal zones, as an irreplaceable ecological, economic and social resource, is a priority obligation of all Mediterranean states with a view to their preservation and sustainable development. Croatia is one of the signatories of the Protocol. The Protocol is the seventh in the series of protocols to the Barcelona Convention¹ since 1976. Croatia joined the Barcelona Convention upon gaining its independence in 1991. The Protocol entered into force at the beginning of 2011. The process for its ratification has now started in Croatia. With the ratification of the Protocol Croatia will take on the obligation of its implementation, but it should be acknowledged that Croatia has already indirectly taken on the obligation of its implementation since the Protocol has been ratified by the European Union.

All of the signatories of the Protocol, through their legislation, take on the obligation to implement the goals and principles of the Protocol through coastal strategies, plans and programmes. Once ratified, the Protocol will become an integral part of Croatia's legislation. Since this is an international agreement, all of the national rules and regulations that are not in accordance with it will have to be changed and/or modified. In doing so one should especially have in mind the provisions of the physical planning and land-use management legislation which should enable preservation and rehabilitation of coastal and hinterland areas of natural, cultural, historic and traditional values².

When it comes to coastal zone management, as its beginning we could consider the implementation of the San Francisco Bay recovery program (1965). It is also important to mention the year 1972, when the USA passed the first law on coastal zone management. The concept of Integrated Coastal Zone Management (hereinafter- ICZM) was introduced at a time when numerous, today fully developed instruments of development and environment management, had not yet been used on a regular basis. The previously mentioned law on ICZM was used to stimulate various local management programmes which dealt with issues such as protection of space, management of urban development, securing public access to the coast, environmental impact assessment, management of coastal risks, etc. Great importance has been given to public participation in public policy making, especially of private and nongovernmental sectors.

By the beginning of 1990s, some countries had accepted the ICZM as a framework used to encourage and implement most of the integrated coastal management principles. Some countries, such as France, have been gradually upgrading their physical management system with new instruments, creating thus a legal framework for ICZM. When it comes to coastal zones, most of the countries have defined their respective legislative and institutional frameworks by gradual upgrading of the basic forms of sectoral and physical planning. In the meantime, as the EU institutions evolved, and based on the experiences of some countries' good practices, a part of common legislation was formed regulating various thematic areas, including those of great importance for coastal areas, such as: protection of the environment (including marine environment), protection of nature, preservation and sustainable use of natural resources, etc.

¹ Adopted in 1976 as the Convention for the Protection of the Mediterranean from the Pollution and then revised in 1995 as the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean

² This is defined by the article 49 of the Law on Spatial Planning and Construction (Official Gazette number 76/07, 38/09, 55/11 and 90/11)

In the Croatian legislation the issue of sea and coast was mentioned for the first time in the Law on Spatial Planning and Use of Development Land (Official Gazette number 14/73), which states that the sea and the coast are especially valuable parts of human environment and are under special protection. Along the same lines, all the laws enforced before 1994 when the Law on Spatial Planning was passed (Official Gazette numbers 30/94, 68/98, 61/00, 32/02 and 100/04), it was stated that the coast could not be occupied or fenced in, and that free and public access to and use of the coast had to be secured. Unfortunately, the above law of 1994 did not recognise the coast of Croatia as one of the most vulnerable parts of Croatia. It has to be mentioned, however, that both the Spatial Planning Strategy of Croatia (1997) and the Spatial Planning Programme (1999) mention the coastal area as a priority and problem area, suggesting a set of measures for its management. However, these two documents have an advisory nature lacking legal strength.

During the period of large building expansion and uncontrolled strive for construction along the coastline, in 2004 it was decided that it was the last moment to implement control of construction along the coast. Accordingly, the Law on Spatial Planning was appropriately modified (Official Gazette number 100/04). In order to regulate the coastal zone protection, the Regulation on the Protection of the Coastal Zone was adopted by the Government (Official Gazette number 128/04). When the Law on Spatial Planning and Construction was passed in 2007, it included all the articles of the above Regulation, albeit updated on the basis of the experience gained during the three years of its implementation.

The basic goal of the Protocol is to provide a regional legal framework that will ensure that appropriate definitions of coastal zone are introduced in the national legislation of the Mediterranean countries, and that all of the relevant activities going on in that area are covered by integrated management. The Protocol determines the main goals of ICZM, which include rational planning that entirely takes into account the environmental and landscape values, economic, social and cultural development, stability and integrity of coastal ecosystems, sustainable use of natural resources, the impact of natural hazards (especially climate change) and compatibility of public and private initiatives with all the decisions made by the authorities at the national, regional and local levels. The Protocol also establishes the basic elements (Articles 8-15) and the key instruments of ICZM (Articles 16-21). The Protocol also tackles the risks affecting the coastal zone (Articles 22-24) and envisages ways of quick response to natural disasters (Article 24).

The implementation of the Protocol in a certain country, besides the ratification, also includes changes and modifications of the existing legislation, enhancement of the integration process and the capacity building in key institutions for the implementation of ICZM. Having in mind the complexity of ICZM, especially in the context of the land-use planning system, this study has the objective to formulate proposals for the harmonisation of the current Croatian legislation with the Article 8 of the Protocol. Also, this study has to suggest an appropriate institutional framework to monitor the implementation of the Protocol.

Furthermore, this study is partially based on two earlier studies. The first study, entitled "Coastal Setback Zones in the Mediterranean: A Study on Article 8-2 of the Mediterranean ICZM Protocol" was prepared by the Institute for Sustainable Development and International Relations (IDDRI) from Paris, at the request of the Priority Actions Programme Regional Activity Centre (PAP/RAC). It analyses the implementation of the Article 8 of the Protocol. The second study, entitled "An Assessment of the Spatial Planning System of Montenegro: The Implications of the Implementation of the Article 8 of the Protocol on ICZM", was made upon request of the Ministry of Spatial Planning and Environmental

Protection of Montenegro and financed by PAP/RAC. It analyses the similar problem as the former study but in a context that resembles more the Croatian one.

Over the past two years, two countries have provided technical and financial support to Croatia to analyse the legal and technical aspects of the Protocol: Germany and France. The German Development Agency (GTZ) has prepared the study “Assessment of the Impacts of the Mediterranean ICZM Protocol on Croatia”, coordinated by PAP/RAC, while the French Ministry of the Environment, along with PAP/RAC, carried out the ProtoGIZC Project, under which the abovementioned IDDRI prepared a study entitled “Analysis of the Croatian legal framework in relation to the provisions of the Mediterranean ICZM Protocol” (2012). This study could be considered, *inter alia*, as the sequel to those two studies.

2. ISSUES DEFINED BY THE ARTICLE 8 OF THE PROTOCOL

The current trends of construction in the coastal areas of the Mediterranean show that there is a need for a quick response since, according to the Blue Plan scenarios³ from 2005, the population of the Mediterranean coastal region will, by 2025, increase from the current 143 to 174 million. Having that in mind, as well as the growing trend towards linear construction along the coastline, it is expected that 50% of the Mediterranean coast will be urbanized by 2025.

The coastal areas are the most exploited spaces in the world, while the protection of their sensitive and vulnerable natural and cultural heritage is the national priority of all coastal states. The coasts of the Mediterranean have been the place of concentrated development for thousands of years. Consequently, the coastal management activities should be coordinated, not only at the national, but also at the regional level as well. The coastal areas are especially under threat by mass tourism, excessive urbanization and uncontrolled construction coupled with non-existent or unsatisfactorily implemented physical plans, inappropriate industries, etc. Improvement can only be achieved through integrated planning and management.

Departing from the facts showing that the coastal zones are under threat, the priority fields of action of the Protocol are defined through the provisions of the Articles 8 to 15.

2.1. The meaning of the Article 8 of the Protocol

The Article 8 of the Protocol contains the minimum obligations that a country has to fulfil in order to enable and ensure integrated management of its coastal zone. It basically prohibits all the construction in the coastal zone that must not be narrower than 100 metres. However, it leaves the possibility for exceptions, but in such cases the States have to inform the Organization (UNEP-MAP) of the national legal instruments that allow the exceptions or adjustments.

