

**„Environmental Protection of International River Basins”**

Legal and Institutional Overview

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## ABBREVIATIONS AND ACRONYMS

Art.	Article
BUVR	river basin management departments
ECBSea	Environmental Collaboration for the Black Sea
EECCA	Eastern Europe, Caucasus, and Central Asia
EPIRB	Environmental Protection of International River Basins Project
EU	European Union
IWRM	Integrated Water Resources Management
JRMP	Joint River Management Project
JSC	Joint Stock Company
MENR	Ministry of Environment and Natural Resources
MNP	Ministry of Nature Protection
MNREP	Ministry of Natural Resources and Environmental Protection
MOE	Ministry of Environment
OJEC	Official Journal of the European Community
OSCE	Organization for Security and Cooperation in Europe
PCA	Partnership and Cooperation Agreement
RBMP	River Basin Management Plan
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
USAID	United States Agency for International Development
WFD	Water Framework Directive
WRMA	Water Resources Management Agency

## INTRODUCTION

The beneficiary countries of the Environmental Protection of International River Basins Project (EPIRB) - Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine – are increasingly recognizing that through the implementation of Integrated Water Resources Management (IWRM) and the adoption of a river basin approach their waters would in due course achieve a better quality status. Although not necessarily seeking full harmonization with the EU Water Framework Directive (WFD),<sup>1</sup> according to which EU member countries are required to follow this approach, some of them have made progress towards the incorporation of IWRM and river basin management principles into their legal framework.<sup>2</sup>

The Environmental Protection of International River Basins Project (EPIRB) intends to support further progress in this direction by building capacity in the formulation of river basin management plans for selected river basins and in the implementation of planning-related compliance monitoring processes. The project’s stated objectives are:

- to improve the availability and quality of data on the ecological, chemical, and hydro-morphological status of transboundary river basins, including groundwater;
- to develop River Basin Management Plans for selected river basins/sub-basins according to the requirements of the WFD.

A review of the present status of development of the legal and institutional framework forms an important part of the project inception phase, since it facilitates the identification of the adjustments to be made to support the implementation of activities and the sustainability of results. Bearing this in mind, the project management invited the Consultant to visit Kyiv from 30 May to 8 June, 2012. Her task was principally to review current legislation and literature on water resources management in Belarus, Moldova and Ukraine, with a view to identifying the legal and institutional changes intervened since the completion of the ‘Water Governance in the Western EECCA’ Project (Water Governance Project) in 2010. Since another EU-funded project – Transboundary River Management Phase III for the Kura River basin (Kura III) – is ongoing in the Caucasus countries, namely in Armenia, Azerbaijan and Georgia, the Consultant’s input with regard to these countries was limited to the literature produced during this project and the Water Governance Project. Focus was placed on existing and draft legislation, policies and institutional arrangements.

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<sup>1</sup> Directive 2000/60/EC of the European Parliament and the Council of 23 October 2000 establishing a framework for the Community action in the field of water policy, published in the Official Journal of the European Community (OJEC no. L 327 of December 22, 2000).

<sup>2</sup> Being parties to Partnership and Cooperation Agreements with the European Union and having subscribed to the European Neighbourhood Policy, the project countries have undertaken to meet the requirements set by the EU, including those relating to the water sector.

## COUNTRY OVERVIEW: WESTERN COUNTRIES

### 1. BELARUS

#### 1.1 Present situation

The water legislation of Belarus was reviewed a number of times in the past few years, with a view to assessing whether it reflected IWRM principles such as those set forth in the EU WFD. The Water Code of Belarus of 15 July 1998, as subsequently amended, was reviewed and analyzed during the EU-funded Joint River Management Project (JRMP) and the Water Governance Project in 2003 and 2008, respectively,<sup>3</sup> to find out that it did not – and still does not – address river basin management and planning in an adequate manner. In fact, while it calls for the production of national programmes and action plans (Article 82), water balances (Article 92) and schemes for complex use and protection of water (Article 93), it does not require that they be prepared by river basin. Moreover, the code is silent with regard to the participation of stakeholders in the planning process.

Acknowledging that the river basin approach to water resources management enshrined in the WFD is sound and that it facilitates international relations, Belarus is gradually moving towards reforming its legal framework. By Decision of the Council of Ministers of 9 October, 2007, the Government has introduced provisions in support of river basin planning. These provisions, which were illustrated in the course of the Water Governance Project, call for the production of ‘schemes for the complex use and protection of water resources’<sup>4</sup> that cover both water quantity and quality aspects, although they are not geared towards the achievement of stated objectives. The Decision seeks to achieve a compromise between river basin planning and territorial administration, and provides for the involvement of stakeholders. However, although it represents a step towards IWRM, the Decision does not reflect EU WFD requirements, which consist of the setting of specific environmental objectives to achieve good status of surface water and groundwater by specified deadlines, through the implementation of concrete programmes of measures for each river basin district.

The Water Code has been amended again in 2011, but still fails to reflect a river basin approach to water resources management. Also in 2011, the Ministry of Natural Resources and Environment Protection has adopted the Water Strategy until 2020,<sup>5</sup> which sets as long-term strategic targets the approximation of water legislation to the EU directives in the water sector (Target No. 6), the creation of river basin management bodies (Target No. 7) and public participation in decision-making (Target No. 8). Based on the Strategy, the UNDP has launched an initiative to support the approximation of the national legal framework for water resources management to the EU water *acquis* so as to cover the gaps in the current legislation.<sup>6</sup> The studies carried out under this initiative will serve as a basis for the finalization of a new Water Code, which is currently in progress.

The present version of the draft of this new code adopts a river basin management approach (Article 3) and contains provisions that are relevant to river basin planning and stakeholder participation. Article 14 calls for the development and implementation, by the government, the local authorities and the industry sector, of ‘programmes for the use and protection of water resources’ with a view to preserving and restoring water quality in water bodies and ensuring ecological safety. These programmes, which are conceived as ‘territorial’ instruments (national, regional, etc.), are expected to indicate the necessary measures for such preservation and restoration, the achievement of good ecological

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<sup>3</sup> See Final Report of Phase I (Pripyat and Seversky-Donets), 2003, and M. Nanni, Water Governance in the Western EECCA, *Overview of Legal and Institutional Frameworks*, July 2008.

<sup>4</sup> This is the term which was employed in the Soviet Union and is still employed in the Russian Federation.

<sup>5</sup> Decision No. 72-P of 11 August, 2011.

<sup>6</sup> Joint European Union and United Nations Development Programme project ‘Support to the Development of a Comprehensive Framework for International Environmental Cooperation in the Republic of Belarus’, <http://www.greenlogic.by>.

status of surface water bodies, and the reduction of discharges of pollutants into surface water bodies, of water consumption and water losses. The programmes would contain information deriving from analyses based on water resources monitoring data and the data in the state water cadaster, and take into account the national integrated environmental protection schemes and the schemes for complex use and protection of water resources. In other words, they are meant to implement the schemes. The programmes are to be supplemented by sectoral programmes.

The schemes for complex use and protection of water resources would be developed for specified river basins, namely the Dnieper, Pripyat, Western Dvina, Neman and Western Bug (Article 69). The stated aim of the schemes is to determine the water management and other measures required to meet the future needs of the population, as well as the needs of the various sectors of the economy, to reduce water pollution and improve the ecological status of water bodies, to prevent and abate the harmful effects of water (i.e., floods) and to optimize monitoring networks for surface and underground water. Again, no mention is made of concrete objectives to be achieved by the schemes. Water balances, also to be prepared by river basin, would form integral part of the schemes of complex use and protection of water resources.

Article 15 of the draft code calls for the establishment of river basin councils for the river basins just mentioned, to provide advice on water resources management issues. The councils would be made up of representatives of public institutions at the regional level, organizations of water users, the waterways enterprise and public and scientific organizations. They would be hosted by the regional offices of the Ministry of Natural Resources and Environmental Protection (MNREP).

