



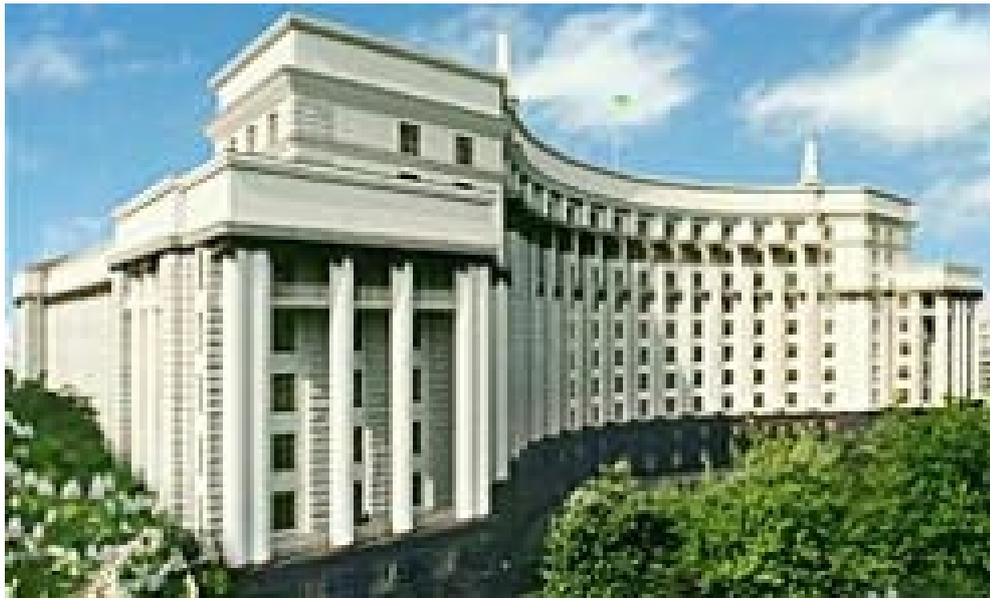
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Environmental Protection of International River Basins

**Preparation and development of the draft of new legislative
act, based on the IWRM principles and in accordance with the
requirements of the WFD**



DRAFT INCEPTION REPORT

Prepared by

Dnieper Fund, Ukraine

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LIST OF ABBREVIATIONS

EPIRB - Environmental Protection of International River Basins

EU – European Union

IWRM – Integrated Water Resources Management

MENR – Ministry for Ecology and Natural resources

SWA – State Water Agency of Ukraine

UNECE – United Nation European Economic Commission

WFD - Water Framework Directive 2000/60/EC

INTRODUCTION

The present inception report has been prepared by 'Dnieper Fund' within the signed contract for Implementation of selected measures from the programme for pilot projects in the scope of EU funded project "Environmental Protection of International River Basins" (EPIRB).

The research under 'Preparation and development of the draft of new legislative act, based on the IWRM principles and in accordance with the requirements of the WFD' to assist the Government of Ukraine in the development and drafting of a new legislation act which is to elaborate the transition from administrative-territorial management model to the basin model principle.

Preparation and development of a draft new legislative act, based on the IWRM principles and in accordance with the requirements of the WFD, to be submitted to the beneficiary for adoption and implementation on the National level. The new act will elaborate the transition from administrative-territorial management model to the management of the basin principle under the EU Water Framework Directive.

Ministry for Ecology and Natural resources (MENR) has sought to harmonise Ukrainian environmental legislation with the EU legislation and introduce a system of integrated water resources management at the basin principle, as a part of the 'Action Plan Ukraine – EU'. This approach was officially adopted in 24 May 2012 Law № 4836-VI 'On approval of the National Program for Water Management and Environmental Rehabilitation of the Dnieper River for the period till 2021'. This Law declares the harmonization of Ukrainian legislation with international standards and improving the regulatory framework to ensure innovation and investment development of water management, the introduction of effective, sustainable and balanced mechanisms for the use, protection and restoration of water resource. Other item of this National Program declares 'implementation of integrated water resources management at the basin principle, development and implementation of river basin management plans, the use of economic models earmarked funding measures in river basins, river basin councils formation and enhance the role of existing and creation of new departments basin water resources'.