Analysing the provisions of the Article 8 of the Protocol, it has to be mentioned that the paragraph 1 states that parties must try to ensure the sustainable use and management of coastal zones in order to maintain the coastal zone's habitats, landscape, natural resources and ecosystems in accordance with the global and regional legal instruments. This obligation is one of the obligations for achieving a certain effect, whereby parties cannot have the absolute freedom of action, and the flexibility in implementation is restricted by international obligations which a country has taken on through other international contracts, or they derive from international common law.

The Article 8 of the Protocol:

- Orders the parties to establish the no-construction zone that may not be less than 100 metres in width, as from the highest winter waterline, and if the countries have stricter regulations they should keep applying them
- The countries may make exceptions to the ban of construction within the 100 metres zone only for the projects of public interest and in areas having particular geographical or other local constraints, especially related to population density or social needs, where individual housing, urbanisation or development are provided for by national legal instruments

³ The Blue Plan (BP/RAC) is one of the Regional Activity Centres of the Mediterranean Action Plan (located in Sophia Antipolis) whose activities are focused on making territorial plans and development projections of the Mediterranean.

In the paragraph 3 of the Article 8 of the Protocol, it is stated that parties must ensure that their national legal instruments include criteria for sustainable use of the coastal zone. Among others, those criteria must include:

- identifying and delimiting, outside protected areas, open areas in which urban development and other activities are restricted or, where necessary, prohibited;
- limiting the linear extension of urban development and the creation of new transport infrastructure along the coast;
- ensuring that environmental concerns are integrated into the rules for the management and use of the public maritime domain;
- providing for freedom of access by the public to the sea and along the shore;
- restricting or, where necessary, prohibiting the movement and parking of land vehicles, as well as the movement and anchoring of marine vessels, in fragile natural areas on land or at sea, including beaches and dunes.

2.2. The starting points for the analysis of implementation of the Article 8 of the Protocol

The starting points for the analysis of the implementation of the Article 8 of the Protocol are given in the study entitled “Coastal Setback Zones in the Mediterranean: A Study on Article 8-2 of the Mediterranean ICZM Protocol”. These are as follows:

- The Protocol as a “regional” law enters the field of spatial regional and urban planning that is usually within the sole jurisdiction of national legislation.
- The Protocol, with its demands, fits also into the principles and goals of some other international legal acts (UN Convention on Biological Diversity - CBD, the European Landscape Convention, and the UN Convention on the Law of the Sea). That requires of the countries to take into account the synergies of the effects of the implementation of these acts.
- The first step is to clearly define the coastline from which the coastal setback is measured. The coastline has to be defined by the competent national institution.
- The implementation of the setback line does not affect the existing legal construction.
- The coastal setback must be prescribed by a national legal act and cannot be delegated on to a lower level. The type of act or document is not defined, as long as it is adopted at the national level.
- The Protocol is implemented by the principle of obligation to produce results, and not by the obligation to make best efforts.
- The core demand is that the definition of the width of the setback corresponds with the principles and goals of the Protocol (Articles 5 and 6). Hence, every adjustment (exception) of the coastal setback to less than 100 metres must be guided by the principles and goals of the Protocol. One of the important demands is the application of the environmental impact assessment and prevention of the linear construction along the coastline.
- Adjustments or exceptions are for special cases, for example specific geographical or other local constraints (8-2-b-2). Adjustments may regard the situations of high population densities or social needs where particular projects, including housing, are provided for by national legal instruments. This is a rather flexible and insufficiently precise provision where the only defence against “abuse” is provided by the principles and general goals of the Protocol.
- The identification of the public interest leading to deflection from the mandatory setback is a very sensitive area. The public interest is both economic and social. It is beyond any doubt that

adaptations must be affirmed by a national legal act, taking into account the principles and goals of the Protocol. In addition, the Vienna Convention demands that the signatories act in good faith and that they do not bend the contents, coverage and the “spirit” of the Protocol.

- Projects of public interest must be separated from those related to public services that, by their nature, have to be close to the coastline. For example, it is technically imperative that certain types of infrastructure are located within the setback zone due to the degree of coastal development. However, it is important to note that even in these cases it is important to perform environmental impact assessment.
- The exceptions from the setback can be conducted in two ways. The first one is by correcting the setback line, while the second does not correct the line but gives the right to an exception within the setback zone. However, in both cases the exception has to be in line with the objectives of the Protocol.
- It would be ideal if research could be conducted to determine consistent criteria and hence the setback line that could then be even larger than 100 metres (for example, the criterion of the implementation of a 100 year projection of climate change impact). The coastal setback can be defined by a fixed distance, by a formula (that, as for example in California, includes the age of construction and erosion rate) or by other specific criteria. According to the above, any adjustment of the setback would demand its own special study.
- Any adjustment also demands a search for alternative solutions or evidence that there are no other realistic solutions.
- The adoption of the coastal setback is an unconditional obligation, while the implementation of the Protocol, in good faith, means that the adjustments (exceptions) are a possibility that must be defined by a national legal instrument, which includes a very clear definition of criteria that can be met in a very limited number of cases. In other words, the setback is a rule with exceptions given only in extreme cases.
- The monitoring of the implementation of the Protocol based on the reports will enable the signatories to develop better mechanisms of control and coordination of demands of the Protocol with the practices of a single country.

2.3. The experience of Montenegro: Assessment of the state of spatial planning system in relation to the implementation of the Article 8 of the Protocol

The implementation of the Protocol and all its provisions, besides the ratification itself, includes also the adoption and/or adjustment of the current national legislation if necessary, the enhancement of the integration process and the capacity building of key institutions to implement ICZM. Taking into consideration the complexity of the nature of ICZM, especially when it comes to spatial planning, an analysis was conducted of the existing and, especially, future spatial plans in order to assess the impact of the Article 8 of the Protocol (setback zone) on the spatial planning documentation of Montenegro. That analysis⁴ was part of the CAMP Montenegro⁵, and its project activity on the analysis of the implications of the ICZM Protocol on spatial planning. It is also important to mention that the above analysis was included in the CAMP activities upon request of the Ministry of Spatial Planning and

⁴ The analysis was made in October 2010 by Mr. Gojko Berlengi and Ms. Ana Mrak-Taritaš.

⁵ Coastal Area Management Programme (CAMP) Montenegro, for whose coordination, in the framework of the Mediterranean Action Plan (MAP), PAP/RAC is in charge.

Protection of the Environment at the inception workshop of the “GEF Strategic Partnership for the Mediterranean LME” project (Budva, 17-19 February 2010).

The conclusions of the analysis are as follows:

- It is necessary to declare by a national legal act, best by the Law on Spatial Development and Construction of Structures (Official Gazette of Montenegro, No. 51/08), the coastal zone in the spirit of the Protocol and to establish it as the area of special interest of Montenegro⁶.
- It is necessary, through the provisions of the Law on Spatial Development and Construction of Structures (or some new legal act), to indisputably define the position of the coastline from which the coastal setback is measured, in line with the description in the Protocol, which is the highest winter water line (Article 8.2.a), namely to point reached by the high tide and not the point reached by waves during the worst storms (Article 3 of the Law on Public Maritime Domain). Therefore, such line has to be confirmed by the competent hydrographical service of Montenegro⁷.
- Following the provisions of the Protocol, the Law on Spatial Development and Construction of Structures (hereinafter - the Law) has to establish the construction prohibition within the setback zone from the coastline - minimum 100 metres. The same Law should define the cases when the construction prohibition within the setback zone (100 metres minimum) is not enforced. It is suggested, according to the goals and general principles of the Protocol, to consider the following exceptions from the construction prohibition within the 100 metres:
 - The coastal parts of the existing settlements, that are categorized as built-up development land (it is important to precisely define what is considered as the “built-up development land” in the Regulation on the detailed contents and form of planning documents, land-use criteria, elements of urban regulation and unified graphic symbols – hereinafter – the Regulation),
 - Parts of the coast formerly used for industrial or military purposes that have been abandoned and that are being rehabilitated under the new regulation, in which case the coastal setback of the new interventions depends on the geographical or other local conditions,
 - Areas with special geographical or other local constraints,
 - Projects of public interest that are defined by the national legislation.⁸
- It is necessary to determine, through the provisions of the Law, the main guidelines for coastal zone planning and to integrate certain provisions from the Regulation. In doing so, it is particularly important to define the following:
 - The conditions and criteria for planning new development sites and for the expansion of the existing ones⁹,
 - The limitations regarding linear expansion of development areas along the coast,

⁶ Following the demands of the Protocol, the clear choice has been to cover 6 coastal administrative units: Herceg Novi, Kotor, Tivat, Budva, Bar and Ulcinj.