There is no competition among water management institutions in Belarus, since the MNREP is the designated water management entity. Inter alia, under Article 10 of the draft water code the MNREP would set procedures for river basin planning (to be adopted by the Council of Ministers) and the establishment of river basin councils, issue permits for special water use, set water quality standards, set maximum allowable concentrations for water bodies intended for fisheries (together with the Ministry of Health), organize the monitoring of surface water and groundwater, keep the state water cadaster and develop the programmes for the use and protection of water resources together with ‘the other authorized organs of the state administration’.

### 1.2 Conclusions and possible project inputs

Although not seeking convergence with the EU *acquis* in the water sector, Belarus is increasingly recognizing that an integration of IWRM principles into its legal framework in line with the river basin management approach enshrined in the EU WFD would lead to stronger relations with neighbouring countries. The basin planning instruments envisaged in the draft water code are closer to these principles than the existing schemes, although they maintain the same name. However, they are still far from being geared towards the achievement of specific objectives. The same applies to other resource management tools, such as water resources monitoring. It is also to be noted that no link seems to be established in the draft water code between planning instruments and water resources monitoring.

The draft water code is in the process of being finalized in order to be submitted to Government in November/December, 2012. Since the Government endorsement process prior to submission to Parliament might be lengthy, there is scope for improvements. In this connection, as one of the areas of activities within the framework of EPIRB will be the production of a management plan for a selected river basin, it would be useful **to carry out a comparative analysis of water resources management tools as they are dealt with in the WFD and water resources management in accordance with the draft water code, with a view to seeing how harmonization with WFD principles may be achieved over time and provide recommendations for modified provisions of the draft code, reflecting those principles.** Given that the basin management planning exercise supported by EPIRB will be a practical one, the recommendations could also cover draft secondary legislation for the implementation of such provisions. In particular, this draft secondary legislation would

define the steps necessary for arriving at the adoption of river basin management plans, as well as mechanisms to facilitate interaction between the MNREP and the river basin councils.

## 2. MOLDOVA

### 2.1 Present situation

A new Water Law was promulgated in April, 2012,<sup>7</sup> after a five years decision-making process. This law supersedes the 1993 Water Code and seeks (partial) harmonization with the WFD and other EU directives in the water sector.<sup>8</sup> It will enter into force in October 2013.

The law calls for the delimitation and mapping of two river basin districts, namely the Dniester River Basin District and the Danube-Prut/Black Sea River Basin District (Article 5). Article 19 requires that river basin districts be managed on the basis of basin plans and lists the minimum content of these plans, which includes, among other things, an assessment of water resources quality and quantity, as well as an assessment of the risks of water shortages, drought, floods and pollution. These assessments will have to be carried out on the basis of monitoring data.

Water resources management responsibilities for the mentioned basin districts are split between the Ministry of Environment (MOE), the ‘Water Management Administrative Authority,’ i.e., the Apele Moldovei Agency, which is subordinated to the MOE, and the River Basin District Committees (Articles 9-10). While the MOE is essentially conceived as a policy body but retains responsibilities relating to water quality, Apele Moldovei is vested with both resource management and infrastructure development and operation functions. In particular, it is expected to participate in river basin management planning.<sup>9</sup> However, under its own regulations,<sup>10</sup> it is *responsible* for river basin management planning.<sup>11</sup> Finally, under the Water Law the River Basin District Committees are expected to provide advice with regard to river basin management issues. The Law also spells out the areas of responsibility of the local authorities (Article 11).

Under Article 13, the MOE carries overall responsibilities with regard to the monitoring and recording of the conditions of surface water, underground water and protected areas, while the monitoring of drinking and irrigation water sources and recreation areas is to be performed jointly with the Ministry of Health. Water resources monitoring is to take place pursuant to Government regulations which must specify monitoring parameters, procedures and technical measures, including those relating to sampling, analysis requirements for each parameter, quality control, laboratory practices and data recording (Article 13). Thus, monitoring requirements seem to have been set with regard to water quality aspects only, while the assessments to be referred to in the basin plans relate to both quality and quantity.

According to Article 37 of the law, provisions on water quality monitoring requirements, including methods of measurement and sampling, frequency of analyses and procedures and data management requirements must be contained in Government regulations on environmental quality requirements for water. Thus, two separate sets of regulations are expected to be drafted with regard to water resources monitoring, and there is a risk of overlapping provisions.

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<sup>7</sup> Water Law No. 272 of 23 December, 2011, Official Monitor No. 81 (4119) of 26 April 2012.

<sup>8</sup> Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment; Council Directive 91/676/EEC of 12 December 1991 on protection of waters against pollution caused by nitrates from agricultural sources, the WFD, Directive 2006/7/EC of the European Parliament and the Council of 15 February 2006 on the management of bathing water quality; Directive 2007/60/EC of the European Parliament and the Council of 23 October 2007 on the assessment and management of flood risks; Directive 2008/105/EC of the European Parliament and the Council of 16 December 2008 on environmental quality standards in the field of water policy.

<sup>9</sup> The main responsibilities for river basin planning are vested in the MOE.

<sup>10</sup> Government Decision No. 1056 of 15 September, 2008, on the approval of the regulations, structure and staff of the Apele Moldovei Agency, in *Monitorul Oficial* No. 175-176 of 19 September, 2008.

<sup>11</sup> For a detailed institutional analysis, see MCA Moldova, Irrigation Sector Reform Activity: River Basin Management Sub-activity, *Institutional and Monitoring Framework Report*, July, 2011.

The data-management functions of the various administrative authorities and subordinated bodies also overlap, to some extent. For instance, although Hydromet and the Apele Moldovei Agency are the logical repositories of water-related data and information, the Aquatic Resources Section of the Natural Resources and Biodiversity Division of the MOE is responsible for coordinating the creation and administration of a water management database for the Dniester and Prut river basins. This function should not be vested in this division, since it is not a technical body and as such does not have the capacity needed to coordinate databases. The Agency for Geology and Mineral Resources and the Pollution Prevention and Waste Management Division of the MOE deal with data on groundwater use and water quality, respectively.<sup>12</sup>

The Water Law refers to a number of regulations to be prepared within 18 month from the date of its publication (see Annex 1), and the drafting process has already started. Some sets of draft regulations were produced within the framework of past technical assistance projects, on the basis of previous drafts of the law. Two sets of draft regulations on the protection of surface water quality and on the delimitation and classification of water bodies, respectively, were produced within the framework of the project on Environmental Collaboration for the Black Sea (ECBSea), while the Water Governance Project supported the preparation of draft regulations on procedures for the development and updating of river basin management plans and on procedures for the development and updating of water resources monitoring programmes. These draft regulations will have to be modified so as to meet the requirements set forth in the law.

Efforts are now underway to further elaborate, with technical support provided by the Swiss Development Cooperation, the draft regulations on the protection of surface water quality, which deal with the classification of water bodies according to functions and with water quality standards (environmental quality requirements), among other things, in accordance with Article 37 of the Water Law, and the draft regulations setting forth procedures for the development and updating of water resources monitoring programmes. The latter draft regulations will reflect the provisions of Article 13 of the Water Law, by defining monitoring procedures and indicating the parameters to be monitored for both surface water and groundwater. Other draft regulations are currently being developed with the technical support of the Millennium Challenge Corporation and the EU.

The question now remains to be answered as to when regulations on river basin planning, which are also called for by the Law, will be prepared. Water body classification, the implementation of water quality standards, water resources monitoring and river basin planning are closely interlinked, but the provisions of the Water Law on river basin planning will not be implemented in the absence of supporting regulations. In addition, there is a need for detailed regulations as to the actual functioning of the River Basin District Committees.

