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Commission II

Cadre juridique du droit de l'environnement pour la production agricole
– **Legal framework of environmental Law for agricultural production** – Umweltrechtliche Rahmenbedingungen für die landwirtschaftliche Produktion

National report for Serbia

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Summary

Agricultural land covers 57.6 % of overall territory of the Republic of Serbia. Budgetary investment in the environment is slow; on average (statistical data for 2001-2008 period) it amounted to 0.3% of the GDP annually. Other countries in transition assign approximately 2% of the GDP for environmental protection.

Economic sanctions, production and economic drop, as well as impoverishment have significantly reduced capabilities of the state for investment in environmental protection, but as well environmental concerns of agricultural producers. Agro-environmental measures seem to have a low priority or have remained just as a declarative issue. Uncontrolled exploitation of biological resources, conversion of native habitats to agricultural and agricultural to residential and commercial real estate, permanent air, water and soil pollution by nitrate oxides, fertilizers and pesticides makes agricultural production an increasing factor of pollution. Low and almost nonexistent agro-environmental subsidies and generally low awareness of agricultural producers is enough to conclude: although there is a basic legal framework on the control of agricultural production in the framework of environmental pollution control, the law is not fully harmonised with the EU acquis, there is no effective supervision and overlapping of duties and responsibilities within government institutions is still evident.

One of the most important steps would be introduction of integrated pest management, but also harmonisation with EU agri-environmental rules. The purpose of this Report is to present and elaborate in brief the legal framework of agro-environmental measures in Serbia.

Part 1. Presentation of the national legal structure

1. Integration of agricultural production in the constitutional system (economic and civil law rights, human rights)

Economic system in the Republic of Serbia is based on a market economy, open and free market, freedom of entrepreneurship, independence of business entities and equality of private and other types of property. The Constitution promulgates the freedom of entrepreneurship as a general rule. However, article 83. par. 2. stipulates that entrepreneurship may be restricted by the Law, for the purpose of protection of people's health, environment and natural goods and security of the Republic of Serbia. This is, as well, the legal basis for limits on agricultural producers as entrepreneurs which relate to their agricultural practices and products.

In terms of property rights, the Constitution guarantees private, cooperative and state property: all such types of property have equal legal protection.¹ The economic system of Yugoslavia was peculiar in a sense that 'communal' or 'societal' property, was the concept which did not incorporate the property of the state or local self-governments, it was the property of working people and society. Societal assets became state assets, assets of the autonomous province and assets of local self-government units. In addition, societal property, converted to state property, was subject to privatization. However, in administrative practice of privatization there were situations when cooperative property was, wrongly classified as 'societal', turned into state property and privatized. A special law regulated the issue of conversion of a societal agricultural land into other forms of ownership: Law on conversion of societal property over agricultural land in other types of property.²

State resources are natural resources and goods of public interest. Pursuant to Article 87 of the Constitution of the Republic of Serbia, natural resources must be utilised under the terms and in a manner stipulated by the respective laws. Natural and legal entities may obtain particular rights on particular goods in public use, under the terms and in a manner stipulated by the law.

Pursuant to international treaties and Article 17 of the Constitution of the Republic of Serbia, foreign nationals in the Republic of Serbia have all rights guaranteed by the Constitution and law with the exception of rights

¹ The Constitution of the Republic of Serbia, Official Gazette of RS No. 98/2006, Article 86.

² Official Gazette of RS No. 49/1992, 54/1996, 62/2006 – other law.

to which only the citizens of the Republic of Serbia are entitled under the Constitution and law. The Constitution proclaims the right of foreign natural and legal entities to obtain real estate property, in accordance with the Law or international contract. Foreigners may obtain a concession right for natural resources and goods, as well as other rights stipulated by the Law.³ Although the Constitution stipulates that foreign natural or legal persons shall be equal on the market with domestic persons,⁴ land ownership by foreign nationals is restricted. Namely, the Law on Agricultural Land explicitly forbids foreign legal or natural entity to be owner of the land.⁵ However, foreign natural entity may circumvent this rule by buying Serbian enterprise which owns land, or setting up a company under laws of the Republic of Serbia. However, this restriction is about to expire in 2014, as the Stabilisation and Association agreement Serbia signed with the EU stipulated liberalization of the regime of agricultural land ownership by foreigners.

In Chapter II on human and minority rights and freedoms, in addition to rules on general constitutional guarantees, prohibition on discrimination, right to property, right to work, Article 74 of the Constitution entitles everyone to have the right to healthy environment and the right to timely and full information about the state of environment. Everyone is obliged to preserve and improve the environment. Serbian Constitution is one among World's constitutional acts which explicitly provides for consumer protection, as it prohibits activities directed against health, security and privacy of consumers, as well as all other dishonest activities on the market.⁶

2. Integration of agricultural production in the constitutional system (liabilities of actors; public authorities and civil rights)

While generally permitting utilization and management of agricultural land, forest land and municipal building land on private assets, the Constitution of the Republic of Serbia explicitly states that the Law may restrict the models of utilisation and management, that is stipulate terms of utilisation and management, in order to eliminate the danger of causing damage to environment or prevent violation of rights and legally based interests of other persons.⁷

³ Constitution of the Republic of Serbia, Article 85.

⁴ Constitution, Article 84. par. 2.

⁵ Official Gazette of RS, No. 62/2006, 65/2008, 41/2009, Article 1. par. 3.

⁶ Constitution, Article 90.

⁷ Constitution of the Republic of Serbia, Article 88. par. 2.

The Constitution has explicitly recognized that the Republic of Serbia has the competence to provide for the following: sustainable development; system of protection and improvement of environment; protection and improvement of flora and fauna etc. Article 97 of the Constitution represents a clear legal basis for the activities related to sustainable development and protection. The Constitution also represents a legal basis for delegation of public powers and public services, which may be delegated to enterprises, institutions, organizations and individuals, and specific bodies through which they perform regulatory function in particular fields of affairs.⁸ This is the legal basis not only to establish competences of specialized bodies of Government or broader, public administration bodies, but also third parties, notably the accredited certification bodies which have a control function in enforcing environmental and good agricultural practice standards.

Moreover, article 190 of the Constitution which refers to competences of municipalities provided that municipalities are, among other competences, “responsible for environmental protection, protection against natural and other disasters, ...protection, improvement and use of agricultural land”.