⁷ The officially determined coastline and the corresponding minimal setback zone of 100 metres must be prepared in digital form by the competent geodesic service and delivered to all authorised offices dealing with spatial planning documents.

⁸ According to key provisions of the Protocol (primarily the Articles 5, 6, 10 and 19), i.e. on the rocky coastal sections that are not susceptible to erosion and where there are no ecosystems of special value or rarity.

⁹ According to the mentioned Regulation, there are no special conditions for the coastal zone, i.e. the same applies to the entire Montenegro.

- The obligation from the Protocol that all the citizens must have freedom of access to the sea and the shore,
 - The conditions and criteria for planning development areas aimed at tourism use - especially for development areas detached from settlements intended for such uses,
 - To determine the limitations of interventions in coastal zones.
- Considering that the current area coverage of the Public Maritime Domain is inappropriate as a spatial planning area, it is suggested, in line with the above, that the coastal spatial plan's coverage be extended to 6 coastal municipalities (Herceg Novi, Kotor, Tivat, Budva, Bar and Ulcinj). Thus, the spatial plan of area intended for special purposes would cover the entire coastal zone regarding the Protocol implementation becoming thus the Spatial Plan of the Coastal Zone of Montenegro.

Following the above recommendations Montenegro has initiated changes of existing laws (on spatial development and construction of structures, and on the maritime domain), as well as the preparation of a new spatial planning document – Spatial Plan of the Coastal Zone. Also, as a result of the analyses made, Montenegro has ratified the Protocol in December 2011.

3. REVIEW OF THE CURRENT LEGISLATION OF CROATIA

3.1. The treatment of sea and coast in Croatian legislation

When it comes to the sea and coast, the Croatian legislation stated, for the first time, in the Law on Spatial Planning and Use of Development Land (Official Gazette number 14/73) that the sea and coast are especially valuable parts of human environment and are under special protection. Considering the issue of space and creating conditions and instruments for its controlled development, in 1980 the Croatian Parliament passed the Law on Physical Planning and Land-use Management (Official Gazette Nos. 54/80, 16/86, 34/91, 49/92) which defines that spatial planning and land-use management are based on the citizens' right and duty to use the space for living and working, preserve natural and man-made values of human environment, prevent and/or reduce negative impacts on those values, and ensure the social and economic development for safe, healthy and humane life and work of the present and future generations¹⁰. By the provision of the Article 48 of the Law, the sea and the coast are defined as especially valuable parts of the human environment under special protection. According to a decision from the earlier Law on Land-use Planning and Use of Development Land¹¹, the protected coastal belt is defined by the spatial plan of the municipality, more specifically by the municipality assembly's special decision¹², depending on the purpose, configuration and other characteristics of the terrain, as well as on the extent of the built-up areas. It is determined, in the same way, that the coast must not be occupied or fenced-in, and that free and public access to and use of the seashore must be ensured¹³. By the provision of the Article 59 of that Law, it is determined that before the adoption of a Development Plan, no construction is allowed within the protected coastal belt.

Taking into account all the changes that happened in the region, which were primarily of a political and economic nature, and in an attempt to respond to the growing private initiative for construction, the Law on Spatial Planning (Official Gazette Nos. 30/94, 68/98, 61/00, 32/02 and 100/04) was passed in 1994. Unfortunately, this Law failed to recognise the coastal zone of Croatia as an area with important development potential, which is at the same time one of the most vulnerable parts of Croatia, although it could easily have been taken over from the Spatial Planning Strategy of the Republic of Croatia and the related Programmes adopted several years before the passing of this Law. The development pressures on the coast grew to considerable proportions, and there was a real threat that the coastal area could be irrecoverably destroyed, in spite of the fact that it has always counted and fortunately still counts among comparatively well-preserved parts of the European continent. In that context, which was characterised by an ever growing intention to use the coast and build by the sea, which is very attractive owing to its natural features, in 2004 it was decided that it was the last moment to exert strict development control along the coast and in that sense the Law on Spatial Planning (Official Gazette number 100/04) was changed. The protected coastal zone was established and it was defined as an area

¹⁰ This was the first time that the idea of sustainable development was mentioned in the Croatian legislation.

¹¹ By the provision of the Article 57 of the Law from 1973 it is determined that, either by a spatial plan or by a special decision by the municipality's assembly, the width of the protected coastal belt will be defined depending on the local conditions and terrain configuration.

¹² Provision of the Article 41 of the Law from 1980 is identical to the provision of the Article 57 of the Law from 1973.

¹³ By the provision of the Article 8 paragraph 3 and subparagraph d) of the Protocol it is determined that all the citizens should have free access to the sea and the shore. Hence, it is important to note that Croatia has had this obligation in its legislation since 1980. So, the problem is not in the legislation itself or the lack of it, but in its implementation.

of 1000 metres from the coastline landwards and 300 metres from coastline seawards, including all islands. For the purpose of the protection of the coastal zone, the Regulation on the Protection of the Coastal Zone (Official Gazette No. 128/04) was passed in 2004.

The new Law on Spatial Planning and Construction which establishes the spatial planning and development system was published in the Official Gazette No. 76/07 of 23 July 2007 (it is in force since 1 October 2007)¹⁴. The provisions of the Regulation on the Protection of the Coastal Zone were incorporated in that Law, improved on the basis of the experience gained during three years of its implementation.

Accordingly, it is important to mention that there are no special legal regulations for the management of the coastal zone as a whole, with the exception of the previously mentioned provisions from the Regulation on the Protection of the Coastal Zone taken over by the Law on Spatial Planning and Construction. Still, there are several laws and regulations that deal with specific issues of the coastal zone but, unfortunately, those are not fully harmonised with each other. These are: the Law on the Protection of Nature (Official Gazette 70/05, 139/08), the Law on Environmental Protection (Official Gazette 110/07), the Law on Public Maritime Domain and Sea Harbours (Official Gazette 158/03, 100/04, 141/06, 38/09), the Law on Islands (Official Gazette 34/99, 32/02, 33/06) and the Law on Regional Development (Official Gazette 153/09).

When it comes to strategies, besides the Spatial Planning Strategy and the Programme of the Republic of Croatia (Official Gazette 50/99), other important development documents include the National Programme for Island Development (1997), the National Strategy for Environmental Protection (Official Gazette 46/02), the National Environmental Action Plan (Official Gazette 46/02), the Strategy for Sustainable Development of the Republic of Croatia (Official Gazette 03/09), and the Strategy for Regional Development of Croatia 2011-2013 (2010).

3.2. The current use of the coastal zone

The Adriatic Sea region with its coast and islands hosts the most valuable and, at the same time, the most sensitive natural systems of Croatia. The processes in that area are characterised by interaction between the sea and the land, while development pressures and the resulting negative impacts on the natural systems are more pronounced than those inland. The Adriatic Sea is a unique and very sensitive marine ecosystem¹⁵, especially because of the wealth of its biological life, clarity, transparency and landscape, and, appropriately, it has gained the status of a special Mediterranean sub region. The Adriatic coastal zone is also characterised by a high level of biological diversity, including many endemic species, especially sensitive habitats and ecosystems. It is also important for its highly developed economy, and rich cultural and social life. Therefore, the use and preservation of the Adriatic Sea should be given special attention.

In the coastal zone of the Adriatic there are 790 settlements (with around 1,050,000 inhabitants, 370,000 apartments and 190,000 secondary homes), around one hundred tourist zones detached from settlements (with about 430,000 beds), few dozen industrial zones and about one hundred big harbours and marinas (with 17,000 berths). Cities, settlements and other urbanised areas, according to the data from the year 2000, occupy about 850 kms, or 15% of the total coastline.