## 2.2 Conclusions and possible project inputs

Draft regulations on procedures for the development and updating of river basin management plans are already available, but should be adjusted to the Law, as was mentioned earlier. Since the EPIRB Project will engage in capacity building activities with focus, *inter alia*, on the development of a river basin management plan for Moldova – most likely for the Prut river basin, which the country shares with Romania and Ukraine – a possible **project contribution to this planning exercise could be the further elaboration of these draft regulations.**

Consistently with Article 19 of the Water Law, the new draft would define procedures for the elaboration, discussion and adoption of River Basin District Management Plans, as well as the mandatory content of these plans. It would further indicate mechanisms for stakeholder participation in plan development. In this connection, the project could also provide **support to the drafting of regulations on the creation and functioning of River Basin District Committees.**

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<sup>12</sup> *Ibidem.*

The modalities for drafting the regulations would be the same as those followed by other – past and parallel – projects while providing technical assistance to this efforts, i.e., the actual drafting would be the responsibility of a local expert supported, if needed, by an international experts and the results of the work would be discussed within the framework of a working group created for this purpose.

### 3. UKRAINE

#### 3.1 Present situation

The Water Code of Ukraine of 1995, as subsequently amended, was reviewed in the course of the JRMP, the Transboundary River Basin Management projects<sup>13</sup> (2006-2007) and the Water Governance Project. On those occasions it was noted that, although according to Article 13 water resources are to be managed by river basin,<sup>14</sup> the code does not spell out the manner in which this principle should be implemented.

Article 12 of the Water Code calls for national, international and regional programmes to ‘provide for the implementation of effective measures for the satisfaction of domestic and industrial water needs, rational use and protection of waters and the prevention of their adverse impacts’. These programmes are to be developed on the basis of data derived from water accounting, state water cadastre data and the schemes of water resources use, protection and restoration.

The programmes concern various sectoral aspects such as land reclamation, measures against floods, irrigation, river regulation and water resources monitoring. In addition, they tend not to indicate concrete modalities for their implementation, except in the case of infrastructure development, which is normally their core. Furthermore, they tend to be conceived as self-contained instruments which do not take into consideration the effects that each might have on the others. Thus, the potential for conflict is high. Since little or no coordination is sought, efforts and investments risk to be duplicated.

The schemes of water resources use, protection and restoration, to which no further reference is made in the code, are essentially planning documents which do not set any management objective to be achieved and focus mainly on the construction of hydraulic infrastructure. Hence, they have nothing to do with the river basin management plans provided for in the WFD. No schemes have been developed so far in Ukraine.

Finally, no reference to the participation of stakeholders in the planning process is made in the Water Code. Article 11 only mentions a general right of citizens and their associations to participate in the consideration, by the local councils and other state bodies, of issues relating to water resources use, protection and restoration.

Ukraine is aware of the need to update its legal framework for water resources management, in line with the agreements stipulated with the European Union in recent years.<sup>15</sup> Law No. 1629-IV of 18 March, 2004, ‘on the state programme of adaptation of Ukraine legislation to the legislation of the European Union’ provided a basis for the harmonization of the domestic legal framework for environment protection to the *acquis communautaire* during the period 2004-2007 (first implementation stage). The ‘Concept of National Ecologic Policy of Ukraine for the Period ending in 2020,’ approved by Cabinet Decision No. 880-P of 17 October, 2007, has confirmed the country’s intention to proceed in this direction and has triggered several proposals for amendments to the Water Code and for draft secondary legislation.

Among others, the EU Transboundary River Basin Management projects mentioned earlier has facilitated the preparation of a draft Cabinet decision on river basin planning, draft inter-*oblast* agreements relating to the establishment of basin

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<sup>13</sup> Phase 2: Pripyat Basin and Phase 2: Seversky-Donets Basin.

<sup>14</sup> Article 13 reads: ‘The state management of water resources use, protection, and restoration is carried out according to the river basin principle on the basis of national, international, and regional programmes for water resources use, protection, and restoration.’

<sup>15</sup> Partnership and Cooperation Agreement, 1998; EU-Ukraine Neighbourhood Policy Action Plan, 2005. An Association Agreement was initialled on 30 March, 2012, but is still to be signed.

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councils for the Pripjat and Seversky-Donets river basins, draft statutes for the councils, draft statutes for a BUVR (river basin organization) to be established for the Pripjat, draft revised statutes for the Seversky-Donets BUVR and draft regulations on the exchange of water-related data. However, all these proposals have remained on paper. Instead of the Cabinet decision on river basin planning, the State Committee for Water Management (*Derzhvodhosp*) – now renamed ‘Water Agency’ - has adopted *Nakaz* (Order) No. 56 of 28 February, 2008, on the methodology for the elaboration of river basin management plans. Among other things, this Order provides guidance as to the content of river basin management plans (see Table 1) and calls for the establishment of river basin councils to participate in, and facilitate, the planning process.

**Table 1 - Content of river basin management plans according to Nakaz No. 56<sup>16</sup>**

Analysis of river basin district	
Surface water	mapping of the location & boundaries of surface water bodies
	mapping of eco-regions and types of water bodies within each river basin
	mapping of reference conditions for the water bodies defined
Groundwater	mapping of the location & boundaries of groundwater bodies
List of different kinds of anthropogenic impact	
Surface water and groundwater	assessment of point-source pollution
	assessment of diffused pollution, including information on land use
	assessment of pressures on the quantitative status of water, including abstractions
	analysis of other anthropogenic impacts on water status
Identification and mapping of protected areas	
Map of monitoring network and information on results of monitoring programme	
Surface water	Ecological and chemical
Groundwater	Chemical and quantitative
Protected areas	
List of environmental objectives for surface water, groundwater and protected areas	
Summary of feasibility analysis of water use	
Summary of programmes of measures	
-	summary of the measures required to implement EU legislation on water protection
-	measures taken to apply the principle of recovery of the costs of water use
-	summary of the measures taken to protect drinking water bodies
-	summary of measures for the control of water abstraction and impoundment
-	summary of measures for the control of point-source discharges & other activities with an impact on the water status

<sup>16</sup> Taken from M. Nanni, Water Governance in the Western EECCA, *Overview of Legal and Institutional Frameworks*, July 2008.

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-	identification of the cases where direct discharges to groundwater were authorized
-	summary of the measures taken to reduce discharge of priority substances and thereafter
-	summary of the measures taken to prevent or reduce the impact of accidental pollution
-	summary of the measures taken for water bodies which are unlikely to achieve the environmental objectives
-	details of additional measures aimed at attaining the environmental objectives established
-	details of the measures taken to avoid increase in pollution of sea waters
<b>Register of any detailed programmes and RBMP for a river basin district dealing with particular sub-basins, sectors, issues or water types, including a summary of their contents</b>	
<b>List of competent authorities</b>	
<b>Contact sources and procedures for obtaining background documents, information and monitoring data</b>	

The Order is silent as to the concrete modalities for plan preparation and approval. Moreover, since river basin planning is a matter of concern to a number of institutions at various territorial levels, as well as to other stakeholders, and therefore should not be limited to the domain of the State Committee (Water Agency), it is of limited value. Therefore, between 2008 and 2010 assistance was provided to the Government, through the EU Water Governance Project, in the development of a modified draft of the Cabinet decision on river basin planning reflecting WFD principles, to provide a legal basis to legal instruments at a lower level, such as *Nakaz* No. 56. Two further draft Cabinet decisions were prepared under the project, on the establishment and functioning of river basin councils and on the development of a methodology for the delimitation of water bodies, respectively. The project also recommended amendments to the 1995 Water Code, to incorporate IWRM and river basin management principles, thus providing a solid legal basis to river basin management planning. No steps have been taken after project completion to implement the recommendations and finalize the draft Cabinet decisions.

