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**STUDY  
ON THE BEST  
ADMINISTRATIVE  
POSITIONING OF  
THE REGULATORY BODY  
IN THE PROCESS OF TARIFF  
SETTING OF COMMUNAL AFFAIRS  
OF WATER SUPPLY AND  
WASTEWATER COLLECTION  
AND TREATMENT  
SERVICES**



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# **STUDY ON THE BEST ADMINISTRATIVE POSITIONING OF THE REGULATORY BODY IN THE PROCESS OF TARIFF SETTING OF COMMUNAL AFFAIRS OF WATER SUPPLY AND WASTEWATER COLLECTION AND TREATMENT SERVICES**

## **United Nations Development Program (UNDP)**

### **The Study on best administrative positioning of the Regulatory Body in the process of tariff setting of communal affairs of water supply and wastewater collection and treatment services**

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*The United Nations Development Program (UNDP) ordered the development of this Study. Opinions expressed in this document are author's opinions and do not necessarily reflect the positions of UNDP.*

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# 1. INTRODUCTION

## 1.1. Context

Communal affairs of water supply and wastewater collection and treatment services are of common interest since they meet the basic needs of citizens as beneficiaries of those services. These services are so important at present so we literally cannot imagine life without them. These activities are included in the group of communal services in individual consumption, and the performance of this activity is ensured from the tariff of communal services.

Legislative competence for these activities exists at the level of Republika Srpska, Cantons in the Federation of Bosnia and Herzegovina and the Brčko District. The said levels have enacted Laws on Communal Services, and provisions of these Laws regulate the performance of communal services which include water supply and wastewater collection and treatment services, the manner and procedure of tariff setting of communal services and products. The Entity-level Laws on Principles of Local Self-Governance establish that the communal services fall under the competence of local self-governance units (municipality/town) and that a local self-governance unit should ensure performing, managing, financing, improving and developing of communal affairs. Furthermore, the Laws on Communal Services at all legislative levels (Republika Srpska, Cantons in the Federation of Bosnia and Herzegovina, the Brčko District) contain the provision which reads that local self-governance units shall ensure the performance of communal services.

The European Union policy in the sector of waters, including the communal services of water supply and wastewater collection and treatment is such that it requires the establishment of realistic tariffs for water services which should provide for a full recovery of incurred costs.

Entity-level Laws on Waters and water management strategies took over the principles which are the foundation of the European Union water legislation („polluter pays“ and „beneficiary pays“), a consistent implementation of which should provide for adequate economic compensation in the use and protection of waters and ensure a recovery of incurred costs for water services and environmental protection and resources costs. A majority of communal affairs laws contains a pro-

vision which prescribes that a price for communal services should provide for self-sustainability in the performance of communal services and business operations on the basis of simple reproduction.

However, the situation on the ground is completely different. Communal affairs laws have not sufficiently developed the said principles and have not established an adequate regulatory framework for tariff setting of communal services, thus giving larger powers to local self-governance units in the process of tariff setting of communal services.

In the implementation of the Law on Communal Services and the Law on Local Self-Governance Units, local self-governance units have not ensured a consistent application of the principles in the performance of these activities which resulted in a disorganized, rather chaotic situation when it comes to performing of these activities. There is not a single local self-governance unit in Bosnia and Herzegovina with a clearly determined tariff policy of communal services which should provide for self-sustainability of these communal services. The tariffs of communal services are observed as a social rather than economic category. That is why almost all local self-governance units in B&H have non-economic tariffs of these services which cannot ensure the optimum requirements for the performance and improvement of these activities.

When it comes to the performance of communal services, the existing Laws on Communal Services have not sufficiently regulated the relations between local self-governance units and communal services providers, their mutual rights, obligations and responsibilities when performing these activities. This is particularly noticeable in Republika Srpska considering the change of status of public utilities companies in to share holding companies and change of legal capital owner in these companies from local self-governance units to the Entity. Only in the past couple of years have the regulations been enacted on the reinstatement of capital to local self-governance units. However, the consultant is of the opinion that it is necessary to make appropriate amendments to the Law on Communal Affairs in order to clearly define the status of current utilities companies and relations with local self-governance units as the previous founders of public utilities companies.

In addition to the aforementioned, the performance of communal services is further aggravated with a series of internal problems of communal service providers, such as:

- ▷ Inadequate internal organization of service providers, the result of which is that service providers render other communal services as well and those activities are not separated in terms of organizational and financial structures; thus it is difficult to evaluate the real state of affairs and problems in certain activities;
- ▷ Irregularity and malfunctioning of communal facilities and system equipment which suffer large losses especially in the water supply system, resulting in negative effects on business operations;
- ▷ Employees surplus;
- ▷ Inadequate expertise from among employees and
- ▷ Other internal weaknesses.

That is why the establishment of a regulatory framework for tariff setting of water supply and wastewater collection and treatment services and its incorporation into the legislative framework will not be sufficient to ensure successful performance of these activities. At the same time, other problems will have to be solved (organization of public water companies (PWC), insufficient definition of relations between founders (local self-governance unit – hereinafter LSGU) and public companies and the like) in the performance of these activities, the solution of which is at the same time a requirement for successful and complete implementation of the new regulatory framework.

Introduction of a new regulatory framework for tariff setting of services into the legislation should clearly define both obligations and responsibilities of all participants in the performance of communal services: lawmaker, local self-governance unit as the most responsible factor in provision of high-quality and efficient performance of communal services, public utilities and other companies –communal services providers and communal services beneficiaries – households and legal entities. After the necessary amendments to the communal affairs laws, which will regulate the establishment of a new regulatory framework for tariff setting of services, are adopted there must be a consistent implementation of laws followed by appropriate administrative and expert supervision by relevant administration bodies (Entities, Cantons, local self-governance units).

## 1.2. Activities preceding the development of the Study

In late 2013, the UNDP launched a project with the aim of establishing the regulatory framework for tariff setting for water supply and sewage in B&H. The regulatory framework includes the enactment of methodology for tariff setting for services and the establishment of the Regulatory Body which, during the process of service tariff setting approval, would give an expert opinion to local self-governance units relative to the harmonization of proposed tariffs with the methodology for tariff setting for services and with the relevant communal affairs laws provision. The document titled Regulatory Framework in the process of tariff setting of water supply and wastewater collection and treatment services was developed in early 2014. The objective of this document was to determine principles and guidelines for legislative and institutional activities relative to the establishment of regulatory framework in the process of tariff setting of water supply and sewage in Bosnia and Herzegovina. As part of this document, an analysis of the current situation was made, with a special emphasis on the existing solutions for the issues of tariff setting and approval of water supply and sewage services in Bosnia and Herzegovina (Republika Srpska, Cantons in the Federation, the Brčko District).An analysis was made of the legislative and institutional framework, as well as of the current practice in tariff setting and approval in Bosnia and Herzegovina. The document concludes with guidelines, principles and proposals for the establishment of regulatory framework including the analysis of possible options of administrative positioning of the Regulatory Body in the approval process of tariff for services.

A more detailed analysis of the document titled Regulatory Framework in the process of tariff setting of water supply and wastewater collection and treatment services in the territory of B&H is given in chapter 4.1.herein.

Attached to the document titled Regulatory framework in the process of tariff setting of water supply and wastewater collection and treatment services in the territory of B&H is a document titled Legal framework for regulatory framework for tariff setting of water supply and sewage services which provides an analysis and gives a legal ground for proposals of the basic document. A more detailed analysis of the said document is given in chapter 4.2.

The said previously developed documents constitute a ground for the Study which will give proposals for: Regulatory framework in the process of tariff setting of water supply and wastewater collection and treatment services, administrative positioning of the Regulatory Body in that process, as well as the proposal of necessary amendments to the existing Laws on Communal Affairs relative to a new Regulatory framework and Regulatory Body.

### 1.3. Terms of reference

As defined by the terms of reference, the purpose of hiring an Expert on Legal and Institutional framework for Water Supply and Wastewater Collection and Treatment was to prepare the draft study on the best administrative positioning of the Regulatory Body in process of tariff setting of communal affairs of water supply and wastewater collection and treatment services, and also to concretize the possible tasks and jobs in the competences of that body.

For the purpose of improvement of the overall situation in this field, this project should result in the establishment of the system of tariff setting of water supply and wastewater collection and treatment services in the territory of Bosnia and Herzegovina. The said result shall be achieved by the adoption and implementation of the results of specific objectives defined in the terms of reference:

- ▷ **Proposal of Regulatory Framework in the process of tariff setting of water supply and wastewater collection and treatment services;**
- ▷ **Proposal for administrative positioning of Regulatory Body in the process of tariff setting of water supply and wastewater collection and treatment services;**
- ▷ **Proposal of necessary amendments to Laws on Communal Affairs** regarding the new Regulatory Framework and for administrative positioning of the Regulatory Body in the process of tariff setting of water supply and wastewater collection and treatment.

A starting ground for the Consultant in his task of developing the draft of the Study is found in two documents with recommendations:

- ▷ Regulatory framework for tariff setting of water supply and sewage services in B&H, and

- ▷ Legal framework for regulatory framework for tariff setting of water supply and sewage services in B&H.

The tasks of the consultant as defined by terms of reference are:

#### 1. Analysis:

- ▷ Existing legal framework (in the sector of water and communal affairs with a special emphasis on existing solutions for the issue of tariff setting of communal products and services at all levels of government in Bosnia and Herzegovina) as well as strategic documents in the relevant sector, Methodology for formation of the tariff for drinking water in water supply systems of RS, and other relevant documents;
- ▷ Existing institutional framework in the communal affairs (at the level of state government bodies which perform the tasks from the sector of water and communal affairs and at the level of bodies which perform the activities of drinking water supply and wastewater collection and treatment);
- ▷ Existing documents prepared by UNDP (Regulatory framework for tariff setting of water supply and sewage services in B&H and Legal framework for regulatory framework of tariff setting for water supply and sewage services in B&H).

#### 2. Proposals for improvement:

- ▷ Proposal of regulatory framework (process of tariff setting of water supply and wastewater collection and treatment services – amendments to the Laws on Communal Affairs that will cover the issues such as determination of a measurement unit of services, body which sets a price of services, body which approves the proposed tariff of services, structure of the tariff of services, role of the regulatory body in the process of tariff setting, obligation of the municipality to obtain an expert opinion of the regulatory body, *benchmarking* and others), proposal to adjust the Methodology of tariff setting for drinking water in RS water supply systems to include wastewater collection and treatment and proposal of necessary amendments to the laws in order to introduce the obligation to develop and implement such methodologies.
- ▷ Proposal of administrative positioning (level, status and composition) of the regulatory body (as well as competences and tasks that

would be discharged by the regulatory body in the process of tariff setting of water supply and wastewater collection and treatment services, and possible other tasks and competences relevant to the work and business operations of communal services/water supply companies).

- ▷ Proposal of amendments to the Law on Communal Affairs (the Consultant should provide concrete proposals for amendments to the Laws on Communal Affairs at cantonal levels, RS and Brčko District, especially in terms of legal commitments in implementation of a methodology for tariff setting of water supply and wastewater collection and treatment, the procedure of tariff setting of services, the establishment and role of the Regulatory Body in the process of tariff setting of services, benchmarking, relations between municipalities and Regulatory Body, procedures in the event the municipality does not accept an opinion of the Regulatory Body, funding of the Regulatory Body etc.)

UNDP organized a workshop for a public presentation and discussion of the draft Study. On that occasion, comments and recommendations of all participants were collected and subsequently evaluated.

## 1.4. Methodology of project development

The following methodology was used in the development of the Study:

- ▷ At the initial, analytical stage of the Study, a detailed analysis of the existing legislation in the sector of waters, environmental protection and communal affairs at all legislative levels of B&H (B&H, FB&H, RS, Cantons in FB&H, Brčko District) was made, with a special emphasis on the issue of tariffs of services. As needed, the analysis also included other legislation relevant to the communal affairs, including water supply and wastewater collection and treatment. Available legislation of local self-governance units was also analyzed in relation to performing of communal affairs and tariff setting of services.
- ▷ The analytical stage also included the analysis of the institutional framework in the sector of waters and communal affairs of the competent authorities at all levels and facilities which

perform the activities of water supply and wastewater collection and treatment.

- ▷ As part of the analysis of legislative and institutional framework in the sector of waters and communal affairs, an evaluation was made of the situation in legal and institutional framework along with guidelines for their improvement especially in terms of the establishment of regulatory framework for tariff setting of services.
- ▷ During the analytical stage of the Study, an analysis was made of the existing strategic, study and other documents including previously developed UNDP documents relative to the introduction of regulatory framework for tariff setting of water supply and wastewater collection and treatment. The focus of the analysis was placed on the issue of setting and approving prices for services.
- ▷ Following the completion of the initial analytical stage of the Study, general and specific objectives of the Study were set in relation to the establishment of regulatory framework for tariff setting of water supply and wastewater collection and treatment services.
- ▷ Setting the objectives of the Study is followed by the most important part of the Study, the measures and activities in the establishment of regulatory framework in the process of tariff setting of water supply and wastewater collection and treatment services including the enactment of methodology for tariff setting of services and administrative positioning of the Regulatory Body within the regulatory framework.
- ▷ It is followed by the proposal of measures and activities in making amendments to the Law on Communal Affairs which pertain to the establishment of regulatory framework and regulatory body in the process of tariff setting at all levels (FB&H, RS, Cantons in FB&H, the Brčko District).
- ▷ Finally, the Study gave an implementation plan of measures and activities for all levels of government and participants in the performance of communal affairs (Federation of B&H, Republika Srpska, Cantons in FB&H, the Brčko District, municipalities/towns, public utilities companies), which will lead to the realization of Study objectives.

A structure or contents of the Study is envisaged in accordance with the aforementioned methodological approach.

## 1.5. The manner of Study implementation

The establishment and detailed regulation of regulatory framework for tariff setting of water supply and wastewater collection and treatment services in B&H will be done through amendments to the Law on Communal Affairs at certain levels of legislative competence in communal affairs (Federation of B&H, Republika Srpska, Cantons in FB&H, the Brčko District).

This is why it is important to include representatives of relevant bodies of all levels of legislative authorities in communal affairs in the discussion on the draft regulatory framework. On the one hand, their participation in the discussion will contribute to a high-quality development of this issue, and on the other hand, those bodies will accept the Study objectives as their obligation in the regulation of tariff of communal services of water supply and wastewater collection and treatment which will facilitate the process of establishing a regulatory framework for tariff setting of these services. This is followed by amendments to the Law on Communal Affairs, by laws (methodology for tariff setting of services, regulatory body to give an expert opinion in the approval process of tariff of services and the like), as well as by the development of new or improvement of the existing municipal decisions on water supply and wastewater collection and treatment. Communal services providers should make certain organizational and other changes in order to provide for optimum requirements for the implementation and consistent application of a regulatory framework for tariff setting of water supply and wastewater collection and treatment. Relevant legislative and municipal authorities, by their role of administrative and professional supervision, play an important role in the establishment and functioning of a new regulatory framework for tariff setting.

The Consultant suggests that, following the development of the Study, UNDP send the Study to the relevant bodies at all legislative authority levels (RS, FB&H, FB&H Cantons, the Brčko District) who should then initiate the amendments procedure for the communal affairs laws in line with the proposals of the Study.

# 2. LEGAL FRAMEWORK

## 2.1. State level

According to the Constitution of Bosnia and Herzegovina, legislative competence in environmental protection including water and communal affairs is not vested in the level of Bosnia and Herzegovina.

