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THE RIVER BASIN PRINCIPLE OF WATER RESOURCES MANAGEMENT IN THE LEGISLATION OF THE EUROPEAN UNION AND UKRAINE

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Abstract. The article studies the notion of the river basin principle of water resources management, its meaning, its legal definition in the EU directives, the particular aspects of its implementation in Ukraine, and its overall importance in terms of water quality and management of water resources, including the marine environment. It is determined that the river basin principle of water resources management is one of the key matters of the EU environmental policy and is a topical issue for Ukraine in the process of European integration. Essentially, the river basin principle of water resources management is defined as integrated management within a river basin district. It is concluded that this principle is one of the main components of integrated management of water resources and is, in fact, the basis of the integrated approach to such management.

Keywords: water resources, management of water resources, integrated management, the river basin principle, the Water Framework Directive, implementation.

1. INTRODUCTION

The signing and implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part [3] (hereafter *the Agreement*) has marked a new stage in the process of European integration in Ukraine as well as presented our country with new challenges. Needless to say, the Agreement has had an influence on all the spheres of political, economic, and social life of the country and has resulted in outlining the primary objectives of Ukrainian state policy and defining its priorities. Moreover, in order to strengthen cooperation with Europe and become a member state of the European Union (hereafter *the EU*), Ukraine has assumed a great number of responsibilities stated in the Agreement and its Annexes.

One of the important aspects of cooperation between the Parties to the Agreement is the question of the environment. According to Art. 361 of the Agreement, this cooperation is aimed at preserving, protecting, improving, and rehabilitating the quality of the environment, protecting public health, utilizing natural resources in a sustainable way, and promoting measures at international level to resolve regional and global environmental problems. According to Art. 362 of the Agreement, the Parties: a) exchange information and experience; b) conduct joint research and exchange information

about eco-friendly technologies; c) plan to tackle the consequences of natural disasters and other emergencies; d) engage in joint activities at regional and international levels in accordance with multilateral environmental agreements ratified by the Parties and, if necessary, within relevant agencies. The Parties pay particular attention to transboundary issues. Art. 361 of the Agreement also outlines the following lines of environmental cooperation: a) climate change; b) ecological management and ecology-related questions, i.e. education and academic training, access to information on the environment and the decision-making process; c) air quality; d) water quality and management of water resources, including the marine environment; e) waste and resources management; f) environmental protection, including the preservation and protection of biological and landscape diversity (ecological networks); g) industrial pollution and industrial threats; h) chemicals; i) genetically modified organisms, including the ones in the agricultural sector; j) noise pollution; k) civil protection, natural disasters and anthropogenic threats in particular; l) the urban environment; m) ecology-related meetings. It is certain that all of these problems are crucial, which is why their resolution requires mutual efforts and actions on the part of the states. Meanwhile, specific thorough research is needed due to the multifaceted nature of each of the problems and a large number of sub-questions.

This article is aimed at studying the notion of the river basin principle of water resources management, its meaning, its legal definition in the EU agreements, the particular aspects of its implementation in Ukraine, and its overall importance in terms of water quality and management of water resources, including the marine environment.

2. ANALYSIS AND DISCUSSION

Nowadays the general prospects for the development of environmental legislation in Ukraine in the context of European integration is being discussed more often by Ukrainian legal scholars and is the subject of the academic research of V. Y. Andreitsev [1], A. P. Hetman [11], M. V. Krasnova [12], N. R. Malysheva [16] and many others.

A. P. Hetman believes that the national environmental legislation has had a unique opportunity to approximate to the laws and regulations within the EU legal system in accordance with the criteria for the states aiming to join the Union, the establishment of relevant institutions and the implementation of additional measures, necessary for efficient law-making and law enforcement in the ecological sector. The implementation of the EU directives and regulations ensuring the integration of environmental policy into the other sectoral policies will become a prerequisite for developing a precise and transparent mechanism for the realization of sustainable environmental management; preserving and renewing natural resources; conserving the environment; adhering to the norms of environmental safety, and protecting the ecological rights and legal interests of individuals, legal entities, and other subjects of environmental law [11, p. 31–32].

According to N. R. Malysheva, the process of approximating Ukrainian environmental legislation to the EU law involves meeting the criteria at the three interconnected levels: the criteria at the first level comprise the requirements stated in Art. 6 “Environment” of the Chapter 5 “Economic Cooperation and Other Cooperation Policies”; the criteria at the second level are determined by the ecological constituent of the “*acquis communautaire*”, i.e. a compulsory set of requirements of the EU law which must be met by the legal systems of the states aiming to join the European community; the criteria at the third level are constituted by the “*spirit and letter*” of the EU law on the environment. Today in Ukraine the main focus of attention is on the first approximation level, i.e. on making Ukrainian environmental legislation conform to the EU environmental law, whose issues of priority are outlined in Art. 361 of the Agreement. Unfortunately, not all the domains are properly involved in the process of approximating Ukrainian legislation to European ecological directives stated in the Agreement. The most considerable progress has been achieved in the regulation of water resources management with the integrated approach based on the river basin principle having been introduced at legislative level [16, p. 77–78].