Further legislation has been adopted, more recently, to reiterate Ukraine’s commitment to the adoption of IWRM principles in line with the EU WFD. Law No. 2818-VI of 21 December, 2010, on the Fundamental Principles (Strategy) of Ukraine’s State Environmental Policy for the Period until 2020, sets as main policy objective that of reforming the public administration in such a manner as to achieve a shift towards IWRM, consistent with a river basin management approach. However, the concrete (environmental) objectives to be attained through this shift are not stated. The law indicates as a further policy objective the construction of municipal treatment facilities with a view to the reduction of pollution within specified deadlines. Emphasis is placed on construction, not on the achievement of environmental objectives.

The National Environmental Action Plan 2011-2015, approved by Cabinet of Minister by Resolution No. 577 of 25 May, 2011, sets as one of its objectives (Objective 2) that to improve the environmental situation and calls, among other things, for the preparation of draft legislation to introduce IWRM principles and for the preparation of river basin management plans. Pursuant to the Methodological Guidelines ‘on incorporating the provisions of the Law of Ukraine on the Fundamental Principles (Strategy) of Ukraine’s State Environmental Policy for the Period until 2020 and the National action plan on environmental protection for 2011-2015 into the development programmes of industries (sectors) of the economy and regional development programmes’ (2011-2012), the terms of reference for the development of industry-specific environmental programmes include the implementation of IWRM in accordance with the river basin management principle. Here, also, the objectives to be achieved are not stated. In addition, there is no mention of the manner in which implementation is to take place.

Last but not least, in May, 2012, The Verkhovna Rada (Parliament) has passed a Law approving the National Target Programme of Development Water and Environmental Rehabilitation of the Dnipro River Basin for the period up to

2020.<sup>17</sup> This Law, which repeals Law No. 25 of 2002, on the State program of water management, states that one of the aims of the Programme is ‘...the implementation of integrated water resources management according to the basin principle.’ The Law enumerates the actions to be implemented in the period 2017-2021, which include the harmonization of water legislation with international standards, the development of the system for water resources monitoring in accordance with international norms, the implementation of IWRM by river basin, including river basin planning, the establishment/strengthening of river basin management departments (BUVR) and the establishment of river basin councils. Again, there is no objective to be achieved through programme implementation. Thus, there are obligations of conduct (measures) but not of result. This is inconsistent with the stated intent to bring water resources management in line with international, and in particular European, standards.

### 3.2 Conclusions and possible project inputs

The legal framework for water resources management of Ukraine does not reflect river basin management principles such as those enshrined in the WFD. Considerable efforts have been made in recent years to introduce reforms, often with the assistance of EU-funded projects, but these efforts have remained on paper. The EU Water Governance Project has contributed significantly to the reform efforts, but the time frame for project implementation – two years including inception - has probably been too short to allow their translation into concrete action. Hence, the draft legislation produced was never channeled through a formal approval process after project completion.

Evidence of the recognition by the Government of the soundness of the EU approach is provided by the numerous policy statements made in the past two years, which also indicate that Ukraine still intends to opt for a river basin management approach in line with European standards. Given its duration and its capacity-building orientation, the EPIRB project could provide a good opportunity for the country **to resume activities building on the outputs produced through the Water Governance Project**. In particular, it could include in the group of activities relating to **pilot river basin planning the further elaboration of the draft subsidiary legislation on the subject**, based on the evolution of the planning exercise. It should be borne in mind, however, that the 1995 Water Code still does not spell out the manner in which the river basin management principle should be implemented.

Therefore, a parallel-track approach to the legislation-drafting exercise just mentioned is recommended, consisting of:

- the preparation of draft subsidiary legislation on river basin planning and the establishment and functioning of river basin councils, based on the materials produced through the Water Governance Project and the changes intervened since 2010;
- the drafting of amendments to the 1995 Water Code to provide a basis to the subsidiary legislation just mentioned.

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<sup>17</sup> Not officially published yet. Text available at [http://search.ligazakon.ua/l\\_doc2.nsf/link1/JF7E800V.html](http://search.ligazakon.ua/l_doc2.nsf/link1/JF7E800V.html)

## COUNTRY OVERVIEW: CAUCASUS COUNTRIES

### 4. ARMENIA

#### 4.1 Present situation

The provisions of the Water Code of 4 June 2002 on river basin planning and management are currently being implemented. The national water policy and the national water programme required to be introduced by the code were adopted in 2005 and 2006, respectively.<sup>18</sup> For the implementation of the national water programme objectives, short-term (until 2010), mid-term (2010-2015) and long-term (2015-2021) programmes have been developed.

The institutional reforms called for by the code have also been turned into practice, so that at present the Water Resources Management Agency (WRMA) of the Ministry of Nature Protection (MNP) carries virtually all resource management functions. River basin organizations have been established for six of the basin management areas which were to be defined under the Code. The highest advisory body in the field of water resources management is the National Water Council.<sup>19</sup> It is composed of representatives of the main water-related institutions and is chaired by the Prime Minister. The Dispute Resolution Commission under the council is responsible for resolving disputes relating to water use permits.

River basin management plans are being developed for the six river basin management areas.<sup>20</sup> Mechanisms for stakeholder participation in river basin planning are also provided for by the code. Several Government decisions and other legal instruments have been adopted since 2003, as required by Article 121 of the code.

Assistance in the implementation of the legal and institutional reforms just mentioned was provided to the Government over the years by a number of donor organizations, including USAID, UNDP and the EU. Surface water quality standards consistent with the provisions of the Water Code were developed through a state-supported programme, and between 2008 and 2010 they were discussed at length with the support of a number of projects, including the Water Governance Project. These standards have now become mandatory by virtue of Government Resolution No. 75-N of January 27, 2011, ‘On Definition of Water Quality Norms for each Water Basin Management Area, Taking into Consideration Local Specifics’.

#### 4.2 Summary of findings and possible project inputs

The legal framework for water resources management in Armenia is well developed and partially consistent with EU WFD principles. The country continues to make efforts towards further improvements. In particular, Armenia is currently planning to adopt a decentralized approach to water resources management. Since the EPIRB Project intends to build capacity in river basin planning, one project activity from the legal/institutional viewpoint could focus on a **study of the impacts of decentralization on river basin planning, followed by recommendations on how links could be established between river basin planning (and planning tools) and decentralized resource management functions.**

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<sup>18</sup> Law on Fundamental Provisions of the National Water Policy, 2005; Law No. 1384 of 27 November, 2006, on the National Water Programme of the Republic of Armenia.

<sup>19</sup> Established by Government Decision No. 532 of 16 September, 2002.

<sup>20</sup> For the Sevan-Hrazdan Basin, the Northern Basin, the Akhuryan Basin, the Araratyan Basin and the southern Basin. See Prime Minister’s Decision No. 5-N of 10 January, 2003 on the Approval of the List of Basin Management Bodies of the Water Resources Management Agency of the Ministry of Nature Protection, Operational Procedures and Schedule for Transition to Basin Management.

## 5. AZERBAIJAN

### 5.1 Present situation

The Water Code of 1997 emphasizes water quantity issues but does not enter into detail as to river basin management and planning. The Ministry of Environment and Natural Resources (MENR) was recently vested with water resources management responsibilities,<sup>21</sup> but has not reached the stage at which it is fully able to handle the relevant issues yet. The Amelioration Joint Stock Company (Amelioration JSC), which is a successor of the Soviet-era Ministry of Amelioration and Water Economy (*Minvodkhoz*), has claimed to play a prominent role in this respect, while its real focus is on irrigation and drainage). Water resources management functions will now be in the hands of the new State Water Agency created within the Ministry of Emergency Situations. Other institutions have a stake in water resources management, such as AzerSu, which is involved in drinking water service provision.