## 2.2. Entity level – RS

According to the Constitution of Republika Srpska, the legislative competence in the sector of environmental protection, waters and communal affairs is vested in the entity level.

The laws that, in their entirety or in part, regulate the sector of environmental protection, waters and communal affairs are the following:

- ▷ Law on Local Self-Governance (Official Gazette of Republika Srpska, Vol: 62/06, 47/11, 93/12 and 99/13)
- ▷ Law on Environmental Protection (Official Gazette of Republika Srpska, Vol: 53/02 and 109/05)
- ▷ Law on Waters (Official Gazette of Republika Srpska, Vol. 50/06 and 92/09)
- ▷ Law on Communal Affairs of Republika Srpska (Official Gazette of Republika Srpska, Vol: 124/11)

A detailed analysis of the said laws and other RS regulations is given in Annex 1 to this Study (Legislative framework).

## 2.3. Entity level – Federation of B&H

The Constitution of the Federation of Bosnia and Herzegovina provides in an insufficiently precise manner the regulation of legislative competence in the sectors of environmental protection, waters and communal affairs. In practice, the legislative competence in the sectors of environmental protection and waters is shared by the Federation of B&H and Cantons, while the competence in the sector of communal affairs is vested in the cantons.

Indeed, the Federation of B&H has the Law on Communal Affairs (taken over from the Socialist Republic of B&H) but this law is not applied at the cantonal levels.

The laws that, in their entirety or in part, regulate the sector of environmental protection, waters and communal affairs are the following:

- ▷ Law on Local Self-Governance Principles in the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, Vol: 49/06 and 51/09)
- ▷ Law on Environmental Protection (Official Gazette of the Federation of Bosnia and Herzegovina, Vol: 33/03 and 39/09)
- ▷ Law on Waters (Official Gazette of the Federation of Bosnia and Herzegovina, Vol: 70/06)
- ▷ Law on Communal Affairs (Official Gazette of SRB&H, Vol: 20/90)

A detailed analysis of the said laws and other FB&H regulations is given in Annex 1 to this Study (Legislative framework).

## 2.4. Cantonal level – Cantons in FB&H

The cantonal constitutions vest the legislative competence in the sector of waters and environmental protection jointly to the Federation of B&H and Cantons whereas the legislative competence in the sectors of communal affairs is vested exclusively in the cantons.

The laws that, in their entirety or in part, regulate the sector of environmental protection, waters and communal affairs are the following:

- ▷ Cantonal laws on local self-governance principles
- ▷ Cantonal Laws on Environmental Protection
- ▷ Cantonal laws on Communal Affairs
- ▷ Cantonal laws on Waters.

A detailed analysis of the said laws and other cantonal regulations is given in Annex 1 to this Study (Legislative framework).

## 2.5. Brčko District

Pursuant to the Statute of the Brčko District of B&H the Brčko District is a single administrative unit of local self-government existing under the sovereignty of Bosnia and Herzegovina.

The laws that, in their entirety or in part, regulate the sector of environmental protection, waters and communal affairs are the following:

- ▷ Law on Environmental Protection (Official Gazette of the Brčko District of BH, Vol: 24/04, 1/05)
- ▷ Law on Waters (Official Gazette of the Brčko District of BH, Vol: 30/04, 24/07 and 09/13)
- ▷ Law on Communal Affairs (Official Gazette of the Brčko District of BH, Vol: 30/04, 24/07 and 09/13)

A detailed analysis of the said laws and other Brčko District regulations is given in Annex 1 to this Study (Legislative framework).

## 2.6. Municipal level of authority – Federation of Bosnia and Herzegovina and Republika Srpska

According to the Entities' Laws on Local Self-Governance, the tasks in the sector of communal affairs fall under the competence of their local self-governance units.

The regulations that, in their entirety or in part, regulate the sector of environmental protection, waters and communal affairs are the following:

- ▷ Statutes of local self-governance units
- ▷ Decisions on the establishment – organization of public utilities companies for water supply and wastewater collection and treatment
- ▷ Decisions on performing communal affairs of water supply and wastewater collection and treatment
- ▷ Decisions on the manner of tariff setting of communal services.

A detailed analysis of the said regulations of some local self-governance units in the Federation of B&H and Republika Srpska is given in Annex 1 to this Study (Legislative framework).

## 2.7. Legislation of the European Union relative to water

The basic document which sets a long-term water policy in the territory of Europe is the Directive 2000/60/EC of the European Parliament and Council of the European Union.

In addition to the said Directive, the Drinking Water Directive 98/83/EC and the Urban Wastewater Directive 91/271/EC are in place.

A detailed analysis of the said EU Directives is given in Annex I to this Study (Legislative framework).

## 2.8. Analysis of the legal framework in the domain of communal affairs of water supply and wastewater collection and treatment with a special focus on the tariff of communal services

Based on the analysis of the legal framework in the sector of waters and communal affairs of water supply and wastewater collection and treatment in B&H, the following conclusions can be reached:

1. The Constitution of Bosnia and Herzegovina does not at all mention the issue of environmental protection and waters, which include communal affairs of water supply and wastewater collection and treatment. In the part pertaining to legal order and institutional competences, the Constitution determines that "all governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities." This means that the real legislative competence in the domain of environmental protection, waters and communal affairs should belong to FB&H and RS, and to a certain point Brčko District.
2. Although the RS Constitution does not mention the sector of waters and communal affairs, but only the environmental protection, it is indisputable that the legislative competence in the sector of waters and communal affairs is at the Entity level.
3. With regard to the Constitution of FB&H, it cannot be concluded with certainty as to whether communal affairs, which include water supply and wastewater collection and treatment, fall under the exclusive competence of Cantons or under the joint competence of the Federation and Cantons. In practice, the legislative competence in communal affairs belongs to the Cantons which regulate this domain by their laws on communal affairs. However the sector of waters, which include communal affairs of water supply and wastewater collection and treatment, is in the joint competence of the Federation and Cantons and is regulated by

the Federation and Cantonal laws on waters. The domain of waste disposal, which also falls in the communal affairs, is regulated by the Federation and Cantonal laws on waste management.

At the level of the Federation of B&H, we also have the Law on Communal Affairs which is taken over from the Socialist Republic of B&H. Anyhow, there is a dilemma as to whether the sector of communal affairs including the sector of water supply and wastewater disposal and treatment, falls under the exclusive competence of the cantons or joint competence of the Federation and Cantons.

Resolution of this dilemma has a large influence on the subject of this Study, that is, the establishment of the regulatory framework for tariff setting of water supply and wastewater collection and treatment in FB&H.

4. All laws on communal affairs contain the provision according to which the local self-governance units provide the conditions for performing communal affairs, but do not regulate the manner in which and the measures and activities by which the performing of these affairs is provided. The majority of laws on communal affairs did not sufficiently regulate the establishment of public utilities companies and the contents of the municipal decision on the establishment of public companies.

The laws on communal affairs did not sufficiently regulate the issue of tariff setting and tariff approval of communal services.

The Laws on communal affairs did not sufficiently regulate the relations, obligations and responsibilities of municipalities, as founders of the public utilities companies, and public utilities companies, as service providers, in performing of communal affairs.

5. According to the information available to the Consultant, municipal decisions on the establishment of public utilities companies in most of the local self-governance units are not harmonized with the Law on Communal Affairs (for example: Una-Sana Canton).
6. In Republika Srpska, following the process of state capital privatization and status changes in the organization of public utilities companies, the acts of local self-governance units on the establishment or organization of utilities

companies are not harmonized with the Law on Communal Affairs.

7. None of the local self-governance units' decisions on performing communal services of water supply and wastewater disposal and treatment that were available to the Consultant have adequately and clearly regulated the issue of communal services tariff.
8. The Consultant is not aware as to whether all local self-governance units passed the decisions on the manner of tariff setting of communal services of individual consumption in cases when such obligation exists in the Law on Communal Affairs.
9. Most of public utilities companies which perform communal services of water supply and wastewater collection and treatment also perform other communal services, but the Consultant did not have a chance to analyze the organization of public utilities companies.

## 2.9. Guidelines for future steps in the establishment of regulatory framework for tariff setting of water supply and wastewater collection and treatment

A prerequisite for the establishment and implementation of the regulatory framework for tariff setting of water supply and wastewater collection and treatment services in B&H is the adequate legal and other legislation in the sector of communal affairs, primarily updating and amending the laws on communal affairs at all levels of the legislative authority (the Entities, the Cantons in FB&H, the Brčko District).

That is why, within the measures and activities for achieving the objectives of the Study, the requirements shall be analyzed which pertain to legal framework in the sector of communal affairs of water supply and wastewater collection and treatment. They would be the following:

- ▷ To give an answer to the dilemma about the legislative competence in the sector of communal affairs between the Federation of B&H and Cantons in FB&H;
- ▷ To have all Laws on Communal Affairs defining the manner in which local self-governance units provide for the conditions of performance and development of communal affairs;

- ▷ To have all Lawson Communal Affairs extensively regulate the establishment of public utilities companies, including the contents of the decision of the local self-governance unit on the establishment of public utilities companies;
- ▷ To have the Laws on Communal Affairs define the obligations and responsibilities of all participants in the establishment and implementation of the regulatory framework for tariff setting;
- ▷ To have all local self-governance units (FB&H, RS, and BD) harmonize the decisions on the establishment (organization) of (public) utilities companies with the Law on Communal Affairs.
- ▷ To have the acts of local self-governance units on performing of communal affairs of water supply and wastewater collection and treatment to extensively regulate the obligations and responsibilities of local self-governance units, service providers and service beneficiaries in the implementation of the regulatory framework for tariff setting;
- ▷ To adequately inform the public (service beneficiaries) about the establishment of the new regulatory framework for tariff setting.

## 3. INSTITUTIONAL FRAMEWORK

### 3.1. Institutions at the level of Bosnia and Herzegovina

There is not a single appropriate state institution in charge of waters or communal affairs at the level of Bosnia and Herzegovina.

The Ministry of Foreign Trade and Economic Relations is the only one that carries out tasks and discharges duties which are within the competence of BiH and relate to defining policy, basic principles, co-ordinating activities and harmonizing plans of the Entity authorities and bodies at the international level among others in the sector of environmental protection, development and use of natural resources.

### 3.2. Institutions at the Entity level – Republika Srpska

The Ministry of Agriculture, Forestry and Water Management is the institution in charge of the sector of waters at the Republika Srpska level, in line with the Law on Waters. The RS Ministry of Spatial Development, Civil Engineering and Ecology is in charge of the sector of environmental protection and communal affairs.

In addition to the said RS bodies of administration, expert and other activities in are carried out by *Vode Srpske* public institution, in line with the Law on Waters.

### 3.3. Institutions at the Entity level – Federation of Bosnia and Herzegovina

Pursuant to the Law on Waters, the main institution in charge of waters in the Federation of Bosnia and Herzegovina is the Federation Ministry of Agriculture, Water Management and Forestry.

The Federation Ministry of Environment and Tourism is in charge of environmental protection and tourism.

Expert tasks and activities related to water management at the level of Federation of Bosnia and Herzegovina are carried out by the Sava River Basin Agency and Adriatic Sea Basin Agency.

### 3.4. Institution at the Cantonal level – the Federation of Bosnia and Herzegovina

At the federation of B&H level, administrative, expert and other activities in the sector of waters in majority Cantons are mainly carried out in the Ministries of Agriculture, Water Management and Forestry, and at some instances with the Ministry of Economy/Spatial Development / Environmental Protection.

With regard to the communal affairs issues, including the activity of water supply and wastewater collection and treatment, the majority of Cantons organized them in different ministries, mainly the ministries in charge of spatial development and environmental protection.

There is not a single Canton in the Federation of B&H that includes sectors of waters, environmental protection and communal affairs in one ministry.

### 3.5. Institutions at the level of Brčko District

At the Brčko District level, the activities from the sector of waters are carried out in the Department of Agriculture, Forestry and Water Management while the activities in the field of communal affairs are carried out in the Communal Affairs Department.

### 3.6. Institutions at the local self-governance level

The activities in the sector of waters and the sector of communal affairs are differently organized in local self-governance units in Republika Srpska and Federation of Bosnia and Herzegovina. The majority of local self-governance unit organized the said activities in two or more municipal bodies of administration. These activities are mainly related to spatial development, environmental protection, housing issues etc. There are a very small number of local self-governance units that carry out these activities within one organizational unit.

### 3.7. Units which perform communal affairs of water supply and wastewater collection and treatment

According to the Entities' Laws on Local Self-Governance, the communal affairs including the drinking water supply and wastewater collection and treatment fall within independent competences of local self-governance units.

According to the Law on Communal Affairs in Republika Srpska and Cantons in Federation, the communal affairs of drinking water supply and wastewater collection and treatment are carried out by public utilities companies founded by founders of local self-governance units who are at the same time majority owners of capital in those companies.

Communal affairs of water supply and wastewater collection and treatment in the Brčko District terri-

tory are carried out by the public utilities company which was founded by Brčko District.

A detailed analysis of the institutional framework in the sector of waters and communal affairs, including the water supply and wastewater collection and treatment at the level of Bosnia and Herzegovina, Republika Srpska, Federation of B&H, Cantons in Federation of B&H and Brčko District is made in Annex II to this Study. (Institutional framework).

### 3.8. Findings on the institutional organization in the field of communal affairs of water supply and wastewater collection and treatment

Based on the analysis of the institutional framework in the sector of waters, that is, communal affairs of water supply and wastewater collection and treatment in Bosnia and Herzegovina, the following findings and conclusions can be reached:

1. At the level of Bosnia and Herzegovina there is no institution competent for the activities in the sector of waters and communal affairs of water supply and wastewater collection and treatment.
2. At the level of Republika Srpska, the activities in the sector of waters are carried out in the Ministry of Agriculture, Forestry and Water Management while the activities in the sector of communal affairs are carried out in the Ministry of Spatial Development, Civil Engineering and Ecology. The Law on Republic Administration did not clearly divide the activities of the said two Ministries.
3. At the level of the Federation of Bosnia and Herzegovina, the activities in the sector of waters are carried out in the Federation Ministry of Agriculture, Water Management and Forestry. Although it is not emphasized in the Law on Federation Ministries and other Bodies of Administration, the activities in the sector of communal affairs are carried out in the Federation Ministry of Environment and Tourism. The Law on Federation Ministries and other Bodies of Administration did not clearly divide the activities and competences of the said two Ministries.
4. At the level of Cantons in the Federation of B&H, the activities in the sector of waters and communal affairs are not regulated to details. The activities in the sector of waters are mainly done in the Ministry of Agriculture and Forest-

ry while the activities in the sector of communal affairs are carried out within other bodies competent for spatial development, environmental protection and the like.

5. The activities in the sector of waters and communal affairs are performed by two bodies of administration in the Brčko District as well. The activities in the sector of waters are carried out by the Department of Agriculture, Forestry and Water Management of the Brčko District Government, while the activities in the sector of communal affairs are carried out in the Utilities Department of the Brčko District Government without a clear division of activities in the field of water supply and wastewater collection and treatment.
6. The activities in the sector of waters and communal affairs are carried out by two or more municipal bodies, without a clear division of competences. However, the Municipality (current town) of Bihać is the example of a merger of waters and communal affairs into one municipal body.
7. With regard to the units which perform communal affairs of water supply and wastewater collection and treatment, it should be noted that the earlier public utilities companies were transformed into shareholding companies in the process of state capital privatization, with a change of the capital ownership, so that Republika Srpska became a majority capital owner in these companies which practically stripped the municipalities of the authority to manage the utilities companies. The procedures of changing the organization of public utilities companies into shareholding companies did not take into consideration the provisions of the Law on Communal Affairs and the Law on Local Self-Governance. It is only in the recent years after the adoption of the Law on Local Self-Governance, Law on Determination and Transfer of Right to dispose with property of local self-governance unit and the Law on Transfer of Rights of Republika Srpska capital ownership from utilities companies to local self-governance units, were the conditions met to return the right to local self-governance units to perform communal activities.
8. In the Federation of Bosnia and Herzegovina, the communal affairs of water supply and wastewater collection and treatment are carried out by public utilities companies founded by the municipalities. However, the Cantonal Laws on Communal Affairs and decisions on the establishment (organization) of public utilities companies did not properly regulate: the rights, obligations and responsibilities of the

municipalities as founders of public utilities companies, mutual relations between the municipalities and public utilities companies, the manner of tariff setting of communal products and services and the like.