We cannot but agree with the above-mentioned statement, since significant amendments and additions have been made to the Water Code of Ukraine [24] (hereafter *the WC of Ukraine*) by the Law of Ukraine No. 1641-VIII of October 4, 2016 [15] with regard to the implementation of integrated approaches to water resources management based on the river basin principle. It is important to add that the river basin principle of water resources management has been studied from the point of view of its different aspects by such Ukrainian legal scholars as A. H. Borovytska [4], A. V. Kulko [13], N. V. Loktieva-Maklashova [14], Ye. P. Suietnov [23], Z. V. Yaremak [25], and others.

First and foremost, it is necessary to emphasize that water is an essential resource for sustainable development. The state of water resources, their amount and quality depend on a set of conditions, including their effective management. Management of water resources is one of the main issues of the EU environmental policy. The principal EU documents on water quality assurance and management of water resources, including the marine environment are as follows: Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (hereafter *the Water Framework Directive*) [8]; Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks [9]; Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy [10]; Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment [5]; Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption [7]; Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources [6].

In the course of efficient management of water resources the principles of its implementation are of particular importance. The Water Framework Directive comprises the main elements of integrated water resources management: the principle of integrated protection of waters (rivers, lakes, coastal waters, and groundwaters); the river basin principle of water resources management; the principle of the active involvement of citizens and public organizations; the principle of continuous improvement of legislation [14, p. 146]. In our opinion, the river basin principle, among the others, needs special study, since the question of water resources management is now a high priority in Ukrainian environmental policy and plays an important role in the process of European integration.

In fact, the shift from the administrative-territorial to the river basin management of water resources envisaged for Ukraine requires the improvement of legislation, first and foremost of the part concerning the introduction of regulations aimed at the practical implementation of the system of integrated water resources management based on the river basin principle, such as: the definition of the main terms, the hydrographic and hydroeconomic zoning of Ukrainian territory, the powers of central and local authorities, etc. [4, p. 89] which are currently stated, for the most part, in the WC of Ukraine.

As stated in Art. 13 of Chapter 1 of the WC of Ukraine, the government control of the utilization and protection of waters and the restoration of water resources are exercised according to the river basin principle within the framework of the state, interstate, regional, and target-oriented programmes of the utilization and protection of waters and the restoration of water resources as well as of the river basin management plans. This being said, the basin management principle consists in complex (integrated) management of water resources within a river basin (Art. 1 of the WC of Ukraine). The river basin district, according to Art. 1 of the Water Framework Directive, is the main unit of river basin management which encompasses the areas of land and water, made up of one or more neighbouring river basins, including their groundwaters and coastal waters. Thus, the river basin district is the main unit of management in the sphere of the utilization and protection of waters and the restoration of water resources, composed of a river basin (neighbouring river basins) and adjacent groundwaters and coastal waters (Art. 1 of the WC of Ukraine).

As stated in Art. 1 of Chapter 3 of the Water Framework Directive, in accordance with the objectives of the Directive, the member states identify individual river basins within their national boundaries and assign them to certain river basin districts. Small river basins can be grouped with bigger ones or join the neighbouring small river basins to form separate river basins, where appropriate. If groundwaters

do not lie entirely within the boundaries of a certain river basin district, they are identified and assigned to the nearest or most appropriate river basin district. Coastal waters are assigned to the nearest or most appropriate river basin district(s). According to Part 2 of Art. 13¹ of the WC of Ukraine, Ukraine has nine river basin districts: the Dnipro river basin district, the Dniester river basin district, the Danube river basin district, the Southern Buh river basin district, the Don river basin district, the Vistula river basin district, the basin district of the Crimean rivers, the basin district of the Black Sea coastal area, the basin district of the Azov Sea coastal area.