¹⁴ The Revision of and Annex to the Law on Spatial Planning and Construction was published in the Official Gazette No. 39/08.

¹⁵ By its hydrographic, oceanographic, biological, biogeographic and other features, the Adriatic Sea is different from the rest of the Mediterranean whose constituent part it is.

Analyses show that, until 1960, the year when intensive development of all sorts started, between 120 and 150 kilometres of the coastline were occupied. Early 1960s, when the borders were opened to foreign tourists¹⁶, mark the beginning of significant tourism development in Croatia. That was followed by the most intense construction period over the decade between 1965 and 1975 when 70% of all accommodation units that Croatia had in the year 1990 were built¹⁷.

According to the data for the year 2000, in the period between 1960 and 1990, cities, towns and other urbanised areas occupied additional 700 kms of the coastline, adding to the total of 850 kms, or 15% of the total length of the Croatian coast. The analyses thus show that in that period 5 times more space was used, mostly the best quality coastal space, than by all the previous generations.

The spatial plans adopted until 2004, envisaged further expansion of the cities and settlements along the coastline by additional 800 kms. If these plans had materialised, the urbanised part of the coast would have expanded to 1,650 kms, and the size of the urbanised area to about 65,500 ha. The tourist zones would account for about 600 kms of the coastline and 15,300 ha of space.

- As an answer to the pronounced pressures to the coastal zone where the natural and cultural environment is at its most sensitive, the Regulation on the Protection of the Coastal Zone was adopted in 2004, which was almost entirely integrated in the Law on Spatial Planning and Construction, adopted in 2007. The Regulation has achieved several significant results, the most important ones being:
 - Further expansion of development areas was prevented, and through the new generation of spatial plans for the coastal communes and municipalities a considerable number of development areas had to be reduced,
 - Preparation of local urbanistic plans for undeveloped areas became compulsory, defining adequate traffic, street and utility infrastructure network,
 - A minimum level of infrastructure was defined as a prerequisite for future development in the coastal zone,
 - The coastal setback zone has been established, in which no construction is allowed and which is intended primarily for public use (except for some specific cases related to activities dependent on the location close to the coastline),
 - Strict rules have been defined for the tourist and other commercial zones in order to ensure their better management, creation of green spaces and other facilities, as well as easy public access to the shore.

3.3. The importance of the Law on Spatial Planning and Construction

Looking into the basic provisions of the Law on Spatial Planning and Construction (Official Gazette Nos. 76/07, 38/09, 55/11, 90/11, 50/12 and 55/12) it can be concluded that the spatial planning in Croatia, considering its legal definitions, tradition and expert capacity, meets the requirements for having an important role in the implementation of the Protocol. A majority of the Protocol's fundamental principles are also built into the land-use planning system for which physical planning is the basic instrument.

¹⁶ One of the most important prerequisite for faster tourism development was the completion of the Adriatic coastal road in 1965.

¹⁷ From 1965 to 1975 a total of 94,840 new beds were provided.

Definition of the protected coastal zone

The protected coastal zone includes all the islands, the coastal strip with a width of 1,000 metres from the coastline, and the sea area with a width of 300 metres from the coastline. The boundaries and the surface area of the protected coastal zone are shown on the Croatian Basic Map (CBM) complemented by ortho-photo maps¹⁸. With regard to the coastline definition, one should bear in mind the Article 4 of the Law on Public Maritime Domain and Sea Harbours (Official Gazette 158/03, 141/06, 38/09), which states that the line from which the coastal zone will be measured is the line of the medium high water line, to be defined by the Croatian Hydrographical Institute.

Basic principles of planning within the protected coastal zone

In a protected coastal zone, the spatial plans and their implementation must:

- Preserve and rehabilitate threatened areas of natural, cultural- historical and traditional values, and values of the coastal and hinterland areas' landscape, and stimulate natural rehabilitation of the forests and indigenous vegetation,
- Determine measures for the environmental protection on the land and sea, and especially protection of drinking water resources,
- Ensure free access to the shore, passage along the shore, and public interest in using the coastal zone, especially the public maritime domain,
- Preserve the uninhabited islands and islets, primarily for agriculture, recreation, organised visits and research, but without planning any development areas,
- Make the protection and preservation of the landscape values prerequisite for any development and especially of public infrastructure,
- Restrict connecting the existing development areas and limit linear coastal expansion of the existing development areas, as well as plan new development areas outside the areas that are forests,
- Rehabilitate abandoned mineral resources extraction sites and industrial areas primarily by landscape re-cultivation or by planning areas for tourism, sports and recreation purposes.

Criteria for planning development areas

The Law on Spatial Planning and Construction defines also the criteria for enlargement of development areas in the protected coastal zone. The permission to expand a development area is dependent of the degree of the already developed portion of the given area. In the protected coastal zone a development area can be expanded by not more than 20% of the surface area of its already developed part, if that part exceeds 80% of the total surface area of that development area, or it must be reduced to at least 70% of its surface area if its developed part accounts for less than 50% of the total surface area of that development area.

A new development area detached from settlements intended for production purposes can be planned only outside the area of 1m000 m, unless it is for those activities that, by their nature, demand location close to the shore (shipyard, harbours and alike).

An important limitation is that the detached development areas of a settlement that are within the zone of 100 m from the coastline cannot be expanded nor can new ones be planned.

¹⁸ Defined by the Article 49 paragraph 1 of the Law on Spatial Planning and Construction

Limitations to interventions

In a protected coastal zone, with a few minor exceptions, there can be no construction, nor can the site permits or building permits be issued for structures intended for:

- Research and exploitation of raw minerals,
- Exploitation of wind energy for electricity generation,
- Storage, processing and disposal of waste, unless it is demanded by the natural conditions and terrain configuration,
- Blue fish farming,
- Small-scale economic purposes (storages for tools, machinery, agricultural equipment, etc.),
- Docking and harbours for nautical tourism and land reclamation along the coast outside development areas,
- Mooring, unless the mooring location is published in official maritime publications.

When it comes to the exceptions to the above in the protected coastal zone, with regard to the exploitation of raw minerals, it may be allowed to perform research and exploitation of sea salt, raw materials for energy production (oil and natural gas), mineral and geothermal water, and exploitation of stone for construction purposes on the islands in the area with a surface of up to 0.5 ha and a yearly production of up to 5,000 m³, as well as stone excavation with the purpose of continuing the traditional activities in the island of Brač.

Furthermore, the provisions of the Law on Spatial Planning and Construction allow for the issuing of site permits and building permits in the protected coastal zone for the buildings needed by registered family business in agriculture and rural tourism/catering services provided that the surface area of the plot is not less than 3 hectares, and is at a distance from the coastline of at least 300 metres, (100 metres on the islands), and provided that the gross surface area of the building ground floor does not exceed 200 m².

However, the latest revision of the Law on Spatial Planning and Construction, in force since 10 August 2010, has changed the above provision when it comes to construction for the needs of registered family agricultural business and for providing rural tourism/catering services. It has now been made possible to issue a site permit or building permit if the building is on a plot with a surface area of at least 3 ha and removed from the coastline by at least 100 metres, or 50 m in the islands, and provided that the gross surface area of the building ground floor does not exceed 400 m². Thus, the most important modification, apart from the size of such a building, is that in the islands it can be located 50 m from the coastline.

In addition to the above, the Law does not permit construction of one or more new individual buildings in the development areas of a settlement in which less than 50% of the existing buildings are being used for housing by the individuals with a permanent residence in the settlement, as well as in the development areas detached from the settlement within a coastal belt of at least 70 m from the coastline. In detached development areas outside the settlements construction is not allowed in the coastal belt of at least 100 metres from the coastline, except for the utility infrastructure network and underground energy infrastructure, tourism/catering facilities, structures that, by its nature, demands location on the coast (shipyards, harbours, etc.), and public surfaces.

