

## 1. SOURCES OF NATIONAL LEGISLATION (PRIMARY AND SECONDARY LEGISLATION)

The national water legislative framework in the Republic of Macedonia is comprehensive and regulates, from different perspectives, all the main aspects related to the water services provisions, establishing the institutional set up (responsibility and control).

Considering the complexity of the existing legal framework and to ensure the proper functioning of the system, the harmonization between the constitutional principles and the system of laws is necessary, in particular taking into account: the administrative legal framework; the framework laws and regulations in the water management area (i.e.: law on waters, law on environment etc. and related by-laws), special laws in the water management area (i.e.: laws the law on drinking water supply and urban wastewater treatment and the law on communal activities, law on water management enterprise) and special laws in other areas (e.g. Energy law).

In order to have a complete and exhaustive overview the main accounting regulations, regulations on subsidies, social security regulations were also taken into account in this assessment.

Based on the Constitution of the Republic of Macedonia all natural resources and services of public interests determined by law are considered as goods of common interest for the Republic and are subject to special protection<sup>1</sup>. The Constitution requires that the conditions under which the specific goods of general interest for the Republic can be used shall be regulated by Law.

The **Law on waters (LoW)**<sup>2</sup>, is the general law regulating all the aspects related to the water management, it establishes that the waters, as goods of public interest, are the ownership of the Republic of Macedonia and are subject to special protection. Besides that it prescribes that the water resources management shall be an activity of public interest, carried out in accordance with the provisions of this Law and its regulations. Several other special laws regulate different aspects of the water management and define the institutional set up allocating and defining roles and responsibilities related to the water management (about the complexity of the regulatory framework please see [Figure 1 - Water management Regulatory framework](#)).

However the **Law on determining the prices of the water services**<sup>3</sup> is the main regulatory tool for determining the prices of the water services.

The aim of this law is to establish a system for water services, which is affordable for the population, taking into account the income per household in the area in which the service is provided; ensure sustainable use of the water services infrastructure, with the ultimate goal of achieving full cost recovery; improve the quality of the services in order to ensure that services are delivered according to the best practices; ensure gradually the complete application of the polluter pays principle, user pays principle and recovery of costs the costs of the resource according to the Law on Waters; improve the efficiency of water services providing the best quality in water services with the minimum cost.

This law was recently adopted to ensure to the PUC the increasing of their income, currently insufficient to cover operating costs and for allocating adequate funds for the construction of water services infrastructure.

Previously the water services pricing was regulated by the "*Law on supply of drinking water and urban waste water drainage and treatment*"<sup>4</sup>(*LSDWUWWDT*) and the methodology based on that law; the implementation of the law provisions and methodology showed that the prices for the water services are often too low and not in accordance with the prescribed methodology, since the

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<sup>1</sup> Article 56 para 1.

<sup>2</sup> Official Journal no 87/2008, 6/2009, 161/2009, 83/2010, 51/2011, 44/2012, 23/2013, 163/2013, 180/2014, 124/2015, 146/2015, 52/2016)

<sup>3</sup> Official Journal of RM no7/2016

<sup>4</sup> Law on Drinking water supply and urban waste water drainage (OGRM No.68/2004, 17/2011, 54/2011, 163/2013, 10/2015, 147/2015, 31/2016)

methodology was not binding for the determination of water prices, and there was no entity appointed to control the correct determination of the price for the water service.

The previous legal basis was unclear, the requirements for pricing were overlapping or conflicting in several laws and by-laws, there were no clear link established between the activities to be implemented at national level and those at the municipal level or at the level of PUCs.

The previous methodology was not obligatory and it contained no mechanism for implementation and supervision. The main problems that the previous tariff system was facing were: the non-application of the user/polluter pays principle and of the costs of the resource, non-coverage of all the costs of the water service providers, especially those related to the collection and treatment of wastewater, non-coverage or partial reflection of the depreciation due to problems regarding the evaluation of fixed assets within the accounting system; frequent revision of tariffs and use of the collected revenues for other municipal or PUCs needs.

The general objective of the law is to ensure the establishment of a financially self-sustainable system of water services, which shall provide a high standard of services at reasonable price, in line with the objectives of the National Water Strategy of the Republic of Macedonia and the management plans for river basins.