In the process of putting into practice the river basin management of water resources, a river basin management plan is an important document which contains an analysis of the river basin condition and an action plan aimed at achieving the objectives set for every river basin district within the prescribed time limit. According to Part 4 of Art. 13 of the Water Framework Directive, a river basin management plan contains information, specified in Annexe VII. Overall, as stated in the Annexe and in Part 2 of Art. 13² of the WC of Ukraine, the main points of river basin management plans are: 1) a general description of the groundwaters and coastal waters of a river basin district; 2) the definition of the major anthropogenic influences on the amount and quality of surface waters and groundwaters, including point and nonpoint sources of pollution; 3) the designation of zones (areas) for protection and their mapping; 4) the mapping of monitoring networks and the results of monitoring programmes for surface waters (ecological and chemical monitoring), groundwaters (chemical and quantitative), zones (areas) to be protected; 5) a list of objectives for surface waters, groundwaters, and zones (areas) to be protected and their deadlines; 6) an economic analysis of water use; 7) a performance review of programmes and events, including the ways of reaching the stated objectives; 8) a complete list of programmes (plans) for a river basin district or a sub-basin, their content and problems that need to be solved; 9) a report on informing the public on the matter and the public discussion of the project on a river basin management plan; 10) a list of relevant authorities; 11) the procedure for information acquisition (including the initial information) on the condition of surface waters and groundwaters. In Ukraine river basin management plans are ratified by the Cabinet of Ministers of Ukraine every six months (Part 3 of Art. 13² of the WC of Ukraine).

The development of the first river basin management plans for every river basin district in Ukraine has to be accomplished within the period of the implementation of the Nationwide Programme of Water Industry Development and Ecological Restoration of the Dnipro River Basin District for the period until 2021, ratified by the Law of Ukraine No. 4836-VI of May 24, 2012 [22].

Moreover, Art. 13³ of the WC of Ukraine declares the formation of advisory bodies (i.e. river basin councils operating within the limits of a river basin district) to the State Agency of Water Resources of Ukraine in order to ensure the sustainable use and protection of waters, the restoration of water resources, and their integrated management. River basin councils are formed by the State Agency of Water Resources of Ukraine to make proposals and reach an accommodation between enterprises, institutions, and organizations in the matter of the utilization and protection of waters and the restoration of water resources within a river basin district. Decisions of river basin councils are taken into consideration in the course of developing river basin management plans and introducing measures for the sustainable use and protection of waters and the restoration of water resources. River basin councils are comprised of representatives of central and local executive authorities, local self-government bodies, other interested organizations, institutions, enterprises as well as members of the public.

The principle objectives of river basin councils also include: ensuring integrated management of water resources within a river basin; reaching an accommodation and action coordination between the interested parties concerning water resources management within a river basin district; fostering cooperation between central and local executive bodies, local self-government bodies, enterprises, institutions, organizations, international organizations and experts (by consent) to reach the "good" ecological and chemical condition of surface waters, the "good" chemical and quantitative condition of groundwaters as well as the "good" ecological potential of artificial and fundamentally altered bodies of surface waters within a river basin district; making proposals for a river basin management plan;

ensuring the implementation of a river basin management plan along with state, target-oriented, sectoral, interstate, regional, and local ecological programmes and projects on river basins; developing and implementing technical assistance programmes and projects; attracting investments to introduce a set of measures aimed at improving the ecological condition of a river basin [18].

According to Annexe XXX to Chapter 6 “Environment” of Title V “Economic and Sector Cooperation” of the Agreement, Ukraine undertakes to gradually approximate its legislation to the terms of the Water Framework Directive within the following time limit: 1) within three years of the entry into force of the Agreement: the adoption of national legislation and the designation of competent authority/authorities; legislating on the definition of the unit of the hydrographic zoning of Ukraine; the development of the regulation on river basin management including its functions stated in Art. 3 of the Water Framework Directive; 2) within six years of the entry into force of the Agreement: the identification of river basin districts and the establishment of management mechanisms for international rivers, lakes, and coastal waters (Art. 3); analysis of the characteristics of river basin districts (Art. 5); introducing programmes for monitoring water quality (Art. 8); 3) within ten years of the entry into force of the Agreement: the preparation of river basin management plans, public consultation, and the publication of these plans (Art. 13 and Art. 14) [2, p. 37–38].

In order to ensure that Ukraine will fulfill its obligations, the Cabinet of Ministers of Ukraine ratified a set of measures aimed at implementing the terms of the Agreement [20; 19]. The first plan was developed for the years 2014–2017 and addressed the entire Agreement, whereas the second plan addressed only Chapter 5 of the Agreement and defined the time limits for the years 2017–2019. However, on March 17, 2018, the resolution of the Cabinet of Ministers of Ukraine No. 1106 of October 25, 2017 “On Implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part” came into effect [21] declaring the two above-mentioned regulations null and void. This resolution instead ratified a set of measures to implement the Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part.

The resolution defined the following objectives for Ukraine (in the part on the implementation of the terms of the Water Framework Directive): 1) introducing legislation on the system of river basin management of water resources; 2) introducing programmes for monitoring the condition of river basins.

