

RF WATER CODE and EU WATER FRAMEWORK DIRECTIVE
New Approaches and Policies to Water Management

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INTRODUCTION

This paper briefly presents the EU Water Framework Directive (WFD) and the Water Code of the Russian Federation. These new legal frameworks are both concerned with the regulation of water use and water resources protection, and were adopted in 2000 in the EU and in 2006 in Russia respectively. They set out the context and basic principles for forming institutional regimes for water protection and conservation, and specify how various water users may behave. They serve as a legal basis for the development of detailed subsequent rules and norms related to various aspects of water use and water protection. The WFD serves as a guideline for the development of national legislation in the EU countries, while the Water Code is the national law of the Russian Federation.

These two legal frameworks share a number of common features. For example, both of them introduce basin management approaches, where the units for water management are the basin districts in the EU, and the baskin okruigs in Russia. Both of them envisage comprehensive basin management schemes that are to be developed for the purposes of integrated water management. The EU WFD envisages tight coordination between countries, territories and administrations within the same basin and states that the usual administrative boundaries should no longer be applied to water basin management. In Russia, the Water Code coordinates water policies between the federation, the 89 federal subjects and the municipalities by defining the scope of their competences and contents of their water-related connexions. Both of them envisage coordination between multiple stakeholders and water-users. Regular monitoring and inventories are among priority issues.

There are also differences between these two legal frameworks. While the WFD calls for integrated management and a unified regime for all water resources, including surface (rivers, lakes, coastal waters) and ground waters, the competence of the Water Code applies only to surface waters; the use and protection of ground waters in the Russian Federation is regulated by a separate national law – the RF Law on the Earth’s interior. The WFD supports the notion of “one river - one governing body – one programme”, whereas basin management institutions under the Water Code may include a combination of basin management authorities and basin councils, based on existing administrative structures within a basin.

Introduction

The new RF Water Code has recently been adopted in Russia (3 June, 2006), and comes into force on 1 January 2007. It is a *framework* national law regulating the protection and use of water resources. Along with other national laws (for example, the national law on environmental protection, the national law on the Earth's interior and the national land code) and corresponding legislation of the federal subjects it establishes a comprehensive system of domestic water legislation. The set of related norms, regulations and administrative acts adopted by the government at all levels as well as presidential decisions are to be in compliance with this framework law. Although this Code is based to a high extent on existing national water legislation¹ it contains a number of innovations, including:

- establishing water property rights for a broader number of actors (federation, federal subjects, municipalities, private persons and legal entities),
- vertical subsidiarity in water governance and division of competences amongst various levels of authority
- institutional coordination based on basin approaches
- creation of basin councils
- new principles defining access to water
- strict regulations and control in water resources conservation and protection, including adoption of water conservation zones, and others.

Basin Management

The Water Code establishes a *basin approach* to water governance in Russia². This principle envisages the regulation and management of water use, access to water resources and water resources protection within particular water basins or *basin okruigs* (art. 28). These basin okruigs serve as the unit for water governance within a basin area. The Code establishes twenty basin okruigs, including four in the Volga Basin (the Upper-Volga, the Oka, the Kama and the Lower Volga). The design of the basin okruigs is based on the combination of two factors, the existing administrative structure in Russia and geographical and hydrological regimes within a particular basin area. Similarly to the EU WFD water management approaches, the Code envisages integrity in the conservation of all water resources of river basins and seas (excluding ground waters), however, it does not go as far as the WFD in the application of coordination principles between administrative units situated in the same river basin, as the WFD states that “management of a river basin is a single system of water management” and that administrative boundaries are no longer to be applied.. Detailed coordination principles based on a basin approach are to be developed further in Russia when the national framework law is implemented.

¹ It replaces the existing national Water Code of the Russian Federation adopted in 1996

² Basin management approach was also foreseen by the 1996 Water Code.

Basin Councils

Institutional *coordination* is realised through the *basin councils* (art.29), which are responsible for recommending effective water governance options within basin okruigs. The basin councils have a consultative status, and their recommendations are taken into account by the respective federal authorities when developing comprehensive water management schemes³ for each river basin.. The design and scope of activities of the basin councils are to be determined by the RF government when the Water Code is implemented.. The system of basin councils is combined with the existing system of government basin authorities. The disadvantage of this is that there is some overlap between the basin management and administrative management approaches. One of the innovations is the high level of participation of major stakeholders represented in the basin councils. They are to include representatives from government institutions, i.e. responsible executive federal organs, authorities of federal subjects, local municipalities, and also representatives of water-users, public organisations and local people. One of their tasks will be to enhance local public participation in decision-making within river basins. Although the basin councils have a limited scope of activities, , presumably their role will increase in importance, and this innovative system for Russia opens up new possibilities for basin management..