In carrying out this assignment the attention is drawn to the requirements of the recently signed association Agreement between the EU and Government of Ukraine, the IWRM principles embedded in the Water Framework Directive and the transboundary issues enshrined in the UNECE Water Convention.

The IWRM principles are provided in Water Code of Ukraine (N 214/95-VR from 06.06.95) EU Water Framework Directive (2000/60/EU), EU Directive flood (2007/60/EU), the International Commission for the Protection of Danube River (ratified by Law N 2997 -III of 17.01.2002), the Framework Convention on the Protection and Sustainable development of the Carpathians (ratified by Law N 1672 -IV of 07.04.2004).

There is a comprehensive international framework that helps interested countries to introduce and implement the principles of the IWRM. Many of the countries in the region are Parties to the 1992 UNECE Water Convention that lays down principles for IWRM and transboundary cooperation. Its' Protocol on Water and Health takes a broader approach to protect human health and well-being by better water management, building on IWRM principles.

The signing of the political part of Association Agreement between Ukraine and EU on 21 of March 2014 and economical part on 27 of June made step forward implementation of the results of 10 years work of Ukraine on harmonization / approximation of environmental legislation¹ to the EU legislation, including EU water legislation, particularly the EU WFD. It develops a good political momentum to support the efforts of SWA, the MENR and the Ecology Committee of the Verkhovna Rada to incorporate the Basin management principles into Ukrainian legislation. During the last 3 years there were three attempts of SWA and MENR to made amendments to the Water Code of 1995 edition. Due to the administrative reforms and political instability they were not adopted yet.

1. IMPEMETATION METHODOLOGY

1.1. General approach

The pressure on water resources highlights the hydrological, social, economic and ecological inter-dependencies in river, lake and aquifer basins. These interdependencies demand more integrated approaches to developing and managing water and land resources. There is a dynamic relationship between basin stakeholders and central governments, who have to work together to ensure the viability of their decisions in meeting sustainable development goals.

To address the multi-faceted nature of water management, many countries are now introducing an integrated approach to water resources management at the national and basin level. This includes improving institutional arrangements and working practices.

The integrated water resources management approach helps to manage and develop water resources in a sustainable and balanced way, taking account of social, economic and environmental interests. It recognises the many different and competing interest groups, the sectors that use and abuse water, and the needs of the environment.

The integrated approach co-ordinates water resources management across sectors and interest groups, and at different scales, from local to international. It emphasises involvement in national policy and law making processes, establishing good governance and creating effective institutional and regulatory arrangements as routes to more equitable and sustainable decisions. A range of tools, such as social and environmental assessments, economic instruments, and information and monitoring systems, support this process.

According EU WFD ‘Within a river basin where use of water may have transboundary effects, the requirements for the achievement of the environmental objectives established under this Directive, and in particular all programmes of measures should be coordinated for the whole of the river basin district’ and ‘Member States shall identify the individual river basins lying within their national territory and, for the purposes of this Directive, shall assign them to individual river basin districts. Small river basins may be combined with larger river basins or joined with neighbouring small basins to form individual river basin districts where it is appropriate. Member States shall ensure the appropriate administrative arrangements, including the identification of the appropriate competent authority, for the application of the rules of this Directive within each river basin district lying within their territory.

¹ Law on the State programme of adaptation of Ukraine legislation to the EU legislation No1629-IV of 18 March 2004

From other hand, according to the Law of Ukraine “On Fundamental Principles (Strategy) of the State Environmental Policy of Ukraine for the Period until 2020 (“the EcoStrategy Law”)², in the field of water resources management the goals are to reform the state governance system by implementation of the IWRM and River Management principles by 2015 and to develop the RBMP for six Ukrainian river basins during the period 2015 - 2020. According to the task #64 of the National Environment Action Plan for 2011-2015³ the preparation of the research studies for development of the RBMP for six Ukrainian river basins was planned for 2012-2013.

The State Targeted Programme on the Water Management Development and Environmental Restoration of the Dnieper River Basin until 2021 (approved by the Verhovna Rada of Ukraine #4836-17 on 24.05.2012) requires a shift towards river basin approach and the use of river basin management plans as an operational tool.