3. The structure of specialized bodies and courts

The Ministry of Agriculture, Forestry and Water Management of Serbia is a central governmental body in charge of agricultural policy. It consists of several Sectors, departments and administrations, among which the following are most relevant: Veterinary Administration, the Plant Protection Administration, Forestry Administration, the Administration for Agricultural Land, the Unit for Organic Production, the Administration for Agricultural Payments, Water Directorate. Agricultural Advisory Services of Serbia and Agricultural Advisory Services of the Autonomous Province Vojvodina are closely linked to the Ministry in terms of oversight and funding.

The Government of the Republic of Serbia is obliged to set up the Agricultural Council, which should consist of farms, family farms, associations of agricultural producers and other representatives of agricultural production chain. This should be a consultative body and monitor the realisation of the Strategy of agriculture and rural development. However, it is not operational.

⁸ Constitution, Article 137.

The Ministry of Energy, Development and Environmental Protection of the Republic of Serbia has two important departments in charge of environmental protection: Environmental Protection Department and Department for Planning and Management in Environmental Sector. Within the Environmental Protection Department there are special units such as Water Protection Unit, Air Protection Unit, Unit for the Protection of Biodiversity, Unit for Protected Natural Areas, the Unit for Implementation of Natura 2000. However, most of these units do not have appropriate enforcement powers, they are primarily engaged in monitoring and evaluation of agricultural measures. Department for Planning and Management in Environmental Sector is committed to promotion and evaluation of environmental standards. It has several units and groups focused on particular issues, such as environmental impact analysis, noise and waste management etc. Within this Ministry is the Agency for Environmental Protection, which monitors and informs the public about certain indicators of environmental protection and maintains the national register of the sources of pollution.

The judicial power in Serbia belongs to the courts, which are separated from other two branches and independent in their work and should perform their duties in accordance with the Constitution, Law and other general acts, when stipulated by the Law, generally accepted rules of international law and ratified international conventions. The Law on Court Organisation establishes the basis for court organisation and jurisdiction.⁹ Courts in Serbia are either courts of general jurisdiction or special courts. Proceedings in both types of courts are similar.

Currently, there are three types of courts of general jurisdiction in Serbia: basic courts, higher courts and the Supreme Court of Cassation. Jurisdiction of basic courts is limited to the territory of one or several municipalities. They primarily deal with civil cases involving natural persons. In some cases, their jurisdiction may extend to legal persons if the dispute concerned does not arise from a commercial activity. Municipal courts are also the courts of first instance in certain criminal cases. Higher courts, previously known as district courts, have original jurisdiction over cases involving the infringement of intellectual property rights (where at least one party is a natural person), some family law issues and over some criminal cases etc. They also act as appellate courts with respect to decisions of municipal courts within their territorial jurisdiction. Appellate courts' territorial organization covers territorial areas of several basic courts, their seats are in four cities: Belgrade, Novi Sad, Nis and Kragujevac. These courts deal are generally competent to

⁹ Official Gazette of RS, No. 116/2008, 104/2009, 101/2010, 31/2011, 78/2011 – other law and 101/2011.

decide on appeals against decisions of higher courts, and upon appeals on certain judgments of basic courts.

In accordance with the Constitution of the Republic of Serbia and the Law on Court Organization the Supreme Court of Cassation is the court of last resort. This court reviews and possibly overturns previous rulings made by lower courts and has significant powers in harmonising the practice of the courts in Serbia. It is vested with the power to bring a decision on the jurisdiction of courts in cases of conflicts of jurisdictions.

Courts of special jurisdiction are the following: commercial courts, Appellate Commercial Court, Misdemeanour Courts, High Misdemeanour Court and Administrative Court. There is a traditional distinction in Serbia between commercial courts and courts of civil (general) jurisdiction. Commercial courts have original jurisdiction over disputes arising from commercial activities, including those stemming from commercial aspects of intellectual property. Their jurisdiction extends to both legal and natural persons engaged in commercial activities, in cases where both parties are economic operators (when they are parties to commercial contracts). When only one of the parties is an economic operator and the other is not, such disputes are, as a general rule, decided by courts of civil (general) jurisdiction and not by commercial courts. Commercial courts in Serbia are organized on two levels as: commercial courts of first instance and Appellate Commercial Court, deciding on an appeal to a lower court decision. As infringements of environmental rules may represent an offence, commercial courts are very important in the field of enforcing environmental protection legislation.

Punishable acts which do not imply such level of public concern as offences are misdemeanours. In cases when there is no administrative organ to take injunctions and measures including pecuniary fines, misdemeanour courts may have jurisdiction when stipulated by the applicable law. Breach of many provisions of environmental laws and legislation related to agriculture, and provisions related to animal and plant health, food safety etc., are sanctioned as misdemeanours. Higher Misdemeanour Court decides on appeals against decisions of misdemeanour courts.

The Administrative court has jurisdiction over administrative disputes. The Constitutional Court is an autonomous and independent state body which protects constitutionality and legality, as well as human and minority rights and freedoms which functioning is based on the

Constitution and the Law on Constitutional Court.¹⁰ Proceedings of assessing the constitutionality may be instituted by state bodies, bodies of territorial autonomy or local self-government, as well as at least deputies of the National Parliament. The procedure may also be instituted by the Constitutional Court itself.

Part 2. Regulation and control of agricultural production

4. Describe briefly the national legislation on the position and responsibilities of agricultural operators

The Law on Agriculture and Rural Development is systemic sector specific law, setting the basic definitions, rights and responsibilities of agricultural producers, including a duty to respect environmental and animal health and welfare legislation. The law differentiates between farms in general and family farms, including commercial and non-commercial family farms. The data on all farms, including companies, cooperatives, entrepreneurs and individual family farmers are recorded in the Register of agricultural producers. This law prescribes competences of agricultural inspectors and responsibilities of agricultural producers in the process of inspection of their premises, agricultural goods and inputs.

Law on Agricultural Land prescribes rules on planning, protection, management and use of agricultural land, surveillance of its application and other issues relevant to protection, maintenance and use of agricultural land, which is considered to be the resource of general interest.¹¹ This law also sets the criteria on the use of arable land for non agricultural purposes, including the creation of artificial meadows and pastures and planting forests. A general duty of owners and users of agricultural land is set out in article 59 of this Law: a) the duty to regularly use the arable land and apply measures prescribed by this or other laws, 2) to act as a good host in accordance with the rules of the code of good agricultural practice. Arable land of first to fifth cadastre class may not be used for purposes out of agricultural production, except when there are exceptions established by law.¹² The destruction and damage to crops, plants, trees and any damage to agricultural land is prohibited, including burning of residues after harvest on agricultural land.¹³

Law on Plant Protection stipulates rules on protection and improvement of plant health, measures to prevent the introduction, detection, prevention and control of contaminants of harmful organisms, and

¹⁰ Official Gazette of RS, No. 109/2007, 99/2011.

