



promoting the **SUSTAINABLE MANAGEMENT OF NATURAL RESOURCES**
in Southeastern Europe through the use of the Nexus Approach
FUNDED BY THE AUSTRIAN DEVELOPMENT COOPERATION

Terms of Reference

Study on the eventual formalisation of aspects of flow regulation across the riparian countries of the Drina and their Nexus sectors

*In the framework of
the “Promoting the Sustainable Management of Natural Resources in Southeastern Europe,
through the use of Nexus approach” Project*

funded by the Austrian Development Agency

implemented by GWP-Med in partnership with the UNECE

1. Introduction – Background

The Water-Energy-Food-Ecosystems Nexus (“Nexus”) approach has been introduced in the natural resources management agenda to facilitate the enhancement of water, energy and food security, while preserving ecosystems and their functions. The Nexus approach provides for an integrated and coordinated approach across sectors, with a view to reconciling potentially conflicting interests as they compete for the same scarce resources, while capturing existing opportunities and exploring emerging ones.

The Nexus approach is especially relevant to South East Europe (SEE), and the Drina river basin in particular, given the significant development and potential of hydropower in the basin. The purpose of the SEE Nexus Project (full title: “*Promoting the Sustainable Management of Natural Resources in Southeastern Europe, through the use of Nexus approach*”), supported by the Austrian Development Agency (ADA) and implemented by Global Water Partnership – Mediterranean (GWP-Med) in partnership with the United Nations Economic Commission for Europe (UNECE), is to introduce the Nexus approach and catalyse action for its adoption and implementation in SEE at the national and transboundary basin levels. Serving this purpose, Nexus Dialogue Processes are being implemented in the transboundary basins of the Drin and Drina rivers, and in Albania, including the development of analytical technical Nexus Assessments.

In the framework of the Water Convention, the UNECE has been facilitating a Nexus dialogue involving the Drina countries since 2014. This dialogue started with the Sava Nexus Assessment (2014-2016), continued with financial support from the Italian Ministry for the Environment, Land and Sea as the (Phase I) Drina Nexus Assessment (2016-2017) and the Drina Nexus Follow-Up Project (2018-2019). The Drina Nexus Assessment provided for joint identification of intersectoral (nexus) issues and possible solutions, and involved also the joint identification of the broad benefits arising from improvements in transboundary cooperation in the basin. A modelling carried out in the Phase I Nexus Assessment demonstrated substantive benefits of coordinated operation of dams, even for electricity generation. The Drina Nexus follow-up project focused on how to foster transboundary cooperation across sectors, improving monitoring and knowledge about factors affecting water quality and erosion, achieving a more balanced flow regulation, including environmental flows, and promoting investment into sustainable renewable energy.

Following up on this sequence of projects and their outcomes, the preparation of a “Phase II” Drina Nexus Assessment under the ADA-funded SEE Nexus Project, serves two aims. The first one is to deepen the analysis of two crucial issues for development and transboundary cooperation that emerged in the previous projects. These are: (i) energy development in the countries and in particular in the basin, in particular renewable energy and hydropower; (ii) agreeing about key aspects of flow regulation in the basin, taking into account all water uses and functions, including the environment, and progress towards formalizing some of these aspects. The second, subsequent aim, is to set the basis for the development of a Drina Nexus Roadmap/Strategy, translating the recommendations from the Assessments into political commitments.

The regulation of flow in the Drina Basin is currently uncoordinated and sub-optimal, and this has an impact on both water availability and quality. Especially regarding e-flows, the 3 Drina countries have adopted different approaches, while the existence of 3 dams in different countries on the main stem of Drina poses constraints to applying e-flows. The different water users would therefore benefit from a holistic approach to basin management. To capitalize on the benefits, coordinated policy and technical actions at different levels, across borders are necessary. Through the Framework Agreement on the Sava River Basin, the Drina countries have access to a well-established institutional platform to discuss flow regulation. The 1st River Basin Management Plan (RBMP) for the Sava river basin was adopted in 2015 and the Sava Commission is in an advanced stage of development of the 2nd RBMP. The Parties adopted The Flood Risk Management Plan in the Sava River Basin that represents a true collective effort in the area of flood risk management (a flood forecasting and information system is functioning) and an important step towards adaptation to climate change. Reflection about how to develop flow regulation in the Drina River Basin towards co-optimization and better ensuring different uses and functions can benefit from a global review of practice and principles relevant to water allocation, carried out as part of preparing a global Handbook on Water Allocation in a Transboundary Context under the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention). The on-going development of the Handbook (currently at an advanced stage) makes an explicit link to the opportunities of broader approaches, the water-food-energy-ecosystems nexus and benefits of transboundary cooperation.