A draft decision of the Cabinet of Ministers of Ukraine on river basin planning was elaborated in the framework of Transboundary River Basin Management projects, but it never was approved.

It has to be mentioned that in Ukraine a technical document on methodology for the elaboration of river basin management plans was adopted by SWA Order No. 56 on 28 February, 2008. The Order sets the principles underlying the preparation of river basin management plans based on the EU WFD principles, application of the existing and developing new financing mechanisms and implementation of the reforms gradually and in coordination, and on a pilot basis in two or three river basin districts first. The Order does not set any time targets; it calls for improvements of the status of water and of the state of the environment and public health within river basins.

The assignment beneficiaries and recipients are Parliament (Verhovna Rada of Ukraine), Government (Cabinet of Ministers of Ukraine), Ministry of Ecology and Natural Resources of Ukraine, State Water Agency of Ukraine.

1.2. Analyses and recommendations in national water legislation and institutional sphere

An implementation of the contract should begin with analysis of the existing management use, protection and restoration of water resources and ecosystems - the history of its creation in Ukraine since independence, a gradual transformation and restructuring and efficiency of operation. The scale of the study should cover all parts of the legislative and the executive branch and the level of their interaction with each other. It is necessary to define positive results in the interaction and disadvantages of reasoned conclusions.

The analysis should include structural elements at the level of central and administrative-territorial government and get involved in all stakeholders: research institutions, community, business and investment funds.

The analysis should also include a mechanism for the implementation of water policy from the appropriate regulatory acts to their implementation and enforcement. Disadvantages of this mechanism and the lack of legislation that hinder the implementation of effective water management should be the basis for proposed changes in the structure of water management and legal framework.

² No 2818-VI of 21.12.2010

³ Cabinet of Ministers of Ukraine, Order No. 577-p from 25.05.2011

Harmonization of the requirements of the EU water legislation in Ukraine with the introduction of the principles of integrated water resources management should be considered in terms of social, economic and environmental feasibility, deferring more ambitious and costly measures and has to present the proposed scheme to attract the necessary funds.

The following international and national legislation should be processed during the execution of required research:

1. The Constitution of Ukraine of 28.06.1996 № 254k/96-VR.
2. The Law of Ukraine "On the Verkhovna Rada of Ukraine" dated 10.02.2010 № 1861-VI;
3. The Law of Ukraine "On the basis of domestic and foreign policy" of 01.07.2010 № 2411-IV.
4. The Law of Ukraine "On the Cabinet of Ministers of Ukraine" dated 07.10.2010 № 2591-VI;
5. The Law of Ukraine "On Environmental Protection" dated June 25, 1991 № 1264-XII.
6. On main directions of the state policy of Ukraine on Environmental Protection, Natural Resources and Environmental Security on May 5, 1998 № 188/98-VR.
7. Water Code of Ukraine. Law of Ukraine on June 6, 1995 213/95-VR number.
8. Law of Ukraine on May 24, 2012 № № 4836-VI «On Approval of the State Program on Water Resources Management and Environmental Rehabilitation of the Dnipro River for the period until 2021.»
9. Ukraine Act of March 3, 2005 № 2455-IV «On the State Programme" Drinking Water of Ukraine "for 2006-2020."»
10. The Law of Ukraine "On the State Program for Adaptation of Ukraine to the EU legislation" from 18.03.2004 № 1629-IV.
11. The EU Water Framework Directive 2000/60/EC.
12. The Law of Ukraine "On Taxation System" dated June 25, 2001 № 1252-XII.
13. The Order of Cabinet of Ministers of Ukraine dated March 7, 2006 № 256 on improving the organization of work to bring national legislation into line with European norms and standards.
14. The Tax Code of Ukraine, the Law of Ukraine of 02.12.2010 № 2755-VI.
15. The Law of Ukraine "On Fundamentals (strategy) of the State Environmental Policy of Ukraine till 2020" from 21.12.2010 № 2818-VI.
16. The Law of Ukraine "On the central authorities" from 17.03.2011 № 3166-VI.
17. Verkhovna Rada of Ukraine "On recommendation by the parliamentary hearings on the implementation of the state policy of Ukraine's integration into the EU" from 17.01.2002 № 2999-III.
18. Decree of the President of Ukraine "On some issues of the organization of ministries and other central authorities "from 24.12.2010 № 1199/2010.
19. Decree of the President of Ukraine "On Regulation of the Ministry of Ecology and Natural Resources of Ukraine "dated 13.04.2011 № 452/2011.
20. Resolution of the Cabinet of Ministry of Ukraine 'On approval of preparation rules of draft acts of the Cabinet of Ministers of Ukraine' dated 06.09.2005 № 870.
21. Oder of Ministry of Justice 'The order provision of legal acts on state registration with the Ministry of Justice of Ukraine and their state registration' dated 15.05.2013 № 883/5.