Vertical Coordination

The Water Code clearly defines a vertical structure and coordination principles between various levels of authorities within water governance. Particularly, it establishes a hierarchy? subsidiarity between the three levels of state authorities - federation, federal subjects and municipalities (art.24-27). It also defines a division of competences and responsibilities between various levels for the regulation of access to water and water protection. Major new principles of this vertical hierarchy? subsidiarity include:

- A significant part of the federal competences/responsibilities is transferred to federal subjects (with accompanying funds, i.e. subventions from the federal budget)
- New competences concerning the regulation of water use and water protection are given to the municipalities
- Strict control over the execution of water management functions and the use of financial resources allocated for these purposes is established
- Possibility to withdraw the competences in case of non-compliance with established provisions.

The Code contains significant innovations relating to *property rights* over water resources and water bodies. Whereas under the previous RF Water Code, 1996, water had been declared as the property of the state, the new Code treats the major water bodies, i.e. rivers, lakes, artificial reservoirs and canals as *federal property*. Federal subjects, municipalities, private persons and legal entities can have property rights over ponds or a carry located within the limits of land that is their property. .

³ Comprehensive water basin management schemes (art. 33) define allowable limits of human pressures, water quality indicators, water balance, inventory of water use (water consumption and discharges) and water protection activities, flood risk reduction indicators and level of funding; these integrated schemes are obligatory for all state authorities and municipalities.

Civil Society

One of the basic provisions of the Water Code is the establishment of the legal framework for public participation (individuals and non-governmental organisations) in decision-making relating to water property rights and to the protection and conservation of water resources. According to art.3 (6) the public can take part in the reaching of decisions whose implementation might affect water resources, their use and conservation. In their turn, the state authorities, municipalities and water-users must promote public participation and create specific participation mechanisms according to existing national legislation. The Code also guarantees private persons and legal entities equal water use rights, property rights over water bodies (in permitted cases),; has and rights of access to common water resources. It also establishes the principle of *glasnost* and free public access to information on water use (except for data defined for limited dissemination by the government). The Code allows local people in the North, Siberia and the Far East to use water in traditional ways. . on the Code's provision for public participation in decision-making and in practical actions are of special importance to Russia. According to CABRI assessments, public participation is a weak area of 'good water governance' and many challenges will be faced when the Water Code is implemented..

Stakeholders

The Code defines the major types of stakeholders involved in water issues: these include the federation, federal subjects, local municipalities, private persons and legal entities. Based on the type of water users, the Code further divides stakeholders into sectoral groups of actors, and particular regulatory provisions are defined for each group. There are also general principles of water use and water protection, which are to be applied by all stakeholders. The Code identifies the following groups of users of water for the purposes of:

- Drinking water supply and water supply for economic activities
- Waste water discharges
- Artificial reservoirs maintenance and use
- Energy production
- Transport
- Timber floating
- Health and medical care
- Recreation
- Fisheries and hunting
- Mineral exploitation
- Fire safety
- Traditional uses by local people

Agreements

The Water Code provides a new institutional design for the coordination of water access and water protection. It provides for a shift from current national regulatory practices based on licensing to a relaxation of administrative and bureaucratic procedures. *Agreements* between the government and a water user are authorised with permits, or the so-called *decisions* on the use of a water body, while certain types of water use are in free access (ch.3, art.11-23), such as environmental protection, navigation, fire protection, fisheries and reproduction of bio-resources, research and monitoring, water use for private rural households and leisure. Agreements between executive authorities and water-users are established (for up to 20 years) for (a) water extraction, (b) use of surface of water bodies, including recreation, and (c) energy production. Special fees for water use are fixed by the agreements and they differ across water basins. ‘Decisions’ are issued by the federal government or executive authorities and municipalities for a broader variety of water uses, including water discharges, security issues, hydro-technical facilities and networks, transport infrastructure, mining, timber floatation, and agricultural melioration.

Water Quality Norms

The Water Code defines rules for the development of norms of allowable impacts on water bodies, and respective water quality indicators for water bodies. Norms of allowable impacts are based on maximum allowable concentrations of chemicals, nuclear substances, micro-organisms and other water quality indices. These norms are adopted according to existing regulatory regimes defined by the government. Water quality norms are developed by responsible federal executive authorities for each water basin taking into account its natural and geographical conditions, as well as specific features of water uses within the basin. For water bodies that are used for drinking water supply, special sanitary and protection zones are established. A system of regulations and bans are established for sewage water discharges, dumping and discharges of harmful substances. The comprehensive schemes of water use and water protection (art.33) for particular basins, along with defining allowable levels of human pressures and levels of water use, establish regimes for water protection and a system of water quality indicators (for the basin or its sub-basins), limits for sewage discharges and water consumption along with the list of protection and conservation measures and measures to reduce the risk of floods. Detailed environmental protection regimes are defined by the national Law on environmental protection. Protection and use of ground waters is regulated by a special national legislation on the Earth Interior.

