

# Turkey's New Water Law and WFD Implementation: An Analysis

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**Abstract:** After some lengthy processes of preparation and consultation, a new framework water law has now been declared as “ready” for Parliamentary procedures. Since Turkey aspires for European Union membership, harmonization with Water Framework Directive (WFD) is one of the key priorities within environmental negotiations. From the outset, the newly proposed water law has been drafted with an eye on WFD requirements. It also targets to eliminate the so-called “patchwork” of water-related legislation in Turkey through adoption of a single yet comprehensive law. This paper analyzes the recent draft Turkish water law in light of WFD rules and principles. It has been observed that the proposed water law appears to be largely in line with these rules. However, there is room for improvement as well. For instance, although the proposed law mentions the full-cost-recovery principle, which is one of indispensable elements of WFD, there is a degree of ambiguity in the law on whether environmental and resource costs would be calculated and recovered in full. It is anticipated that a number of by-laws would provide full-fledged frameworks of operationalization on issues that are not sufficiently articulated in the law itself.

**Key words:** Turkey, water law, European Union, Water Framework Directive.

## 1. INTRODUCTION

It has been long since Turkey started talks on a new water law. Two sets of factors contributed to initiation of process of drafting a new water law. One is related with Turkey's internal legal structure regarding water. Many water laws in Turkey were enacted some considerable time ago, reflecting the priorities and paradigms of the respective eras. Also, in time, adoption of a number of legislation created a complicated legal structure for water management, rendering sustainable use and protection of water resources difficult. Another reason is related with the prospect of Turkey's European Union (EU) membership. EU membership process entails a number of norms and principles to be incorporated into national legislation. The most significant of EU documents in the water realm is the Water Framework Directive (WFD). Turkey has now been in the process of adoption of a new water law with an aim of simplifying and streamlining existing legislation as well as harmonizing with the European water legislation, the WFD in particular.

This paper analyzes the most recent Draft Water Law in Turkey vis a vis the basic principles of the WFD. It argues that while the Draft Water Law is largely in line with the water management paradigm as required by the WFD, there are several issues that needs attention. Monitoring and public participation are among notable areas where the Draft Water Law lacks full compliance with the WFD.

## 2. THE ROAD TOWARDS A NEW WATER LAW

### *2.1 Earlier Drafts: Setting the Ground for a WFD-complaint Water Law*

It has been suggested that Turkey has no comprehensive *framework* water law (Grontmij 2003). Instead, there are multiple legal regulations on public sector activity, defining the responsibilities for the construction of water networks, operation and maintenance obligations, as well as their financing. With this token, it has been argued that there are overlapping and competing duties and responsibilities between the different organizations and the lack of effective coordination mechanism appears to be a stumbling block against an efficient water management. There are conflicts over tasks and responsibilities in the water sector which are attributable to different laws and by-laws authorizing a number of different institutions to manage water resources.

For instance, the By-law on Water Pollution Control authorizes a number of Ministries and official organizations other than Ministries for regulating different aspects of water pollution. To illustrate, in accordance with the Act No. 2634 on Promotion of Tourism (“Turizmi Teşvik Kanunu” in Turkish) (Republic of Turkey 1982) the Ministry of Tourism and Culture has mandate to control water pollution within Culture and Tourism Protection and Development Zones (“Kültür ve Turizm Koruma ve Gelişim Bölgeleri” in Turkish). Meanwhile, the evaluations and analyses of groundwater pollution are conducted by DSİ, while enforcement regarding pollution of groundwater had to be done by -now defunct- Ministry of Environment and Forestry. However, it has become apparent that, dealing with water pollution through efforts of multiple organizations in a setting of imperfect coordination is not adequate to produce desired results. This is mainly related with the main nature of the phenomenon in question: water pollution does not recognize borders of any kind, whether they are administrative, or organizational. For example, water pollution in surface waters may pollute groundwaters through leakages. It is quite hard with incoherent legal and administrative framework and fragmented mandates to effectively deal with the water pollution, a complex phenomenon with ramifications over the whole water cycle.