The law is based on several principles:

- The **user pays principle** means that the consumer of water services shall pay for the services of water provision and that the level of payment for the received water service shall increase with the level of used water
- The **polluter pays principle** means that the operator / polluter shall pay for the service for the wastewater being collected and treated, and shall pay for the resulting pollution of water
- The **cost recovery principle**, means that the tariffs charged for the water services shall be such as to allow the water service provider to deliver continuously adequate and financially-sustainable water services
- The **equity principle** means that the price paid for water services shall, over time, be harmonised in the way that the same tariff and quality are applicable irrespectively to the category of the end consumer
- The **efficiency principle** means that the provider of water services shall provide the high quality services with least expenses for the end consumers.

The Chapter II of the Law regulates the determination of tariffs to be paid to the water service providers by the end-users for the water service.

This law distinguishes between price for the water services and the tariff for water service.

The amount of the tariff of water service will depend on the costs covered by the water service provider for the water services, which is calculated according to the methodology for determining the tariff of water service to be determined by ERC.

The price of the water service is the amount, which is paid by the user, it includes fees, relevant taxes and other fees determined by other laws (see Figure 2 - Determining the level of payment required from a consumer- price of the water services). This law defines exactly the types of costs that might be considered in determining the tariff for water service, i.e.: operating costs and maintenance costs; costs of capital investments (depreciation expenditures for rehabilitation, interest repayment of equity investments and other financial expenses) and expenses, taxes and other duties prescribed by law. However, it only indicates the costs to be included in the price of the services. Under this law, the water service provider shall not charge a price for water services, if it does not include the tariff for water service previously approved by the ERC with ad hoc decision.

## 2. ANALYSIS OF THE INSTITUTIONAL ARRANGEMENTS RELEVANT FOR WATER PRICING

### **Central Level Authorities- Policy creation and implementation agencies**

**The Assembly of the Republic of Macedonia** defines the river basin districts, adopts the National Water Strategy and Water Master Plan, which are therefore becoming national normative and binding planning documents for water management.

**The Government through MOEPP** is responsible for: granting concessions for economic activities that are performed by using waters from surface and groundwater bodies; the adoption of River basin management plans, preparation and adoption of program of measures for each individual river basin management district, and for setting standards on water quality and identification of waters protection zones.

The Government of RM, on proposal of the MoEPP adopts River Basin Management Plan for each river basin district and adopts the Program of Measures for achievement of Environmental Objectives. The Program of Measures includes the financial plan for the implementation of the planned activities and measures. The Program must contain inter alia measures aimed at preserving the sources of drinking water, eliminations of sources of pollution and mitigating of the risks of pollution for the drinking water sources, prohibitions and restrictions regarding the use of groundwater, measures for ensuring the quality of drinking water etc.

The Government of the RM, on proposal of the MoEPP provides the conditions, manner and procedure for the establishment and functioning of the hydrological monitoring networks, and adopts a water-monitoring program, as an integral part of the River Basin Management Plans. The water-monitoring program includes a section on the monitoring of the safety and quality of drinking water, prepared and proposed by the Minister of Health.

The Ministry of Environment and Physical Planning (MoEPP) is responsible for the definition of water policy and its **Environmental administration – Sector for Waters** for the implementation and the overall management of the water resources, i.e.: issues pertaining to surface waters, including the permanent watercourses or watercourses where the water flows occasionally, lakes, accumulations and springs, groundwater, waterside land and water habitats and their management, including the distribution of waters, protection and conservation of waters, as well as protection against harmful effects of waters; water resources management facilities and services; including permitting of the water use and discharge; organizational set up and financing of water resources management, as well as the conditions and the procedures under which the waters can be used and discharged.

The MoEPP is responsible for the monitoring of waters encompassed by the State Hydrological Monitoring Network. The mayors are responsible for the monitoring of waters covered by the municipal hydrological monitoring networks. The MoEPP is responsible for the monitoring of waste waters discharge. The State Hydrological Monitoring Network is established to monitor the quantity, quality and other conditions of the surface and groundwater. The areas and waters that are not covered by the State Hydrological Monitoring Network, may be covered by municipal hydrological monitoring networks, established by the municipalities and/or the City of Skopje (optional not mandatory for the municipalities). The MoEPP provides the criteria for the selection of monitoring locations for both the state and local monitoring networks.

The **Administration for Hydro-meteorological activities** is competent for monitoring waters, in accordance to the Law on hydro- meteorological activities, as part of the state-monitoring network. MoEPP as primary competent authority, performs monitoring of the quality and quantity of waters and protection from pollution and shall supervise the implementation of the provisions of the LoW. The Hydro- Biological Institute performs monitoring on the three main natural lakes in Macedonia.