1.3. Proposals for reforming of the state governance of water resources through the transition from administrative-territorial management model to the management of the basin principle under the EU Water Framework Directive (legal, financial, economic, structural, organizational components)

A transition from territorial to river basin water management system, in which the main control unit is defined catchment area of the water body, will help to maximize good governance in the use, protection and restoration of water resources. This is provided by the Law of Ukraine "On

the Fundamentals of the State Environmental Policy until 2020", which states that "the system of government in the field of water requires urgent reform in the direction of the transition to integrated water management." In accordance with this Act and Action Plan to implement the National Programme for Approximation of Ukraine to the EU legislation is also necessary to draft legislation aimed at implementing the principle of integrated water resources management.

Science-based management of water resources, water regime and water consumption for the rational comprehensive use in a particular area is possible in the implementation of the principle of basin water management, as stipulated by the Law of Ukraine. According to this principle management structure within the catchment area of the basin carry out the functions of planning, coordination and control in order to ensure an integrated and sustainable management of river waters of the basin at the regional, national and international level. Basin principle of water management involves cross-border cooperation in the use and protection of waters and restoration of water resources in transboundary waters.

The improving of transboundary monitoring requires the coordinated management decisions in the field of water management with other countries that share transboundary watercourses, distribute and communicate environmental and water management information. Also it is necessary to develop common criteria for assessing the ecological status of river basins and work out common action to eliminate the effects of environmental emergencies, accidents and disasters. Basin water management system will contribute to the harmonization of water legislation of Ukraine with the EU legislation, the implementation of the international conventions and agreements to which Ukraine has become. Implementation of integrated water resources management is a priority activity in this area. It should take into account social factors needs of industries, providing education and information activities aimed at the protection and sustainable use of water sources and participating in international events for the conservation and restoration of water resources.

As part of the Integrated Water Resources Management Ukraine provides:

- The creation of river basin water management authorities, which are responsible for the restoration of water resources and the implementation of river basin management plan in accordance with the requirements of the EU WFD;
- Development of the legal acts to ensure their development;
- Development and implementation of economic mechanisms regulating the use and reproduction of water resources and ecosystems;
- Development of special programs for reconstruction and development of water management and finance sector;
- Access to information, participation of community in the discussion of problems and making joint decisions.

Due to the inability to solve water and environmental issues quickly, public policy should be based on the principles of identification of goals, have targeted the entire water and environmental activities. National priorities for environmental protection and natural resource management include:

- A guarantee of ecological safety of nuclear facilities, protection of people and the environment from radiation, prevention of harmful effects of the Chernobyl accident;
- Improvement of the ecological state of the Dnipro River Basin and the quality of drinking water;
- The stabilization and improvement of environmental conditions in the cities and industrial centers of the Donets-Dnieper region;
- Prevention of pollution of the Black and Azov Seas and improvement of their environmental situation;

- Restructuring resource-productive capacity of the economy, implementing of greening technologies in the industry, energy, construction, agriculture and transport.

2. DRAFT OF NEW LEGISLATIVE ACT, BASED ON THE PRINCIPLES AND IN ACCORDANCE WITH THE REQUIREMENTS OF THE WFD

Development of the Act will increase the effectiveness of regulatory policy by the transition from administrative-territorial system to the basin water management system, regarding the introduction of integrated approaches to the management of water resources at the basin principle in Ukraine.