9. In addition to performing communal affairs of water supply and wastewater collection and treatment, most of the utilities companies in Republika Srpska, Federation of Bosnia and Herzegovina and Brčko District of Bosnia and Herzegovina perform other communal affairs as well, which has influence on the activities of water supply and wastewater collection and treatment and the tariff of services as subjects of this Study.

### 3.9. Guidelines for future steps in the establishment of regulatory framework of tariff setting of water supply and wastewater collection and treatment

One of the basic requirements for the development and implementation of legislation is the institutional organization at all levels of authority. With regard to the sector of waters and communal affairs, this is primarily related to the organization of local self-governance units and units which perform communal affairs of water supply and wastewater collection and treatment. That is why the chapter – Measures and Activities for achieving the objectives will include the requirements related to the institutional organization of all participants in performing of communal affairs of water supply and wastewater collection and treatment.

The measures and activities would be reflected in the following:

- ▷ More detailed regulation of legislative competences between the Federation of B&H and Cantons;
- ▷ Merger of activities in the sector of waters and communal affairs of water supply and wastewater collection and treatment into one body of state administration at all levels (RS, FB&H, Cantons, Brčko District, municipalities/towns);
- ▷ Through adequate legislation of Republika Srpska, reinstate all competences in the field of waters and communal affairs to municipalities/towns in accordance with the Law on Local Self-Governance and Law on Communal Affairs;

- ▷ By amendments to the Laws on Communal Activities extensively regulate the relations between municipalities/towns and public utilities companies which perform activities of water supply and wastewater collection and treatment;
- ▷ To harmonize the existing municipal/town decisions on the establishment of public utilities companies with the provisions of the Law on Communal Affairs;
- ▷ By acts on the organization of public utilities companies provide for divided organization and accounting for each communal activity.

### 3.10. Organization of tasks in the sector of water, environmental protection and communal affairs

- ▷ The analysis of legislative and institutional framework in the sector of waters, drinking water supply and wastewater collection and treatment in Bosnia and Herzegovina showed that the tasks in the sector of waters, environmental protection and communal affairs are not carried out within one organizational unit at any level in Bosnia and Herzegovina. (ministries or services).
- ▷ Tasks in the sector of waters are mainly carried out in one organizational unit along with the tasks in sector of agriculture and forestry while the communal affairs are carried out in a different organizational unit along with tasks in the sector of spatial development, environmental protection, housing and other issues.
- ▷ Bearing in mind the fact that waters are one of the components of environmental protection and considering that certain communal affairs such as drinking water supply and wastewater collection and treatment are part of the sector of environmental protection, the question is why the tasks in the sector of waters, environmental protection and communal affairs would not be carried out within the same organizational unit (ministry or local self-governance service).
- ▷ Although the issue of organization in the sector of waters, environmental protection and communal affairs is not the subject of this Study, the Consultant deems it necessary to point to this problem and gives his opinion in that regard.

- ▷ There are several reasons to the benefit of organizing a single body to cover the sector of waters, environmental protection and communal affairs:
- ▷ In the legislation of Bosnia and Herzegovina (RS, FBiH, Cantons in FBiH, Brčko District) these sectors are regulated by several laws: Law on Environmental Protection, Law on Waters, Law on Communal Affairs, but the tasks and activities prescribed by the laws for these sectors are carried out in different bodies at different levels;
- ▷ According to EU legislation, the sector of waters is processed along with other environmental components, and so the tasks related to waters and environment are carried out in one body or institution in most EU countries;
- ▷ The joinder of activities in the sectors of waters, environment and communal affairs would prevent any duplication of activities and even different interpretation of competences as is often the case nowadays;
- ▷ Such organization would be significantly more efficient in the sectors of water and environmental protection;
- ▷ The existing pool of experts would be grouped in one organizational unit and this would contribute to a higher quality in carrying out of tasks in the sector of waters and environmental protection.
- ▷ The Consultant suggests that the relevant state body (at all levels) should develop a study on the joinder of activities in the sector of waters, environmental protection and communal affairs into one organizational unit (ministry, service), which would determine the justifiability of joining these activities into one organizational unit.

## 4. ANALYSIS OF THE EXISTING STUDIES AND OTHER DOCUMENTS

### 4.1. Regulatory Framework for Tariff setting of water supply and sewage in B&H (UNDP – January 2014)

In late 2013, UNDP launched the activity with a view of establishing the regulatory framework of tariff setting of water supply and sewage services in Bosnia and Herzegovina, including the establishment of the regulatory body in charge of giving an official expert opinion in the process of tariff setting. In early 2014, the document titled “Regulatory Framework of Tariff Setting of Water Supply and Sewage Services in B&H” was developed. The goal of this document was to give guidelines for further institutional and legislative activities related to the establishment of regulatory framework of tariff setting of water supply and sewage services in B&H.

The document provided an analysis of the current situation in B&H, as well as the analysis of the existing legislative and institutional framework. A brief review was also given of the existing practice in tariff setting of these services in B&H. The document also gives an overview of the existing regulatory bodies in other sectors in B&H and refers to examples of regulatory frameworks in other countries. The document also examined possible options of administrative positioning of the regulatory framework or regulatory body in the process of tariff setting of these services.

In the course of the document’s development, several meetings (discussions) were held with key players in the field of water supply and wastewater collection and treatment in Bosnia and Herzegovina (representatives of competent bodies of Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, Republika Srpska, Cantons, municipalities, utilities companies, Water Agencies of the Federation and Republika Srpska, associations of communal management employers of the Federation and Republika Srpska, union of municipalities

and towns of the Federation and Republika Srpska and the like). A high degree of agreement with the document and proposed future activities was reached at the meetings.

At the end of the document, proposals are given for the establishment of regulatory framework of tariff setting of water supply and wastewater collection and treatment in B&H. The fundamental principles in proposing the regulatory framework for tariff setting are as follows:

- ▷ All changes in the sector (waters and communal affairs) that would ensure the establishment of new regulatory framework should be as less intrusive as possible in relation to the existing legislative framework.
- ▷ Responsibility for self-sustainability of water supply and wastewater collection and treatment lies with the local self-governance units (municipalities, towns).
- ▷ It is desirable that the Law on Communal Affairs gives a more detailed and clearer regulation of rights, obligations and responsibilities of local self-governance units and utilities companies in the provision of water supply and wastewater collection and treatment services. It would be desirable to regulate the relations more closely by a contract between the local community and utility company in addition to the Law on Communal Affairs.
- ▷ A single methodology of tariff setting of water supply and wastewater collection and treatment services would contribute to the harmonization of practice and approach in local communities.
- ▷ Local community (municipality/town) needs adequate professional help in controlling the implementation of prescribed methodology and verification of the data submitted by utilities companies. It is necessary to establish a body (regulatory) which should provide an official opinion on abiding by prescribed methodology of tariff setting, as well as for review and opinion on business plans of the communal services provider.
- ▷ The Sector might find it helpful to collect, keep and publish the indicators of operational and financial success of utilities companies collected, kept and published.

Based on the aforementioned principles, the Consultant proposed the following in the document:

1. It is necessary to prescribe the methodology of tariff setting of water supply and sewage services in the Federation of B&H and Republika Srpska by the acts of the Entities' Governments in line with the RS Law on Local Self-Governance and FB&H Law on Local Self-Governance Principles.

The Consultant is of the position that, bearing in mind the communal affairs legislation (Law on Communal Affairs of RS, FB&H, Cantons, BD) this conclusion cannot be directly implemented.

It is necessary first to introduce the methodology into the Laws on Communal Affairs with the approval of the Governments (RS, Cantons, BD) to enact the methodology.

2. With regard to collecting, keeping and publishing the indicators of operational and financial success of utilities companies, the Consultant proposes that this task is realized in cooperation with the Danube Program (DWP), which based its work among others on *benchmarking* and has already done a lot in terms of selection and definition of these indicators.
3. Although the request to change the tariff of services will finally be reviewed and approved by the local community, the Consultant proposes that the request be forwarded via expert body (regulatory) to make sure that the request is harmonized with the prescribed methodology. The Consultant offers possible administrative levels for the establishment of this body which needs to be prescribed by the Laws on Communal Affairs of Republika Srpska, Cantons in the Federation and the Brčko District.

The next stage of the Project of regulatory framework establishment for the tariff setting of water supply and wastewater collection and treatment in B&H will propose specific amendments to the existing Laws on Communal Affairs in relation to the establishment of regulatory framework including the role of methodology of tariff setting and establishment of regulatory body within the regulatory framework.

## 4.2. Legal framework of regulatory framework of tariff setting of water supply and wastewater collection and treatment in B&H (UNDP – January 2014)

Attached to the document “Regulatory framework of tariff setting of water supply and sewage in B&H” is the document developed by the Consultant titled “Legal framework of the regulatory framework for tariff setting of water supply and wastewater collection and treatment services in Bosnia and Herzegovina” laying the legal foundation for the proposals referred to in the basic document.

In Chapter 1 of the document, the consultant explained the competence for the regulation of local self-governance affairs and provision of communal services (affairs).

With regard to the legislative competence in the regulation of communal affairs, the Consultant did not process the relations between the Federation and Cantons in the Federation of B&H, which is important for the entire Project, because the measures and activities of establishing the regulatory framework in the tariff setting will be carried out through these units. Therefore, the dilemma must be resolved as to whether the legislation in the sector of communal affairs is under the exclusive competence of Cantons or under joint competence of the Federation of B&H and Cantons. This is not sufficiently examined in Chapter 2.1. either, which provides an overview of the regulations in the field of communal affairs in the Federation B&H. The text of this Chapter does not lead to the conclusion as to whether the Consultant analyzed all Cantonal laws on communal affairs or just some of them, bearing in mind that the Cantons have different regulations when it comes to the tariff setting of communal services. In addition to that, this Chapter should have mentioned and analyzed the decisions as follows:

- ▷ Decision on the establishment (organization) of a public utilities company;
- ▷ Decision on the provision of communal affairs of water supply and wastewater collection and treatment;
- ▷ Decision on the manner of tariff setting of communal products and services,

because the said decisions regulate partly or en-

tirely the issues that were the subject of these documents.

With regard to the legislation in the field of communal affairs in Republika Srpska, there is no such dilemma as with the Federation of B&H because the legislation is under the exclusive competence of Republika Srpska.

When Chapter 2.1.1. reads about the provision of communal affairs and obligations of the municipality in terms of supervising the provision of communal affairs, it would be desirable to quote the provisions of the Law on Organization of Bodies of Administration in FB&H (Official Gazette of FB&H, Vol: 35/05), which regulate that “the municipality shall, by way of competent bodies of administration, monitor the situation within the scope of its competences.”

Chapter 2.2.1. reads about the status of public utilities companies in Republika Srpska should also mention that in the process of state capital privatization, public utilities companies were transformed into shareholding companies with several capital owners in those companies.

Chapter 2.3. Conclusions mentions the steps that need to be taken by the municipalities in the Federation of B&H and primarily the following:

- ▷ Harmonization of municipal decisions on the establishment of public utilities companies with the provisions of Cantonal Laws on Communal Affairs;
- ▷ Rendering the decision on the manner of tariff setting of communal products and services,

because the said decisions, among other things, regulate the issue of tariff setting.

In the Chapter 3, which mentions the establishment of the mechanism for tariff proposals of communal services, it should be considered that the existing Laws on Communal Affairs (RS, Cantons in FB&H, BD) are the basic substantive regulations which regulate the provision of communal affairs and prescribe that the issue of “the establishment of regulatory framework of tariff setting of water supply and wastewater collection and treatment” must be regulated exclusively through amendments to these laws. Any other option would go beyond the existing laws on communal affairs and it is not possible in practice. These laws must determine the powers for the establishment of regulatory body and enactment of the methodology of tariff setting.

With regard to the role of unions of municipalities/towns (Chapter 3.2.), it is disputable whether they should receive any activities and measures in the competence of municipal bodies of administration (especially Cantonal and Entity bodies). The unions should be advisory bodies with a view of harmonizing the positions and exchange of experience of municipalities/towns in the implementation of Laws on Communal Affairs with a special focus on the communal service tariff policy.

The Consultant's intentions to determine measures and activities that will disturb the existing legislation system in the least possible measure (Chapter 3.2. conclusion) are proper. However, it should be noted that in order to become operative and binding, all measures and activities in the establishment of a new regulatory framework of tariff setting of water supply and wastewater collection and treatment must be incorporated into the existing laws on communal affairs (RS, Cantons in FB&H, BD), or else it will not be possible to apply them.

Therefore, the harmonization and verification of the regulatory framework of tariff setting of water supply and wastewater collection and treatment (communal affairs) in B&H, should be immediately followed by the introduction of targets, measures and activities of the regulatory framework into the existing Laws on Communal Affairs (RS, Cantons in FB&H, BD).

The Consultant's observation at the end of Chapter 3.2. should be underlined: "Although the focus is placed on the tariff setting, it is unequivocal that an expert analysis would point to other measures that would contribute to better operations with the infrastructure necessary for water supply and wastewater collection."

### 4.3. Working material – Law on Communal Management in FB&H (Union of communal management employers FB&H – October 2012)

In order to contribute to the establishment of a new regulatory framework of communal affairs tariff setting in the Federation of B&H, the Union of communal management employers FB&H prepared in late 2012 the working material – Law on Communal management in the Federation of Bosnia and Herzegovina which was submitted to the relevant bodies in the Federation of B&H, but

it still remains unknown what happened with that material and whether it will be sent into a parliamentary procedure.

In addition to the provisions on the communal management principles, conditions and manner of performing of communal affairs, and funds for performing of communal affairs, the authors of this document extensively elaborate on the issue of communal tariffs by way of the establishment of the regulatory framework and regulatory body for the tariff setting of communal services.

In the reasoning of the document, the authors tried to find an adequate legal ground for the enactment of this law at the level of the Federation of Bosnia and Herzegovina referring to certain fields that fall under the exclusive competence of the Federation under the Constitution of FB&H or under the joint competence of the Federation and Cantons. The several years long difficult situation in communal management is stated as the main reason for the enactment of the Law on Communal Management.

At the same time, the fact is neglected that all Cantons enacted their Laws on Communal Affairs on the legal grounds of Article 4 Chapter III of the Constitution of FB&H, which determines that "the Cantons have all competences that are not expressly entrusted to the Federation authority."

The Federation of B&H took over the Law on Communal Affairs (Official Gazette of SRB&H, Vol: 20/90), while all the Cantons enacted their own Laws on Communal Affairs and declared the said Law ineffective. The Consultant is not aware as to whether and how this Law was applied in the Federation of B&H or whether there are current activities in developing and enacting the new Federation Law on Communal Affairs. Therefore, it can be assumed that the competent state authorities of the Federation of B&H have a dilemma as to whether such Law needs to be enacted at the Federation level or just left at the level of Cantonal Laws on Communal Affairs.