¹¹ Official Gazette of the Republic of Serbia, No. 62/2006, 65/2008, 41/2009.

¹² Law on Agricultural Land, Articles 22-25.

¹³ Law on Agricultural Land, Article 28.

conditions for production, processing, import and storage of plant products and requirements to objects related to plant activities.¹⁴ The law specifies in particular duties of plant holders to examine and monitor the health of plants, including storage and processing facilities, suppress harmful organisms, undertakes plant protection measures, maintains the evidence on undertaken measures, plant treatment and utilized products and undertakes measures which are proposed by phytosanitary inspection or other bodies.

Law on Plant Protection Products specifies general rules and conditions for the application of plant protection substances.¹⁵ Articles 44 and 45 of this Law specify that the use of such substances should be in accordance with the declaration and instruction for use, “in accordance with principles of good agricultural practice and integral plant protection”, and in the manner which does not cause threats to the environment. The use of such substances shall be forbidden if utilized in a manner which could cause the pollution of premises, facilities, water, waterfronts, protected areas, toxic to bees etc. The user of such substances must be qualified to utilize plant protection substances and is responsible for all activities and safeguard measures with regard to utilization of plant protection substances, related to human and animal health and environment. Residues in food and animal feed must not exceed quantities prescribed in implementing regulations, and are prescribed by the minister in charge of agriculture, upon consent of the minister in charge of health. The Minister of Agriculture, Forestry and Water Management prescribed also methods of sampling and testing residues. However, the new law is in the pipeline, as the law of 2009 was based on the Directive 91/414/EEC which is not applicable as of June 2011., and is replaced by the Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the markets. The new law should also be in line with the Regulation (EC) No 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, Regulation (EC) No 396/2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin, Directive 2009/128/EC establishing a framework for Community action to achieve the sustainable use of pesticides, Directive 2009/127/EC on the machinery for pesticide application, Regulation (EC) No 1185/2009 concerning statistics on pesticides. The new law should lay down new rules for the authorization of plant protection products, establishment of maximum residue levels of active substances of plant protection products and their control. With regards to plant and soil nutrition, the Law on

¹⁴ Official Gazette of RS, No. 41/2009.

¹⁵ Official Gazette of RS, No. 41/2009.

Plant Nutrition and Soil Nutrients regulates quality, control and application of plant and soil nutrients.¹⁶

Law on Organic Production sets criteria for production in line with methods of organic production, control and certification in organic production, processing, labelling, storage, transport, export and import, as well as other questions related to organic production.¹⁷

Besides laws within the competence of the ministry in charge of environment, which are referred to below, a number of other laws and regulations issued by the ministry in charge of agriculture also regulate activities of producers and processors, such as Law on Food Safety, which sets basic conditions for the safety of food and animal feed, duties and responsibilities of business subjects in the food sector, hygiene and quality of food and feed.¹⁸

Law on Animal Husbandry,¹⁹ obliges agricultural producers to respect the needs of animals in cultivation, in accordance the Law on Animal Welfare and regulations on healthcare and animal welfare. The Law on Animal Husbandry has detailed provisions on the procedures of breeding and generally introduced the principle of good breeding practice to ensure animal welfare, maintenance of soil fertility and food safety. Pursuant to its Article 52, the breeder must be qualified and have basic knowledge on the treatment of animals, nutrition, quality of products of animal origin and treatment of livestock fertilizer.

Law on Animal Welfare,²⁰ introduces a general rule on the behaviour of animal owner or breeder to act as a good host and ensure proper conditions for holding of animals and care. However, although the law is mostly aligned to EU legislation, in practice some of its rules, notably on animal slaughter, are not fully obeyed.

Act on wildlife and hunting,²¹ Law on Protection and Sustainable Use of Fishing Resources,²² Law on Forests are also relevant.²³ There are many strategies and programmes referring to duties of agricultural produces and those involved in the chain of agricultural production, such as the National Strategy for Sustainable Development and Action Plan for its Implementation 2009-2017, however, many of the proposed actions have not been fulfilled.²⁴

¹⁶ Official Gazette Official Gazette of RS, No. 41/2009.

¹⁷ Official Gazette of RS 30/2010.

¹⁸ Official Gazette of RS, No. 41/2009.

¹⁹ Official Gazette of RS, No. 41/2009, 93/2012.

²⁰ Official Gazette of RS, No. 41/2009

²¹ Official Gazette of RS, No. 17/2009.

²² Official Gazette of RS, No. 36/2009.

²³ Official Gazette of RS, No. 30/2010.

²⁴ Official Gazette of RS, No. 57/2008.

5. Is there a legal distinction between traditional farms and industrially organized units in relation to the control of environmental impacts?

In general, the Law on Agriculture and Rural Development does not formally differentiate between industrially organized units and traditional farms. Pursuant to Article 2 of this Law, the notion 'farm' means a production unit where a company, agricultural cooperative, an establishment or the other legal entity, entrepreneur or a farmer performs agricultural production. Family farm, on the other side, is the farm where a physical person – agricultural producer, performs agricultural production together with family members. Such person is defined as farm holder, and is registered in the Register of Farms. The law stipulates that agricultural producer who is the holder of a family farm or a member of the household shall exclusively perform agricultural production. Family farm may be registered as a commercial family farm and non commercial family farm, which holder is a retired agricultural producer.

Both categories of farms are entitled to subsidies for the sustainable rural development, except non-commercial family farms.²⁵ The differences, however, exist in relation to some duties related to fulfilling sanitary requirements, the safety of food products and some other issues, where requirements for traditional farms may be simplified. This includes the tax on agricultural land. Penal provisions of laws applicable to agricultural production often differentiate between offences and misdemeanours performed by family farms and other forms of agricultural producers in a sense that pecuniary fine is lower for family farm.

6. The general environmental rules and principles concerning agricultural production

Within a short period after turbulent 90s, as of democratic changes and notably 2001, Serbia has ratified most of the significant global and regional environmental conventions, adopted a new set of laws in the field of the environmental and nature protection.

Law on Environmental Protection regulates the integral system of environmental protection in order to ensure healthy environment.²⁶ It refers to the system of environmental protection which comprises measures, conditions and instruments for sustainable management,

²⁵ Law on Subsidies for Agriculture and Rural Development, Article 37. par 2.