Planning tourism/catering and sports facilities

With regard to planning tourism/catering facilities in detached development areas outside the settlements, the Law on Spatial Planning and Construction defines the criteria for location of these facilities and important planning requirements:

- New accommodation capacities must be planned in areas of lower natural and landscape values, and designed in conformity with original urban and architectural values, while the type and capacity of accompanying facilities and public spaces is determined in relation to every phase of construction of accommodation buildings,
- The density must not exceed 120 beds/ha,
- The built-up area of a single building plot must not exceed 30% of the total building plot surface area, and the coefficient of use must not be bigger than 0.8, while at least 40% of the surface of each building plot has to be designed as parks and green areas,
- Waste waters disposal has to be via a closed sewerage system including waste water treatment,
- The number of berths in one or more adjacent marinas must not exceed 20% of the total number of accommodation units.

Within a development area of a settlement, the tourism/catering use is planned according to the following criteria:

- The total surface area intended for such use covers, at the most, 20% of the development area of that settlement¹⁹,
- Accommodation buildings with the adjacent land must be outside the existing public areas along the shore.

As regards the existing buildings used for tourism/catering purposes, their reconstruction can be planned in such a way so that there is no increase of the current use density, construction density of the building plot, or the coefficient of usage, if those measures are bigger than those stated above.

The marinas inside the development area of a settlement, as well as in development areas detached from the settlement can be expanded by the county spatial plan, or a new one can be planned with the surface area of its aquatorium not exceeding 10 ha²⁰. Within marinas, commerce, service, sports and recreational facilities can be planned.

Camping sites can be planned in detached development areas (outside settlements) and in the development area of a settlement but within a tourism/catering area if its size is less than 15 ha²¹, and respecting the current natural vegetation and coastal features. In camping sites accommodation units cannot have fixed links with the ground.

¹⁹ If it comes to the existing surface area of a tourism/catering facilities within a settlement, than it can be bigger than 20% of the total development area of the settlement, but in case of reconstruction it is necessary, with regulatory acts, to clearly define parameters for the preparation of a local urbanistic plan, having in mind that tourism/catering zone has to be integral (i.e. not fragmented), and keeping single smaller buildings should not be allowed.

²⁰ By the article 13 of the Regulation marinas were defined by a maximum number of 400 berths. A bigger number could be kept only for the already existing marinas. The Law defined the surface area of the aquatorium for a marina.

²¹ When it comes to the existing camping sites, those are the ones that were built based on a construction permit or another relevant act, and in case of their reconstruction the Article 52 paragraph 5 of the Law applies, i.e. the existing size has to be kept.

Development areas detached from the settlements used for sports and recreation²² can be planned on sites of lower natural and landscape values, taking in consideration that:

- the total surface area of the closed and covered buildings can account for up to 10% of the surface area of the sports fields and facilities,
- at least 60% of the total surface area of that development area has to be designated as parks and natural green areas,
- a golf course has to be removed from the coastline at least 25 metres²³.

Free public access to the sea and the shore

When it comes to securing free public access to the sea and the shore, it is important to mention that it is made possible by the provisions of the Law on Spatial Planning and Construction. Namely, in a development area detached from the settlement used for tourism/catering, at least one public road/pedestrian access to the shore must be ensured with a width of at least 15 m if the total coastal unit's width is more than 500 m, with a corresponding number of parking spaces inside each unit, as well as access to the public traffic network.

Furthermore, in a protected coastal zone, the beaches are designated as organised or natural beaches. The beaches need to be accessible to everyone under the same conditions from both the land and the sea, including the physically handicapped persons.

3.4. Enabling legalisation of illegally constructed buildings

By the Law on Dealing with Illegally Constructed Buildings (Official Gazette Nos. 90/11 and 86/12), legalisation of illegally constructed buildings is allowed in areas outside the development areas within the protected coastal zone if they are used exclusively for housing or for the use in family agricultural business, and if the applicants can prove that those were constantly used for that purpose before 21 June 2011.

²² The development areas detached from a settlement intended for sports purposes can be planned only if they are inside the existing development areas included in the valid spatial plan or if they are planned by spatial plan of the county.

²³ Speaking of golf courses, after the Law on Golf has been revoked, the only provisions in force are those from the Law on Physical Planning and Construction (Article 52) which define golf as a development area intended for sports purposes provided that the course is removed at least 25 m from the coastline. Furthermore, applying the provisions of the Article 52 of the Law on Physical Planning and Construction, the total gross surface area of closed and covered buildings must not exceed 4 % of the total surface area of the golf course. Also, the accommodation facilities must be removed from the coastline by at least 100 m.

4. PROPOSALS FOR THE HARMONISATION OF THE PROVISIONS OF THE ARTICLE 8 OF THE PROTOCOL WITH THE CROATIAN LEGISLATION

Analysing the provisions of the Law on Spatial Planning and Construction, one can conclude that the spatial planning in Croatia, considering its legal definition, tradition and expert capacity, may have a significant role in the implementation of the Protocol. Most of the principles on which the Protocol is based are already built in the existing system of land-use planning of which physical planning is the basic instrument. Moreover, the Law on Spatial Planning and Construction, as the basic rule in the field of spatial planning, in its Article 49, explicitly requests protection and rehabilitation of threatened natural, historical, cultural and traditional values of coastal and hinterland landscapes.

However, it is also important that, based on the provisions of the Protocol, vertical coordination among local, regional and national levels be secured, as well as horizontal coordination among sectors at the state level and among units of local self-government at the local level. Adopting and/or changing laws because it is required by the Protocol is a longer and more complicated way, which in some cases will be inevitable. Wherever possible, a shorter and simpler way should be chosen of adopting sub-legal acts based on the Protocol.

Starting from the basic provisions of the Article 8 of the Protocol, a certain inconsistency between the Law on Spatial Planning and Construction and the provisions of the Protocol can be noted. Namely, the Article 8 of the Protocol says:

- The Parties²⁴ ...shall establish in coastal zones, as from the highest winter waterline, a zone where construction is not allowed. Taking into account, *inter alia*, the areas directly and negatively affected by climate change and natural risks, this zone may not be less than 100 metres in width...stricter national measures determining this width shall continue to apply.
- The countries can allow for exceptions from the no construction zone of 100 metres if it is about projects of public interest and if it is in areas having particular geographical or other local constraints, especially related to population density or social needs, where individual housing, urbanisation or development are provided for by national legal instruments.

So, the most important topic of the Article 8 of the Protocol is construction prohibition in the setback zone which may not be less than 100 metres in width, while, at the same time, the provision of the Article 8 chapter 3 obliges the parties to include into their national legal instruments criteria for sustainable use of the coastal zone. It is important to point out that the implementation of the setback zone does not affect the existing legal construction.

The setback zone is established at a minimum of 100 m from the coastline. In accordance with the requirements from the Protocol, in the case of low-lying coasts exposed to erosion and coasts exposed to the risks relevant to sea level rise, as well as parts of the coast of a high ecological value, this setback might be insufficient. It would be ideal if research could be conducted to determine consistent criteria and hence the setback line that could then be even larger than 100 metres (for example, the criterion of the implementation of a 100 year projection of climate change impact). The coastal setback can be defined by a fixed distance or a formula (that, as for example in California, includes the age of

²⁴ Contracting Parties to the Barcelona Convention, i.e. the Mediterranean States and the EU.

construction and erosion rate). According to the above, any adjustment of the setback would demand its own special study.

As mentioned already, the Protocol allows for exceptions, i.e. adaptations of the setback to less than 100 m for areas having geographical or other local constraints and for projects of public interest that have to follow the principles and goals of the Protocol. The identification of the public interest leading to deflection from the mandatory setback is a very sensitive area. The public interest is both economic and social. It is beyond any doubt that adaptations must be affirmed by a national legal act, taking into account the principles and goals of the Protocol, i.e. very clear criteria that can only be met in a controlled number of cases. In other words, the setback is a rule with very few justified exceptions. In addition, the Vienna Convention demands that the signatories act in good faith and that they do not bend the contents, coverage and the “spirit” of the Protocol. Finally, any adjustment demands a search for alternative solutions or evidence that there are no other realistic solutions. The coastal setback must be prescribed by a national legal act and cannot be delegated on to a lower level. The type of act or document is not defined, as long as it is adopted at the national level.