Against this background, a framework law which sets out the guiding principles, norms, rules, procedures in water resources management and allocation, has begun to be seen as essential (Baris and Karadag 2007). The need for “the process of formulating, consulting on, and passing a modern water law that gives legally enforceable water rights to water users, and which establishes a water resources management and regulatory authority with full legal powers to license and enforce

water abstractions and discharges” is emphasized. Dursun Yildiz, a Turkish water expert, has concluded that one of the most significant elements of this new structure should be empowerment of this legal authority with a mandate for central planning on the basis of river basins (Yildiz 2010). Creating such legal authority and establishing legally respected individual water rights could contribute to a change in adopted practices through which water resources are managed and developed.

The need for a framework law has increasingly been mentioned within the context of Turkey’s EU membership process. A World Bank draft report in as early as 2006 argued that the adoption of the framework water law will be a major requirement for Turkey’s accession to the European Union (World Bank 2006). In the same vein, the Report on Legal and Institutional Developments Required to Meet EU Legal Requirements in the Field of Water Management in Turkey stated “[h]aving a comprehensive Water Law would make it easier to transpose the daughter directives, which are still being developed under the WFD. It would make it also easier to transpose the current EU water directives and to repeal those regulations, which transpose directives, which will be repealed once they are fully implemented by the WFD” (Grontmij 2003). In this view, the new water law could be helpful for demarcating the realms of authorities of the official organizations responsible from different aspects of water governance. Through such a legislation, the overlaps and duplications in organizational responsibilities could be minimized.

The governmental authorities agree with the view as a reappraisal of water legislation and introduction of a new comprehensive water law, along with the re-organization of the organizational setting is necessary, especially during the harmonization with the EU requirements (Republic of Turkey 2007).

Therefore, a debate around the enactment of a framework water law, which would deal with particular problems of Turkey’s water management (i.e. fractionalization, a lack of legal clarity on user rights, among others, and “water allocations”, “different stakeholders’ roles in water management issues”, “water quality matters”) has evolved (Kibaroglu and Baskan 2011). Several drafts<sup>1</sup> for such a comprehensive water law have been prepared beginning from late 1990s.

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<sup>1</sup> A draft water law was prepared through by contributions of official organizations under the leadership of DSİ. Apart from DSİ’s study, another draft law, namely Draft Water Law (“Su Kanunu Taslağı” in Turkish) was prepared by TEMA. Besides, USİAD (Turkish acronym for “Ulusal Sanayici ve İşadamları Derneği- National Association of Industrialists and Businessmen) prepared a draft law for creation of a “Water Resources Ministry”.

The most significant of these was the “Draft Water Law” which was prepared by the DSI’s legal division in 2001. During the drafting process, legal experts of DSI analyzed various countries water related legislation. These countries include the ones “which established legal structures such as France or the ones which have passed through a recent restructuring such as Brazil and South Africa” (Kibaroglu and Baskan 2011).

The adoption of this law is regarded as one of the major steps toward transposition of the WFD. This is why both the Strategy Document and the Draft National Implementation Plan mentioned the date of 2011 as the date for incorporation of WFD into Turkish legislation. From an analytical point of view, it could be argued that the EU harmonization framework has become one of the major catalysts of change in Turkish Government’s attitude regarding the enactment of a comprehensive water law.

Apart from DSI’s study, another draft law, namely Draft Water Law (“Su Kanunu Taslağı” in Turkish) was prepared by TEMA (the Turkish Foundation for Combatting Soil Erosion for Reforestation and the Protection of Natural Habitats). In that Draft, four major needs are emphasized: 1- need for the protection of quality and quantity of Turkey’s water resources, 2- reasonable and economic use of water, 3- integrated river basin management, 4- need for continuation of state involvement. Besides, responsibilities of public authorities should include water resources development actions like water harvesting (“su hasadı” in Turkish), increase in water storage capacities, methods and techniques aiming at reducing the surface evaporation. TEMA’s Draft was prepared in light of Act No. 4342, the Law on Pastures (“Mera Kanunu” in Turkish) (1998) and the Act No. 5403, the Law on Soil Protection and Land Use (“Toprak Koruma ve Arazi Kullanım Kanunu” in Turkish) (2005). Also, USİAD (Turkish acronym for “Ulusal Sanayici ve İşadamları Derneği”, National Association of Industrialists and Businessmen) prepared a draft law for creation of a “Water Resources Ministry”. During preparatory works of the Draft, relevant water related legislation from Mexico, Denmark, France, South Africa, Brazil, Israel, United Kingdom, Germany and Spain are studied. Also, the WFD was taken into account, as well. Prepared with the consultancy of a working group called “Toprak-Su-Enerji”, this draft, which was published on March 10, 2010, proposed the creation of a single authority responsible for all aspects of water resources management (Toprak-Su-Enerji 2010).