²⁶ Official Gazette of RS, No. 135/2004.. 72/2009.

prevention, control and reduction of all kinds of environmental pollution. Among issues relevant for agricultural policy, the Law specifically relates to protected natural goods (such as landscapes), biological diversity as genetic, species and ecosystems diversity, and public natural goods, such as water-fronts, forests etc. The Law introduces the following basic principles of environmental protection: integration principle, principle of prevention and precaution, principle of natural values preservation, principle of sustainable development, principle of liability of polluter and its legal successor, principle polluter pays, principle user pays, principle of subsidiary liability, principle of applying incentive measures, principle of public information and participation, principle of protecting the right to healthy environment and to access of justice.²⁷ Agricultural production is for sure the addressee of provisions of this Law on planning and utilization of natural values, and is referred to in the National Strategy of Sustainable Use of Natural Resources and Goods. Article 22 of this Law explicitly prescribes protection of land and soil and its sustainable use, including measures of systematic monitoring of land quality and monitoring of indicators for the assessment of risk of land degradation, while Article 23 refers to water protection and its use in the manner and up to the level which shall not represent threat to natural processes or to renewal of quality and quantity of water.

Law on Nature Protection²⁸ governs protection and conservation of nature and biological, geological and landscape diversity. Many of its provisions are relevant for agriculture. Article 18 establishes main principles of protection of forest, wet and water ecosystems and habitats within agro ecosystems.

When entitled to subsidies, article 18. par. 2. of the Law on Agriculture and Rural Development obliges the producer to respect regulations which set standards of environmental protection, protection of public interest, plant and animal health and safety, animal welfare and protection of agricultural land. If, on the basis of official inspection records or reports by authorized bodies it has been proved that the producer acted contrary to this requirement, by purpose or negligence, the Administration for Agricultural Payments is entitled to decrease the amount of subsidy or limit the producer's right to one or several types of subsidies in the future.²⁹ Unfortunately, this remains a letter on the paper, as the monitoring system is ineffective.

The Law on Agricultural Land explicitly prescribes that the code of good agricultural practice is to be prescribed by the Minister in charge of agriculture, which has not yet been prescribed! The Minister is also

²⁷ Law on Environmental Protection, Article 9.

²⁸ Official Gazette of RS No. 36/2009, 88/2010, corr. 91/2010.

²⁹ Article 18 of this Law is practically repeated in Article 10 of the Law on Subsidies for Agriculture and Rural Development, Official Gazette of RS, No. 10/2013.

entitled to prescribe the allowed quantity of allowed amounts of hazardous and harmful elements in agricultural land and irrigation water and the method of their testing, but also technical and other conditions for the examination of the control of fertility and the use of mineral fertilizers and pesticides.³⁰ This law sets the general duty to use the agricultural land for agricultural purpose and forbids discharge and disposal of hazardous and harmful substances on agricultural land and the drainage canals and irrigation, as well as use of non biodegradable films on arable farmland.³¹ The determination of existence of dangerous and harmful matters in agricultural land and water for irrigation has to be in line with the Programme issued by the Minister in charge of agriculture. If the existence of hazardous and harmful matters above the allowed limit is detected, the Ministry shall ban or limit the production at that land or the use of such water.³²

Article 21 of the Law on Agricultural Land prescribes the basic requirement that the owner or user of the agricultural land, from first until fifth cadastre class, shall control the fertility of arable land and keep the record of the amount of ingested mineral fertilizers and pesticides. Fertility assessment of arable land and the control of ingested mineral fertilizers and pesticides have to be done when needed, but at least every five years.

The Law on Organic Production sets basic principles: the principle of management of natural and biological processes, in line with sustainable practices; the principle of limited use of external inputs; the principle of strict limitation to the use of chemical synthetised inputs; the principle of adjustment to regional and local specificities; the principle of maintenance and improvement of natural characteristics of soil, biological diversity and ecosystem.³³

7. The environmental impact of subsidies of the CAP on agriculture and forestry

The Administration for Agricultural Payments, established by the Law on Agriculture and Rural Development³⁴ within the Ministry of Agriculture, Forestry and Water Management is the administrative body in charge of procedural issues, including the entitlement to a subsidy, administrative control and maintenance of the register of farms. One of its competences is to deliver reports and analyses to the Minister, however it does not

³⁰ The regulation is based on Article 80 of the Law on Agricultural Land.

³¹ Article 16 of the Law on Agricultural Land.

³² Article 17 of the Law on Agricultural Land.

³³ Law on Organic Production, Article 6.

³⁴ Official Gazette of RS, No. 41/2009, 10/2013, Article 8.

have an explicit mandate to monitor the environmental impact of subsidies on agriculture and forestry. The bodies of local self-government and the Autonomous Province of Vojvodina are entitled to determine local, municipal, subsidies to agricultural producers on their territory, which have to be in line with the National Programme on Rural Development.

Serbian legal framework, attempting to approximate with the EU acquis and CAP, allows for three types of subsidies: direct payments, market support and structural measures. The dominant form of subsidies are direct payments, however the monitoring system of whether farmers live up to standards for environmental protection and animal health and welfare is underdeveloped. Therefore, it is very hard to ascertain whether farmers are rewarded for providing environmental services in public interest, and to what extent subsidies have environmental impact. Rural development measures, as the type of structural subsidies aim at improvement of the environmental protection programmes, preservice of biodiversity and improvement of life in rural areas. The Law on Subsidies to Agriculture and Rural Development specifies the following categories of subsidies for sustainable rural development: 1) subsidies for implementation of agricultural measures; 2) subsidies for organic production; 3) subsidies for preservice of plant and animal genetic resources; 4) payments for the profit lost due to implementation of good agricultural practices, animal welfare and other environmental protection policies.