According to Article 2 of Chapter III of the Constitution of the Federation of B&H "environmental protection policy" and "utilization of natural wealth" are categorized under the joint competence of the Federation and Cantons. Pursuant to the Constitution of FB&H, a set of environmental protection laws was enacted, including the Law on Waste Management and the Federation Law on Waters.

Based on the said Laws, the Cantons enacted their own Laws on Waste Management and Laws on Waters. Pursuant to the Cantonal Laws on Communal Affairs "collection, transport and disposal of communal waste" falls under the communal affairs of individual consumption.

On the other hand, communal affairs of water supply and wastewater collection and treatment fall in the field of utilization or protection of waters which is regulated by the Federation Law on Waters.

One part of communal affairs of joint consumption (collection of precipitation, sanitation and the like) pertains to the field of environmental protection.

The said examples lead to the conclusion that the field of communal affairs falls under the joint competence of the Federation and Cantons. In this case, Article 3(2) of the Constitution of FB&H is applied which determines that "Cantons and Federation shall agree on a permanent basis" when it comes to the joint competence.

Anyhow, before the new Federation Law on Communal Affairs is enacted, a joint position must be taken upon the issue of joint competence of the Federation and Cantons in the field of communal affairs. More precisely, it must be determined as to which part of communal affairs would be regulated at the Federation level and which at the Cantonal level. Until that time, communal affairs in FB&H would be performed in accordance with the Cantonal Laws on Communal Affairs.

As for the Law on Communal Management drafted by the Union of Employers in Communal Management in the Federation of B&H, a part of the text which pertains to communal services tariff and establishment of the Regulatory body for tariff setting of communal services will be useful to the Consultant of this Study in terms of wording the regulatory framework of the tariff setting of water supply and wastewater collection and treatment in B&H.

#### 4.4. Working material – Methodology of drinking water tariff setting in water supply systems of RS (Vodovodi Republike Srpske Association)

Few years ago, *Vodovodi Republike Srpske* Association came up with a working material – Methodol-

ogy of drinking water tariff setting in water supply systems of Republika Srpska, with a view of the tariff setting of drinking water supply in the water supply systems of Republika Srpska.

The authors explained the elements influencing the water tariff in the document introduction.

Total losses of water are mentioned as the main indicators of water supply systems efficiency and cost-effectiveness. The economic tariff of water is not possible at unacceptably high water losses because it is not economically justified. The tariff setting of water supply services is economically justified only if it is preceded by the reduction of water losses to the possible extent. Bearing in mind the situation of water supply systems in Republika Srpska, the authors proposed the boundary of 25% of the totally captured water quantities, although the justified losses in water supply systems in good shape are within the boundaries of 8% - 12% of the totally captured water quantities.

The authors divided the costs of each water supply system as follows:

- ▷ Investments in permanent assets;
- ▷ Annual costs of system exploitation and maintenance;
- ▷ Costs of water supply system development;
- ▷ Profit.

The authors further elaborate on each of the aforementioned elements (costs). According to the authors, the total exploitation costs, which constitute the amount of all costs in the water supply system, should be the ground for setting of a realistic water tariff for the existing water supply systems without the costs of the system development, that is, the costs of water supply system expansion.

In the methodology, the authors explained two methods of the water tariff setting, a static method and dynamic method.

The difference between these two methods is that according to the static method, the calculation of a water tariff unit is made on the basis of annual water system operations costs while according to the dynamic method the calculation of a water tariff is made on the basis of realistic annual costs of the system in the overall planned period (several years).

The authors mentioned the following factors that influence the final water tariff unit:

- ▷ Water supply system configuration;
- ▷ Total quantity of delivered water;

- ▷ Total number of employees in the water supply company which can be the most important subject of rationalization in the operations of any water supply system;
- ▷ Total water losses which should be an important subject of rationalization in the operations of any water supply system.

Unfortunately this document did not pass the necessary procedure before the competent legislative bodies in Republika Srpska in order to become a regulatory act nor is it applied in the territory of Republika Srpska.

## 5. ANALYSIS OF WATERS STRATEGIC DOCUMENTS

### 5.1. Water Management Strategy of the Federation of Bosnia and Herzegovina for the period from 2010 to 2022

In defining strategic parts of economic framework in water management, one of the requirements is “the recovery of costs”, that is “all costs must be covered in order to have cost-efficient and sustainable water management especially in the field of water supply.”

According to the Strategy, one of strategic objectives is: “Provision of financial viability in water management and reform of water pricing system along with progressive introduction of economic water price.” The tariff of water should provide for the recovery of costs and to be rationalized, that is, to reduce the consumption of water by using various market incentives. In case the tariff is properly set, all beneficiaries will use water in a more rational way and will reduce the quantity of consumed water.

Within the said strategic objective, the Water Management Strategy sets the operative objective: “Progressive transition to the system that would ensure long-term sustainable funding in the area of water management and full recovery of costs by customers or other sources.”

Some of the measures to achieve this operative

objective are as follows:

- ▷ “Establishment of the tariff system which reflects realistically, economically, organizationally and technologically justifiable costs of water supply and sanitation;
- ▷ Harmonization of tariff units collected from households and business entities for the services of water supply and sanitation, if the water is of the same quality.”

With a view of successful reform of tariffs and achieving the economic tariff of water, administrative and institutional measures are proposed as follows:

- ▷ “Analysis of the possibilities of establishing the regulatory body(ies) in charge of the tariff setting;
- ▷ Promoting the establishment of public-private partnership in the provision of services of water supply and sanitation.”

However, the water tariff should not contain irrationalities in communal affairs: organizational (fragmented and inefficient communal water sector) and technical nature (big losses of drinking water in the system), and connections that were not in the function of water management.

A part of the strategic and operative objectives of the Water Management Strategy pertains to the institutional strengthening of the water sector with the state bodies and also with public utilities companies which perform water supply and sanitation (wastewater collection and treatment).

With a view of realizing the measures for achieving the objectives of water management, among others, determine the following measures as well:

- ▷ Extensive analysis of the existing and realistic costs for the provision of water supply services and possible financial losses, the character and causes of losses, as well as possibilities for the reduction thereof;
- ▷ Development and application of the criteria and standards of operations of the companies for the provision of services in the sector of water supply and sanitation and relating them with the tariff amount paid by the beneficiaries;
- ▷ Precisely defining the conditions for financial self-sustainability in all segments of water management, that is, precisely defining certain types of costs and amount of total and full costs (operational costs, maintenance costs,

amortization, capital costs, system expansion costs, external effects costs, costs of water as scarce resource);

- ▷ Establishment of the tariff system which reflects realistically, economically, organizationally and technologically justifiable costs of water supply and sanitation;
- ▷ Harmonization of tariff units collected from households and business entities for the services of water supply and sanitation, if the water is of the same quality;
- ▷ Analysis of the possibilities of establishing the regulatory body(ies) in charge of the tariff setting.

The Cantons, municipalities and utilities companies shall be in charge of the implementation of all aforementioned measures from the Plan of the Measures Implementation in their respective competences. A larger part of these measures is related to the subject of this Study as well.

## 5.2. Integrated Water Management Strategy of Republika Srpska for the period from 2014 to 2024

According to the Strategy, one of the water management principles is also “the recovery of costs principle which means that the recovery of costs is ensured for water services, including the costs of environmental protection and protection of water resources in general, according to the prescribed economic analysis per “polluter pays” principle and also to ensure economic fee for the used quantity of water from the entity which uses water resources per “beneficiary pays” principle.

According to the Strategy in the field of use of water “the water tariff should provide for a full recovery of all costs of simple reproduction, complete investment and current maintenance of the system, full selection of the springs, as well as a part of expanded reproduction which pertains to the research and planning of new systems and conditions of their protection.”

When the Strategy prescribes the rationalization of water consumption, the measures for reduction and rationalization of consumption include:

- ▷ Introduction of the water economic tariff;
- ▷ Introduction of tariff policy (selective tariff) to

promote the saving of water;

- ▷ Reduction of losses at the distribution network and household installations and
- ▷ Updating of the monitoring system in water supply systems.

The economic price of water is the most important requirement for normal operations of utilities companies and it must be realistic and comprise all costs of capture, treatment and distribution of water and costs of the protection of spring.

The economic policy should provide for self-financing of the water sector through adequate collection of tariff of water supply and all other water services.

In addition to that, in accordance with the European Union legislation, tariff systems must incite the saving of water and sustainable development at all levels. One of the tariff policy measures which incite the saving of water is the introduction of higher water tariff for the beneficiaries who “are wasting” drinking water.

The Strategy mentions the economic measures of water protection, and it should include one of the measures: “to bring the water tariff to the level of economic tariff which includes all costs of simple reproduction, costs of spring protection and part of the costs of expanded reproduction.”

Such water tariff is the most efficient instrument of water consumption rationalization; hence it is one of the most efficient measures of water protection.

The part of the Strategy which reads about the financing of water sector, in the process of economic valuation of activities in the field of waters should include among other things the following:

- ▷ Water is not a commercial product, but all costs should be covered for the purpose of securing, treating and supplying consumers with water, protecting the springs;
- ▷ The “polluter pays” principle should be applied for discharged water and other pollution;
- ▷ The “beneficiary pays” principle should be applied for the utilization of water.

In order to provide for an efficient financing of water sector, the following should be done:

- ▷ To examine the real financial needs of the water sector by using the realistic market price of products and services;

- ▷ To establish the missing financial needs in relation to the existing sources of financing;
- ▷ To identify the sources and manner of additional financing;
- ▷ To consistently implement the generally accepted global/European economic principles (polluter pays);
- ▷ To ensure a progressive introduction of economic prices of water services, particularly in the field of water supply and wastewater collection and treatment.

According to the Strategy, one of the basic postulates in the future tariff policy in the water sector must include the “economic price of water” and “full recovery of costs” principles aimed at protecting the quality and quantity of waters and ensuring the integrated management in terms of the development of not only water infrastructure but also the overall development of water sector.

## 6. OBJECTIVES OF THE STUDY

Based on the analysis of legal and institutional framework, and the analysis of strategic and study documents in the field of waters or communal affairs of water supply and wastewater collection and treatment in Bosnia and Herzegovina, the objectives of the Study were set with a view of establishing or improving the system of tariff setting of communal services of water supply and wastewater collection and treatment.

### 6.1. General objective

General objective of the Study is **„to establish the system of tariff setting of water supply and wastewater collection and treatment services in the area of Bosnia and Herzegovina“**, aimed at achieving financial sustainability in the provision of communal affairs of water supply and wastewater collection and treatment along with a progressive introduction of economic tariff of communal services.

### 6.2. Specific objectives

General (strategic) objective includes a number of specific operational objectives which define the manner of actions in the establishment of the tariff setting of water supply and wastewater collection and treatment services.

#### 6.2.1. Specific objective No. 1.

The first specific objective of the Study is to define the **„Proposal of Regulatory Framework in the process of tariff setting of water supply and wastewater collection and treatment services.“** Defining of the Proposal of Regulatory Framework will include the definition of all measures and activities in the process of tariff setting and approval of water supply and wastewater collection and treatment services, including the methodology of tariff setting of services and the establishment and administrative positioning of the regulatory body with the main task to analyze the tariff proposed by the entity (public utilities company) which perform communal affairs of water supply and wastewater collection and treatment, and to give an official expert opinion on the tariff approval to the bodies of administration.

#### 6.2.2. Specific objective No.2.

The second specific objective of the Study is to define the **„Proposal for administrative positioning of Regulatory Body in the process of tariff setting of water supply and wastewater collection and treatment services.“** Considering the complexity of the legislative competence in the field of communal affairs in Bosnia and Herzegovina (Republika Srpska, Cantons in the Federation, the Brčko District), this objective should include administrative positioning of the regulatory body for all levels of legislative authorities, as well as the possible status of regulatory body and its basic competences.

#### 6.2.3. Specific objective No.3.

The third specific goal is to define the **„Proposal of necessary amendments to the Law on Communal Affairs“** regarding the new Regulatory Framework for administrative positioning of the Regulatory Body in the process of tariff setting of water supply and wastewater collection and

treatment. The defining of this specific objective should include the harmonization of the procedure of tariff setting of water supply and wastewater collection and treatment at all levels of legislative competence in the sector of communal affairs (RS, Cantons in FB&H, the Brčko District), with a view of establishing the single policy of tariffs of these services in the territory of Bosnia and Herzegovina.

## 7. MEASURES AND ACTIVITIES WITH A VIEW OF ACHIEVING THE OBJECTIVES OF THE STUDY

For the purpose of achieving the objectives of this Study, this chapter will define the measures necessary for the establishment of the regulatory framework in the process of tariff setting of water supply and wastewater collection and treatment services, establishment of the regulatory body in the process of the tariff setting, as well as the measures and activities of amending the existing Laws on Communal Affairs which pertain to the establishment of the regulatory framework and regulatory body in the process of the tariff setting of services (Republika Srpska, Cantons in the Federation, the Brčko District).

### 7.1. Measures and activities in establishing a regulatory framework in the process of tariff setting of water supply and wastewater collection and treatment;

The existing legal framework of the tariff setting of communal services and products, which include the tariff of water supply and wastewater collection and treatment, is regulated by the Laws on Communal Affairs of Republika Srpska, Cantons in the Federation of Bosnia and Herzegovina and the Brčko District. With regard to the Federation of B&H, the provisions of the Constitution of the

Federation of B&H which prescribe the legislative competence in the sector of communal affairs are incomplete and imprecise. Bearing in mind that the provisions of the Constitution of FB&H regulating the division of competence between the Federation and Cantonal authorities do not mention the sector of communal affairs, the position was taken that the legislative competence over communal affairs belongs to the Cantons in line with Article 4 Chapter III of the Constitution which reads that **“the Cantons will have all competences not expressly entrusted with the Federation authority.”** Therefore, a new regulatory framework of tariff setting of water supply and wastewater collection and treatment services in Bosnia and Herzegovina will be defined and regulated through amendments to the Laws on Communal Affairs of Republika Srpska, Cantons in FB&H (or in case of determined joint competence of the Cantons and FB&H – by the new Law on Communal Affairs of FB&H) and the Brčko District, this being the Consultant’s proposal. Some activities and measures in the process of tariff setting are also in the competence of some municipalities based on the powers vested in them by the Law on Communal Affairs (Republika Srpska, Una-Sana Canton, and Canton 10). Generally, the tariff of communal services itself is approved (set) by the enactment of all local self-governance units in B&H based on the proposal of the communal service provider. This is not the case in Sarajevo Canton where the cantonal Government sets and adopts the tariff of water supply from the central water supply system and the tariff of wastewater collection and treatment through the central sewage system.

Bearing in mind that, according to the Entities Laws on Local Self-Governance the sector of communal affairs falls under the competence of local self-governance units (municipality/town), a number of elements, measures and activities of a new regulatory framework will still be under the competence of local self-governance units.

#### 7.1.1. Elements of the regulatory framework of tariff setting of water supply and wastewater collection and treatment services;

A draft regulatory framework of tariff setting of water supply and wastewater collection and treatment services contains a series of elements starting with **“setting of the measurement unit”**, and concluding with **“the date as of which the tariff**

**of services becomes effective.”**

### a) Setting of the measurement unit

The tariff structure of water supply can be developed according to various elements. The basic tariff system would be based only on the quantity of consumed water. With such system in place, changes in the water consumption might lead to unanticipated gain or loss in the utilities companies operations. Another tariff system includes both quantitative and fixed tariff. When applying the combination of quantitative and fixed tariff, changes in the consumption of water have less influence on the companies' operations, gains or losses. The quantitative tariff might introduce the element of consumption size, so that one tariff would be applicable to the normal (optimal) household consumption and another to the increased consumption. Differentiated tariffs might be introduced to legal entities depending on their activities (for example: commercial consumers, carwashes, public institutions and the like). It is proposed that a combination of two tariffs be applied in water supply, quantitative tariff per 1m<sup>3</sup> of consumed water and fixed tariff for natural persons on grounds of housing unit (households) and for legal entities per profile of water meter. Higher tariffs on grounds of an increased consumption might be applied at a later stage.