Considering the provisions of the Law on Spatial Planning and Construction (Official Gazette numbers 76/07, 38/09, 55/11, 90/11, 50/12 and 55/12) it is determined that the following is possible:

- In the development areas of a settlement within the zone of 100 metres from the coastline, construction of individual or more buildings is possible if more than 50% of the existing buildings are used for habitation by persons who permanently reside in that settlement,
- In the development areas of a settlement (and their detached parts) in the zone beyond 70 m from the coastline, construction of individual or more buildings is possible (this refers to the settlements where less than 50% of the existing buildings are used for habitation by persons who permanently reside in that settlement),
- Utility infrastructure network and underground energy lines, facilities complementing tourism/catering facilities²⁵, structures which require proximity to the coastline by the nature of their use (shipyards, harbours, etc.), and public spaces within the 100 metre zone in already existing development areas,
- Issuing of site permits and building permits for the buildings needed by registered family business in agriculture and rural tourism/catering services, registered agricultural business or a legal entity, provided that those are on a plot with a surface area larger than 3 ha and at least 50 metres from the coastline in the islands, and that have the gross ground floor surface area of up to 400 m² and the height of up to 5 m and/or a fully interred basement of up to 1,000 m² of the gross surface area.

Furthermore, the Law on Dealing with Illegally Constructed Buildings (Official Gazette Nos. 90/11 and 86/12) allows the legalisation of illegally constructed buildings (according to, but also against the provisions of the spatial plan) within the entire protected coastal zone (except in the public maritime domain and with minor exceptions listed in the article 6).

Having in mind the above, it could be concluded that the following provisions of the Law on Spatial Planning and Construction **are in full conformity with the provisions of the Article 8 of the Protocol**:

- new development areas detached from the settlement to be used for production purposes can be planned only beyond the coastal belt of 1,000 m, except for those uses that by their nature require proximity to the sea (shipyards, harbours, etc.),

²⁵ The Article 52 of the Law on Spatial Planning and Construction defines that those are open facilities for sports and recreation, catering, entertainment, etc.

- development areas detached from the settlement, which are located in the zone within 100 metres from the coastline, cannot expand nor can new such areas be planned.

Furthermore, using the **possibility of adaptation** of the coastal setback to less than 100 metres, it is estimated that the provisions of the Article 51, paragraph 3 of the Law on Spatial Planning and Construction would be acceptable (taking into consideration the fundamental provisions of the Protocol related to the protection of valuable coastal ecosystems and landscapes, avoidance of natural risks and environmental impact assessment²⁶) when it allows that construction of one or more buildings is possible:

- In the development area of a settlement (and within the prescribed 100 m setback), if more than 50% of the existing buildings are used for habitation by persons who permanently reside in that settlement,
- In the zone beyond the belt of 70 m from the coastline, in the development areas and their detached parts of settlements where less than 50% of the existing buildings are being used by for habitation by persons who permanently reside in that settlement.

In addition, as an exception it is possible to plan, in accordance with the rules of the profession and spatial indicators contained in the Regulation on the Contents, Scale of Topographic Maps, Compulsory Spatial Indicators and Standards of the Spatial Planning Documents (Official Gazette Nos. 106/98, 39/04, 45/04, 163/04), the construction of facilities complementing tourism/catering facilities in development areas of settlements, their detached parts and development areas detached from the settlements, within the zone of 100 metres from the coastline.

Speaking of the provisions of the Article 51, paragraph 2, which has been in force since 10 August 2011, the most recent changes of the Law on Spatial Planning and Construction allow that in the islands site permits and building permits can be issued for the buildings needed by registered family business in agriculture and rural tourism/catering services, provided that those are on a plot with a surface area larger than 3 ha and at least 50 metres from the coastline in the islands, and that have the gross ground floor surface area of up to 400 m² and the height of up to 5 m and/or a fully interred basement of up to 1,000 m² of the gross surface area. However, it is deemed that construction of the abovementioned buildings in the islands within the zone of at least 100 metres from the coastline should be limited through appropriate amendments to the Law on Spatial Planning and Construction.

The coastal area of Croatia is faced with a great problem of illegal buildings. It is estimated that within the zone of 100 metres from the coastline, but outside development areas, about 35,000 buildings have been built illegally during the period from 15 February 1968²⁷ to 11 June 2011 when survey was made. It is deemed that the consequences of the implementation of the Law on Dealing with Illegally Constructed Buildings (Official Gazette Nos. 90/11 and 86/12), which allows legalisation of the abovementioned buildings, should be analysed in greater detail in order to assess the impact that such a decision could have on the implementation of the Protocol in Croatia, but also elsewhere in the Mediterranean region. Croatia could suggest as a possible solution that the legalisation be implemented as an **adaptation**, but such conduct would be somewhat conflicting with the spirit of the Protocol. On the other hand, the sheer size of the problem makes it impossible to ignore, and it will be necessary to find, through the implementation of the Protocol, an acceptable solution, in order to minimise damages if the problem is kept ignored. It is important to note that in the Croatian case this Law was passed along

²⁶ Primarily Articles 5, 6, 19, 22 and 23.

²⁷ In its Article 330, chapter 1, the Law on Spatial Planning and Construction defines that all buildings built before 15 February 1968 are to be considered as built on the basis of a valid building permit or another appropriate act of a competent administrative body.

with the decision that the legalisation can be effectuated only for the buildings built before 21 June 2011, when aerial photographs of the entire Croatian territory were taken. If this provision is implemented that will mark the end of illegal construction in Croatia. It is proposed that, within a short period of time, a study be prepared with an assessment of the impacts of the implementation of the abovementioned law, their relationship with the provisions of the Protocol, and a proposal of measures to minimise negative impacts, in particular taking into account the fact that the deadline to start the legalisation procedure has been defined as 30 June 2013. One of the measures that could be proposed is, for example, that the Law on Dealing with Illegally Constructed Buildings envisage that a portion of the proceeds to be collected for the legalisation be utilised to finance the preparation of plans to rehabilitate those areas, the preparation of which could be coordinated by the Ministry of Construction and Physical Planning.

5. PROPOSALS FOR AN INSTITUTIONAL ARRANGEMENT FOR THE IMPLEMENTATION OF THE PROTOCOL

Integrated coastal zone management is recognised as a dynamic process towards sustainable management and use of coastal zones, since it pays equal attention to the sensitivity of coastal ecosystems and landscapes, the diversity of activities and uses, their interrelationship, and marine orientation of certain activities and uses and their influence on the marine and coastal systems.

The Article 7 of the Protocol states that it is necessary for ICZM to:

- Ensure institutional coordination in order to avoid sectoral approaches and facilitate comprehensive approaches,
- Organize appropriate coordination between the various authorities competent for both the marine and land parts of the coastal zones, in different administrative services, at the national, regional and local levels,
- Organize close coordination between national authorities and regional and local bodies in the field of coastal strategies, plans and programmes and in relation to the various authorizations for activities that may be achieved through joint consultative bodies or joint decision-making procedures.

Furthermore, in Part III - Instruments for Integrated Coastal Zone Management of the Protocol, it is indicated, *inter alia*, that it is necessary to:

- Carry out awareness raising activities on ICZM,
- Organise educational programmes aimed at training and public education on ICZM,
- Constantly cooperate in the training of scientific, technical and administrative personnel in the field of ICZM particularly with a view to identifying and strengthening capacities for developing scientific and technical research, promoting centres specialized in ICZM and promoting training programmes for local professionals.

Taking into consideration the complexity of ICZM and the direction in which the changes demanded by the Protocol will lead, the Ministry of Environmental Protection, Physical Planning and Construction of Croatia initiated the study to assess the impacts of the Protocol in Croatia. The study assumes that, according to the Government's Plan for Implementing Activities for the Economic Recovery (of 6 July 2010), by the fourth quarter of 2011 the Strategy on Integrated Management of Coastal Areas (in compliance with the demands of the Protocol) will have been made. Unfortunately that wasn't done by the proposed deadline, but the activities were again set in motion at the beginning of 2012.

Integrated development planning in the coastal zone of Croatia is not formally defined by the law. Therefore, an institutional framework for preparing and implementing formal strategies and policies is missing for the time being. However, most of the principles of the Protocol and most of the instruments it proposes do, more or less, exist or are already in use in Croatia. They can be found in a number of laws and other legal acts, as well as in strategies, plans and programmes that, from different perspectives, deal with the coastal zone.