The establishment of ERC and original competences of ERC is regulated by the Law on Energy. The LPWS regulates the status and competences of the ERC regarding the setting of the tariffs for water services. The amendment to the Energy law OJ 06/2016 states that issues related to the performance of energy activities are specified in the Energy law, while the aspects related to the establishment of tariffs and prices for water services are defined in the LPWS.

The list of roles and responsibilities of ERC regarding water pricing, may be grouped in main regulatory functions:

- Review assessment and decisions:
  - i. Implements the procedure for determination of the water tariffs
  - ii. Determines the tariffs for water services
  - iii. Reviews the application of tariffs for water services and verifies the compliance/implementation of the business plan of the provider
  - iv. Reviews the manner of calculation and application of tariffs for water services
  - v. Evaluates the plan to adjust the tariffs and business plans in terms of their compliance with the provisions of the LPWS
  - vi. Provides consultation with providers of water services and their associations with associations of end-users and the state bodies that have competences in water management, public works and water management

The LPWS determines a timetable for submitting the applications for determining the water services tariff. According to the transitional provisions, ERC is obliged to set a timetable for submission of applications for determining the tariff for water services no later than 30 September 2016, in accordance with the size of the provider of water services. All the water service providers providing services to more than 10,000 population equivalent, and supplying bulk water for the public drinking water supply systems, are obliged to start applying the tariff until January 1, 2018. All the other water services providers are obliged to start applying the tariffs for water services until January 1, 2019.

- Supervision, Inspection and Enforcement:
  - i. Surveillance over the application of the tariffs for water services
  - ii. Surveillance over the application of the regulatory tariffs
  - iii. Surveillance over the application of tariffs for water services with the compliance/implementation of the business plan of the provider
  - iv. Reviews the compliance of the application of tariffs for water services;
  - v. Inspect the operations of the provider of water services in order to implement this law;
  - vi. Supervise and monitor the implementation of legal requirements and acts adopted;

The MoEPP and the ERC are responsible of the supervision on the implementation and enforcement of the LSWP.

ERC is responsible to monitoring/supervise the implementation of the decisions on determining the tariffs for water services and the regulated tariffs for water services. The Water service Providers are required to submit to ERC the reports on the status of implementation of the water tariffs to be assessed.

ERC submits an annual report to Parliament on its activities.

**The State Environmental Inspectorate, through water management inspectors** shall verify:

- Whether the provider of water service charges the end users of water services with the tariffs approved by the ERC, and
- if the provider of water service has submitted the request for the determination of tariff to the ERC. According to Article 20, if the Regulatory Commission finds that the service provider has not fully implemented the established tariffs, take a mandatory treatment and will determine corrective action and a deadline for their implementation. If the provider does not act upon it, the Regulatory Commission may adopt regulatory tariff for water services.

Article 24 entitles the ERC to inspect the water service provider in order to determine whether it acted in accordance with the obligations stipulated by this law.

- Development of regulations and guides
  - i. Prescribes the procedure for approval of tariffs for water services;
  - ii. Prescribes the procedure for determining the tariff and supervise its application;
  - iii. Determine the key success indicators, objectives/targets to be met by the provider regarding the water service provision, benchmarks for the main success indicators of the service providers
  - iv. Provides guidance in the implementation of tariffs for water services and regulatory tariff for water services and proper implementation of the business plan;
  - v. Proposes actions to improve efficiency in water services, capacity building in the area of providing water services financial management and business planning;
  - vi. Recommends the threshold of affordability of prices of water services

The work of the Regulatory Commission shall be financed from financing secured from the payment of:

1. Special annual charge paid by the providers defined as percentage of the annual income of the providers obtained from providing water services, and
2. Charges in the procedure setting the water service tariffs, i.e. establishing of regulatory tariffs for water services

The percentage of the annual revenue collection from providers shall be defined with a decision by the Assembly of the Republic of Macedonia, where the percentage can not be higher than 0.1%.<sup>5</sup>

The chapter five regulates the issues relate to the monitoring the implementation of this law and the application of established tariffs for water services.

ERC, MoEPP and the State Inspector of Environment through water management inspectors are responsible for the supervision and inspections activities (See page 40 of this report on Inspection and Supervision).