Between 2008 and 2010, the Water Governance Project tried to stress the need for a separation between water resources management functions on the one hand, and construction and O&M on the other. The Project promoted in parallel a gradual shift to a IWRM approach in line with EU policies that call for river basin management and planning with a view to achieve given environmental objectives. Thus, the project recommended the implementation of institutional reforms consisting of: (a) the establishment of a State Water Commission to coordinate water-sector institutions; (b) the setting up of a water policy department or sector within the MENR to act as the commission’s secretariat and start performing water resources management functions in a phased manner; and (c) the gradual decentralization of these functions to the basin level.<sup>22</sup> Two draft of statutes (charters) were prepared for the State Water Commission and the department (or sector) of the MENR, respectively, together with the draft legislation needed for their approval. The draft charter of the proposed State Water Commission was submitted to the Cabinet of Ministers and, apparently, has been officially endorsed. There is no recent information on the subject.

The Water Governance Project also indicated the Ganikh (Alazani) river basin as a suitable starting point for the implementation of a river basin management approach, since stakeholders within that basin had shown interest in taking action in such direction. A Ganikh river basin council representing the interests of various stakeholders is now in place and hold meetings, but on an informal basis. A draft charter was prepared for the council and was discussed on various occasions after completion of the Water Governance Project in 2010, with the support of the Organization for Security and Cooperation in Europe (OSCE).

A new draft National Water Strategy is currently being developed within the framework of the EU Water Initiative (EUWI) National Policy Dialogue. The Strategy, which is planned to be submitted to the Cabinet of Ministers at the end of 2012, sets out priority directions and the short- and long-term actions needed to implement IWRM in line with the principles enshrined in the EU WFD, as follows:

- ‘Short-term (6-year) purpose: Implementation of the comprehensive Water Strategy provides benefits to people. Quality and quantity of water supply is sufficient to address water demands of key sectors. Significant improvement in institutional capacity and legal basis supports interagency cooperation and stakeholder participation
- Medium-term (12-year) Purpose: The Water Resources Strategy is operationalized to provide substantial benefits to people for basic needs fulfilment as well as other increased benefits

<sup>21</sup> See *Ukaz* of the President of Azerbaijan of 2 February, 2007, on amendments to various presidential *ukazes* and on the abrogation of *Ukaz* No. 548 of 3 May, 1993, on the establishment of the Committee for Amelioration and Water Economy within the Cabinet of Ministers. This *Ukaz* transfers major water resources policy and management functions to the MENR.

<sup>22</sup> Marcella Nanni, *Institutional and legal reforms for enhanced water resources management, Ideas for a first draft concept paper and the way ahead*, Working Document No. 2 (Rev. 1), February, 2009.

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related to sustainable water use. Coordinated water management allows covering water needs of involved sectors. Environmental condition of water ecosystems is improved.

- Long-term (18-year) Purpose: Benefits from water resources are maximized in Azerbaijan in a sustainable manner. Water supply is efficient. Water quality corresponds to water requirements of relevant sectors. Measures undertaken allow providing environmental requirements.<sup>23</sup>

Key strategy directions include strengthening water resources and ecosystem protection, meeting the needs of different water users through an improved water rights system, promoting water saving and improving transboundary cooperation in water resources management.

## 5.2 Summary of findings and possible project inputs

Azerbaijan is making progress towards approaching international standards in IWRM. The Charter and plans of action of the new State Water Agency are in line with the efforts the Government has made to assimilate IWRM-related principles in recent years. Azerbaijan has large irrigation infrastructure. Hence, it intends to combine an irrigation-oriented approach with IWRM concepts and tools.

The new National Water Strategy and the institutional reforms just mentioned will have to be supported by an amended Water Code favouring the implementation of a river basin approach to water resources management. This need was already present during the Water Governance Project, but since time and resources were limited and assistance in the development of a new code was not envisaged, the project produced the outline of a project proposal focusing on this particular subject. The proposal, which in the opinion of the author of this report is still valid since it reflects the draft Strategy, among other things, is reproduced in Annex 2.

Given that the EPIRB project will engage in a river basin planning exercise on a pilot basis, it would be useful **to explore whether there is interest in Azerbaijan in the updating of the 1997 Water Code in such a manner as it would reflect IWRM in line with EU WFD principles**. This would of course not mean transposition of the WFD, but just absorbing the main features of it into the national legal framework.<sup>24</sup>

## 5.3 Summary of findings and possible project inputs

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The new Strategy and the institutional reforms just mentioned will have to be supported by an amended Water Code. This need was already present during the Water Governance Project, but since time and resources were limited and assistance in the development of a new code was not envisaged, the project produced the outline of a project proposal focusing on this particular subject. The proposal, which in the opinion of the author of this report is still valid, is reproduced in Annex 2.

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<sup>23</sup> The Azerbaijan Republic National Water Strategy, Draft 1<sup>st</sup> May 2012.

<sup>24</sup> Being party to a Partnership and Cooperation Agreement with the European Union since July 1999 and having subscribed to the European Neighbourhood Policy through the adoption of the policy implementation action plan in 2006, Azerbaijan has undertaken to meet the requirements set by the EU, including those relating to the water sector.

Given that the EPIRB project will engage in a river basin planning exercise on a pilot basis, it would be useful **to explore whether there is interest in Azerbaijan in the updating of the 1997 Water Code in such a manner as it would reflect IWRM in line with EU WFD principles.** This would of course not mean transposition of the WFD, but just absorbing the main features of it into the national legal framework.<sup>25</sup>

## 6. GEORGIA

### 6.1 Present situation

In Georgia, the present situation is not dissimilar from the one found at the time of the Joint Rivers Management Programme in 2002-3, except for the fact that a new Law on Environmental Permits enacted in 2007<sup>26</sup> abolished the permit system provided for in the Water Law of 1997. This new law contains a list of activities that are subject to a permit and to ecological expertise, but not all the water-using (and polluting) activities that were regulated under the Water Law fall within its scope. The law states that the activities which are not mentioned in the list are to be dealt with in ‘technical *reglements*’ (standards), but no such ‘technical *reglements*’ have been adopted so far.

As to the Water Law itself, it contains the main body of rules on water resources management, but does not contain any provisions in support of IWRM. In particular, it does neither provide for river basin management and planning, nor does it facilitate stakeholder participation in water resources management.

### 6.2 Possible project inputs

A draft water law has been under preparation for quite some years and, upon the request of the beneficiary institution – the Ministry of Environment - efforts were devoted with the support of the EU Water Governance Project, unfortunately at a late stage of project implementation, to the elaboration of a text in line with IWRM principle. This text has never reached the completion stage, so that the opportunity could be seized, **on occasion of the pilot river basin planning exercise promoted by the EPIRB project, to resume its preparation and, possibly, to complete this task.** A tentative outline of a draft water law for Georgia, which was developed within the framework of the Water Governance Project, is reproduced at Annex 3. Together with the text produced, but never completed under that project, this outline could serve as initial reference for the preparation of the draft.

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<sup>25</sup> Being party to a Partnership and Cooperation Agreement with the European Union since July 1999 and having subscribed to the European Neighbourhood Policy through the adoption of the policy implementation action plan in 2006, Azerbaijan has undertaken to meet the requirements set by the EU, including those relating to the water sector.

<sup>26</sup> In force since 2008.

## SUMMARY OF CONCLUSIONS

The project beneficiary countries have become increasingly aware, in the past decade, of the need to adopt a river basin approach to water resources management, reflecting the principles enshrined in the WFD. However, their water legislation and institutions do not always support this approach.

The countries' experiences with regard to legal and institutional reforms are diverse, due to different traditions but also to different external influences. While Armenia has a well developed legal framework which it continues to improve, and Moldova is in the process of drafting regulations in support of the implementation of the river basin management and planning tools provided for in the new Water Law, Azerbaijan, Georgia and Ukraine lag behind in the process of reform, in spite of the technical assistance received through numerous projects aimed at supporting this process. Belarus is moving towards the adoption of a resource planning system similar to that of the Russian Federation, but with some elements recalling EU legislation currently in force.