2. Description of the Assignment

Objective

The objective of the assignment is the Preparation of a study describing different options for the eventual formalisation of key aspects of flow regulation across the riparian countries of the Drina and their Nexus sectors. The relevant parts of this study will be integrated in the “Phase II” Drina Nexus Assessment Report.

Scope and aims

Regarding flow regulation, the Phase II Drina Nexus Assessment seeks to further explore and promote discussion about formal flow regulation mechanisms between countries (agreements, protocols, discharge/operation rules etc.), to highlight good practices in transboundary water allocation taking into account approaches to environmental and minimum flow as well as clauses for hydrological extremes, and to lay out some possible directions to help the Drina Basin countries in further development of their cooperation. The options available to the Drina countries need to explicitly include the needs of different users as well as the required environmental flows (“e-flows”). Achieving an agreement on flow regulation would have implications on sectoral developments in all countries, including energy planning.

The study will illustrate formalization options available from a legal perspective, based on relevant experience from around the world, also considering the key role of actors beyond government authorities

from the Nexus sectors, notably hydropower operators and energy utilities. The experience from other transboundary basins will be considered taking into account potential similarity to the Drina, both in terms of type/level of transboundary cooperation and in terms of legal and regulatory frameworks for water and environment, but also comparable issues. A key consideration in identified relevant experiences is also whether the cooperation involves actors across sectors or (at least) successfully addresses inter-sectoral aspects at transboundary level. International experience also provides examples of provisions and modalities for shared costs and benefits.

In that regard, the aims of the study are to provide:

1. **Overview of the relevant flow regulation issues**, taking also into account water uses, and their pertinence to specific sections of the Drina (upper, lower and middle reaches; or in between specific dams used for regulation)
2. **State of the understanding about the current flow regulation and how this is governed, taking into account how meeting different water needs is ensured** (legal and regulatory basis: existing agreements and protocols, permit conditions, operational rules etc.)
3. **An analysis of relevant international examples of agreeing at the transboundary level about specific aspects of flow regulation and reconciling different uses** (hydropower, flood and low flow management, meeting ecosystem needs, sediment management etc.)
4. **Types of possible arrangements for the Drina River Basin for the key flow regulation issues, taking into account the governance landscape** at different levels and which actors are concerned, advantages and limitations, related international instruments or obligations e.g. related to Conventions and examples of reference value.
5. **Recommendations** for steps that could be taken to progressively move forward, taking into account the present situation but also the future outlook.

The specific tasks requested for the preparation of the study are described in the section below.

The study will be developed in consultation with the Expert Group on Flow Regulation and Environmental Flows in the Drina, which was established with the support of the Drina Nexus Follow-Up Project. The first meeting of the Group was convened in June 2019, hosted by the ISRBC¹. A new meeting of the Group is expected to take place online in January 2021.

The perspectives of all relevant stakeholders should be taken into account in the development of the Study. In that regard, early in the process, the Consultant should conduct interviews with representatives of key institutions, including utilities, for their perspectives and up-to-date policy developments and management practices. An online Regional Consultation Meeting, involving a broad range of Nexus-related stakeholders from the Drina countries, will be held in January/February 2021 and 3 national Consultation Meetings. Details of the current practices around flow regulation will be discussed during these meetings and the key comments and recommendations should be addressed in the development of the Study. A second Regional Consultation Meeting will be held in Q2 2021 for feedback on the draft Assessment. Feedback and comments should also be expected from the ad-hoc Steering Committee for the SEE Nexus Project's activities in the Drina basin. Finally, the UNECE will facilitate contacts with e.g. the ISRBC as well as the Drina Task Force of the GEF-SCCF project for their feedback.