8. How do those subsidies take into account the safeguard of biodiversity?

Genetic agricultural resources in Serbia are rich and include a large number of autochthonous sorts and races of cultivated plant and animal species. Serbia has been a Party to the United Nations Convention on Biological Diversity since 2001. Under the Convention adopted at the UN Conference on Environment and Development in Rio de Janeiro in 1992, biodiversity is defined as “the variability among living organisms, including, inter alia, terrestrial, marine and other aquatic ecosystems of which they are part: this includes diversity within species, between species and of ecosystems”. Serbia has committed itself to three main objectives of the Convention: the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of benefits. A precondition to the effective subsidies for safeguarding biodiversity is classification and monitoring. Unfortunately, the existing level of biodiversity monitoring in Serbia is incomplete and inhomogeneous. Indicators for measuring biodiversity are non-standard and therefore not sufficiently comparable with the data in the region and

Europe. In the last 10 years Serbia ratified almost all the most important global and regional conventions. The first act attempting to regulate biodiversity is the Regulation on the Protection of Natural Rarities of 1993.³⁵ Ordinance to designate and protect strictly protected and protected wild plants, animals and fungi³⁶, Regulation on the placing under the control of trade of wild fauna and flora³⁷ are examples of legal instruments to protect biodiversity. However, nature conservation, incorporation and effective policy towards biodiversity issues are not put high in agenda.

As above stated, the Law on Subsidies for Agriculture and Rural Development recognizes subsidies for preservice of plant and animal genetic resources. However, the existing system of subsidies does not appropriately take into account the importance of biodiversity. Looking for the profit, agricultural producers are induced to use hybrids, and sometimes even some invasive species. The future of subsidies related to biodiversity for sure lies within subsidies for organic production, as small family farms could be the best keepers and producers of old sorts.

Part 3. Specified environmental rules for agricultural production

9. The position of agricultural production in the framework of environmental pollution control

Economic sanctions, production and economic drop, as well as impoverishment have significantly reduced capabilities of the state for investment in environmental protection, but as well environmental concerns of agricultural producers who are primarily led by profit. The obstacle to effective implementation of environmental rules in agricultural production is the economic pressure. Agro-environmental measures seem to have a low priority or have remained just as a declarative issue. Uncontrolled exploitation of biological resources, conversion of native habitats to agricultural and agricultural to residential and commercial real estate, permanent air, and water and soil pollution by nitrate oxides, fertilizers and pesticides makes agricultural production an increasing factor of pollution. Main pressures on environment and biodiversity are intensified agricultural production, conversion of large areas to monocultures, the use of chemical agents, and conversion of native habitats to agricultural or commercial uses.

Low and almost nonexistent agro-environmental subsidies and generally low awareness of agricultural producers clarifies that conclusion:

³⁵ Official Gazette of RS, No. 50/1993.

³⁶ Official Gazette of RS, No. 5/2010.

³⁷ Official Gazette of RS, No. 31/2005, 9/2010.

although there is a basic legal framework on the control of agricultural production in the framework of environmental pollution control, the appropriate system of incentives and control has to be built. In the field of environmental pollution control diversification and overlapping of duties and responsibilities within government institutions is still evident, although to a lesser degree since the new environmental legal framework of 2009 has been in force. One characteristic of the institutional framework is diversification and overlapping of duties and responsibilities, and a pice-meal control of environmental protection issues which cause coordination problems both horizontally (cross-sectoral issues) and top down (Republic to local self-governance).

Agricultural land covers 57.6 % of overall territory of the Republic of Serbia. One of the key challenges for Serbia and its agricultural system is how to reconcile environmental considerations with economic development, insufficient public budget and interests of economic operators, notably food exporters, to achieve the real implementation of environmental rules related to agricultural protection.

In addition to the ineffective monitoring and reporting system and insufficient institutional capacities, insufficient capacity in surveying the legislation implementation, insufficiently efficient inspection supervision, and inadequate sanctioning system are major obstacles. On the other hand, deteriorating factor is the ineffective system of financing of environmental protection and the lack of economic incentives – budgetary investment in the environment is slow, on average (statistical data for 2001-2008 period) it amounted to 0.3% of the GDP annually. Other countries in transition assign approximately 2% of the GDP for environmental protection. Low level of awareness related to the environment, insufficient education and inadequate participation of general public in decision making is also evident.

One of the most important steps would be introduction of integrated pest management, as the process which entails careful consideration of all available plant protection methods (biological, biotechnological, chemical, agro technical or enrichment measures for plant cultivation), integration of appropriate measures that discourage the development of populations of harmful organisms and keep the use of plant protection products and other forms of intervention to levels that are economically and ecologically justified and reduce or minimise risks to human health and the environment and the least possible disruption to agro-ecosystems. Hopefully, the Draft Law on Plant Protection Product will serve as a legal basis.

10. Planning provisions and mandatory licenses for the location of production units

Space management, use of natural resources and goods determined by special and urban building plans which are obligatory pursuant to the Law on Environmental Protection, include plans for the use of agricultural land, forests and water plans. Such plans are based on the duty to maintain natural resources, their rational use and renewal, protection of nature and the environment, including habitats of wild plants and animal species. Article 34 of the Law on Environmental Protection prescribes that space and urban plans shall ensure measures and conditions of protection of the environment. The Republic of Serbia, Autonomous Province Vojvodina and municipalities are entitled to stipulate the conditions and measures of environmental protection which are constituent parts of the application for the approval of the environmental conditions which are needed for urban plans. This is especially the case for permits related to production, when additional criteria may be imposed, such as information on planned production process and equipment, wastewater etc. Building of production units may presuppose preliminary process of environmental impact analysis, when provisions of regulation establishing the list of projects for which the impact should be assessed stipulate that such analysis may be required by the Law on Environmental Impact Assessment.³⁸ Law on Strategic Environmental Impact Assessment³⁹ has introduced a proactive instrument of strategic impact analysis for plans and programs for the use of agricultural land, agricultural activity, forestry, fishery, hunting, industry etc. On the basis of the Law on Integrated Environmental Pollution Prevention and Control,⁴⁰ building of certain objects or industrial activities requires an integrated permit, however agricultural activities objects *stricto sensu* are not enumerated, unless it relates to chemicals and waste management.

Law on Agricultural Land generally establishes the planning acts on the protection, management and use of agricultural land for the territory of the Republic of Serbia and the Autonomous Province of Vojvodina and stipulates the content of the Agricultural Base as strategic planning document and the Annual Programme of Land Protection, Management and Use for the territory of the Republic of Serbia and the Autonomous Province of Vojvodina.⁴¹ The Administration for Agricultural Land

³⁸ Official Gazette of RS, No. 135/2004, 36/2009.

³⁹ Official Gazette of RS, No. 135/2004, 88/2010.

⁴⁰ Official Gazette of RS, No. 135/2004.