If diversities exist, some common elements in the solutions opted for by the project countries can be traced as well. While water resources management according to the WFD aims at the achievement of specific environmental objectives through the implementation of six-year river basin planning cycles, water resources management and planning according to the countries' water legislation is far from being geared towards the achievement of objectives. Water resources plans which in some of the countries<sup>27</sup> are still referred to as 'schemes for the complex use and protection of water resources' and which are consistent with the soviet tradition, tend to provide for the construction of hydraulic infrastructure as the main remedy to water problems.

The same applies to the other resource management tools, i.e., water body classification, the setting of objectives for water bodies, river basin planning, monitoring and assessment, and the implementation of measures. Instead of being regarded as part of an integrated whole – the planning cycle – each of these tools is considered by the legislation in isolation from the others. For instance, the draft water code of Belarus fails to relate water resources monitoring to river basin planning.

Finally, in Ukraine the water legislation indicates that water resources should be managed on a river basin basis, but fails to spell out the manner in which this principle should be implemented. This is the case in Ukraine.

The water legislation of Azerbaijan and Georgia do not contain any indication that water resources should be managed by river basin, although there is an increasing awareness that reforms are needed.

In consideration of the above, from a legal/institutional viewpoint the EPIRB project could assist the beneficiary countries in the following (or part thereof, depending on resources available), to accompany and support the project pilot river basin planning activities:

- (i) in **Belarus**: a comparative analysis of water resources management tools according to the WFD and the same tools as they are dealt with in the draft water code, with a view to seeking harmonization with WFD principles over time;
- (ii) in **Moldova**: the finalization of the draft regulations on the development of river basin management plans prepared with the support of the Water Governance Project and the preparation of draft regulations on the creation and functioning of River Basin District Committees;
- (iii) in **Ukraine**: building on Water Governance Project outputs, the further elaboration of draft subsidiary legislation on river basin planning, and recommendations on related amendments to the Water Code;
- (iv) in **Armenia**: a study of the impacts of decentralization on river basin planning, followed by recommendations as to links between river basin planning and decentralized resource management functions;
- (v) in **Azerbaijan**: the updating of the Water Code, so as to reflect IWRM in harmony with the principles set forth in the WFD;

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<sup>27</sup> Such as Belarus, Ukraine and Azerbaijan.

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- (vi) in **Georgia**: the finalization of the text of the draft water law which was being elaborated during the Water Governance Project.

The resources needed in order to carry out the above are:

- (vii) local legal/institutional experts: 30 person/-days for each country;
- (viii) international legal/institutional expert(s): 5 person/days for each country (to review the work done by the local experts);
- (ix) workshops to discuss and validate the outcome of the work: 1 for each country, possibly to be organized back-to-back with discussion workshops concerning other project topics.

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### ANNEX 1: POLICY DOCUMENTS AND SECONDARY LEGISLATION TO BE ADOPTED UNDER THE NEW WATER LAW<sup>28</sup>

Nr.	Denumirea actului	Articolul	Instituția responsabilă
Nº	Title of document	Article	Responsible Institution
<b>DOCUMENTE DE POLITICI</b>			
POLICY DOCUMENTS			
1	<b>Politica națională în domeniul resurselor de apă</b>	Art. 17	
	National Water Resources Policy		
2	<b>Politica națională privind apele uzate</b>	Art. 18	
	National Wastewater Policy		
<b>ACTELE CE URMEAZĂ SĂ FIE APROBATE DE CĂTRE GUVERNUL REPUBLICII MOLDOVA</b>			
LIST OF ACTS TO BE APPROVED BY THE GOVERNMENT OF REPUBLIC OF MOLDOVA			
1	<b>Nu se specifică actul (HG?) Hotarele districtelor bazinelor hidrografice, ale subbazinelor hidrografice și hărțile speciale în care acestea sunt determinate</b>	Art. 5 (5)	
	Act not specified (GD?)The boundaries of river basin districts and sub-basins, and the special maps in which these are defined		
2	<b>Regulamentul privind organizarea și funcționarea autorității administrative de gestionare a apelor (Agenția „Apele Moldovei”)</b>	art. 9 (2)	

<sup>28</sup> According to the Draft Water Law, version of 11 October 2011 (prepared by ISRA for the second reading in the Parliament).

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	Regulation on Administrative Authority for Water Management		
3	<b>Regulamentul privind modul de constituire și de funcționare, structura și atribuțiile comitetului districtului bazinului hidrografic</b>	Art.10 (3)	Ministerul Mediului Ministry of Environment
	Regulation on establishment, functioning, structure and competences of the river basin district committee		
4	<b>Nu se specifică actul (HG?) privind crearea comitetului pentru fiecare district al bazinului hidrografic</b>	Art. 10 (1)	
	Act not specified (GD?) on establishment of the River Basin District Committee for each district		
5	<b>Regulamentul privind efectuarea monitoringului și evidenței sistematice a stării apelor de suprafață, a apelor subterane și a zonelor protejate</b>	Art. 13 (1,2)	Ministerul Mediului Ministry of Environment
	Regulation on water resource systematic monitoring and recording of the status of surface water, groundwater and protected areas.		
6	<b>Regulamentul privind structura și conținutul Cadastrului de stat al apelor</b>	Art. 14 (2)	
	Regulation on State Water Cadastre		
7	<b>Regulamentul privind structura și conținutul Registrului autorizațiilor de mediu pentru folosința specială a apei</b>	Art. 15 (2)	Fondul Provocările Mileniului/ Activitatea Reforma Sectorului de Irigare Millennium Challenge Account Moldova/ Irrigation Sector Reform Activity
	Regulation on the Registry of Environmental Authorizations for special use of water		
8	<b>Regulamentul privind elaborarea Planului de gestionare a districtului bazinului hidrografic</b>	Art. 19	Ministerul Mediului <sup>29</sup> Ministry of Environment
	Regulation on development of River Basin District Management Plan		
9	<b>Regulamentul privind evidența și raportarea de către utilizatorii de apă a apei folosite</b>	Art.21 (2d)	Fondul Provocările Mileniului/ Activitatea Reforma Sectorului de Irigare Millennium Challenge Account Moldova/ Irrigation Sector Reform Activity
	Regulation on Water use monitoring and reporting		
10	<b>Regulamentul privind eliberarea autorizației de mediu pentru folosința specială a apei</b>	Art. 21-33	Fondul Provocările Mileniului/ Activitatea Reforma

<sup>29</sup> In versiunea curentă a regulamentului urmează să fie actualizată terminologia (adică: district al bazinului hidrografic și nu regiune teritorial-bazinieră, gestionarea apelor și nu gospodărirea apelor etc)

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	Regulation on the Issuance of Environmental Authorizations for Special Water Use		Sectorului de Irigare Millennium Challenge Account Moldova/ Irrigation Sector Reform Activity
11	<b>Regulamentul privind condițiile de deversare a apelor uzate în corpurile de apă</b>	Art. 34-36, 44	
	Regulation on discharge conditions for wastewater into water bodies		
12	<b>Regulamentul privind zonele de protecție sanitară a prizelor de apă din sursele apelor de suprafață și a prizelor apelor subterane</b>	Art. 34 (3)	
	Regulation on sanitary protection areas for the surface water and groundwater intakes		
13	<b>Regulamentul privind cerințele de calitate a mediului pentru ape</b>	Art. 37	Ministerul Mediului <sup>30</sup>
	Regulation on Environmental Quality Requirements for Water		Ministry of Environment
14	<b>Nu se specifică actul (HG?)</b>	Art.38 (1, 2, 3)	
	<ul style="list-style-type: none"> <li>• <b>Obiectivele de mediu pentru ape cu referire la starea chimică și/sau ecologică și/sau la starea cantitativă a apelor de suprafață, precum și a apelor subterane și a zonelor de protecție.</b></li> </ul>		
	Act not specified (GD?)		
	<ul style="list-style-type: none"> <li>• environmental objectives for water (i.e. chemical and/or ecological status and/or quantitative status for surface water as well as for groundwater and protection areas)</li> </ul>		
	<ul style="list-style-type: none"> <li>• <b>Criteriile generale privind starea apelor pentru corpurile de apă, inclusiv pentru râuri, lacuri, corpuri de apă artificiale sau puternic modificate și pentru apele subterane, precum și definițiile necesare</b></li> </ul>		
	<ul style="list-style-type: none"> <li>• General criteria for the water body status, including, rivers, lakes, heavily modified or artificial water bodies and groundwater together with needed definitions</li> </ul>		
15	<b>Regulamentul privind exploatarea sistemelor de colectare și a stațiilor de epurare a apelor uzate în localitățile urbane</b>	Art. 39	

<sup>30</sup> Proiectul regulamentului a fost elaborat în conformitate cu Codul apelor din care motiv, termenologia acestuia urmează să fie adusă în conformitate cu cea a Legii apelor. În plus, versiunea curentă a regulamentului se referă doar la apele de suprafață.