The Law on Spatial Planning and Construction (Official Gazette Nos. 76/07, 38/09, 55/11, 90/11, 50/12 and 55/12) defines the protected coastal zone (PCZ) and states that it is an area of special interest for Croatia. The PCZ covers all of the islands, the coastal belt of 1,000 metres from the coastline, and the sea part of 300 metres from the coastline. The surface area of the land part of the PCZ is 4,639 km², out of which the islands account for 3,236 km². In addition, Croatia has an exceptionally long coast, and

there are several ministries that deal with the issues concerning the coastal zone: Ministry of Environmental Protection and Nature; Ministry of Construction and Physical Planning; Ministry of Tourism; Ministry of Maritime Affairs, Transport and Infrastructure; Ministry of Culture; Ministry of Regional Development and EU Funds; Ministry of Agriculture and Ministry of Economy (formerly: Ministry of Environmental Protection, Physical Planning and Construction; Ministry of Tourism; Ministry of Sea, Transport and Infrastructure; Ministry of Culture/ State Institute For Nature Protection; Ministry of Regional Development, Forestry and Water Economy; Ministry of Agriculture, Fishing and Rural Development; and Ministry of Economy, Labour and Entrepreneurship).

By the establishment of the new ministries and by dividing the former Ministry of Environmental Protection, Physical Planning and Construction into two ministries, the Ministry of Environmental Protection and Nature and the Ministry of Construction and Physical Planning, the institutions and administrations that were formerly dealing with coastal zone management issues have now also been split between those two ministries. One of the most important institutions responsible for the coastal zone management is the Department for Sea Protection, now within the Ministry of Environmental Protection and Nature. When it was established, it was the first such institutional solution in the Mediterranean. Its current assignments are mainly reduced to the work related to the sea protection, and much less to the management of the terrestrial part of the coastal zone. Furthermore, as part of the Ministry of Construction and Physical Planning, there exist the Department for Physical Planning and the Institute for Physical Planning that cover all the issues relevant to physical planning, from preparing analytical thematic studies to preparing and adopting physical planning documents. Also, within other ministries there are departments that directly or indirectly deal with issues involving the use of the sea and coastal area, where the Ministry of Maritime Affairs, Transport and Infrastructure is especially important.

According to the abovementioned, and departing from the fact that, horizontally, the institutional aspects of coastal zone management are dealt by several institutions within several ministries, it is obvious that at this moment the Protocol on Integrated Coastal Zone Management should be considered as a trigger for making progress in coastal zone management. By the implementation of the Protocol, and taking into consideration that Croatia will, upon entering the EU, honour the *acquis communautaire*, the system will start changing and become more efficient. For the Protocol implementation, the most important point is, definitely, to achieve successful coordination among all the sectors in preparing physical, development and sectoral plans and policies at all levels. Hence, strengthening the capacity of all stakeholders for efficient coordination is considered to be one of the priorities in the implementation of the Protocol.

Since one of the priority tasks of the Ministry of Construction and Physical Planning is the establishment of the State Institute for Spatial Development, and since it is realistic to assume that the implementation of the Protocol in Croatia will be based on the physical planning system as one of the main determinants of the future integrated coastal management system, it is clear that the question has to be raised as to how it will be secured that the obligations are met arising from the Article 7 *Coordination* which defines the obligation to form an appropriate institutional framework at the national level to ensure the implementation of the Protocol.

The current national programmes of ICZM all over the world are mostly developed on the basis of the existing administrative structures and sectoral jurisdictions. Accordingly, the best choice at this point would be to give the responsibility for the coordination of the Protocol implementation to the Department for the Sea Protection of the Ministry of Environmental Protection and Nature. However, considering the current spatial planning system (in terms of hierarchy and coverage), which is based on

the principle of the holistic approach, and having in mind that when preparing and adopting physical planning documents one must consider the sensitivity of the environment of the given area, the landscape values, non-renewable and renewable resources, cultural heritage and man-made resources, as well as the totality of their mutual influences, and mutual influences of the current and planned interventions in the environment, it is obvious that in the near future the institutional framework for the implementation of the Protocol should include in equal measure the State Institute for Spatial Development, once it is established.

From all the above it is clear that the issues of coastal zone use are dealt with by several institutions within several ministries. Thus the need logically appears to create a **coordination body** that would cater for the interests of all the institutions in order to make progress in coastal zone management.

1. The Protocol on Integrated Coastal Zone Management in the Mediterranean is based on the fact that planning and management of the coastal zone, as an irreplaceable ecological, economic and social resource, with the objective of its preservation and sustainable development, is the priority obligation of all the Mediterranean countries, and beyond, and all because of the growing negative anthropogenic influences on those areas. It was signed in Madrid on 21 January 2008, and the Republic of Croatia was one of the signatories. Now that Croatia has ratified it, the Protocol has become a constituent part of the Croatian legislation. This is an international treaty, so the relevant domestic regulations have to be changed and/or updated. We should especially keep in mind the regulations related to the physical planning and land-use management domain which should enable the preservation and rehabilitation of the threatened areas of natural, cultural-historical and traditional values which make part of the coastal and hinterland landscapes, as well as other regulations relevant to environmental management. The implementation of the Protocol should be local, but also in the national context, with central financial, legal and institutional support and control. By that, the Protocol could contribute to solving the main conflict that exists between the need for a long-term sustainable use and a desire to achieve short-term profit.
2. The Adriatic Sea area with its coast and the islands hosts the most valuable and the most sensitive natural systems of Croatia. That is an area where processes that depend on mutual influence between the sea and the land take place, and the development pressures and negative influences on the natural systems are more pronounced than inland. The most intensive construction activities in that area were from the 1960s to the 1990s, and over the past 15 years. All of the analyses show that in that period 5 times more space was used, mostly of the highest natural value, than by all the previous generations. As an answer to the extreme pressures on the coastal zone, where the natural and cultural environment is at its most sensitive, in the year 2004 the Regulation on the Protection of the Coastal Zone was passed, which has been almost completely integrated into the Law on Spatial Planning and Construction, adopted in 2007.
3. One should bear in mind that, when contemplating the development, especially in the context of sustainable development of the coastal zone, we primarily refer to the need to manage growth and development, as well as sustainable use of the resources of that area, which also implies planning. At that, the main goal is to use the coastal resources and the coastal zone in such a way as to secure permanent stability of the ecosystems together with an economic growth. All that was stated above confirms the fact that the ICZM is accepted almost everywhere in the world. The opinions of its success are, however, divided and with praises there is also criticism. That is not unexpected, since the harmonisation of interests among the coastal resources users, and reaching an agreement on their use is a long-term, and often controversial, process.
4. Analysing the provisions of the Law on Spatial Planning and Construction, it can be concluded that the spatial planning in Croatia, considering its legal definitions, tradition and expert capacity, meets the prerequisites to play an important role in the implementation of the Protocol. Most of the principles on which the Protocol is based are already built in the existing system of land-use planning of which physical planning is the basic instrument.