It should be pointed out that even now many municipalities apply the combination of two tariffs, quantitative per water consumption and fixed per maintenance of water meters. As for the measurement unit of discharged wastewater, it is proposed to apply the quantitative tariff only in relation to the quantity of wastewater discharged into the public sewage system. Bearing in mind that meters for discharged wastewater are not yet in place, the quantities of delivered (consumed) water would be used as per m<sup>3</sup>.

The measurement unit may be set by:

- ▷ Provisions of the Law on Communal Affairs;
- ▷ Decision of local self-governance unit pursuant to powers prescribed by the Law on Communal Affairs or
- ▷ Methodology of tariff setting.

It is proposed that the measurement unit is set by the Law on Communal Affairs.

### b) Manner of tariff setting

The manner of tariff setting is linked with the entity which sets the tariff of services and elements based on which the tariff is set.

It is proposed that the service tariff is set by the service provider, that is, the utilities company performing the services of water supply and wastewater collection and treatment. The elements on which the tariff would be set are the tariff structure and methodology of tariff setting of services.

The manner of tariff setting should be defined and regulated by the Law on Communal Affairs.

### c) Tariff structure

The basic principle of setting the tariff structure should be “full recovery of costs” which should provide for self-sustainability of communal affairs of water supply and wastewater collection and treatment. The tariff should contain all costs which ensure permanent and high-quality functioning of the water supply system, and wastewater collection and treatment system.

At minimum, the tariff should provide for the level of simple reproduction and it should contain the following:

- ▷ Recovery of all material and other costs related to the functioning of the system;
- ▷ Costs of current and investment maintenance and functioning of the system to which the tariff is related;
- ▷ Amortization, which consists of the fixed assets of the communal services provider and amortization of permanent infrastructure systems or estates in common use;
- ▷ Funds for salaries and joint consumption of employees;
- ▷ Statutory and contractual obligations;
- ▷ Payment of credits;
- ▷ Funds of accumulation;
- ▷ Funds of reserves in accordance with the regulations;
- ▷ Funds for necessary reconstruction and modernization of existing capacities, facilities and devices of the system.

The tariff of communal services may contain a part of funds for expanded reproduction in accordance with the municipal/town development plans.

The tariff structure should be set by the Law on Communal Affairs and extensively elaborated in the methodology of tariff setting.

#### d) Methodology of tariff setting

In order to define the manner of tariff setting of water supply and wastewater collection and treatment services in B&H, the methodology will be passed for the tariff setting which should provide for a full recovery of costs and requirements for self-sustainability of water supply and wastewater collection and treatment.

A more detailed definition of the methodology will be provided in Chapter 7.1.2. of this document.

#### e) Tariff setting

Tariff amounts are set by the provider of water supply and wastewater collection and treatment services or its competent service.

When setting the tariff of services, the communal services provider must abide by the Law on Communal Affairs which regulated the manner, procedure and structure of tariff of services, as well as by the methodology of setting the tariff of water supply and wastewater collection and treatment services.

#### f) Request for tariff approval

The communal services provider submits the request for tariff approval to the local self-governance units (municipality/town). The request must contain the following:

- ▷ Type of the communal services, the manner of calculation and payment of communal services;
- ▷ Structure of the existing tariff of communal services;
- ▷ Proposed new tariff of communal services and its structure;
- ▷ Percentage of changes in tariff of communal services in relation to the existing price;
- ▷ Reasons for a change in the tariff of communal services with an extensive reasoning and calculation;

- ▷ Date as of when a new tariff of communal services enters into force.

The contents of the request for tariff approval will be determined by the Law on Communal Affairs.

#### g) Procedure with the competent body of local self-governance unit upon the receipt of the request for tariff approval

Upon the receipt of the communal services provider for approval of the tariff of communal services, the competent body of the local self-governance unit shall verify whether the request is complete and harmonized with the provisions of the Law on Communal Affairs that regulate the manner and procedure of tariff setting of communal services.

If the competent body of the local self-governance unit determines that the request filed by the communal services provider is incomplete or is not drafted in accordance with the Law on Communal Affairs, it shall return the request to the communal services provider and ask him to amend it.

If the competent body of the municipality/town determines that the request is complete and harmonized with the Law on Communal Affairs, it shall submit the request along with the accompanying documentation to the regulatory body competent for giving an expert opinion on the justifiability of the request and its harmonization with the Law on Communal Affairs and Methodology of tariff setting for water supply and wastewater collection and treatment.

#### h) Procedure with the regulatory body in giving an expert opinion upon the request for tariff approval

Upon the receipt of the request of the communal services provider for approval of the tariff of communal services along with the appropriate documentation, the Regulatory body shall verify whether the request is harmonized with the Methodology and provisions of the Law on Communal Affairs which stipulate the procedure of tariff setting and approval.

In case that having analyzed the request for approval of the tariff of communal services, the Regulatory body finds that the request is harmonized with the Methodology and provisions of this Law on Communal Affairs, it shall give a positive expert opinion and approval for the tariff of communal services. In case the Regulatory body determines that the request for approval of the tariff of communal services is not developed in accordance

with the Methodology, it shall give a negative expert opinion and shall not give an approval for the tariff of communal services. The Regulatory body is obligated to submit its opinion/approval to the request for tariff setting within eight days upon the receipt of the request, which will be regulated by provisions of the Law on Communal Affairs.

Administrative positioning status and competence of the regulatory body will be elaborated upon in Chapter 7.1.3. of this document.

#### i) Procedure with the competent body of the local self-governance unit upon receiving the opinion of the regulatory body

Upon the receipt of the expert opinion of the Regulatory body, the competent body of the local self-governance unit shall prepare the proposal to the municipal/town Council competent for approving the tariff of communal services. In case the Regulatory body gives a negative opinion upon the request for approval of the tariff of communal services, the competent body of the local self-governance unit shall propose to the Municipal/Town Council to refuse the request for approval of the tariff of communal services. In case the Regulatory body gives a positive opinion, that is, if the Regulatory body gives an approval to the tariff of communal services, the competent body of the local self-governance unit shall propose the municipal and town council to grant the requested tariff of communal services. The act of the municipal/town council granting the tariff of communal services shall determine the date as of when the new tariff of communal services shall become effective and the obligation of the communal service provider to appropriately inform the beneficiaries about the new tariff and reasons for its enactment.

The entire procedure for approval of the tariff of communal services lasts 30 days from the date when the request for approval of the tariff of communal services is submitted to the enactment of the act of municipal/town council granting the tariff or refusing the request for approval of the tariff, and this will be regulated by the Law on Communal Affairs. The Law on Communal Affairs shall also prescribe that in case the municipality/town does not decide upon the request for approval of the tariff of communal services (either by approving or refusing it) within the deadline referred to in the preceding Paragraph, it shall be considered as if the opinion on the request is positive and that the new tariff can be applied after the expiry of 30 days as of the day the request is submitted.

If the municipal/town council approves the tariff increase in the lower amount than the one approved by the regulatory body, then in case of operations losses caused to the service provider due to lower tariff of services, the municipality/town will cover the loss from the municipal budget.

The entire procedure of tariff approval will be determined by the Law on Communal Affairs.

### 7.1.2. Methodology of tariff setting

The Methodology of tariff setting of water supply and wastewater collection and treatment services should be the basic document for the harmonization and approval of communal services tariff.

The Methodology will establish the tariff structure of services with the basic principle in the tariff setting being "full recovery of costs". The Methodology will prescribe that the tariff of services must be such that it ensures covering of all operations but also investment maintenance costs of the entire existing infrastructure, as well as covering of indirect costs and resources costs to the extent set by the Law.

The Methodology may (or may not) prescribe that the tariff of service contain a part for expanded reproduction, that is, investments into the development and expansion of system, which will depend on local self-governance units in line with their development plans of communal affairs and development in general.

The Methodology may prescribe that the tariff of services is affordable to most of citizens in the local community. However, if this cannot be applied in practice, the problem should be resolved in local self-governance units through the introduction of subsidizing communal services to certain beneficiaries of communal services. Subsidizing funds should be provided in the local self-governance units' budgets.

The Methodology must not derogate any of the statutory obligations in terms of financial-accounting operations.

The Methodology of tariff setting should be harmonized between the Entities and prescribed (enacted) at the level of Entities. This will not be a problem in Republika Srpska because the legislative competence over communal affairs is at the Entity level. The legislative competence over communal affairs in the Federation of B&H is currently

at the cantonal level. However, considering that the sector of waters is according to the Constitutions of FB&H under the joint competence of the Federation and Cantons, the position can be taken that water supply and wastewater collection and treatment is under joint competence of the Federation and Cantons and accordingly reach the Methodology at the level of the Federation of B&H. Draft methodology for tariff setting of water supply and wastewater collection and treatment is the subject of other document within UNDP project "Regulatory framework for service tariff setting" developed in parallel with this document.

### 7.1.3. Regulatory body in the process of tariff setting

The previous UNDP document "Regulatory framework of tariff setting of water supply and wastewater collection and treatment services in B&H" identified the need of establishing the regulatory body which will be given certain competences in the process of the tariff approval. The basic task of the regulatory body would be to give an expert opinion as to whether the request for the tariff approval is harmonized with the methodology of the tariff setting and the provisions of the Law on Communal Affairs which regulate the procedure of tariff setting of services.

The measures and activities of establishing the regulatory body in the process of the tariff setting and approval are elaborated upon in details in Chapter 7.2.

### 7.1.4. Use of benchmarking in the process of the tariff setting

A set of indicators (benchmarks) shall be used in the process of the tariff setting of services and evaluation of the service provider's success in rendering of water supply and wastewater collection and treatment services.

Determination of benchmarks or indicators (benchmarking) should allow the service providers to prepare the reports on their positioning in relation to other businesses in both Entities and the State, and also in relation to the regional average and good practice examples.

A part of the benchmarking issue will be examined to a certain extent within the document-

draft Methodology of tariff setting of water supply and sewage in B&H.

Possibilities of establishing the model/system of indicators of water business operations and determination of benchmarks (benchmarking) will be analyzed and developed within the Danube Water Program. The introduction of benchmarking in water supply companies in B&H is possible through amendments to the Entities' Laws on Waters. In case the joint competence of the Federation B&H and cantons is determined in communal affairs, the benchmarking would also be possible through amendments to the Law on Communal Affairs.

### 7.1.5. Requirements for the introduction and application of the regulatory framework in the process of tariff setting;

All Laws on Communal Affairs (Republika Srpska, Federation, Cantons in the Federation and the Brčko District) contain the provision which reads that **„the municipalities shall ensure the performing of communal affairs.“** The exception is the Una-Sana Canton Law on Communal Affairs with the provision which reads that **„by the manner of organization and entrusting the performance of communal affairs and the tariff policy, the municipalities shall ensure the performing of communal affairs per sustainable development principles.“** Other Laws on Communal Affairs prescribe that the municipalities shall ensure the performing of communal affairs but do not prescribe how they will do that.

This is why the municipalities do not pay due attention to the provision and development of communal affairs. Therefore the Laws on Communal Affairs **must define and regulate in more details the manner in which the municipalities shall ensure the performing of communal affairs.**

The provisions of the Law on Communal Affairs that **regulate the entrusting of communal affairs must be more detailed and specific** and they must clearly define the conditions under which the performing of communal affairs is entrusted and the manner in which communal affairs should be performed. With regard to the establishment of public utilities companies, **the Law must determine the contents of municipal decisions on the establishment of public companies includ-**

**ing the manner in which the communal services and products tariffs are set.** The Law should also define **the manner of organizing the activity** so that each communal activity is organized into a separate organization unit with their own financial unit in order to allow for the monitoring of operations of each communal activity separately. With regard to communal services tariff policy, **the Law should determine the obligation that the tariff of communal services and products provides for a sustainable development of affairs or the business operations at least at the level of simple reproduction.**

In addition to the said amendments to the Law on Communal Affairs, it is necessary to **harmonize the Law on Communal Affairs with the Law on Local Self-Governance and the Law on Protection of Consumers.**

With regard to the municipal legislation in the field of communal affairs it is necessary to **harmonize municipal decisions on the establishment (organization) of public utilities companies with the Law on Communal Affairs, Law on Public Companies and Law on Business Entities, and reach new (or update the existing) decisions on performing of communal services of water supply and wastewater collection and treatment.** After that, it will be necessary to make appropriate **amendments to the statutes** of public utilities companies and especially the **Rulebook on organization and systematization of work posts in public utilities companies.**

The said amendments to legislation and acts of public utilities companies are necessary for a successful establishment and functioning of a new regulatory framework of tariff setting of water supply and wastewater collection and treatment services.

## 7.2. Measures and activities in establishing the regulatory body in the process of tariff setting

The draft Regulatory framework for tariff setting of water supply and wastewater collection and treatment services prescribe the establishment of the regulatory body as one of the elements which will have the task of giving an expert opinion (approval) to municipalities/towns upon the request for approval of tariffs submitted by the communal service providers.

### 7.2.1. Analysis of possible options of the regulatory body administrative level

Analyzing the possible options of administrative positioning of the regulatory body must start with the legislative competence in communal affairs, because the establishment of a new regulatory framework of tariff setting of water supply and wastewater collection and treatment including the establishment of the regulatory body will be regulated by the Law on Communal Affairs of Republika Srpska, Cantons in the Federation of B&H and the Brčko District. The Federation of B&H currently does not have legislative competence over communal affairs because the provisions of all cantonal laws on communal affairs declared ineffective the pre-war Law on Communal Affairs (Official Gazette of SRB&H, Vol: 20/90), which the Federation of B&H accepted as its own.

The previously developed UNDP document “Regulatory framework of tariff setting of water supply and sewage in B&H” analyzed possible options of administrative positioning of the regulatory body and so this document will briefly reflect upon it:

#### a) State level

Bearing in mind the similar operations and positions of utilities companies in Bosnia and Herzegovina, the optimal solution (option) would be to have the regulatory body established at the level of Bosnia and Herzegovina. However, Bosnia and Herzegovina does not have legislative competence over communal affairs and so there is no legal ground for the establishment of the regulatory body at the level of Bosnia and Herzegovina.

#### b) Entity level

With regard to the establishment of the regulatory body at the Entities’ level, there is a difference between Republika Srpska and the Federation of B&H. Legislative competence over communal affairs in Republika Srpska is at the Entity level. Therefore, there is no problem in establishing the regulatory body at the RS level and it would be an optimal solution.

The problem in the Federation of B&H is the fact that the legislative competence over communal affairs is at the Cantonal level.

However, the analysis of the Constitution of FB&H provisions, which regulate the division of competence between the Federation and Cantons, begs

a question as to whether the legislative competence over communal affairs should be under the exclusive competence of the Cantons or under joint competence of the Cantons and the Federation of B&H. This dilemma is further corroborated by the fact that the sector of waters which include communal affairs of water supply and wastewater collection and treatment falls under the joint competence of the Cantons and Federation of B&H, and by the fact that this sector is regulated by the Federation and Cantonal Laws on Waste Management.