⁴¹ Law on Agricultural Land, Articles 5-7.

monitors the realization of the Annual Programme and has a number of activities related to planning, protection and use of agricultural land. Article 60 par. 2. of the Law on Agricultural Land prescribes a duty of municipalities to issue the Annual Programme of land protection, management and use on their territories. This Programme is adopted by the municipal assembly, upon prior approval by the Ministry of Agriculture, Forestry and Water Management. This Programme contains all types and extent of works to be done in a calendar year and various data, such as total area of arable land, quality of the land and seeded plants; data on irrigation and drainage, land users, owners and tenants of agricultural land including state owned land, the state of protection, management and use of the land and other data prescribed by the law, municipal statute and municipal acts.

Law on Planning and Construction deals with the following: the conditions and modalities of spatial planning and development, the development and use of buildable land and the construction facilities, landscaping and use of buildable land and construction of facilities.⁴² This law applies to facilities, auxiliary facilities (such as septic tank, cisterns) and buildings which include agricultural facilities, buildings for storing and guarding animals, goods, equipment, including industrial buildings. The law also applies to economic facilities, as the buildings for livestock rearing; supporting facilities for raising domestic animals, fodder and feed storage facilities, produce storage facilities etc. In accordance with the Law on Animal Welfare, objects for animal keeping have to be in line with criteria specified by the Minister in charge of agriculture, and should be recorded in the Registry of objects kept by the Ministry of Agriculture, Forestry and Water Management.⁴³ Similarly, the Law on Plant Health authorised the Minister to prescribe criteria for subjects who are recorded in the Registry of producers, processors, importers, storekeepers and traders of plant products as well as related objects.⁴⁴

For the majority of agricultural objects the procedure for issuing location and building permits does not differentiate from the other buildings and facilities, unless the economic objects on farms has more than 600 square meters. For some economic facilities in agriculture, such as simple objects, small garden pools and fish ponds, cattle pits and similar, there is no need to apply for the permit.⁴⁵ The technical application, planning documents and project have to be in line with municipal spacial plans and

⁴² Official Gazette of RS, No. 72/2009, 81/2009 – corr. 64/2010 – Constit. Court, 24/2011, 121/2012 and 42/2013 – Constit. Court.

⁴³ Law on Animal Welfare, Article 18.

⁴⁴ Law on Plant Health, Article 5.

⁴⁵ Law on Planning and Construction, Article 144.

plans for the use of agricultural land, and prove that there should be no adverse effects to the environment. Environmental concerns are constituent part of the feasibility study of construction project, when such study is required for an object. For certain big infrastructure objects or objects for certain industries such as chemical, metal etc., the procedure shall directly be lead by the Ministry in charge of spatial planning, which issues the building permit. When certain objects such as wind turbines, small hydrocentrales are built on agricultural land, the approval by Ministry in charge of agriculture must be assured.

Public storages of agricultural goods are regulated by the Law on Public Storages of Agricultural Goods, which sets criteria for licensing public storages, their inscription to the Registry of public storages, conditions and manner of their use, and other relevant issues for their operation.⁴⁶

Part 4. Mechanisms of environmental law

11. Please describe briefly existing measures for

- The national transposition of the Nitrates Directive 91/676/EEC

Nitrates Directive of 1991 forms an integral part of the Water Framework Directive (Directive 2000/60/EC) which aims to protect water quality across Europe by preventing nitrates from agricultural sources polluting ground and surface waters and by promoting the use of good farming practices. Serbia still has not fulfilled the main requirements set out in the Nitrates Directive 91/676/EEC. This is, among other problems, a practical consequence of the inability to fulfil the goals set out in the EU Water Framework Directive. The implementation of Nitrates Directive and Communal Wastewater Directive 91/271/EEC requires high costs of approximation with the EU acquis and it is certainly one among most urging issues in the field of agro-environmental measures.

Official statistical data on communal infrastructure shows that among 2,5 million of households, only 1,3 million is connected to public drainage. It has been announced that Serbian Law on Water shall be revised until 2014. Estimates of the cost of building infrastructure to decrease water pollution due to agricultural production is around 0,9 billion EUR. One of the most important steps would be to determine nitrate sensitive zones. There is no reliable data on the use of fertilizers in the Republic of Serbia and the use of plant protection substances. Some reports show the decrease of nitrate and phosphorus fertilizers production, and increase in mixed fertilizers production and use.⁴⁷

⁴⁶ Official Gazette of RS, No. 41/2009.

⁴⁷ Fourth National Report to the United Nations Convention on Biological Diversity, Ministry of Environment and Spatial Planning of the Republic of Serbia, 2010, p. 30.

- **The regulation of water and soil based nutrients**

Law on Plant Nutrition and Soil Nutrients contains detailed rules on approval of plant nutrition and soil nutrients, duties of the producer, distributor and importer which have to be registered in an official register kept by the Ministry of Agriculture, Forestry and Water Management. Plant, water and soil nutrients have to be registered and may be put into the market if they are approved, registered and properly marked. Plant producer is obliged to maintain the evidence on the use of plant and soil fertilizers, in line with the elements of good agricultural practice, which are yet to be prescribed by the Minister.⁴⁸ Ammonium-nitrate fertilizers with high level of azotes are subject to special rules for putting such fertilizers on the market. The Minister is authorized to prescribe characteristics of ammonium-nitrate fertilizers, and methods of testing.⁴⁹ In addition to the Rulebook on methods of examination of nutrients⁵⁰ the implementing legislation includes rulebooks on the registration of plant and soil nutrients, conditions of their storage, quality assessment and minimal and maximal values of nutrients, content of declaration, packaging etc. Active substances, safeners and synergists, co-formulants and some other issues will, hopefully, be regulated in the new Law on Plant Protection Products. The draft of it foresees specific measure to protect the aquatic environment and drinking water, and gives the Administration for Plant Protection the power to prescribe the measures, allow or forbid certain nutrients, prescribe buffer zones, mitigation measures which minimize the risk of off-site pollution caused by spray drift, drain-flow and run-off.

At this moment, Serbia has not fully implemented the Urban Waste Water Directive (Directive 91/271/EZ), especially pre-authorisation of discharges from the food-processing industry and industrial discharges into urban wastewater collection systems. Law on Waters⁵¹ regulates the conditions for the use of water for irrigation and the quality of such water, taking into account the type of arable land, means of irrigation as well as the plant. The Minister of Agriculture, Forestry and Water Management is entitled to prescribe conditions for the use and quality of such water.⁵²

⁴⁸ Law on Plant Nutrition and Soil Nutrients, Article 28.

⁴⁹ Rulebook on characteristics of ammonium-nitrate fertilizers, Official Gazette of RS, No. 70/2010.