There are a number of commonalities in these draft laws. Furthermore, most of these common elements also comprise some of the basic principles of the WFD. Therefore, incorporation of WFD elements in the draft water law appears to be one of the gains of Turkey in the process of WFD adaptation. First, all drafts acknowledge the need for a “river basin level” in water management policy. “River basin” is regarded as the main unit of WFD implementation. Member States need to study and define boundaries of their river basins via creating river basin districts. Secondly, all drafts emphasize the need for continuation of public involvement in water management policy. From the perspective of the WFD, Member States are responsible from the implementation of the Directive. Third, drafts give due diligence to protection of water resources in terms of both quantity and quality. This is a principle also supported by the WFD. It could be asserted that despite lack of formal adoption, these exercises have contributed to laying foundations for subsequent efforts directed towards developing of an improved, more coherent and WFD-complaint water law in Turkey. Next section discusses the most recent attempt of drafting a framework water law.

## ***2.2. The Recent Draft and Its Critiques: Partial Overlap with the WFD?***

By 2011, the process of drafting a framework water law was revived after previous rounds of preparations. In October same year, the Draft Law was opened to public consultation. In a few months time, the Draft has generated a considerable public attention. Outside reviewers of the Draft have pointed out that there are novel elements in the Draft Water Law representing a shift toward a more coordinated approach (Sumer 2012). It has also been argued that it is in harmony with modern water laws in Europe (Günes 2012). Most of the criticisms to the Draft Water Law centered around the risks of “allocations” which -in the long run- may result in a transfer of water services from public to private domains, with a potential of exacerbating the disadvantages for some segments of the society with regard to the issue of “access to water”. (TMMOB 2013; Su Hakki Kampanyasi 2014, CMO-Istanbul 2012). Nevertheless, the Draft Water Law retains public involvement: Article 3. upholds the State’s control and rule over the water resources, and separates the ownership of water resources from the ownership of the land. Therefore, the land owner is not entitled for ownership of water resources on or under of his/her land. However he/she is entitled with the right for use proportionate to his/her needs. Critics mainly argue that the Draft Law makes privatization as one of its main foci. In a similar vein, according to CMO-Istanbul, permitting inter-basin

transfers will provide the legal ground for commercialization of water resources.(CMO-Istanbul 2012).

Apart from these comments which focus on the “rights” and “wrongs” of the Draft Water Law *per se*, there is also a need to compare the Draft Law against the major WFD norms and procedures, of which Turkey has long aspired to harmonize with. There are a number of prominent issues and principles in the WFD which provides ground for making comparisons between national and European legislations. These are, *inter alia*, river basin management approach, environmental objectives, holistic approach to all types of water bodies, pricing requirements, monitoring, and public participation. Therefore, Turkey’s Draft Water Law might be evaluated in light these points of reference.

#### 2.2.1. River Basin Approach:

According to Draft Water Law, water resources will be managed on the basis of river basins (Article 4). This will entail both stages of surveys and planning (Article 1.1.). This approach is compatible with the main understanding of the WFD. Draft Water Law puts emphasis on River Basin Management Plans which are central planning dimension in water management based n river basins. Additionally, allocations will be based on river basin planning.