This dilemma might be overcome by an agreement between the Federation and Cantons or by seeking an opinion of the Constitutional Court of FB&H.

In case the position is accepted that communal affairs fall under the joint competence of the Federation and Cantons, there would be no problem in establishing the regulatory body at the level of the Federation of B&H. Another possibility of establishing the regulatory body at the level of the Federation of B&H is to reach an agreement between the Cantons and Federation of B&H on the establishment of joint regulatory authority at the level of the Federation of B&H which should be foreseen by the provisions of Cantonal Laws on Communal Affairs.

#### c) Cantonal level

In case the establishment of the regulatory body at the level of the Federation of B&H is not feasible, the only solution is to establish the regulatory body at the Cantonal level which would be regulated by the Cantonal Laws on Communal Affairs. In that case it is possible to have an agreement between two or more Cantons and establish the joint regulatory body which would also be regulated by the Cantonal Laws on Communal Affairs.

#### d) Brčko District level

Considering the constitutional competence of the District in the sector of communal affairs, the only possible solution is to establish the regulatory body at the level of the Brčko District through amendments to the Law on Communal Affairs.

### 7.2.2. Proposal of administrative level, status and competences of the regulatory body

Pursuant to the analysis of possible administrative levels of the Regulatory Body, the following proposal is made:

1. To establish the regulatory body at the Entity level in Republika Srpska.
2. To establish the regulatory body at the cantonal level in the Federation of Bosnia and Herzegovina. However, if the position is taken (agreed) that the Federation of B&H and Cantons in FB&H have the joint legislative competence over communal affairs; it would be possible to establish the regulatory body at the level of the Federation of B&H.
3. To establish the regulatory body at the District level in Brčko District.

The establishment of the regulatory body would be implemented through the provisions of the Law on Communal Affairs of Republika Srpska, Cantons in the Federation of B&H and Brčko District.

In case the position is accepted that the Federation of B&H and Cantons in FB&H have the joint legislative competence over communal affairs, the regulatory body would be established by the Federation Law of Communal Affairs.

There are two possible ways of establishing the regulatory body, as follows:

1. That the regulatory body is established directly by the provisions of the Law on Communal Affairs or
2. That the provisions of the Law on Communal Affairs give the power to the Government or body of administration competent for communal affairs.

The bodies with legislative competence (Entities, Cantons and Brčko District) will decide about the establishment of the regulatory body.

It is proposed that the regulatory body be established as a commission and titled "Regulatory Commission of tariffs of water supply and wastewater collection and treatment."

The Regulatory Commission would have three members (President and two members).

The Regulatory Commission would be independent in its work. The Regulatory Commission would not have a status of legal entity. Administrative and other affairs for Regulatory Commission would be carried out by the bodies of administration in charge of communal affairs (Entities and Cantonal Ministries, competent Department of the Brčko District Government). The Regulatory Commission would be financed from the budget of the competent level of authority.

The Regulatory Commission would render the Rules of Procedure which would regulate the manner of operations and decision-making of the Regulatory Commission.

It is proposed that at the beginning, the Regulatory bodies have the competence to exclusively give an expert opinion in the process of tariff setting of water supply and wastewater collection and treatment, this being the basic objective of this Study. Regulatory bodies should not have any competence which falls under the scope of competent bodies of administration.

### 7.3. Measures and activities in amending the Law on Communal Affairs which pertain to the establishment of a regulatory framework and regulatory body in the process of tariff setting (FB&H, RS, Cantons, Brčko District);

The establishment and elements of regulatory framework of tariff setting of water supply and wastewater collection and treatment will be regulated and defined through the provisions of the Laws on Communal Affairs in RS, Cantons in the Federation and the Brčko District.

If the dilemma about the legislative competence over communal affairs between the Federation of B&H and Cantons is resolved in the meantime and if the joint competence of the Federation of B&H and Cantons is determined, then it would be possible that certain elements of the regulatory framework such as the methodology of tariff setting and regulatory body for giving an expert opinion in the process of tariff approval, would be regulated through the Law on Communal Affairs of FB&H.

#### 7.3.1. Draft amendments to the Law on Communal Affairs which pertain to the issue of tariff of services;

The existing Laws on Communal Affairs of Republika Srpska, Federation of Bosnia and Herzegovina, Cantons in the Federation of Bosnia and Herzegovina and Brčko District prescribe the communal tariff policy that pertains to all communal affairs including water supply and wastewater collection and treatment.

Bearing in mind that the subject of this Study is the regulatory framework of tariff setting of water supply and wastewater collection and treatment, the proposals related to the establishment of the regulatory framework will pertain to water supply and wastewater collection and treatment.

However, the lawmaker will decide whether the tariff of water supply and wastewater collection and treatment will be regulated separately from other communal affairs or whether the regulatory framework will include other communal affairs as well.

Considering that the tariff of communal services is differently regulated in the existing laws on communal affairs, it is not possible to make proposals for amendments of the provisions that regulate the tariff of communal services for each law separately. That is why the proposal will encompass a whole chapter of communal services tariff and each lawmaker would make amendments to their own laws in accordance with such proposal, or would take over the proposal in its entirety.

Proposed chapter that would define and regulate the establishment of the regulatory framework of tariff setting of water supply and wastewater collection and treatment would be as follows:

# CHAPTER: TARIFFS OF COMMUNAL SERVICES OF WATER SUPPLY AND WASTEWATER COLLECTION AND TREATMENT

## **Article \_\_\_\_ (Regulatory framework for tariff setting of water supply and wastewater collection and treatment)**

- (1) The Regulatory framework for tariff setting of water supply and wastewater collection and treatment (hereinafter: the Regulatory framework) shall be a set of elements and activities in the process of tariff setting of water supply and wastewater collection and treatment in \_\_\_\_\_ (Republika Srpska, Canton \_\_\_\_\_, Brčko District).
- (2) Basic elements of the Regulatory framework shall be the following:
  - a) Measurement unit for calculation and payment of communal services of water supply and wastewater collection and treatment (hereinafter referred to as: communal services);
  - b) Tariff structure of communal services;
  - c) Methodology of tariff setting of communal services;
  - d) Setting of tariff of communal services;
  - e) Request for approval of tariff of communal services;
  - f) Procedure of the competent body of municipality/town upon the receipt of the request for approval of tariff of communal services;
  - g) Regulatory body to give an expert opinion upon the request for approval of tariff of communal services (hereinafter referred to as: regulatory body);
  - h) Procedure of the regulatory body in giving an expert opinion upon the request for approval of tariff of communal services;
  - i) Procedure of the relevant body of municipality/town upon receiving the expert opinion of the regulatory body;
  - j) Date as of when a new tariff of communal services enters into force.“

## **Article \_\_\_\_ (Measurement unit for calculation of communal services)**

- (1) 1m<sup>3</sup> of delivered water shall be the measurement unit based on which the calculation of communal services of water supply is done.
- (2) 1m<sup>3</sup> of delivered water shall be the measurement unit based on which the calculation of communal services of wastewater collection and treatment is done.
- (3) 1m<sup>3</sup> of discharged water shall be the measurement unit in case some of the beneficiaries have a meter which calculates the discharged wastewater into the public system of wastewater collection and treatment.

**Article \_\_\_\_**  
**(Tariff structure of communal services)**

- (1) The tariff of communal services of water supply and wastewater collection and treatment must provide for a level of simple reproduction and should contain the following:
  - a) Recovery of all material and other costs related to the functioning of the system;
  - b) Costs of current and investment maintenance and functioning of the system to which the tariff is related;
  - c) Amortization, which consists of the fixed assets of the communal services provider and amortization of permanent infrastructure systems or estates in common use;
  - d) Funds for salaries and joint consumption of employees;
  - e) Statutory and contractual obligations;
  - f) Payment of credits;
  - g) Funds of accumulation;
  - h) Funds of reserves in accordance with the regulations.
- (2) The tariff of communal services, in addition to the quantitative part (per unit of spent quantity of water) may contain a subscription (fixed part).
- (3) The tariff of communal services may contain a part of funds for expanded reproduction in accordance with the municipal/town development plans.
- (4) The funds for expanded reproduction shall be determined in a percentage of the tariff of communal services which is valid for the program-determined period, and shall be used strictly for that purpose.

**Article \_\_\_\_**  
**(Methodology for tariff setting of communal services)**

- (1) The Methodology for tariff setting of services of water supply and wastewater collection and treatment (hereinafter referred to as: the Methodology) shall be reached for the purpose of defining the procedure and manner of tariff setting of communal services.
- (2) The Methodology should provide for a full recovery of all costs incurred when performing the affairs, as well as for a self-sustainability of the affairs.
- (3) The Methodology must be in accordance with the tariff structure of communal services referred to in Article \_\_\_\_ of this Law.
- (4) The Methodology is passed by the Government \_\_\_\_\_ (Republika Srpska, Canton \_\_\_\_\_, Brčko District).

**Article \_\_\_\_**  
**(Tariff setting of communal services)**

- (1) The tariff of communal services shall be set by the communal service provider.
- (2) When setting the tariff of communal services, the communal services provider shall act fully in line with the Methodology.

**Article \_\_\_\_\_**  
**(Request for approval of communal services tariff)**

- (1) The communal services provider shall submit to the competent body of the municipality/town the request for approval of tariff of communal services.
- (2) The request for approval of the communal services tariff shall contain the following:
  - a) Type of the communal services, the manner of calculation and payment of communal services;
  - b) Structure of the existing tariff of communal services;
  - c) Proposed new tariff of communal services and its structure;
  - d) Percentage of changes in tariff of communal services in relation to the existing price;
  - e) Reasons for a change in the tariff of communal services with an extensive reasoning and calculation;
  - f) Annual report on business operations and annual calculation from the preceding year;
  - g) Business plan which entails the request for approval of the tariff of communal services;
  - h) Date as of when a new tariff of communal services enters into force.

**Article \_\_\_\_\_**  
**(Procedure with the competent body upon the receipt of the request)**

- (1) Upon the receipt of the request by communal services provider for approval of the tariff of communal services, the competent body of the municipality/town shall verify whether the request is complete and harmonized with the provisions of the Law (on communal affairs) that regulate the manner and procedure of tariff setting of communal services.
- (2) If the competent body of the municipality/town determines that the request filed by the communal services provider is incomplete or is not drafted in accordance with the Law (on communal affairs), it shall return the request to the communal services provider and ask him to amend it.
- (3) If the competent body of the municipality/town determines that the request is complete and harmonized with the Law (on communal affairs), it shall submit the request along with the accompanying documentation to the regulatory body competent for giving an expert opinion on the justifiability of the request and its harmonization with the Law (on communal affairs) and Methodology.

**Article \_\_\_\_\_**  
**(Regulatory body for tariff setting of communal services)**

- (1) The regulatory body for tariff setting of communal services shall be established for the purpose of giving an expert opinion upon the request of the communal services provider for approval of the tariff of communal services.
- (2) The regulatory body shall be named the Regulatory Commission for Tariff Setting of Communal Services of Water Supply and Wastewater Collection and Treatment (hereinafter referred to as: the Regulatory Commission).
- (3) The Regulatory Commission shall not have a status of legal entity.

- (4) The Regulatory Commission shall be independent in its work.
- (5) The Regulatory Commission shall be established within the bodies of administration in charge of communal affairs (Entities and Cantonal Ministries, competent Department of the Brčko District Government).
- (6) The Regulatory Commission shall have three members, namely, the President and two members.
- (7) Members of the Regulatory Commission shall be selected in the procedure conducted upon a public call which shall be published in at least two daily magazines and in Official Gazette \_\_\_\_\_ (Republika Srpska, Canton \_\_\_\_\_, Brčko District)“
- (8) The public call referred to in Paragraph (3) of this Article shall be published by the body of administration in charge of communal affairs (Entities and Cantonal Ministries, competent Department of the Brčko District Government) \_\_\_\_\_, upon the approval of the Government.
- (9) The Regulatory Commission shall be appointed by the decision of the Government \_\_\_\_\_ (Republika Srpska, Canton \_\_\_\_\_, Brčko District).
- (10) The Decision on appointment of the Commission shall be published in the Official Gazette of \_\_\_\_\_ (Republika Srpska, Canton \_\_\_\_\_, Brčko District)“
- (11) Members of the Commission shall be appointed for the term of five years, with a possibility of re-election.
- (12) In addition to the general requirements, members of the Commission must meet the special requirements for appointment:
  - a) University degree in engineering, economy or law with adequate several years professional working experience in the sector of waters or communal affairs;
  - b) Previous experience and knowledge related to the issues of communal affairs, especially the issues of work and business operations of public utilities companies;
  - c) Communication and organizational skills, creativity and teamwork;
  - d) Knowledge of the English language or some other global language.
- (13) Employees of the competent body of administration, within which the Commission is established, can also be members of the Commission.
- (14) The body of administration competent for communal affairs (Republika Srpska, Cantons in FB&H, Brčko District) shall carry out administrative and other activities for the Regulatory Commission.
- (15) The Regulatory Commission shall be financed from the budget (of Republika Srpska, Cantons, and Brčko District).
- (16) The Regulatory Commission shall enact the Rules of Procedure which shall prescribe the manner of operation and decision-making in the process of giving an expert opinion upon the request of the communal service provider for approval of the tariff of communal services, as well as other issues related to the work of the Regulatory Commission.

**Article \_\_\_\_\_**  
**(Competence of the Regulatory Commission)**

The Regulatory Commission shall have the competence to give an expert opinion in the procedure of approval of the tariff of communal services upon the request of the communal services provider and its consistency with the Methodology.

**Article \_\_\_\_**  
**(Procedure of the Regulatory Commission in giving an expert opinion)**

- (1) Upon the receipt of the request of the communal services provider for approval of the tariff of communal services along with the appropriate documentation, the Regulatory Commission shall verify whether the request is harmonized with the Methodology and provisions of the Law (on communal affairs) which stipulate the procedure of tariff setting and approval.
- (2) In case that having analyzed the request for approval of the tariff of communal services, the Regulatory Commission finds that the request is harmonized with the Methodology and provisions of this Law (on communal affairs), it shall give a positive expert opinion and approval for the tariff of communal services.
- (3) In case the Regulatory Commission determines that the request for approval of the tariff of communal services is not developed in accordance with the Methodology, it shall give a negative expert opinion and shall not give an approval for the tariff of communal services.
- (4) The Regulatory Commission shall submit its expert opinion/approval in a written form to the competent body of the municipality/town within 8 days as of the day of the request receipt.

**Article \_\_\_\_**  
**(Procedure with the competent body upon the receipt of the Regulatory Commission expert opinion)**

- (1) Upon the receipt of the expert opinion of the Regulatory Commission, the competent body of the municipality/town shall prepare the proposal to the municipal/town Council competent for approving the tariff of communal services.
- (2) In case the Regulatory Commission gives a negative opinion upon the request for approval of the tariff of communal services, the competent body of the municipality/town shall propose to the Municipal/Town Council to refuse the request for approval of the tariff of communal services.
- (3) In case the Regulatory Commission gives a positive opinion, that is, if the Regulatory Commission gives an approval to the tariff of communal services, the competent body of the municipality/town shall propose the municipal and town council to grant the requested tariff of communal services.
- (4) The act of the municipal/town council granting the tariff of communal services shall determine the date as of when the new tariff of communal services shall become effective and the obligation of the communal service provider to appropriately inform the beneficiaries about the new tariff and reasons for its enactment.
- (5) The procedure for approval of the tariff of communal services shall last 30 days from the date when the request for approval of the tariff of communal services is submitted to the enactment of the act of municipal/town council granting the tariff or refusing the request for approval of the tariff.
- (6) In case the municipality/town does not decide upon the request for approval of the tariff of communal services (either by approving or refusing it) within the deadline referred to in the preceding Paragraph, it shall be considered as if the opinion on the request is positive and that the new tariff can be applied after the expiry of 60 days as of the day the request is submitted.