⁵⁰ Official Gazette of RS, No. 56/2010.

⁵¹ Official Gazette of RS, No. 30/2010.

⁵² Law on Waters, Article 83.

- **The treatment and disposal of farm-based sludge**

Directive 86/278/EEC on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture, is not implemented in Serbia. This would be of ultimate importance for the environment and health of Serbian consumers, as there is no appropriate control of farm-based sludge which is sometimes used on soil in which fruit and vegetable crops are growing and areas where the EU Directive prohibits the use of sludge. Law on Waters, on the other side, establishes a duty to treat wastewater in line with the set limits, taking into account environmental standard and to monitor sewage including biochemical and mechanical parameters of the quality. It is the competence of municipalities to prescribe conditions for the discharge of sewage.⁵³

Although the Ministry of Energy, Development and Environmental Protection has leading role in regulation and oversight of the waste disposal,⁵⁴ municipalities have significant competences in regulation and oversight of the treatment and disposal of farm-based sludge. The Environmental Protection Agency is monitoring waste management, while practical implementation of waste collection and management is the responsibility of local self-governance, which may confer certain powers to private entities.

Law on Animal Husbandry specifies the main regime of the treatment of animal waste (faeces and urine) and its use as fertilizers. Animal waste as well as the compost used as soil fertilizer is not considered waste. The minister of agriculture and the minister of environment are entitled to prescribe the treatment of animal waste management which is not to be used as fertilizer. Animal waste must be treated in a way which does not endanger human health and the health of animals, environment and the quality of food.⁵⁵

In line with the Law on Waste Management,⁵⁶ the Rulebook on categorisation, examination and classification of waste, and the Catalogue of Waste classifies all waste from agricultural production and processing under classification 2 „Waste from agriculture, horticulture, aquaculture, forestry, hunting, fishery, food preparation and processing“. For each type of the waste recommended procedures and methods of treatment and disposal are prescribed.

⁵³ Law on Waters, Article 98-99.

⁵⁴ The administration of the Autonomous Province of Vojvodina is in charge of waste disposal local regulation and oversight at its territory.

⁵⁵ on Animal Husbandry, Articles 55-56.

⁵⁶ Official Gazette of RS, No. 36/2009 and 88/2010.

12. Supervision system of nuisances to neighbourhood (smell, noise, pesticides, insects)

As stated above, every user of arable land has a duty to determine the fertility of arable land and control mineral fertilizers and pesticides.⁵⁷ The control of the examination of agricultural land, inputs used in production of primary agricultural products and water used for irrigation may be performed by state owned institutes and private bodies which have been authorized by the Minister for Agriculture, Forestry and Water Management. However, the prescribed penalties are misdemeanours and the pecuniary fine and this range from 20,000 to 200,000 dinars, while for certain punishable conduct 1,000,000 dinars. Therefore, it is hard to say that a sanction has the appropriate preventive effect, as the maximum which may be imposed for a serious misconduct is less than 10,000 EUR. The competence supervision over the application of laws related to agricultural land and implementing regulations is granted to the republic agricultural inspection. Supervisory powers of inspectors encompass the control of the means of use of arable land, acting in line with the good agricultural practice, control of discharge and disposal of hazardous and harmful substances on agricultural land and the allowable limit of hazardous and harmful substances, including pesticides. The agricultural inspector has also the power to control entities which are authorized by the Minister to conduct examinations and control of producers for the above. The inspector is given the powers and injunctions to ban the production and order the appropriate conduct of the producer, or to initiate proceedings before courts.

Law on Plant Health represents a legal base for conferral of public interest by administrative contract in the field of diagnostics and plant protection to legal entities which may be state or private, upon harmonized methods and guidelines by the National Reference Laboratory.⁵⁸

Regarding the use of pesticides, the Law on Plant Protection Products established strict criteria for services in the area of plant protection, both advisory and operational services. After all requirements are fulfilled, the service provider shall be recorded in the Register kept by the Ministry of Agriculture, Forestry and Water Management. The supervision over activities of service providers and generally, the application of the Law on Plant Protection Products and implementing legislation is the competence of phytosanitary inspectors. Law on Plant Nutrition and Soil Nutrients entitles phytosanitary inspectors to perform control over the use of nutrients. In terms of supervision of pesticides, the new Draft law on

⁵⁷ Law on Agricultural Land, Article 21, par. 1-2.

⁵⁸ Law on Plant Health, Articles 18-20.

Plant Protection Products aims to harmonise Serbian agro-environmental legal framework with the Regulation (EC) 396/2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and implementing rules.

Law on Protection from Noise in the Environment,⁵⁹ among other sources of noise, applies to the noise from the activities of neighbouring households. Competences related to noise protection are distributed among the Agency for Environmental Protection (indicators, evidence and databases), the Ministry in charge of environment, Autonomous Province and municipalities. Municipalities adopt local action plan of noise protection and supervises the control of the application of noise protection measures. Supervisory system includes republic and local environment protection inspection and state or private bodies authorized to perform noise monitoring, detection and measurement. The supervision regarding smell nuisances is the responsibility of local communal inspectors, as municipal acts and special plans may forbid or limit keeping of animals and farms in certain areas.

13. Zones of protection

- Coastal and waterfront protection

Pursuant to Article 18 par. 4 of the Law on Nature Protection, within wet and aquatic ecosystems with the shore, any acts, activities and operations endangering a hydrological phenomenon or survival and conservation of biological diversity are prohibited.

Law on Waters of 2010 proclaims water and floodplains as natural goods and state property. This may include as well waterfront land, which dimensions are stipulated in the law. Despite of the number of prescribed area, the Law entitles the Ministry in charge of agriculture, body of autonomous province Vojvodina or competent body of the city of Belgrade to determine a different width of waterfront land when this is necessary for water protection, protection of aquatic and coastal ecosystems, water management etc.

The Law on Agricultural Land introduced erosion measures which users of agricultural land are required to apply, such as temporary or permanent ban on ploughing meadows, pastures and other surfaces, crop rotation, growing perennial plants, growing or lifting of agri-protection belts etc. The control of such measures is the responsibility of local self-government bodies.

⁵⁹ Official Gazette of RS, No. 36/2009.