The MoEPP shares with the Minister of Health (MoH) the responsibility regarding the management of the water intended for human consumption and the bathing waters

The **Ministry of health (MoH)** identifies the water bodies suitable for human consumption and bathing waters, and takes care of the wholesomeness and safety of drinking and bathing waters, including the protection of the population from diseases transmitted through waters. The protected areas for water intended for human consumption and public water supply are subject to strict sanitary control. The MoH in agreement with the MoEPP provides conditions for agricultural, construction and other activities in the protected areas that may affect the quantity and the quality of the drinking water. Institute of Public Health of the RM with the network of 10 regional Public Health Centers provide monitoring of drinking water and bathing water quality according to the LoW and

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<sup>5</sup> LSWP Article 8, par. 1 and 2

Rulebook on water safety (Official Gazette 46/08). According to the Public Health Programme monitoring of DWQ is performed not only in urban, but also in rural areas with SSWSS and from water supply objects (dugged/drilled wells or springs) for individuals living in a scarcely populated area (free of charge for the consumers).

The MoEPP, in agreement with the Minister of Agriculture, Forestry and Water Economy (MoAFWE) and the MoH provides the conditions for the designation of the zones sensitive to nitrates.

According to the law on waters the **Food and Veterinary Agency**, undertakes activities for the identification and control of the water bodies intended for human consumption and control of the sanitary and protection zones around those bodies<sup>6</sup>. FVA is responsible for control of the first sanitary and protection zone, and **State Sanitary and Health Inspectorate** is responsible for control of the second and third sanitary and protection zone.

The MoEPP together with the **Ministry of transport and communications (MoTC)** is responsible for the communal infrastructure, issues related to waters supply and collection, drainage and treatment of wastewaters especially the aspect of the construction and management of water management facilities.

The MoTC is responsible for supporting the development and management of communal water infrastructure, it supervises the activities and decisions of the municipalities with regard to drinking water supply and through the mechanism of supervision over the legality of operation of the municipalities (Article 42 of LDWSUWW).

The MoTC together with the MoEPP shall draft the Programme for removal, collection and treatment of urban waste water, which is prepared based on the draft programmes for removal, collection and treatment of urban waste water prepared by the municipalities, the municipalities of the City of Skopje and the City of Skopje (Article 114 paragraph (3) and (4) of LoW). The program is submitted to the Government of the Republic of Macedonia for its adoption.

The MoTC, in agreement with the MoH and the MoEPP is competent to provide the manner of maintaining and protecting the water supply and sewage system(s). The MoTC is responsible for the proper implementation of the Law on the Supply of Drinking Water and Discharge of Urban Waste Waters and it supervises the activities and decisions of the municipalities with regard to drinking water public water supply and sewage services.

The **Ministry of agriculture forestry and water economy (MoAFWE)** remains the competent body for irrigation and the protection of waters from pollution from agricultural resources (nitrate pollution). Generally, MoAFWE is responsible for the water issues in relation to the irrigation and water use in agriculture

**Ministry of economy** is responsible for ground-waters use of mineral and thermo- mineral resources, as well as hydro - electricity generation.

## 2.2 Local Level Authorities

Municipalities, Municipalities of the City of Skopje and the City of Skopje are responsible for establishing an effective and efficient system for supply of drinking water and urban waste water collection drainage and treatment within their jurisdiction.

The mayor may initiate the establishment of a public enterprise for water supply or entrust the activity to a private entity. The Government of the Republic of Macedonia may participate in the construction and maintenance of the communal infrastructure if it is in the interest of several municipalities.

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<sup>6</sup> LoW Articles 99 Boundaries of the protection zones of the waters intended for human consumption and 100 Regime of the protection zones of water bodies intended for human consumption

LSG are obliged to collect, drain and treat wastewater generated on their respective areas and to ensure appropriate treatment of industrial and urban wastewater before discharging into the recipient. The public enterprises or legal persons to whom these activities are delegated are obliged to obtain permits for the use or discharging of waters, to be issued by the Environmental Administration (EA).

LSG are obliged to provide extension of sewer systems, cleaning of septic tanks, to ensure monitoring of bathing and drinking waters, to manage the bathing zones within their territory, to register the water wells existing within their territory, as well as to provide regular drinking water supply to the population, in compliance with the standards and requirements of the legislation. At the same time, LSG is responsible for the protection from harmful effects of waters including flood protection, protection from erosion and draughts.

It is important to note that discharging of wastewater from the B installations should be under jurisdiction of the organizational unit that issues integrated environmental permits and adjustment permits with adjustment plans, although it is still a competence of the Environmental Administration.

LSG shall ensure the establishment of a wastewater collection system for any settlements with more than 2,000 population equivalent and an appropriate treatment, this obligation represents a severe financial burden for the LSGs.

