

## REGULATORY FRAMEWORK IN THE WATER SECTOR IN GREECE

### OVERVIEW

In the water sector a complex regulatory framework has been enacted with successive laws some of them having a limited scope.

The first regulatory framework was enacted in 1999 in anticipation of the EYDAP initial public offering (Law 2744/1999). Apart from the break-up of the existing company in two separate entities (EYDAP Operations and EYDAP Fixed Assets) the law granted on an exclusive basis the right to provide water services in the Athens area to EYDAP Operations for 20 years. The same law established a framework for pricing of water to the end users. A similar law was enacted for the privatization of EYATH in 2001 (Law 2937/2001). The law granted a 30 year right to provide water services in the Thessaloniki area on an exclusive basis and specified the pricing procedure of the services.

Later in 2003 the EU Water Framework Directive was incorporated into Greek law (3199/2003) but its implementation was delayed for almost a decade. Water studies have been completed for most regions in Greece identifying the cost structure of the sector and pricing inefficiencies which have to be addressed.

The purpose of this Directive is to establish a framework that will provide provision that will enable the EU to have a sufficient supply of "good" quality surface water and groundwater as needed for sustainable, balanced and equitable water use.

The WFD envisages the creation of a common framework for water resources management based on the recovery of the full water services cost. According to article 5 the components of full water cost include:

- The Financial cost for the water companies that include costs of investments, operation and maintenance, administrative costs and other direct economic costs.
- The Environmental cost which reflects the losses in social welfare associated with the water quality deterioration caused by the water uses.
- The Resource cost which represents the additional cost to cover water demand because of the resource overexploitation and the consequent restriction of available water resources.

In general the implementation of the directive will lead to considerably higher charges for end users over the medium term. Official studies have shown that the mean cost recovery level for each water district in Greece is only **59.18%**. However, cost recovery in Attica region which includes Athens is estimated at 106% for all users and 108% for domestic users. In central Macedonia which includes Thessaloniki the cost recovery level is 78% for all users and 87% for domestic users. There are reservations as to the accuracy of these studies and in the future EU authorities may ask for clarifications or even re-evaluations of the costs and recovery levels.

Greece is facing a number of complaints on the implementation of the WFD including the 2010/2074, C-297/11 for the timely completion of the management plans of national and international river basins. The case began in June 2010 regarding the completion and delayed submission to the EU of the River Basin Management Plans surface waters in violation of the directive. The first decision against Greece of the European Court of Justice was issued in April 2012. In October 2010 the EC sent a warning letter under Article 260 which was answered in December 2012. From the total 14 plans only 8 have been approved and forwarded to the EU by the end of 2013.

## THE REGULATOR

The Authorities had undertaken the obligation in 2012 to proceed swiftly to establish the regulatory framework in those areas which are necessary for the privatization process (airports, ports, water, horse betting), consistent with EU legislation, taking into account international best practices.

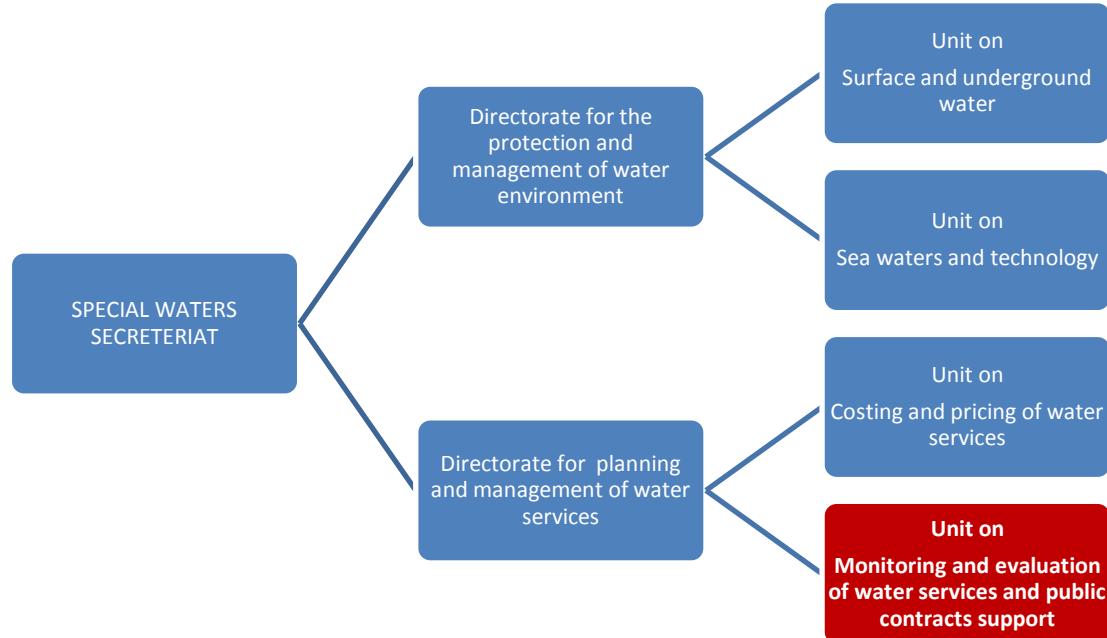
The government has decided in 2013 not to establish an independent regulator for water services abandoning earlier plans and commitments. Instead the government with law 4117/2013 (A' 29) has assigned the competencies of regulation to the Special Waters Secretariat (SWS) of the Ministry of Environment Energy and Climate Change<sup>1</sup>.