According with the Association Agreement between Ukraine on the one hand, the European Union and its Member States on the other hand Ukraine obliged to implement over three years among others next, Water Framework Directive N 200/60/EU and to adopt of national legislation and authorize responsible body (bodies) for implementation WFD.

New legislative act will indicate institutional organization, its legal framework, structure, obligations, responsibility etc. The act will be draw according with the requirement of the Cabinet of Ministry of Ukraine to the normative act (resolution of the Cabinet of Ministry of Ukraine 'On approval of preparation rules of draft acts of the Cabinet of Ministers of Ukraine' dated 06.09.2005 № 870).

Experience in development River Basin Management Plans under the WFD in Ukraine at the state level is an innovation. Therefore, in the final stage of this pilot project it is necessary to provide the plan of implementation of the WFD in Ukraine using CIS, developed for these purpose experts in Europe. So there will be an attempt to explain the sense of each stage of with the interpretation of to national specificities.

3. PLANNING PROCESS: TIMELINE, CONSULTATION

The assignment is divided into three phases. The deliverables for each phase are described below:

Inception phase

Deliverable 1: Inception report - outlining contractor's appreciation and implementation methodology

Phase-1: Analyses and recommendations in national water legislation and institutional sphere

Deliverable 2: Review of the current legislation and recommendations for the development of relevant legal documents

While primary legislation the Water Code is in place it requires revision to fully incorporate the principle of basin management, and the important secondary, or subsidiary, legislation and implementation plans are frequent bottle-necks. River basin management plans have been prepared in only a limited number of cases. There is still an institutional inertia or even resistance towards reform, including the introduction of river basin management.

Deliverable 3: Review of the existing institutional structure of water management at all levels with the aim of delivering river basin management and IWRM

Ukraine has some historic background of river basin management from the Soviet period. Schemes of Integrated Use and Protection of Water Resources had similar features to IWRM but were not fully developed; the participatory approach was not applied and environmental aspects were not properly addressed. Application of the basin approach, i.e. transition from administrative borders to hydrographical borders, is now an important part of the process to introduce Integrated Water Resource Management in Ukraine.

Phase-2: Proposals for reforming of the state governance of water resources through the transition from administrative-territorial management model to the management of the basin principle under the EU Water Framework Directive (legal, financial, economic, structural, organizational components)

Deliverable 4: Guidelines for the development of regulations and / or amendments to the existing water management structure in Ukraine.

Managing the water use is a complex challenge that needs to take into account different water users with different interests. Horizontal coordination between all relevant sectors such as drinking water supply, irrigated farming, power generation, industrial uses, recreation, as well as protection of ecosystems is vital. The domination of a centralised agency representing a single sector should be avoided. Regular coordination and joint planning involving different interests is important. It is equally important that the coordination is well organised and functioning between different levels of management: from national to basin and sub-basin levels. Horizontal coordination mechanisms are defined in Water Codes. Special bodies and mechanisms are needed at least at national and basin levels but the establishment of these proves to be challenging.

The purpose of this draft report and guideline is to give an overview of implementation of the IWRM principles and water sector reforms in Ukraine, with a focus on the development of legal and institutional frameworks.

Deliverable 5: The draft of the new act will elaborate the transition from administrative-territorial management model to the management of the basin principle under the EU Water Framework Directive

Drafting, reporting and implementation of above deliverables will be coordinated, advised and monitored by Team Leader and respective River Basin Management Expert. In addition, the target and other institutions, as well as members of the National Coordination Committee (NCC), will take an active part in the review procedures. Report will be prepared in Ukraine and English.

Draft of the new legislation act will be discussed on the round table with participation of all interested parts of proposing institutional processes.

Duration of the assignment is 12 months from 20 June 2014 to 20 June 2015; the phases will be completed in accordance with the following schedule:

	2014							2015				
	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
<u>Inception Phase</u>												
<u>Phase-1: Analyses and recommendations in national water legislation and institutional reform</u>												

Phase-2: Proposals for reforming management of water resources from administrative-territorial to basin management model														
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