Tasks – Requested Services

The Consultant should:

1. Prepare a **Research Plan** for the analysis to be consulted with GWP-Med and UNECE for clearance and finalisation prior to the consultant proceeding to the next steps. In the context of the Research Plan, the consultant should, among others:

¹ Information on the meeting and the presentations made are available at <http://www.unece.org/index.php?id=52076>

- a. Undertake an assessment of information/data requirements and availability for the implementation of the assignment, leading to the identification of information gaps and suggested approaches to address these gaps. The Consultant will be responsible to collect the needed information -including through interviews, review of relevant reports, the Expert Group meeting - while GWP-Med and UNECE will enable communications with authorities to assist if appropriate in the collection of available and needed documents, information and data.
 - b. Describe in detail their suggested approach, methods and tools for the development of the Study, including a workplan with timeline coupled with the participatory process and an annotated Table of Contents of the Report
2. Prepare a **consolidated overview** of:
- a. International obligations relevant for flow regulation and meeting different needs for water, including exchange of relevant data and information (e.g. in the agreements the Drina countries are parties to, notably the Framework Agreement on the Sava River Basin, the Danube River Protection Convention, and related soft law instruments)
 - b. The provisions under the WFD and any other relevant EU legislation on flow regulation
 - c. The current status of legislation and regulation on flow regulation in each of the Drina countries, including the level of transposition of the related EU Acquis (including, but not limited to the Water Framework Directive).
 - d. The actors (mapping) with a role in flow regulation in the Drina countries and at the transboundary level
 - e. (With input from the EWG on Flow Regulation) The current operational rules for all the major HPPs in the basin
 - f. E-flow country-level legal requirements and options for their further development in the Drina Basin (summarizing relevant conclusions from the report on e-flows from the Drina Nexus Follow Up project and results of the “Support to Water Resources Management in the Drina River Basin” project).
 - g. Selected critical flow issues for major sections of the river, relevant for water uses and functions, e.g. flooding, sediment management, erosion, and deformation of the river course. water shortage (including other/future uses), environmental flows, recreational uses etc (building on a brief review made in the Drina Nexus Follow Up project).
3. **Identify best international practices and options for sustainable coordination and co-optimization for flow regulation in Transboundary waters**, including the respective legal and institutional basis. Evaluate the relevance for the Drina of selected international experiences about diverse flow regulation aspects that have been formalized in some way elsewhere, as agreements, protocols, permit conditions, contractual or other legal and institutional arrangements. These include, for example, conditions for spare reservoir capacity as flood protection measure, compensating energy generation losses upon deviations from agreed discharge regime, specifying by a fine time-step flow requirements according to hydrological conditions (e.g. precipitation as threshold), determining flow releases to meet the requirements of ecosystem needs; swaps of electricity and balancing services, coordinated sediment wash out, river contracts, information and data exchange etc. Among the key references is the database of water treaties of the Oregon State University. As input, UNECE will made available a table or a selection of cases world-wide and the relevant draft chapters of the Handbook on transboundary water allocation, possibly with an initial screening.)
4. Based on the above, **define options for formalizing the flow regulation in the Drina Basin and draft specific recommendations**, taking into account the transboundary governance landscape (e.g. the ISRBC, ICPDR, hydropower relevant energy agreements, mandates of entities below State level), with their salient features including the level of governance and which actors are concerned. This should

include, for each option, a brief description of advantages and limitations of each, as well as citing some relevant examples of reference value from international practice and directly relevant conventions and related soft law instruments. These could be intergovernmental (basin level, including at the level of the Sava, or bilateral), inter-ministry, between utilities/HPP operators, or involving both government and non-governmental actors); and could be, as appropriate, by management issue or represent integrated alternatives.

5. **Prepare the Study** incorporating all of the above and which should consist of a narrative section on each of the elements, and detailing annotations together with any relevant annexes. Any related tables, graphs, figures, and maps should be included, a summary and a factsheet of the key findings. The annotated Table of contents is to be agreed with the UNECE and GWP-Med.
6. Give related presentations to consultation meetings, as requested by GWP-Med

3. Reporting, deliverables, and Milestones

It is required that throughout the implementation of the Assignment, the consultant closely liaises with the Project Manager, Tassos Krommydas, Senior Programme Officer at GWP-Med, as well as with Annukka Lipponen, supported by a UNECE Nexus consultant working on the Drina Basin and with the GWP-Med Senior Programme Officer in Podgorica.

The Study will be delivered in English, edited for quality, clarity and avoiding errors.