**Article \_\_\_\_**  
**(Municipal/town council's failure to act upon receiving positive opinion of Regulatory Commission)**

In case the municipal/town council does not approve the rise of the tariff of communal services or approves it in the amount lower than the one approved by the Regulatory Commission, the municipality/town shall compensate the loss from their respective budgets in case the communal services provider suffers loss in business operations due to the lower tariff of communal affairs.

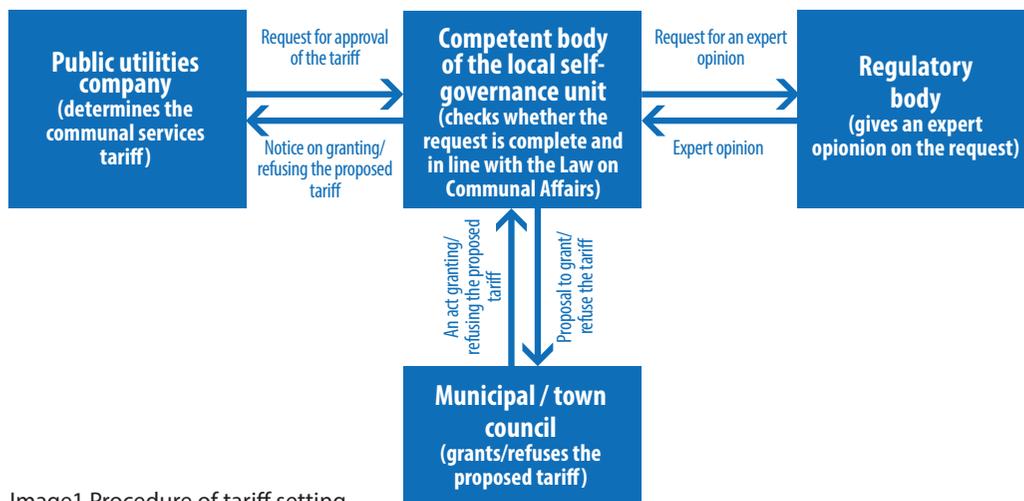


Image1.Procedure of tariff setting

## CHAPTER: CRIMINAL PROVISIONS

The chapter Criminal provisions should prescribe minor offense sanctions in case of failure to act upon the provisions of this Law (on communal affairs) which regulate the procedure and approval of the tariff of communal services to the communal service provider, competent body of the municipality/town and Regulatory Commission.

## CHAPTER: TRANSITIONAL PROVISIONS

The chapter Transitional provisions should determine the deadlines for enactment of the Methodology, appointment of the Regulatory Commission and harmonization of the municipal/town regulations in the sector of communal affairs with the proposed provisions which prescribe the Regulatory framework for tariff setting of water supply and wastewater collection and treatment services.

The legislative bodies of Republika Srpska, Cantons in the Federation of B&H and Brčko District shall decide whether they will go forward with amendments to the existing provisions on communal services tariff setting and approval or take over the entire proposed text of the Chapter – communal services tariff and integrate it into the text of their Laws on Communal Affairs.

In case the decision is reached that the legislative competence in the sector of communal affairs is

joint – of Federation of B&H and Cantons, the new Federation Law on Communal Affairs should determine that the methodology for tariff setting of communal services and the regulatory body in the approval process of the tariff of communal services is established at the level of the Federation of B&H. The procedure of tariff setting and approval itself would still be regulated by both Federation and Cantonal Laws on Communal Affairs.

It would be good if the issue of the legislative competence in the sector of communal affairs is discussed at the Constitutional Court of B&H.

### 7.3.2. Draft amendments to the provisions of Laws on Communal Affairs which would create the conditions for the establishment of the Regulatory framework and Regulatory Body in the process of tariff setting;

Pursuant to the Entities' and Cantonal Laws on Self-Governance, the local self-governance units provide for the management, financing and development of communal affairs.

All Entities' and Cantonal Laws on Communal Affairs contain the provision which prescribes that the local self-governance units (municipalities/towns) shall provide for the performing and development of communal affairs but they do not define the manner in which it is achieved. This is why it is proposed that all Laws on Communal Affairs introduce the following provision:

**Article \_\_\_\_\_**  
**(Providing for the performance and development of communal affairs)**

“The local self-governance units shall provide for the conditions to perform and develop communal affairs per self-sustainability principles through the following measures and activities:

- The manner of organizing and entrusting the communal affairs;
- The policy of communal services tariff which allows the service providers to have business operations at the level of simple reproduction and expanded reproduction in accordance with the development plans of the local self-governance units;
- Providing for material and other conditions for the development of communal affairs and construction and maintenance of communal affairs facilities and devices;
- By subsidizing communal services to certain beneficiaries of communal services;
- By administrative supervision of the implementation of the Law on Communal Affairs and bylaws in the sector of communal affairs;
- Continued monitoring of the situation in communal affairs and undertaking measures for which they are authorized in order to resolve the problems in the performing of communal affairs;
- By inspection supervisions of the performing of communal affairs.”

The majority of laws on communal affairs contain the provision which determines that “communal affairs that are performed in a single technical-technological system may be entrusted to one public company only.” Those affairs include communal affairs of water supply and wastewater collection and treatment. All laws on communal affairs contain the provision which reads that public utilities companies are established by the decision of the municipal/town council but at the same time they either insufficiently or in no way at all define the contents of the Decision.

Therefore it is proposed that the Law on Communal Affairs introduces the following provision:

**Article \_\_\_\_\_**  
**(Establishment of public utilities companies)**

The public utilities company shall be established by the decision of the municipal/town council.

The Decision on the establishment of public utilities companies shall closely determine the following:

- Activity performed by the public company;
- Assigning the public company with the management and maintenance of communal facilities and devices;
- Conditions in which communal affairs are performed;
- Internal organization of the public company;
- Mandatory organizational and financial division of certain communal affairs;
- Mutual relations, rights, obligations and responsibility of the municipality/town as a founder of the public utilities company and the public company as the entity entrusted with the performance of communal affairs;
- Rights and obligations of the founder in terms of public company management;
- The manner of tariff setting of communal products and services;

- Conditions in which the public company can entrust another company with certain activities performed within communal affairs.”

**Article \_\_\_\_\_**  
**(conclusion of a contract regarding communal affairs)**

The local self-governance unit and the public utilities company which was entrusted with the communal affairs of water supply and wastewater collection and treatment shall conclude a contract relative to carrying out of the entrusted communal affairs.

The contract referred to in the preceding paragraph shall contain the following:

- Activity which will be carried out under the contract;
- The timeframe of the contract;
- Conditions under which the entrusted communal affairs shall be carried out;
- Relations between the local self-governance unit and communal services provider while carrying out the communal affairs;
- Responsibilities, rights and obligations of the local self-governance unit and communal services provided;
- The manner of tariff setting for communal services;
- Performance guaranties of both contracting parties;
- Obligations of communal services providers towards the service beneficiaries;
- Other conditions related to carrying out of communal affairs.

In addition to the said proposals, the Law on Communal Affairs should be harmonized with the Law on Local Self-Governance and the Law on Protection of Consumers and also with the Law on Public Companies and Law on Business Entities as needed.

This particularly refers to Republika Srpska considering the changes in the organization of public utilities companies that were not in accordance with the RS Law on Communal Affairs.

### 7.3.3. Proposal of new or updating of the existing municipal regulations in the field of communal affairs which would provide for a full application of the regulatory framework in the process of tariff setting

After the appropriate amendments to the Laws on Communal Affairs (RS, Cantons in FB&H, the Brčko District) are passed, it will be necessary to enact new or to update the existing municipal regulations (harmonization with the Law on Communal Affairs) in the field of communal affairs which in a certain way regulate the establishment and implementation of the regulatory framework of tariff

setting of water supply and wastewater collection and treatment services. This pertains to the following municipal/town regulations:

1. Decisions on the establishment (organization) of public utilities companies which perform communal affairs of water supply and wastewater collection and treatment;
2. Decisions on performing the activity of water supply;
3. Decision on performing the activity of wastewater collection and treatment.

After the regulatory framework of tariff setting of water supply and wastewater collection and treatment is prescribed in the provisions of all laws on communal affairs, the existing municipal/town de-

cisions on the manner of tariff setting of communal products and services shall be declared ineffective in the part which pertains to water supply and wastewater collection and treatment or even in their entirety.

### 7.3.4. Proposal of measures and activities that need to be undertaken by the utilities companies which perform the activities of water supply and wastewater collection and treatment in order to provide for a full and consistent implementation of the regulatory framework of tariff setting

After the amendments of the Laws on Communal Affairs are adopted and after the municipal/town communal affairs regulations are harmonized, it will be necessary to introduce adequate amendments to the acts of utilities companies as follows:

1. The Statutes of (public) utilities companies;
2. The Rulebooks on organization and systematization of work posts in the (public) utilities company.

The amendments to the aforementioned acts should provide for a full and consistent implementation of the regulatory framework of tariff setting of water supply and wastewater collection and treatment services rendered by the (public) utilities company.

## 8. IMPLEMENTATION PLAN OF MEASURES AND ACTIVITIES WITH A VIEW OF ACHIEVING THE OBJECTIVES OF THE STUDY

After this Study is finished and accepted by the legislative authorities in the sector of communal affairs of water supply and wastewater collection

and treatment, the implementation of the Study will start by way of amendments to the legislation and enactment of adequate implementation acts.

### 8.1. Measures and activities pertaining to the legislative level (FB&H, RS, Cantons, Brčko District)

The new regulatory framework of tariff setting of water supply and wastewater collection and treatment will be implemented through amendments to the existing laws on communal affairs of Republika Srpska, Cantons in the Federation of B&H and the Brčko District.

At Republika Srpska level, the activities related to amendments to the Law on Communal Affairs should be initiated by the Ministry of Spatial Development, Civil Engineering and Ecology as the body competent for the sector of communal affairs.

With regard to the Federation of B&H, the activities related to amendments to the existing cantonal laws on Communal Affairs should be carried out by cantonal ministries in charge of communal affairs.

However, with regard to the level of Federation of B&H, there is another way for the implementation of proposals of this Strategy, by way of enacting a new Federation Law on Communal Affairs.

The establishment of the regulatory body for tariff setting at the Federation level is a better option as we would have one regulatory commission at the level of Federation instead of 10 cantonal regulatory commissions.

This option would be possible if the dilemma is solved as to whether the legislative competence for communal affairs is exclusively vested in the cantons, as it is currently the case, or if it is joint competence of the Federation of B&H and Cantons. This dilemma can be solved through an agreement between the Federation of B&H and Cantons in line with the Constitution of FB&H or by seeking an opinion of the Constitutional Court of FB&H.

In case the joint legislative competence of the Federation of B&H and Cantons is determined in the field of communal affairs, then a new Federation Law on Communal Affairs would be pushed forward and it would regulate, among other things,

the relations between the Federation of B&H and cantons in developing the sector of communal affairs. The Federation Ministry of Environment and Tourism, as the Federation competent body for communal affairs, would be the action-holder in terms of the enactment of this new law. The new Federation law would not diminish the powers of the cantons in regulating communal affairs; rather, only some elements, such as methodology for tariff setting, would be regulated at the level of FB&H while other elements of the regulatory framework would be regulated at the cantonal levels.

In case the legislative competence remains with Cantons only, there would be no need to enact the Federation Law on Communal Affairs and the regulatory framework would be entirely regulated through the Cantonal Laws on Communal Affairs.

With regard to the level of Brčko District, the activities related to amendments to the Law on Communal Affairs should be initiated by the Department of Communal Affairs.

Following the amendments to the Law on Communal Affairs related to the establishment of regulatory framework, the implementation acts would be enacted regulating the methodology of tariff setting of water supply and wastewater collection and treatment and establishment (organization) of the regulatory body in the process of tariff setting of communal services.

The associations of public utilities companies which carry out services of water supply and wastewater collection and treatment and Entities' associations of municipalities and towns should extend support to the establishment of the regulatory framework through the laws on communal affairs.

## 8.2. Measures and activities pertaining to the local level (municipalities/towns)

After the amendments to the Law on Communal Affairs are passed (RS, Cantons in FB&H, Brčko District) the municipal regulations shall also be amended in terms of the regulatory framework for water supply and wastewater collection and treatment, such as:

- a) Decision on the establishment (organization) of public utilities companies which perform communal affairs of water supply and wastewater collection and treatment;

- b) Decision on the performing of communal affairs of water supply;
- c) Decision on the performing of communal affairs of wastewater collection and treatment.

Bearing in mind that the regulatory framework of tariff setting of water supply and wastewater collection and treatment services shall be entirely prescribed by the provisions of the Law on Communal Affairs, the municipal decisions on tariff setting of communal products and services shall be declared ineffective in the part which pertains to the tariff of water supply and wastewater collection and treatment.

## 8.3. Measures and activities pertaining to the entities that perform communal affairs of water supply and wastewater collection and treatment (public and other utilities companies)

After the amendments of the Laws on Communal Affairs are adopted and after the municipal/town communal affairs regulations are harmonized, it will be necessary to introduce adequate amendments to the acts of utilities companies as follows:

1. The Statutes of (public) utilities companies;
2. The Rulebook on organization and systematization of work posts in the (public) utilities company.

The optimal implementation of the regulatory framework of tariff setting of water supply and wastewater collection and treatment can be expected only if the laws and implementation acts are enacted at the level of Republika Srpska, (Federation of B&H), Cantons in FB&H, the Brčko District and if the municipal regulations in the field of communal affairs are harmonized with the Law on Communal Affairs and the acts of (public) utilities companies harmonized with those regulations.

**ANNEXES →**

# **Annex I**

## LEGISLATIVE FRAMEWORK

# 1. LEGISLATIVE FRAMEWORK

## 1.1. State level

### 1.1.1. Constitution of Bosnia and Herzegovina

Article III 1 of the Constitution of Bosnia and Herzegovina, which prescribes the competencies of Bosnia and Herzegovina, does not at all mention communal services or environmental protection which encompasses utilities activities under the Law on Environmental Protection and Water Protection.

Article III 3. a) of the Constitution prescribes that **“all governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.”**

Due to the said incomplete and imprecise wording of the Constitution of Bosnia and Herzegovina, a conclusion can be reached that the actual legislative competence in environmental protection including water and communal affairs is vested in the Entities - Federation of Bosnia and Herzegovina and Republika Srpska, as well as the Brčko District.

## 1.2. Entity level – RS

### 1.2.1. Constitution of RS

Provisions of the Constitution of Republika Srpska which regulate competences of this Entity do not mention the sector of waters or communal affairs, but **Article 68 Paragraph 13** mentions environmental protection which can include the sector of waters and communal affairs, confirming the legislative competence of Republika Srpska in these sectors.

Article **102(1) (2)** of the Constitution of Republika Srpska establishes that **„The municipality shall, through its bodies, and in accordance with the law regulate and ensure performing of the municipal services“**, which also include the communal services of water supply and wastewater collection and treatment.

### 1.2.2. Law on Local Self-Governance of Republika Srpska (Official Gazette of Republika Srpska, Vol: 62/06, 47/11, 93/12 and 99/13)

Pursuant to Article 11(1) of the Law “a municipality shall have all competences prescribed by this Law, as well as other competences transferred to it by another law”, while Paragraph 2 of the said Article reads that “a municipality shall be entitled to deal with all issues of the local interest which are not excluded from its competence or assigned to another level of authority.”