In particular SWS “is responsible for the planning and evaluation of the national strategy for the protection and management of waters, monitors coordinates and controls its implementation” (article 4).

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<sup>1</sup> It is difficult to comprehend why the government has decided to assign regulation to this body which is understaffed when in all other markets independent regulators have been established.

Furthermore, the SWS is responsible (a) for the formulation of water services pricing, basing its decisions on the general guidelines of the cost structure of the sector and (b) for the economic analysis of water use.



The Directorate for planning and management of water services is actually performing all the competencies of the regulator<sup>2</sup>.

As regards existing concessions on water services the SWS monitors and, if not defined by otherwise in the law, supervise the proper implementation of existing managing contracts for compliance of the envisaged terms and conditions, including the existing concessions from 9.12.1999 and 27.7.2001 respectively for water and waste water between the Greek Government and the companies EYDAP SA and EYDAP Fixed Assets and EYATH SA and EYATH Fixed Assets.

The **Unit on Monitoring and evaluation of water services and public contracts support** is responsible for the supervision of the proper implementation of concessions to third parties of the right of provision of water services, including of water supply and waste water regarding existing and new contracts.

In the case of concluding new contracts or modifying existing concessions services the Unit:

- Is responsible for the formulation of the terms of the contract in collaboration with other competent authorities.

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<sup>2</sup> Joint Ministerial Decision 322/22-3-2013 Ministers of Finance, Administrative Reforms and Environment on the Structure and Organization of SWS.

- Can participate in negotiations for the contract.
- Undertakes the monitoring and supervision of implementation so that the concessionaire or provider of services is in compliance with the conditions prescribed in the contract imposing the penalties provided therein
- Oversees the strategic and operational plans for the provision of water and drainage, in cooperation with the competent department of the Ministry of Development
- Investigates complaints, reports and injunctions of third parties who have a vested interest against providers of water services for possible violation of their obligations under the concession, and if it finds a breach, recommends to the Special Waters Secretary to take the necessary measures to remedy the violation.

The Unit also organizes monitors and controls the licensing process for water use and the conditions imposed on users.

The pricing decisions of EYDAP and EYATH are in effect taken by the government based on submission of proposals by the respective board of directors and the opinion of SWS. They are enacted through a joint ministerial decision every five years.

The SWS is currently understaffed and it lacks the specialized personnel required for the execution of the regulatory competencies. A number of civil servants are transferred from other public sector units but specialized economists and legal experts are hard to find within the existing public administration. The regulator has not issued any guidelines or rules up to now.

## **THE PRIVATIZATION**

The listing in the stock exchange of EYDAP and EYATH in 1999 and 2001 was seen at the time as a first step in the long privatization process. However, subsequent moves were limited and only when troika put pressure on Greece to increase the pace of privatizations the two water companies were included in the list in 2010.

In EYATH two groups have been preselected to participate in the second round of privatization. However, the State Council (the highest administrative court in Greece) has accepted an injunction submitted by employees deciding in principle that the water is a public good and cannot be in private hands. The ruling has not been published yet so

the government cannot evaluate its impact on the process. Alternatives to full privatization include a PPP type of structure with the private sector undertaking the responsibility for new investments and also the management of the water services.

To facilitate the sale of the water companies, the authorities have concluded a number of legal acts to allow the Treasury to pay arrears to the water companies from the arrears clearance program on behalf of the local governments and the offsetting of obligations of the state towards EYDAP with arrears that EYDAP was running on the purchase of wholesale water. Furthermore, the pricing policy for the next five year period (2014-18) has been clarified for EYDAP through a ministerial decision (4-12-2013) following the opinion of SWS.

*The further evolution of the regulatory framework will depend on the privatization of the two main water companies. If the process is allowed to proceed then the current set up may give way to the establishment of an independent regulator in accordance with international practice. Otherwise frictions between the private investors and the state may become difficult to resolve in the future.*

**S. Travlos 14-3-2014**