The draft regulation was developed in accordance with Water Code. Therefore, its terminology should be adjusted to the draft Water Law. In addition, the current version of the regulation covers only the surface waters.

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	Regulation on requirements for wastewater collecting systems and treatment plants in urban areas		
16	<b>Regulamentul privind epurarea apelor uzate în localitățile rurale</b>	Art. 40	
	Regulation on wastewater treatment requirements in rural areas		
17	<b>Regulamentul privind prevenirea poluării din activități agricole</b>	Art. 43	
	Regulation on prevention of pollution from agricultural activities		
18	<b>Regulamentul privind calitatea apelor subterane</b>	Art. 46	
	Regulation on Groundwater Quality		
19	<b>Regulamentul privind planificarea gestionării secetei</b>	Art. 47, 48	
	Regulation on Drought Management		
20	<b>Regulamentul privind gestionarea riscului de inundații</b>	Art.49	
	Regulation on Flood Risk Management		
21	<b>Regulamentul privind identificarea, delimitarea și clasificarea corpurilor de apă</b>	Art.14	Fondul Provocările Mileniului/ Activitatea Reforma Sectorului de Irigare Millennium Challenge Account Moldova/ Irrigation Sector Reform Activity
	Regulation on identification, delineation and classification of surface water bodies		
22	<b>Nu se specifică actul (HG?) Lista corpurilor de apă de suprafață, a zonelor și a fâșiilor de protecție, și a construcțiilor hidrotehnice gestionate de autoritatea administrativă de gestionare a apelor</b>	Art. 50 (3)	
	Act not specified (GD?) List of surface water bodies, protection zones and belts, hydro-technical constructions managed by the Water Management Administrative Authority		
23	<b>Nu se specifică actul (HG?) Plan etapizat de înregistrare a folosinței speciale a apei pentru districtele bazinului hidrografic</b>	Art. 61 (2)	
	Act not specified (GD?) Phased plan for registration of special water use in river basin districts		

## ANNEX 2: AZERBAIJAN: OUTLINE OF PROJECT PROPOSAL:<sup>31</sup>

### PROVISION OF ASSISTANCE IN THE FORMULATION OF WATER RESOURCES LEGISLATION

#### Background

A series of institutional reforms are being undertaken in Azerbaijan in order to bring about a shift from a command & control-based approach to water resources management to **concerted** and **planned** action aiming at ensuring that in the near future the country's water resources will be sufficient in amount and quality to satisfy all demands. It is now considered of the utmost importance that water resources be dealt with by reference to river basins and with the involvement of the various stakeholders. With this in mind, proposals were made, with the support of the Water Governance project, for the establishment of a State Water Commission comprising representatives of all the stakeholders, including water users, and the strengthening of the Ministry of Environment through the establishment of a department to deal with water policy implementation issues. This department will coordinate water resources planning and the implementation of the measures that are required in order to achieve integrated water resources management (IWRM).

The reforms just described should be reflected in the Water Code and in subsidiary legislation. The present Water Code (1998), which was analyzed in the course of the Joint Rivers Management Project (2002-2003) in the light of the EU Water Framework Directive (WFD) and of the IWRM approach that it advocates, does not cater for present needs. In particular:

- it does not support a river basin approach to water resources management, as the only provision in which the river basin is mentioned as a geographical unit lists among water management principles that of 'coordination between the administrative territorial and basin principles' (Art. 16). Thus, it does not require the various water sector-related institutions cited in the text to deal with the sector-relevant issues within their jurisdiction by river basin;
- it does not contain any provisions requiring or authorizing the government water management agencies to develop water resources management plans, as resource management planning is not designated as a public function in Articles 18 ff. Like the water codes or laws of other countries of the former Soviet Union, the Water Code of Azerbaijan calls for the formulation of water-economy balances (Art. 21) and schemes for the complex (comprehensive) use and protection of water resources (Art. 22), the latter being water resources development plans aiming at the satisfaction of water demands, water protection and the prevention of harmful effects of water through the construction of hydraulic structures.
- while providing for the development of water-economy balances and schemes for the complex use and protection of water resources, the code does not make any reference to the river basin as the unit for calculating water balances and preparing schemes;
- the nature of the schemes as construction-oriented instruments is confirmed by the fact that the code designates as lead institution for scheme development the Committee for Amelioration and Water-Economy (Art. 22), which has recently become the Amelioration and Water-Economy Joint Stock Company (JSC);
- the system of state water accounting (inventory of water resources) provided for in Article 25 does not take into consideration the river basin as the unit of water resources management;
- the state water cadastre, also, is to be 'maintained on a single system in the Republic of Azerbaijan' (Art. 26), hence not by river basin;
- there is no requirement of consistency with resource plans for water management – i.e., the 'state control on the use and protection of water bodies' (Art. 28); and, in general,
- it pays scant attention to water quality issues;
- there is no provision for the participation of stakeholders and water users in water resources management.

<sup>31</sup> Taken from M. Nanni, *Water Governance in the Western EECCA, Legal Component – Final Report*, April, 2010.

Given the rapid pace of economic development, and that the commitments of Azerbaijan towards aligning its legislation with the EU, which are spelt out in a Partnership and Cooperation Agreement (PCA) in force since 1999,<sup>32</sup> have been reinforced through the European Neighbourhood Policy, and considering the fact that Azerbaijan is a party to the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 1992), the revision and updating of the code is now overdue.

## Project description

Given the current Government’s commitment towards the implementation of the EU-Azerbaijan Neighbourhood Policy Action Plan, which was approved by the Government in 2006 and requires Azerbaijan to bring its legislation, including water legislation, in line with the EU *acquis*, the overall objective of the project shall be:

***To improve the legal framework for water resources and river basin management, in line with the principles enshrined in the EU Water Framework Directive (WFD).***

The project’s Immediate Objective is:

***To support the Ministry in producing a draft water code in line with the EU WFD that can be implemented as soon as it is formally adopted.***

### Results:

1. A draft water code in line with EU WFD requirements;
2. Drafts of subsidiary legislation, as required, to implement the provisions of the water code;
3. Recommendations, agreed with the beneficiary, for institutional arrangements appropriate to the new water code
4. Key staff in the institutions capable of implementing the provisions of the Water Code;
5. Improved public and stakeholder understanding of the legal and institutional issues underlying the management and use of water resources;
6. Report on test of the new Water Code and institutional capacity in a pilot river basin;
7. A time-bound plan for implementing the new Water Code

### Activities:

- 1.1. Agree with beneficiary the content of the new Water Code
- 1.2. Establish drafting team and begin drafting process
- 1.3. Circulate draft for comments and consultation
- 1.4. Beneficiary produces final draft
  
- 2.1. Agree with beneficiary list of priority legal instruments (subsidiary legislation) to be drafted in order to implement the water code
- 2.2. Establish drafting team and begin drafting progress
- 2.3. Circulate drafts for comment and consultation
- 2.4. Beneficiary produces final draft
  
- 3.1. Contractor and beneficiary jointly assess ability of existing institutions to implement the water code
- 3.2. Agree with beneficiary necessary reforms to institutional structure
  
- 4.1. Agree with beneficiary the training/capacity building necessary for staff
- 4.2. Agree training programme for selected staff, involving a local training organisation, who will provide future national training for all staff.
- 4.3. Implement training programme
  
- 5.1. Select a pilot basin and hold public meetings to present the main features of the new draft water code and subsidiary legislation and their practical implications.