5. For the needs of this study, the provisions of the Law on Spatial Planning and Construction (Official Gazette Nos. 76/07, 38/09, 55/11, 90/11, 50/12 and 55/12), as well as the provisions of the Law on Dealing with Unlawfully Constructed Buildings (Official Gazette Nos. 90/11 and 86/12), have been closely looked into with regard to the implementation of the Article 8 of the Protocol which says that:
 - the Parties shall establish in coastal zones, as from the highest winter waterline, a zone where construction is not allowed that may not be less than 100 meters in width, but if there are stricter national measures determining this width, those shall continue to apply.
 - the countries may allow for exceptions to the no construction zone of 100 metres if it is about the projects of public interest and if it is in areas having particular geographical or other local constraints, especially related to population density or social needs, where individual housing, urbanisation or development are provided for by national legal instruments.
6. In the same way, it is important to bear in mind that the Protocol is implemented by the principle of obligation to produce results, and not by the obligation to make best efforts. Establishing the coastal setback is an unconditional obligation and the implementation of the Protocol in good faith means that the adjustments are a possibility that must be defined by a national legal act, and with very clear criteria that can be fulfilled only in a very restricted number of cases. In other words, the setback is a rule with very few justifiable exceptions. The coastal setback must be prescribed by a national legal act and cannot be delegated on to a lower level. The type of act or document is not defined, as long as it is adopted at the national level. However, an important obligation is to inform the Organisation on the national legal instruments that enable the exceptions, or adjustments.
7. In the case of Croatia, using the exceptions have been clearly defined at the national level, and it is estimated that using the possibility of adaptation of the coastal setback to less than 100 metres, the provisions of the Article 51, paragraph 3 of the Law on Spatial Planning and Construction would be acceptable (taking into consideration the fundamental provisions of the Protocol related to the protection of valuable coastal ecosystems and landscapes, avoidance of natural risks and environmental impact assessment) when it allows that construction of one or more buildings is possible:
 - In the development area of a settlement (and within the prescribed 100 m setback), if more than 50% of the existing buildings are used for habitation by persons who permanently reside in that settlement;
 - In the zone beyond the belt of 70 m from the coastline, in the development areas and their detached parts of settlements where less than 50% of the existing buildings are being used by for habitation by persons who permanently reside in that settlement;
 - Facilities complementing tourism/catering services, in the development areas of settlements, their detached parts, and the development areas detached from the settlements, within the prescribed 100 m setback.
8. Having in mind the fact that it is estimated that within the zone of 100 metres from the coastline, but outside development areas, about 35,000 buildings have been built illegally during the period from 15 February 1968 to 11 June 2011 when survey was made, it is deemed that the consequences of the implementation of the Law on Dealing with Illegally Constructed Buildings, which allows legalisation of the abovementioned buildings and that could define those areas as exceptions, should be analysed in greater detail. It is proposed that, within a short period of time, a study be prepared with an assessment of the impacts of the

implementation of the abovementioned law, their relationship with the provisions of the Protocol, and a proposal of measures to minimise negative impacts. One of the measures that could be proposed is, for example, that the Law on Dealing with Illegally Constructed Buildings envisage that a portion of the proceeds to be collected for the legalisation be utilised to finance the preparation of plans to rehabilitate those areas, the preparation of which could be coordinated by the Ministry of Construction and Physical Planning.

9. Speaking of the provisions of the Article 51, paragraph 2, which has been in force since 10 August 2011 based on the most recent changes of the Law on Spatial Planning and Construction, and which allow that in the islands site permits and building permits can be issued for the buildings needed by registered family business in agriculture and rural tourism/catering services, provided that those are on a plot with a surface area larger than 3 ha and at least 50 metres from the coastline in the islands, and that have the gross ground floor surface area of up to 400 m² and the height of up to 5 m and/or a fully interred basement of up to 1,000 m² of the gross surface area, it is deemed that construction of the abovementioned buildings in the islands within the zone of at least 100 metres from the coastline should be limited through appropriate amendments to the Law on Spatial Planning and Construction.
10. Integrated coastal zone management in the Republic of Croatia is not formally defined by the law, and an institutional framework for preparing and implementing formal strategies and policies is missing for the time being. However, most of the principles of the Protocol and most of the instruments it proposes do, more or less, exist or are already in use in Croatia. They can be found in a number of laws and other legal acts, as well as in strategies, plans and programmes that, from different perspectives, deal with the coastal zone. Having that in mind, there are several ministries that deal with individual issues concerning the coastal zone: Ministry of Environmental Protection and Nature; Ministry of Construction and Physical Planning; Ministry of Tourism; Ministry of Maritime Affairs, Transport and Infrastructure; Ministry of Culture; Ministry of Regional Development and EU Funds; Ministry of Agriculture and Ministry of Economy.
11. Having the current state of affairs in mind, the best choice at this point would be to give the responsibility for the coordination of the Protocol implementation to the Department for the Sea Protection of the Ministry of Environmental Protection and Nature. However, considering the current spatial planning system which is based on the principle of the holistic approach, it is obvious that in the near future the State Institute for Spatial Development, whose establishment is expected shortly, should be involved in the implementation of the Protocol.
12. Departing from the fact that the institutional issues of the coastal zone use, based on the horizontal hierarchy, are dealt with by several institutions within several ministries, the need logically appears to create a coordination body that would cater for the interests of all the stakeholders in order to make progress in coastal zone management, while taking into consideration the provisions of the Protocol.

7. BIBLIOGRAPHY

- GTZ (2011.). Studija procjene učinaka Protokola o IUOP-u u Sredozemlju na Hrvatsku (neobjavljena studija).
- Ministarstvo prostornog uređenja, graditeljstva i stanovanja (1997.). Strategija prostornog uređenja Republike Hrvatske, MPUGS, Zagreb.
- Ministarstvo prostornog uređenja, graditeljstva i stanovanja (1999.). Program prostornog uređenja Republike Hrvatske Narodne novine, br.50/99.
- Ministarstvo razvitka i obnove RH (1997.). Nacionalni program razvitka otoka, Zagreb, MRORH.
- Ministarstvo regionalnog razvoja, šumarstva i vodnoga gospodarstva (2010.). Strategija regionalnog razvoja Republike Hrvatske 2011. – 2013., MRRŠVG, Zagreb.
- PAP/RAC (2012). Analysis of the Croatian legal framework in relation to the provisions of the Mediterranean ICZM Protocol, Split, PAP/RAC.
- Nacionalna strategija zaštite okoliša (2002.). Narodne novine, br. 46/02.
- Nacionalni plan djelovanja za okoliš (2002.). Narodne novine, br. 46/02.
- PAP/RAC (2010.). Procjena stanja sistema prostornog planiranja Crne Gore – implikacija provedbe članka 8. Protokola o IUOP, PAP/RAC, Split.
- Plan Bleu (2005). A Sustainable Future for the Mediterranean. The Blue Plan's Environment and Development Outlook, Earthscan, London.
- Pravilnika o sadržaju, mjerilima kartografskih prikaza, obveznim prostornim pokazateljima i standardu elaborata prostornih planova. Narodne novine, br. 106/98, 39/04, 45/04, 163/04.
- Program prostornog uređenja Republike Hrvatske (1999.). Narodne novine, br. 50/99.
- Rochette J., Wemaëre M., Billé R., du Puy-Montbrun G. (2012). A contribution to the interpretation of legal aspects of the Protocol on Integrated Coastal Zone Management in the Mediterranean, PAP/RAC, Split.
- Rochette J., Wemaëre M., Billé R., du Puy-Montbrun G. (2012). Coastal Setback Zones in the Mediterranean: A Study on Article 8-2 of the Mediterranean ICZM Protocol, Split, PAP/RAC, Split.
- Strategija održivog razvitka Republike Hrvatske (2009.). Narodne novine, br. 30/09.
- UNEP/MAP/PAP (2008). Protocol on Integrated Coastal Zone Management in the Mediterranean, Priority Actions Programme Regional Activity Centre, Split.
- Uredba o uređenju i zaštiti zaštićenog obalnog područja mora (2004.). Narodne novine, br. 128/04
- Zakon o otocima (1999.). Narodne novine, br. 34/99, 32/02, 33/06.
- Zakon o pomorskom dobru i morskim lukama (2003.). Narodne novine, br. 158/03, 100/04, 141/06, 38/09.
- Zakonom o postupanju s nezakonito izgrađenim zgradama (2011.). Narodne novine, br. 90/11, 86/12.
- Zakon o prostornom planiranju i uređivanju prostora (1980.). Narodne novine, br. 54/80, 16/86, 34/91, 49/92.
- Zakon o prostornom uređenju i korištenju građevinskog zemljišta (1973.). Narodne novine, br. 14/73.
- Zakon o prostornom uređenju (1994.). Narodne novine, br. 30/94, 68/98, 61/00, 32/02 i 100/04.
- Zakon o prostornom uređenju i gradnji (2007.). Narodne novine, br. 76/07, 38/09, 55/11, 90/11, 50/12, 55/12.
- Zakon o regionalnom razvoju (2009.). Narodne novine, br. 153/09.
- Zakon o zaštiti okoliša (2007.). Narodne novine, br. 110/07.
- Zakon o zaštiti prirode (2005.). Narodne novine, br. 70/05, 139/08.