The following measures were outlined to achieve the first objective until March 20, 2018: 1) the development of a draft regulation on the formulation and development plan for programmes of monitoring surface waters and groundwaters; 2) the discussion of the draft regulation with the EU experts; 3) the adoption of the regulation; 4) the improvement of the workings of the existing basin and regional departments of water resources; 5) the development and adoption of the regulation on river basin management of water resources. The measures set to accomplish the second objective until October 31, 2020, are as follows: 1) formulating and adopting the procedure of the identification and classification of surface waters and groundwaters; 2) the identification of river basin districts and the establishment of management mechanisms for international rivers, lakes, and coastal waters; 3) the development and adoption of the procedure for measuring the ecological and chemical condition of waters; 4) analysis of the characteristics of river basin districts; 5) introducing programmes for monitoring the quality of surface waters and groundwaters.

In order to support Ukraine’s aspirations and contribute to the proper accomplishment of its objectives regarding the adoption of the river basin principle of water resources management, the EU has recently launched the EUWI+ project aimed at fostering the reformation of water policies in the six countries of the Eastern Partnership: Azerbaijan, Armenia, Belarus, Georgia, Moldova, and Ukraine.

Its general goal is to improve the strategy of water resources management in the above-mentioned countries, with special regard to transboundary river basins. More specifically, it is aimed at approximating the water policies and strategies of these countries to the terms of the Water Framework Directive, multilateral environmental agreements, and the principles of integrated management of

water resources. The project contains three components: 1) improving the legal and regulatory systems of the countries (including conducting National dialogues on water policy, increasing and strengthening workforce capacity, reforming legislation and administration); 2) the development and implementation of river basin management plans; 3) a systematic analysis of the status of the project implementation and its results, communication, informing the interested parties of the project progress, engaging the public in solving the problems of water resources management. The main objectives of the project for the year 2018 are as follows: 1) contributing to the development of the National Water Strategy of Ukraine and its Implementation Plan; 2) cooperation with the Ministry of Ecology and Natural Resources of Ukraine and other beneficiary organizations regarding the improvement of the legal and institutional systems of Ukraine which will allow to employ the Water Framework Directive and other international strategies of integrated management of water resources; 3) conducting the National Dialogue on water policy; 4) cooperation with the Ministry of Ecology and Natural Resources of Ukraine regarding the provision of new equipment for laboratories and conducting necessary training sessions; 5) the beginning of the development of a river basin management plan in the part on the characteristics of the Dnipro river basin district (the Dnipro river basin is chosen as a pilot one); 6) the identification of the bodies of surface waters and groundwaters according to the order of the Ministry of Ecology and Natural Resources of Ukraine on the identification of the bodies of surface waters and groundwaters; 7) the development of the strategy for engaging the interested parties and the public in formulating and introducing river basin management plans and their implementation plans; 8) the organization of the International Dnipro River Day in cooperation with the Ministry of Ecology and Natural Resources of Ukraine and the State Agency of Water Resources of Ukraine [17].

3. CONCLUSIONS

Therefore, the river basin principle of water resources management is defined as integrated management within a river basin district. This principle is one of the main components of integrated management of water resources and is, in fact, the basis of the integrated approach to such management.

The river basin principle of water resources management is one of the key matters of the EU environmental policy and is a topical issue for Ukraine in the process of European integration, since proper legislation and a gradual implementation of efficient management policy influences the condition of water resources, their amount and quality.

At present, the process of approximation of Ukrainian legislation to European legislation is in the active phase. However, today we can already assert that Ukraine has put much effort into legislating on integrated approaches to the river basin principle of water resources management. Meanwhile, the problems of the practical application of this principle in the course of water resources management still remain pressing issues.

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Данилюк Леся. Басейновий принцип управління водними ресурсами у законодавстві Європейського Союзу та України. *Журнал Прикарпатського університету імені Василя Стефаника*, 5 (2) (2018), 99–106.

У статті досліджується поняття басейнового принципу управління водними ресурсами, його зміст, нормативно-правове закріплення в актах ЄС, особливості впровадження у законодавстві України та загалом його значення в контексті питання якості води та управління водними ресурсами, включаючи морське середовище. З'ясовано, що управління водними ресурсами за басейновим принципом належить до ключових питань діяльності ЄС в галузі охорони довкілля та має актуальне значення для України у процесі євроінтеграції. За своєю суттю басейновий принцип управління водними ресурсами передбачає комплексне управління в межах району річкового басейну. Встановлено, що цей принцип є одним з основних елементів інтегрованого управління водними ресурсами і, що фактично, саме на ньому базується інтегрований підхід до відповідного управління.

Ключові слова: водні ресурси, управління водними ресурсами, інтегроване управління, басейновий принцип, Водна Рамкова Директива, імплементація.