However, it should be noted that the Draft Law does not include stipulations on management plans in transboundary river basins, whereas WFD calls for endeavors towards creating single river basin management plans for transboundary river basins via cooperation of all riparians. According to Günes, this represents Turkey still maintains its reservations concerning the WFD discourse on transboundary river basins (Günes 2012).

#### 2.2.2. Environmental Objectives:

One of the seven principles listed in the Draft Water Law is related with reaching environmental objectives that will be determined in river basin management plans. The main aim is mentioned as preventing further deterioration of water bodies, and improving the quality of polluted waters. In short, “environmental objectives” have been incorporated as one of the central terms into the Draft Water Law.

The Draft Water Law establishes a hierarchy of uses in Article 5 which seems to confirm the centrality of environmental objectives in the Draft Water Law. It is interesting to note here that the second priority use, after drinking and sanitary water use, is defined as the “water needs for natural life”. All agricultural and industrial needs come after provision of water for sustaining environmental health. This prioritization symbolizes the new logic of water legislation which effectively raises the environmental concerns over economic ones in the water management thinking. Similarly, having regard of the need to balance between ecological needs and sustainability of water uses, the Draft Water Law provides the definition of the “minimum water flow”, a term which does not appear in the WFD. According to Article 9 of the Draft Water Law, minimum water flow shall be sustained in order to maintain the good water status.

Environmental objectives in the WFD are strongly linked to the overarching term “good status”. Similarly, the Draft Water Law introduces the “good status” in the context of environmental objectives. Regarding the environmental objectives, the Draft Water Law is, thus, parallel to what has been written in the WFD.

### 2.2.3. All Types of Water Bodies

According to WFD, all inland (surface water, groundwater) and coastal waters (marine), including transitional waters should be subject to the WFD requirements. Article 1 of the WFD reads: “The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater” (European Communities 2000) Therefore, the European legislation on water takes a holistic look over the issue of protection of all interrelated water bodies. This understanding is related to the emergent broader “integrated” approach for water resources management in European Union.

When the Draft Water Law concerned, a similar approach could be recognized. The Draft Water Law provides definitions of “transitional water”, “coastal water”, “groundwater” and “surface water”. All definitions are in line with those of the WFD. The Draft Water Law clearly excludes geothermal waters and marine waters (seas) (Article 1.2.). In brief, the Draft Water Law is in conformity with the holistic coverage of freshwater bodies in the WFD.

### 2.2.4. Cost Recovery: Pricing, “Polluter Pays”, “User Pays”.

The idea of cost recovery, along with the principles of “polluter pays” and “user pays”, is one of the main pillars that the WFD rests upon. According to WFD, costs should be understood as broader as possible, including “environmental” and “resource” costs (Brouwer 2006). Article 9.1. of the WFD reads: “Member states shall take into account of the principle of the recovery of the costs, including environmental and resource costs,...” (European Communities 2000). Article 4.f. of the Draft Water Law lists “user pays” and “polluter pays” among the main principles of the Water Law. Additionally, Article 22.6. clearly mentions the “full-cost-recovery” as one of the key properties of financing of water services (Republic of Turkey 2011). It should be noted that WFD text mentions of cost-recovery (not “full cost recovery”), thus the proposed Water Law adopts a stricter wording regarding recovery of the costs. In short, the Draft Water Law appears to be in compliance with the financing and pricing obligations set out in the WFD.

While this holds true at the level of legislation, the issue of setting up a robust implementation scheme is another issue which should be seriously assessed. This part of implementation is strongly related to so-called “Article 5 studies”, namely analyzing the impacts on water resources, particularly economic analysis of water. Besides, it should also be added that the Draft Law makes no mention of “environmental” or “resource” costs, causing some uncertainty on whether authorities prepared the Draft Water Law with a comprehensive cost perception in a way that has been mentioned in the WFD text.

#### 2.2.5. Monitoring:

A search for the word “monitoring” in the WFD text gives a result of 140. It is one of the most central elements in order to create and implement program of measures successfully. According to European Commission’s view, it is a prerequisite to reach “precise and reliable” monitoring data for sound planning of investments in the program of measures (European Commission 2009). Article 8 of the Directive provides main stipulations on monitoring activities that Member States are obliged to conduct. According to this, Member States shall establish monitoring programs. Annex V to WFD includes a number of detailed guidance. Although Member States enjoy a margin of appreciation in determining their methods for monitoring, there are serious efforts to create comparable methodologies among Member States.