The consultant will deliver the following deliverables, described in detail under the section “Tasks – Requested Services”, as per the below schedule (to be possibly adapted based on the actual date of the signature of the contract, in the light of the consultative process):

Task #	Deliverables	Deadline
1	Research Plan	15 March 2021
2	Draft Overview of international obligations as well as of the status with relevant national laws and regulations	29 March 2021
3	Good international practices for sustainable coordination and optimization for flow regulation in Transboundary waters	5 April 2021
4	Options for formalizing the flow regulation in the Drina Basin and specific recommendations	19 April 2021
5	Preparation of the Study including related tables, graphs, figures and maps, a layman’s summary and a factsheet of the key findings.	15 May 2021

4. Contract Price

The maximum fee for this assignment is 14.000 EUR. This amount includes all other costs, income taxes and any other amount payable or cost that may be required for the completion of the work/service, including VAT.

5. Criteria

Successful participants must have:

- University Law Degree
- Post-graduate degree (at least Masters or equivalent), on International Law, and/or on Environmental Sciences or Policy, and/or any directly related field.
- Excellent oral and written communication skills in English (Proficiency level at a minimum).

Work experience (Required)

- Minimum 15 years of professional experience as a Legal Advisor / Consultant / Specialist relevant to legal and governance aspects of sustainable development and environmental policy
- Minimum 2 assignments or publications relevant to the Implementation of International or EU Environmental Legislation
- Minimum 1 assignment or publication relevant to multilateral Agreements in environmental fields
Minimum 2 assignments relevant to the management of Transboundary river basins

Work experience (Desired)

- Assignments or publications relevant to the implementation of the EU Water Framework Directive preferably including on aspects relevant to river flow regulation.

Assignments or publications on the Nexus approach, preferably on Transboundary basins

6. Awarding Criterion and Evaluation process

The Award criterion is the most economically advantageous tender on the basis of best price / quality ratio.

Offers shall be evaluated as follows:

Offers qualified in terms of exclusion grounds and selection criteria will be further evaluated on the basis of the requirements presented under section "Qualification and Experience", as follows:

Name of Firm / Participant:			
(1) Criterion	(2) weighting (w)	(3) points of criterion (c) 100p Base +10p for extra criteria over base up to 50 additional points	(4) Score = (2) x (3)
Required qualifications			

Minimum 15 years of professional experience as a Legal Advisor / Consultant / Specialist relevant to legal and governance aspects of sustainable development and environmental policy	30%		
Minimum 2 assignments or publications relevant to the Implementation of International or EU Environmental Legislation	15%		
Minimum 1 assignments or publication relevant to multilateral Agreements in environmental fields	20%		
Minimum 2 assignments relevant to the management of Transboundary river basins.	15%		
Desired qualifications		10 points for each assignment and for up to 5 assignments Assignments on River Flow Regulation for D.1 and on Transboundary Basins for D.2 will be awarded 20 points each.	
D.1 Number of Assignments or publications relevant to the implementation of the EU Water Framework Directive, preferably including on aspects relevant to river flow regulation.	10%		
D.2 Number of Assignments or publications on the Nexus approach, preferably on Transboundary basins	10%		
Total	100%		

Failure to provide the minimum requirements in any of the above is considered ground for disqualification

Each Section/evaluation criterion is evaluated autonomously. The final scoring of each evaluation criterion is the outcome of its scoring multiplied by the corresponding weighting factor. The overall score of the technical offer is the sum of the final scoring of all the Sections/evaluation criteria. The overall score of the technical offer is calculated on the basis of the following formula:

$$B_i = w_1 \times c_1 + w_2 \times c_2 + \dots$$

For the overall score which will determine the ranking of offers, technical evaluation will be weighted with 80%, and the financial offer with 20%.

The final listing of the most advantageous offers will be made on the basis of the following formula:

$$\Lambda_i = 0,8 * (B_i/B_{max}) + 0,2 * (K_{min}/K_i).$$

Where:

B_{max} : the max score received by the best of the technical offers received

B_i : the score of the technical offer

K_{min} : The cost of the financial offer with the minimum price offered.

K_i : The cost of the financial offer

The most advantageous offers is the one with the greater value of Λ .

In case of equality of overall scores, the retained proposal is the one whose corresponding technical proposal received the highest rating.