As above mentioned, according to Article 114 paragraph (3) and (4) of LoW the MoEPP, through its Environmental Administration, in cooperation with MoTC, shall develop the Program for urban waste water drainage, collection, and treatment based on the draft programmes for removal, collection and treatment of urban waste water of the municipalities, municipalities of the City of Skopje and the City of Skopje. The bottom-up approach should ensure the leading role of the LSG units in proposing projects for the construction of waste-water treatment plants within their territory.

This program should be implemented partly by using funds from the Programme for water management<sup>7</sup>, but the main source of funding should be ensured through the establishment of a sustainable system determining an adequate price for the services for collection, drainage, and wastewater treatment.

Adequate price means that the costs for the services, the costs for the protection of the environment and costs for financing the construction of these systems shall be included in the price.

The establishment of a sustainable system for the water services will allow the municipalities to allocate additional funds for investment in this sector, besides other sources as loans, public private partnership, etc..

LSG units may establish their local water-monitoring network within their territory, the costs shall be covered by the budget of the LSG units (optional).

If the LSG units decide to establish a local water-monitoring network, additional staff with specific skills related to control, collection of data and reporting could be required.

### **2.3 Operators - the service providers**

**Public Utility Companies** - Public enterprises for water supply and sewage services (hereinafter: service provider(s)) may be founded by the municipalities /City of Skopje and / or by the RM Government.

The service provider must ensure those services continuously, in accordance with the prescribed quality standards and that relevant infrastructure and equipment are functional.

The activities performed by the public enterprises for water supply and sewage services are considered services of public interest.

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<sup>7</sup> Law on Waters, Article 207 - Charge for water use and discharge and excavation of sand, gravel and stone

The PUCs are managed by the Management Board of the public enterprises, which is accountable for their performance to the municipal authorities.

A Supervisory board controls the financial aspects of public enterprise and examines and approves the annual budget; it submits an annual financial report to the Minister of Finance and other relevant Ministers.

The financial relations between the founder (municipalities/City of Skopje and/or by the RM Government) and PUCs are determined by the statute of the PUCs.

The founder of the public enterprise may decide to re-invest the income (surplus) generated by the services or transfer the surplus to other activities. The public enterprises founded by the Government must return 80% of their profits to the State budget.

The public enterprises performing communal activities of public interest are subject to an authorization to be issued by the Government (See page 33-34 on the Law on Public Enterprises). They are also subject to water use permit and a permit for water discharge. The service-provider makes available all the necessary documentation and evidence regarding the water supply and sewage system necessary for the establishment of an infrastructure register.

**Water Management enterprise - Water Management Incorporated-** The Water Inc. is the legal successor of rights and obligations of the existing Water Management enterprises, which were established under the Law on Water Management Enterprises ("Official Journal" No. 85/2003, 95/2005, 103/2008, 95/12 and 1/12).

With the entry into force of this law, the existing water management enterprises continue to operate as subsidiary bodies of Water Inc.

The Water Inc. is responsible to maintain and manage the irrigation and drainage systems as a whole. The Water Inc., is competent for:

- Supply of water for irrigation;
- Supply of water intended for human consumption to the PUCs (drinking water and other uses);
- Supply of water for industrial and technological (economic) needs, including production of energy;
- Regulation of river beds;
- Land drainage and
- Drainage of water discharged

Its objective is to provide adequate services to water users; ensure an equal treatment in the provision of services for all users.

The Water Management Inc. calculates and charges fees for the services provided; takes measures to ensure the rational use of the water resources, to reduce water losses to a minimum, to protect water in a cost-efficient manner.

The Water Inc. is entitled from all owners or users within the irrigation/drainage system charges:

- Compensation for irrigation
- Compensation for drainage
- Compensation for the transfer of water and discharged
- Compensation for the supplied amount of water for water supply and industrial needs.

The fees are determined according to the methodology adopted by the Government upon proposal of the Ministry of agriculture, Forestry and Water economy, based on:

- Calculated full cost of water supplied to users;



- Service charges for irrigation and drainage is unique and based on the same criteria for the entire system, except for the parts of the system where there is a considerable difference in costs affecting the fee as another source of water or area using pumps
- The fees for services include costs for maintenance and operation of the system, spare parts, replacement of worn-out plants and facilities and cover the risks of drought, flood or accidental damage;
- In case of Use of the same infrastructure by several users, the payment of service charges to be proportional to the quantity of water per user;
- Depreciation may be included in the fee for service when the real cost includes interest and return the principal of the loan, where these additional costs should be recovered in equal terms by all users.

**Provisional Model of Regulatory System on Water**  
(not exhaustive)