It could be argued that monitoring is the Draft Water Law’s “achilles toe”. The issue of monitoring, despite its significance, has been mentioned somewhat superficially, with the word

“monitoring “appearing only 3 times. There is no mention of programs of monitoring. The main provision in the Draft Water Law is that the Ministry of Forestry and Water Affairs would conduct the monitoring activities (Article 10). Nevertheless, it should be noted that a By-law on monitoring was adopted in February 2014 covering a significant ground. Concerning this By-law, two points need to be emphasized. First, the biological monitoring is not covered. Second, since it was adopted before the adoption of the Law there are some incompatibilities with the Draft Water Law. For instance, the By-law mentions the “environmental flow”, while the Draft Law contained “minimum flow” having quite similar meaning to environmental flow.

#### 2.2.6. Public participation:

Public participation is accepted as one of the key principles of WFD (Newig et al. 2005). This stems from the assumption that decisions on the most appropriate measures to achieve the objectives in the river basin management will involve balancing the interests of various groups. The economic analysis requirement is intended to provide a rational basis for this, but it is essential that the process is open to the scrutiny of those who will be affected. The second reason concerns enforceability. The greater the transparency in the establishment of objectives, the imposition of measures and the reporting of standards, the greater care Member States will take to implement the legislation in good faith, and the greater the power of citizens will be to influence the direction of environmental protection. (Harrison et al. 2001 & Günes 2012) Therefore, public participation is accepted one of the key issues for integrated water management. (Pahl-Wostl and Hare 2004)

Preparatory process of the Draft Water Law first seemed to be an exemplar of how water management in Turkey is shifting toward a more participatory policy-making setting. The Draft Water Law was made public in late 2012. Responsible authorities have collected comments and suggestions from a number of interested parties including civil society organizations, professional unions, universities, etc. This consultation process was a good example of operationalization of the principle of public participation as stated in the WFD. Stakeholders had -at least theoretically- a say in policy-making process. However, following the collection of all reviews and evaluations, most of which were criticizing the Draft from various angles, authorities became inclined to continue with rounds internal revisions rather than continuing to consult with wider public for more inclusive scrutiny. Therefore, the latest version of the Draft Water law remains unknown to public.

### 3. CONCLUSION

This paper analyzed the Draft Water Law in Turkey in light of the WFD principles. According to preliminary analysis, it could be argued that the Draft Water Law had been prepared with taking into account of basic WFD terms and requirements, as well as earlier drafts. Beginning from the “definitions” section of the Draft one can recognize the inspiration from WFD text. However, there are several issues that are not fully elaborated in the Draft which raises some doubts about WFD compliance. Monitoring and public participation are two such issues.

Having regard of previous law-making experience in Turkey, it could be argued that a number of by-laws would be adopted following the adoption of the Water Law and those issues would be settled through secondary legislation. All in all, having regard of the hierarchy of legislation in Turkey, and since the new Water Law will be the fundamental text, where by-laws need to be in accordance with *the* law, the wording of the new Water Law should be meticulously improved prior to Parliamentary processes. This would provide ease to the Ministry of Forestry and Water Affairs personnel in the subsequent processes of drafting WFD-compliant by-laws.

### REFERENCES

- Baris, M.E. and Karadag, A.A., 2007. Water Resources Management Issues in Turkey and Recommendations. *Journal of Applied Sciences*; 7: 24: 3900-3908.
- Brouwer, R., 2006. Assessment of Environmental and Resource Cost in the Water Framework Directive, paper presented for the workshop Hydro-economic modelling and tools for implementation of the EU Water Framework Directive, Valencia, Spain, 30-31 January.
- Cevre Mühendisleri Odasi-Istanbul, 2012. Su Kanunu Tasarisi Suya Erisim Hakkini Engelliyor. Available online at <http://bianet.org/bianet/cevre--3/141601-su-kanunu-tasarisi-suya-erisim-hakkini-engelliyor>. Accessed on 05.04.2015.
- European Communities, 2000. 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, OJ L 327, 22.12.2000
- European Commission, 2009. Report from the Commission to the European Parliament and the Council in accordance with article 18.3 of the Water Framework Directive 2000/60/EC on programs for monitoring of water status, Brussels, 01.04.2009.