- **GMO-free areas; others?**

Serbia has a strict regime on GMOs: no modified living organism, neither the product of it, can be commercially grown neither nor put in circulation in the Republic of Serbia.⁶⁰ However, this does not relate to an agricultural product which have less than 0,9% of genetically modified inputs and GMO based adulterants. The Law on Genetically Modified Organisms regulates the procedure for the grant of approval to use GMOs in closed environments and conditions for the purposive use of GMOs in environment, handling, packaging and transport of GMOs and other questions relevant for GMOs. Therefore, current legal regime of GMOs does not provide for planting and harvesting GMOs, except for scientific and laboratory purposes, upon specific approval. However, Serbia's attempt to join the EU entails certain liberalization of this anti-GMO legislation. Due to the fact that risk perception of an average Serbian consumer towards GMO is quite high, upon announcement of preparatory works on the new regime of GMOs in Serbia, many municipalities declared GMO-free areas, often by unanimous vote of municipal assembly members.

With regards to other protected areas, it is important to mention the requirement of the Law on Environmental Protection setting the limitation to perform activities which threaten environmental capacity, biodiversity, hydro graphic, geological, geomorphologic, and cultural and scenery values. Public natural goods, as goods of general interest, may be used in a manner and under the conditions which enable development and durability of their natural, physical, health or other values in accordance with regulations.⁶¹

Law on Nature Protection attempts to include NATURA 2000 strategy and the protection of special areas for conservation of habitats and species and areas of special protection for conservation of habitats and certain species of birds. This law sets general rules for protected areas, as areas that have a distinguished geological, biological, ecosystem and/or landscape diversity and are therefore declared by protection document areas of general interest and protected natural goods.⁶² The law also refers to landscape protection, protective zones in the area outside the borders of protected area, ecologically significant area and/or ecological corridor which may be defined in order to prevent or mitigate external impacts.

⁶⁰ Law on Genetically Modified Organisms, Official Gazette of the Republic of Serbia, No. 41/2009, Article 2.

⁶¹ Law on Environmental Protection, Articles 17 and 18.

⁶² Pursuant to Article 27 of the law, protected natural goods are the following: 1) protected landscapes (strict natural reserve, special natural reserve, national park, natural monument, protected habitat, landscape of exceptional characteristics, natural park); 2) protected species (strictly protected and protected wild species); 3) mobile protected natural documents.

- **How is participation organized in those situations?**

The Law on Environmental Protection represents a legal basis for ensuring access to information to the public and participation of the public. Pursuant to Article 81 of this Law, the public shall be entitled to participate in the process of decision-making regarding: 1) strategic assessment of impact of plans and programs on the environment; 2) impact assessment of projects whose realization may result in environmental pollution or pose risk for the environment and human health; 3) approving the operation of new or existent installation. Participation of public regarding strategic impact assessment is assured by making spatial and urban plan publicly available. The public may participate in the course of issuing licenses for integrated prevention and control of pollution. The public may, in general, submit opinions, comments and suggestions to the responsible authority and should timely be informed of the adopted decision.

Public participation in proclamation of the protected area is stipulated by the Law on Nature Protection.⁶³ The proponent of the decision on proclamation of the protected area shall inform the public about the proposal for decision, public insight and organize public debate in line with provisions of this law. In addition, Chapter XIII of this Law relates to access information and public participation in relation to nature performance and protection.

The Law on Waters introduced rules for public participation in the regulation of water, notably preparation of plans of water management.⁶⁴

(Optional) Part 5. Legal issues

14. Available court procedures for solving agro-environmental issues

In addition to general rules of laws applicable to the methods of agricultural production and protection of plants, soil and other related legislation, the infringements of which procedures and penal provisions stipulate misdemeanours and offences, the Law on Environmental Protection guarantees right to justice to interested public, in the process of exercising right to the healthy environment, to initiate the review of the decision procedure of state or municipal bodies, before the responsible authority or court.

15. Producers liability for environmental damage

The Law on Environmental Protection generally obliges all subjects, legal and natural persons, to provide rational use of natural resources,

⁶³ Law on Nature Protection, Article 43.

⁶⁴ Law on Waters, Article 38.

calculation of environmental protection costs in their investment and production costs, implementation of regulations and/or undertaking environmental protection measures in accordance with this or other laws and implementing rules.⁶⁵ The principle of liability of polluter and its legal successor is established by the Law on Environmental Protection. This should apply also to environmental damage caused by agricultural activities. The law stipulates that the polluter should also be liable in case of liquidation or bankruptcy of the company or other legal persons. Both of them should be obliged to eliminate the cause of pollution and the consequences of direct or indirect environmental pollution.

Although specific laws, such as for example the Law on Plant Protection Products, do include environmental concerns when introducing the restrictive regulatory regime, eventual sanctions as criminal acts, initiation of the procedure before courts for offences, or misdemeanours do not introduce producers liability for environmental damage. However, such sanctioned behaviours are relevant for the establishment of liability of agricultural producers or other parties for environmental damage. Some specific laws, such as the Law on Biocidal Products, explicitly prescribe liability stemming from the use of biocidal products.⁶⁶

16. Liability for diffuse water pollution and eutrophication

The Directive 98/15/EC amending Directive 91/271/EEC concerning urban waste water treatment clarifies the requirements in relation to discharges from urban waste water treatment plants to sensitive areas which are subject to eutrophication. Transposing the Water Framework Directive, Serbian Law on Waters prescribed measures against pollution by individual pollutants or groups of pollutants presenting a significant risk to or via the aquatic environment. However, as Nitrates Directive has not been transposed, full framework to reduce human induced eutrophication should help to reduce the nitrogen and phosphorous load through changes in the agricultural practices, notably by restrictions in the excessive use of fertilizers.

17. Applicability of the Environmental Liability Directive 2004/35/EC

Although not fully, the Law on Environmental Protection and the accompanying legislation is compatible with the Directive 2004/35/EC and international conventions tackling this issue. Serbian legislator transposed the main ideas of environmental liability regulatory regime, including preventive actions, remedial actions, prevention and remediation costs. Chapter VII of the Law on Environmental Protection

⁶⁵ Law on Environmental Protection, Article 5 par. 2.

⁶⁶ Law on Biocidal Products, Official Gazette of RS, No. 36/2009 i 88/2010, Article 48.

refers to liability for environmental pollution. The general rules of the Law on Contracts and Torts of 1978 are applied to the issues of liability for damage made to the environment, which are not stipulated by the Law on Environmental Protection. However, precise criteria to determine significance of damage, remediation of damage to water or protected species or natural habitat and land damage is missing. This means that in addition to general rules, Serbian legislator has to regulate environmental liability in a more detail, including transposition of annexes of this Directive.