Monitoring and Inventories

The government *monitoring* of the water bodies is a system combining observations, assessment and forecasts on the state of water bodies. The system is organised on a okruig level and provides for regular observations on water quality and quantity, regimes of water use, data processing and its incorporation into the water register, and forecasting in their dynamics. The state *water register, to which there is free access (art.31)*, is a compilation of documentation on water bodies and water basins, water quality and

quantity, water use, hydro-technical facilities and water protection zones. It also assembles the agreements and decisions on water use, and documentation on their termination

Economic Mechanisms

The Water Code defines economic mechanisms for water use. These include a system of 1) payments for water use, and 2) economic incentives for protection and conservation of water resources. The water use charges differ between different river basins. The costs incurred by water users for water protection and conservation are taken into account when defining their payments for water use. The fees are agreed with the stakeholders.

THE EU WATER FRAMEWORK DIRECTIVE (WFD)

Introduction

In 2000, the EU issued the WFD in order to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater (Directive, 2000). The WFD is part of the EU environmental policy aiming at coordinating different regulations taken at Community level to tackle particular environmental problems. Some characteristic examples of such regulation are the Urban Waste Water Treatment Directive 91/271/EEC, the Nitrates Directive 91/676/EEC, and the Integrated Pollution Prevention and Control Directive (IPPC).

The purpose of the WFD is to create a framework, which:

- (a) prevents further deterioration and protects and enhances the status of aquatic ecosystems;
- (b) promotes sustainable water use based on a long-term protection of available water resources;
- (c) aims at enhanced protection and improvement of the aquatic environment;
- (d) ensures the progressive reduction of pollution of groundwater and prevents its further pollution;
- (e) contributes to mitigating the effects of floods and droughts.

Key elements of the WFD include:

- *Technical Considerations*: Monitoring, River Basin Planning and Management
- *Institutional*: Adopt the river basin as a single system for water management
- *Environmental*: Water quality and ecosystems
- *Water economics*
- *Public participation*

1.1. Monitoring

For many years European water quality monitoring practice has been subdivided by two approaches:

- control of the sources of pollution through the application of available technologies;
- focusing on the quality status of the receiving environment.

There are potential shortcomings when only one of these approaches is applied. Source controls do not take into account the cumulative toxic effects of contaminants from a number of different sources of pollution. The diffuse impacts cannot be estimated. Quality standards applied to water bodies can underestimate the effects of particular substances on the ecosystem, due to lack of scientific knowledge regarding the final outcome of substances in the environment. This approach may also lead to gradual degradation of a water body, if its initial state was better than standard.

1.2. River Basin Planning and Management

The WFD requires that River Basin Management Plans (RBMP) are produced for each River Basin District (RBD) by 2009. These will be strategic management documents, developed via the River Basin Planning process, which will integrate the management of the water and land environment.

Preparation will involve a process of analysis, monitoring, objective setting and consideration of the measures to maintain or improve water status. RBMPs will have a number of functions, but are primarily intended:

- To establish a strategic plan for the long term management of the River Basin District.
- To set out objectives for water bodies and in broad terms what measures are planned to meet these objectives
- Act as the main reporting mechanism to the European Commission

2. Institutional: River Basin Districts

Integrated water management within the Water Framework Directive is based on River Basin Districts (RBDs). For each RBD there is a statutory requirement to produce and regularly review a River Basin Management Plan (RBMP). When the RBMPs have been produced, the river basins should be mapped and the quality of the water assessed.

3. Environmental

Under the WFD, environmental monitoring programmes are required and specific objectives for water quality are set up. The WFD operates using a cyclical management process. This process begins by identifying water bodies in each river basin district and describing their natural characteristics. The second stage is to assess the pressures and impacts on the water environment. This assessment identifies those water bodies that are unlikely to achieve the environmental objectives set out in the Directive by 2015. This process is known as ‘river basin characterisation’.

4. Water Economics

The Directive calls for the application of economic principles (e.g. the recovery of the costs of water services and the polluter pays principle), approaches and tools (e.g. cost effectiveness analysis) and for the consideration of economic instruments (e.g. water pricing) for achieving its environmental objective in the most effective manner, i.e. good water status for all waters.. Although the different elements of the economic analysis appear in various parts of the WFD text, these should be well integrated in the policy decision and management cycle in order to aid decision-making.

5. Public Participation

The WFD recognises the value and importance of involving all those with an interest in the water and land environment in how the WFD is put into practice. In certain areas (e.g. the development of River Basin Management Plans) stakeholder involvement is an inherent part of the Directive. In order to develop a coherent and consistent approach to information provision and consultation involvement it is important to provide:

- a framework for stakeholder engagement;
- a communication strategy on how to engage the public;
- a platform for consultation and involvement.

References

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