Grontmij Water and Restroffen bv, 2003. Institutional and Legal Strengthening in the Field of Water Management in Turkey, Report on the legal and institutional developments required to meet EU legal requirements in the Field Of Water Management in Turkey, De Bilt.

Günes, A. M., 2012. Su Kanunu Tasarisi Taslagi Uzerine Düsünceler. Journal of LHD; 10:118: 87-106.

Harrison, A., Schmidt, G., Avis, C., Hauser, R., 2001. WWF's Preliminary Comments on Public Participation in the Context of the Water framework Directive and Integrated River Basin Management, June.

Kibaroglu, A., Baskan, A., 2011. Turkey's Water Policy Framework, Ayşegül Kibaroglu, Annika Kramer and Waltina Scheumann (eds.), Turkey's Water Policy: National Frameworks and International Cooperation, Springer Verlag, Berlin-Heidelberg, 3-26.

Newig, J., Pahl-Wostl, C., Sigel, K., 2005. The Role of Public Participation in Managing Uncertainty in the Implementation of the Water Framework Directive. European Environment; 15: 333-343.

Pahl-Wostl, C., and Hare, M., 2004. Processes of Social Learning in Integrated Resources Management. Journal of Community and Applied Psychology; 14:3: 193-206.

Republic of Turkey, 2011. Su Kanunu Taslagi, on file with authors.

Republic of Turkey, 2007. State Planning Organization ("Devlet Planlama Teşkilatı" in Turkish), Dokuzuncu Kalkınma Planı, Toprak ve Su Kaynaklarının Kullanımı ve Yönetimi, Özel İhtisas Komisyonu Raporu, Ankara.

Republic of Turkey, 1982. Official Gazzette (Resmi Gazete), Act No. 2634, Official Gazette No. 17635, 16.03.1982.

Su Hakkı Kampanyası, 2014. Su Kanunu Tasarisi Elestirisi ve Alternatif Su Kanunu Tasarisi. <http://www.suhakki.org/2014/06/su-kanunu-tasarisi-elestirisi-ve-alternatif-su-kanunu-tasarisi/>. Accessed on 05.04.2015.

Sümer, V., 2012. Yeni Çerçeve Su Kanunu'na Doğru: Su Kanunu Taslagi Uzerine Notlar, ORSAM Su Arastirmalari Programi, Rapor No: 16.

Toprak-Su-Enerji, 2010. Çerçeve Su Yasası mı? Su Kaynakları Bakanlığı Yasası mı?, Ankara,, available online at <http://www.topraksuenerji.org>, accessed on 04.04.2015.

TMMOB Chamber of Agricultural Engineers, 2005. Topraklar ve Sular Sahipsiz Bırakılmamalı, statement, 11.01.2005, on file with authors.

TMMOB Türkiye Mimarlar ve Mühendisler Odası, 2013. Su Kanunu Tasarisi Taslagi Uzerine TMMOB Görüşü. Available online at [http://www.imo.org.tr/genel/bizden\\_detay.php?kod=3159&tipi=1&sube=0#.VSpWVYHpFI](http://www.imo.org.tr/genel/bizden_detay.php?kod=3159&tipi=1&sube=0#.VSpWVYHpFI), accessed on 05.04.2015.

World Bank, 2006. Irrigation and Water Resources with a Focus on Irrigation Prioritisation and Management, Water Resources and Institutions Working Paper.

Yildiz, D., 2010.Statement, available online at [http://topraksuenerji.org/su\\_kaynaklari\\_bakanligi\\_icin\\_2N.html](http://topraksuenerji.org/su_kaynaklari_bakanligi_icin_2N.html), accessed on 04.04.2015.