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<sup>32</sup> The PCA requires that, in order to facilitate cooperation, the legislation of Azerbaijan – including legislation on water resources - be gradually brought in line with the EU *acquis*.

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- 5.2. Agree with the beneficiary a programme of future consultations in other basins, drawing on the experience of the pilot consultation
  
  - 6.1. Test the new draft water code and institutional capacity by carrying out a “dry run” in the selected pilot basin
  - 6.2. Report on main findings and lessons learned
  - 6.3. Revise draft code and subsidiary legislation, if necessary, and refine future training programme for institutions
  
  - 7.1. Assist the beneficiary in developing a timed plan for full implementation of the Water Code after its formal adoption.

Suggested project duration: 30 months  
Indicative budget: 2,000,000 €.

If the results are to be sustainable the owner of the project must be the Azerbaijan beneficiary. Most of the work must therefore not be done by the contractor but by Azeri national staff with support and assistance from the contractor (local experts with the support of EU experts). The balance of time allocated to international and local experts must reflect this. One project cannot change procedures in an entire country and the pilot basin is intended to provide (1) a practical example of the current system; (2) a test bed for the new arrangements and (3) a demonstration facility.

The involvement of a local training organisation in staff training is intended to generate sustainable future capacity for training in integrated water resource management.

## ANNEX 3 : GEORGIA: POSSIBLE CONTENT OF A NEW DRAFT WATER LAW<sup>33</sup>

*The draft Water Law for Georgia should be as simple as possible, so as to enable those to whom it is directed, i.e., the officials called to apply its provisions and the water users, to understand it. While being firm as to principles and the definition of the rights and duties of water users and of the functions and powers of the water administration, it should provide the flexibility required in a context of dynamic socio-economic development. Therefore, it should*

- *avoid merely declaratory statements, which could be misinterpreted and misused;*
- *avoid technical details, because they become obsolete when new technologies are introduced;*
- *avoid procedural details, because they may become impractical once circumstances change or the institutional setup undergoes reforms. Details should be left to implementation regulations.*

*The content of the draft Water Law for Georgia should not only reflect the principles enshrined in the EU Water Framework Directive (WFD), but also seek harmony with the water legislation of neighbouring countries. In particular, attention should be paid to the Water Code of Armenia, which was enacted in 2002 and largely reflects IWRM principles.*

### 0. Preamble

#### 1. General provisions:

- purpose of the law [*ensure equitable access to water resources; facilitate the achievement of a good status of water, in accordance with river basin management plans*];
- definition of terms;
- water ownership: water resources to be owned by the state; the state may grant use rights;
- water resources to be managed by river basin, in accordance with river basin management plans;
- authority responsible for water resources [MENR as ‘competent authority’ ?].

#### 2. Water use (or the right to use water) – provisions on the subject should cover both surface water and groundwater :

- manner in which an entitlement to use water arises;
- circumstances under which water may be used without a [permit];
- uses/water-related activities which are subject to a permit;
- manner in which permits are issued (***the main principles should be in the law, the details should be left to the regulations***);
  - there shall be an application, of which public notice is given in accordance with regulations under the Law, a deadline for the raising of objections by those who might be affected by the proposed water utilization, a site inspection, the consideration of the application by specialized institutions (depending on the type of utilization) and, eventually, the issuance or refusal to issue the permit.
- EIA required for certain water uses
- conditions attached to a permit (including conditions relating to the construction, maintenance and safety of hydraulic infrastructure and the protection of drinking water intakes);
- permit duration;
- manner in which a permit may be lost;
- conditions and modalities for the transfer of a permit;
- water charges;
- renewal of permits;
- registration of permits.

<sup>33</sup> Also taken from M. Nanni, *Water Governance in the Western EECCA, Legal Component – Final Report*, April, 2010.

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- 3. Establishment of servitudes (easements) to facilitate water use, water protection, or the execution or maintenance of hydraulic works**
- 4. Water pollution control [Option: ‘Protection of water resources]:**
- duty to assign water bodies to water quality classes (classification of water bodies: see chapter on water resources planning);
  - setting of water quality objectives (quality status to be achieved) and standards;
  - wastewater discharges subject to a permit;
  - manner in which permits are issued (main principles);
  - in case of water use *cum* wastewater discharge, combined permit (covering both the use and the discharge);
  - conditions attached to a wastewater discharge permit (use of treatment installations, ELV, etc.);
  - permit duration and periodical revision of permit conditions (in order to allow for adjustments and progressive reduction of pollution);
  - pollution fees (polluter-pays principle);
  - manner in which a permit may be lost;
  - renewal of permits;
  - registration of permits.
- 5. Groundwater:**
- specific provisions, as required.
- 6. Harmful effects of water:**
- flood management: establishment, delimitation and mapping of flood-prone areas (responsibilities for it);
  - activities which are prohibited or limited within flood-prone areas;
  - establishment of warning and alarm systems;
  - flood management plans (to be integrated into river basin management plans).
  - drought management: power of the authority to limit water abstractions; drought management plans (to be integrated into river basin management plans).
- 7. Water resources planning:**
- designation and delimitation [& mapping] of river basin [districts?], by whom?
  - responsibility [MENR, through its decentralized branches];
  - duty to prepare a river basin management plan for each river basin district;
  - identification of priority basin districts and sub-basins and preparation of action plan for basin plan development (with targets and time frames), [provision of information to the public];
  - content of river basin management plans [WFD + quantity aspects, priorities among water uses (first satisfaction of drinking water needs), and in particular integration of flood and drought management issues]. It is important to define the status to be achieved through the implementation of planned measures. The plans will provide for a classification of water bodies and for water quality standards ;
  - procedures for river basin planning, including interim issue review, preparation of first draft plan, draft plan publication, etc. [WFD, adapted];
  - public consultation [ad hoc river basin councils ?];
  - approval of final basin plans (by the council of ministers?);
  - publication of plans;
  - binding force of approved plans;
  - duration of river basin plans;
  - basin plans subject to periodical review and updating (according to the same procedures followed for plan preparation).
- 8. Water resources monitoring and information system:**
- water resources monitoring to take place in accordance with programmes to be developed by the MENR and coordinated by the [MENR] at the basin level;
  - content of monitoring programmes (not detailed);
  - for water quality monitoring purposes, a list of priority substances is to be established;
  - publication of monitoring results;
  - periodical review and updating of monitoring programmes;

- responsibility for administering the state water cadaster;
- content of state water cadaster;
- register of water uses and inventory of pollution sources.

**9. Financial aspects:**

- water charges
- water pollution fees;
- financial incentives (may consist of credit, tax holidays, exemption from the payment of water charges for a given period of time, etc.);
- cases in which financial incentives may be granted (e.g., when the applicant invests in clean technologies or in methods allowing him/her to use water more efficiently, etc.). The procedures for obtaining financial incentives should be set by way of regulations.

**10. Enforcement:**

- inspectors;
- powers of inspectors;
- violations and sanctions.

- 11. Transitional provisions**, dealing with the manner in which existing water uses and wastewater discharges are going to be handled under the new law, including resort to the existing system of environmental permits pending the reintroduction of a fully-fledged permit system [***the manner in which the environmental permit system works at present, and the extent to which it could be used to implement the water law, should be investigated***].