Article 12 prescribes independent affairs of municipalities and reads that one of independent competences of municipalities in rendering services include also “regulation and ensuring of communal affairs; establishment of companies, institutions and other organizations for rendering services under the scope of their competence, development of their organization and management; regulation and ensuring of construction, maintenance and utilization of public facilities and communal infrastructure for performing of municipalities functions.”

Furthermore, Article 14 regulates competences of a municipality in terms of housing-communal affairs and reads that it is one of independent competences of municipalities to “ensure communal affairs, organizational, material and other requirements for construction and maintenance of communal facilities and communal infrastructure.”

### 1.2.3. Law on Environmental Protection of Republika Srpska (Official Gazette of Republika Srpska, Vol: 53/02 and 109/05)

Article 14 of the Law on Water Protection prescribes one of the components of environmental protection as follows:

“Waters can be used and loaded, and wastewaters can be discharged into waters by application of an adequate treatment in the manner and up to the level which does not pose a threat to natural processes or restoration of quality and quantity of waters and which does not reduce the possibility of their multi-purpose utilization“.

Paragraph 2of this Article reads that: “Protection

and utilization of waters shall be realized within an integral water management by the implementation of measures for protection of surface and ground waters and their reserves, qualities and quantities, protection of riverbed, banks areas and basins in accordance with a special law.”

As one of the environmental protection principles, Article 6 defines “Polluter pays principle”. In this context, a beneficiary of wastewater collection and treatment services is a polluter and is obligated to pay an adequate compensation for the rendered service (communal service tariff). According to Article 13 of the Law “An environmental polluter (hereinafter: polluter) shall pay the compensation for environmental pollution in accordance with the regulations on financing environmental protection when its activities cause or might cause environmental impact or if it produces, uses or sells raw materials, semi-finished product or product which contains substances detrimental to environment.”

#### 1.2.4. Law on Waters of Republika Srpska (Official Gazette of Republika Srpska, Vol. 50/06 and 92/09)

As specified in Article 21 of the Law “Republika Srpska shall manage waters in the manner prescribed by this law and execute obligations which Bosnia and Herzegovina have as an international-legal entity.”

Article 23(2) of the Law prescribes the territorial basis for water management:

„For the purpose of water management in the RS territory, the following river basins are determined:

- a) Sava River Basin,
- b) Trebišnjica River Basin.”

Article 10 contains a definition of a public water estate and determines its ownership: “A public water estate shall be made of all segments of water estate such as: land units, water or hydro-technical facilities, rivers and streams with defined morphological, geological and hydrological contents which were registered in land books before the day this Law becomes effective, that is registered in the Land Register as a public water estate of general interest or defined in other public documents, those that became a state ownership based on this Law.”

Paragraphs 2 and 3 of the said Article prescribe

that: “Public water estate defined in Paragraph 1 of this Article shall be an estate of general interest and owned by Republika Srpska. The powers of water management of public water estates owned by Republika Srpska shall be executed by an administrative body, administrative organization or relevant facilities with public powers in the scope and manner prescribed in this Law or those defined by other law or documents of the competent body to which the powers were transferred.”

Pursuant to Article 24 “Agencies for the district river basins of Sava River and Trebišnjica River shall be in charge of the implementation of tasks of water management in the river basins of Sava River and Trebišnjica River in accordance with this Law.”

Article 68 determines the competence of local self-governance units in wastewater collection and treatment:

“All persons are obligated to discharge wastewater into a public sewage system or in other systems in the manner prescribed by regulations referred to in Article 67 of this Law, which shall be determined by separate decisions on wastewater collection. Decisions referred to in Paragraph 1 of this Article shall, in addition to elements of regulations referred to in Article 67 of this Law, comprise the following: provisions on the manner of wastewater collection, obligatory connection to public sewage system, conditions and manner of wastewater discharge in the areas in which such system was not constructed, obligatory separate disposal and removal of hazardous and other substances, and obligatory maintenance of public sewage systems.

Decisions on wastewater collection in the areas of local self-governance units shall be passed by the assembly of that specific local self-governance unit. In case the same system of wastewater collection is used to collect wastewater from several local self-governance units, the decision is passed by assemblies of respective local self-governance units, and if such decision is not passed for any reason at all, it shall be passed by the Ministry upon a proposal of one or more local self-governance units.”

With regard to supply with drinking water, Article 75 is relevant: “Sanitary protection zones and protection measures shall, in accordance with the regulation referred to in Article 73(3) of this Law, be determined by a body of local self-governance unit where the respective spring protection zones or users of that spring are located. The decision on

protection of springs, whose sanitary protection zones extend on the territory of one local self-governance unit, shall be passed by the relevant Assembly.”

Article 89 of the Law is titled “Tasks of Republika Srpska, local self-governance units and others in the regulation of water courses and other waters”, and Paragraph (1) prescribes: “Republika Srpska and local self-governance units shall ensure the regulation of water courses and other waters in the manner defined in Article 5 of this Law”.

### 1.2.5. Law on Communal Affairs of Republika Srpska (Official Gazette of Republika Srpska, Vol: 124/11)

Pursuant to Article 6 of this Law: “A local self-governance unit shall provide the organized performance of communal affairs and shall reach a decision to prescribe the following in more details:

- a) Conditions and manner of the performance of communal affairs;
- b) Material, technical and other requirements for financing, development, construction and maintenance of communal facilities;
- c) Requirements for functioning and technical-technological unity of system and devices;
- d) Possibility of having a subsidized tariff of communal services, categories of beneficiaries and requirements for subsidizing and
- e) Calculation unit for each type of communal services and manner of payment for services.”

A local self-governance unit may entrust facilities with performing communal affairs in the manner as prescribed by Article 7(1): “For the purpose of performing communal affairs and other affairs of public interest, a local self-governance unit may establish a public utilities company or entrust these duties with other business entities along with the obligation to perform communal affairs in accordance with this Law and other regulations.” Paragraph 2 of this Article reads that “two or more local self-governance units can jointly perform communal affairs under the conditions mutually determined by relevant bodies of the local self-governance unit.”

Paragraph 3 regulates the situation when utilities infrastructure for communal services is built on

the territory of two or more local self-governance units as a single and undividable technological and functional unit. In that case, “local self-governance units are obligated to provide for a joint performance of communal affairs in accordance with this Law.”

In addition to entrusting the performance of communal affairs “a local self-governance unit assigns a communal services provider the management, utilization and maintenance of utilities facilities and devices for individual and joint communal consumption.”

The Assembly of local self-governance units shall decide on the establishment of public company. As defined in Article 8 of the Law, a local self-governance unit shall prescribe in the decision on the establishment the following:

- a) Activity performed by the public company;
- b) Conditions under which communal affairs are performed;
- c) Rights and obligations of the founder in terms of public company management;
- d) Manner in which tariffs, products and services are established and
- e) Conditions under which a public company may entrust the performance of communal affairs to another business facility in accordance with a separate law.”

The aforementioned provision is related to Article 10: “performance of communal affairs is entrusted to a public company by the document on establishment, while it is entrusted to other companies by a contract which regulates mutual rights and obligations”. Article 12 of the Law envisages the possibility of entrusting the performance of communal affairs by concessions.

A limitation in terms of entrusting the performance of communal affairs is prescribed by Article 9(1): “Communal affairs that are performed with a single technical-technological system shall be entrusted to one public company.”

With regard to the funds for communal affairs in terms of individual communal consumption, Article 20(1) prescribes that “funds for the performance of communal affairs of individual communal consumption shall be provided from the communal services tariffs.” Paragraph 2 prescribes that “tariffs of communal services shall provide the

funds to cover the total costs incurred by the communal services provider, and the tariff is approved by the competent body of local self-governance unit."

Paragraphs (3) and (4) of the said Article also contain provisions on the process of tariff setting of communal services: "Communal services tariffs shall be determined by the communal service provider and approved by the competent local self-governance unit. If the competent local self-governance unit does not give an approval to the public company for the determined tariff of communal services and thus calls into question rendering of services, the local self-governance unit may compensate from its budget the differential between the existing and economic tariff of communal services".

The process of tariff setting of communal services is additionally regulated by the **Decree on the issuance of an approval to tariffs of certain products and services** (Official Gazette of Republika Srpska No.: 41/00, 31/01, 12/02 and 103/07).

Article 2 of the Decree prescribes that: "Producers and service providers shall obtain an approval for tariffs when setting the tariffs for the following products and services... 11. Communal services" and Article 3: "Producers and service and product providers referred to in Article 2 of this Decree shall obtain an approval to tariffs before making any correction in tariffs".

Article 5(4) of the Decree prescribes the competence for the issuance of approvals to tariffs of communal services: "An approval to tariffs of products and services referred to in Article 2 sub-paragraph 10 and 11 of this Decree shall be issued by a competent municipal body which will inform the Ministry of Trade and Tourism about the issued approval within seven days as of the day of its issuance."

Legal framework on communal affairs in Republika Srpska includes the following as well:

- Law on Transfer of Socially-Owned Assets into State Property (Official Gazette of Republika Srpska, Vol: 4/93, 8/96);
- Law on Determination and Transfer of Right to Dispose with Property of Local Self-Governance Unit (Official Gazette of Republika Srpska, Vol: 70/06);
- Law on Transfer of Rights of Republika Srpska Capital Ownership from Companies which Per-

form Communal Affairs onto Local Self-Governance Units (Official Gazette of Republika Srpska, Vol: 50/10);

The above first mentioned law is dated 1993, and it prescribes in Article 3 that: "Socially-owned assets and assets that became privately-owned by internal shares of all legal entities with seats in Republika Srpska shall become state-owned assets".

Article 2 of the Law on Determination and Transfer of Right to Dispose with Property of Local Self-Governance Unit defines the property of local self-governance unit. Sub-paragraph 2 of Paragraph 1 of the said Article prescribes that such property includes: "all movables and real estate necessary for the execution of functions of local self-governance units, among them communal infrastructure facilities, business and other facilities financed from the local self-governance unit's budget or by citizens' contributions, and other property that the local self-governance unit acquired as a legal successor of institutions which ceased to exist". Article 6 prescribes that "Communal infrastructure in the part in which Republika Srpska is the owner of disposal right and estates in general use in the local self-governance unit shall be the following:

- a) Water supply – facilities for production and delivery of water and water supply network up to and including the measurement instruments;
- b) Sewage – sewage network up to the joint out-go..."

According to Article 2 of the Law on Transfer of Republika Srpska Capital Ownership Rights in Companies which Perform Communal Affairs onto local self-governance units: "Ownership right on Republika Srpska capital in companies shall be transferred without compensation to local self-governance units with the seat of company in its territory."

Article 7 of the Law reads that: "Local self-governance unit disposes with capital over which the ownership right is transferred in accordance with this law under the condition that its participation in capital stock does not decrease below 51%."

Article 6 of the Law on Privatization of State Capital in Companies reads that: "State capital in companies producing and distributing electricity, oil industry, railroad traffic, telecommunications, water supply, mining and forestry, public media, games of chance, production of weapons, military equipment and other strategic companies shall be

privatized under special privatization programs reached by the Government of Republika Srpska with the approval of Republika Srpska National Assembly”.

### 1.3. Entity level – Federation of B&H

#### 1.3.1. Constitution of the Federation of B&H

The Constitution of the Federation of Bosnia and Herzegovina does not mention the sector of waters and utilities and it only mentions the “environmental protection policy” which according to Chapter III Article 2 - Division of responsibilities between the Federation and Cantonal government falls under the joint responsibility of the Federation of B&H and Cantons. Pursuant to Article 3 (2) of the said Chapter with regard to joint responsibilities “**the Cantons and the Federation Government shall consult each other on an on-going basis.**”

Article 4 of Chapter III of the Constitution prescribes that „**The Cantons shall have all responsibility not expressly granted to the Federation Government**“.

Based on the said provisions of the Constitution of the Federation of Bosnia and Herzegovina, it cannot be concluded with certainty as to whether communal affairs (which include communal affairs of water supply and wastewater collection and treatment) fall under the joint responsibility of the Federation of B&H and Cantons or whether it was exclusively under the responsibility of Cantons. In practice, legislative competence in terms of communal affairs belongs to cantons, and they regulated this issue by their laws on communal affairs.

With regard to municipal authorities, the Constitution of the Federation of Bosnia and Herzegovina prescribes that “local self-governance is exercised in municipality” and that “municipality has the statute which must be in accordance with the Constitution (FB&H), Cantonal Constitution and cantonal legislation.”

#### 1.3.2. Law on Local Self-Governance Principles in the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, Vol: 49/06 and 51/09)

Article 8(1) of the Law on Principles of Local Self-Governance in the Federation of Bosnia and Herzegovina prescribes that “local self-governance unit shall have its own competences established by the Constitution and Law, and shall have the right to deal with all issues of local importance that are not excluded from its competence or assigned to competence of a different authority based on the Constitution and Law”, while Paragraph (2) of the said Article prescribes that “local self-governance unit shall be independent in decision-making about the issues under its competence which cannot be limited or deprived by the Federation or Cantonal authorities, except in case and in the scope established in the Constitution and law”.

Article 8(3) of the Law prescribes that “**local self-governance unit’s own competence includes, among other things, the following:**

- Establishment and implementation of spatial development and environmental protection policy;
- **Management, financing and improving affairs and facilities of local communal infrastructure:**
  - **Water supply and**
  - **Wastewater collection and treatment.”**

Article 33 of the Law prescribes that “Local self-governance units shall be entitled to movables and real estate and appropriate sources of funding, which they can manage freely within their competences, as well as funds required for conducting delegated or transferred activities that normally fall within the rights and obligations of senior authorities.”

Article 34(1) of the Law prescribes that “units of local self-governance are entitled to appropriate inherent sources of funding, which can be managed freely by local bodies within their competences and in accordance with the law”, while Paragraph 2 of the said Article prescribes that “Some funding for local self-governance units shall come from local fees and reimbursements at a rate determined

by the local self-governance unit itself in keeping with the law.”

Article 13 of the Law prescribes that “municipal or city council, within the scope of its competences, shall establish companies and institutions to perform affairs of the interest for local self-governance unit.”

Pursuant to the said Law on Local Self-Governance Principles in FB&H, a local self-governance unit is competent, responsible and obligated to provide for the conditions to perform communal affairs, including water supply and wastewater collection and treatment, by way of the establishment of organizational, technical, regulatory, financial and other mechanisms to provide for optimum performance of these affairs.

### 1.3.3. Law on Environmental Protection (Official Gazette of the Federation of Bosnia and Herzegovina, Vol: 33/03 and 39/09)

Article 14 of the Law on Environmental Protection, determines the protection of waters as a component of environment. Article 14 (4) of the said Law prescribes that “Waters may be utilized and loaded, as well as used water and sewage may be discharged into waters - following appropriate treatment - in a way that does not pose a hazard to the natural processes and to the renewal of the quantity and quality of waters.”

According to Article 11 of the Law, one of environmental protection principles is “polluter pays principle” according to which a beneficiary of wastewater collection and treatment services is a polluter and is obligated to pay an adequate compensation for the rendered service (communal service tariff).

Article 12(3) of the Law prescribes that separate regulations shall regulate some protection and environmental components so that “environmental component – water protection” shall be regulated by the Law on Waters of FB&H.

It follows from the said provisions of the Law on Environmental Protection of FB&H that the protection of waters from the discharge of wastewaters into other waters (recipients) should be financed from the tariff of wastewater collection and treatment paid by the beneficiaries of those services

(polluters) and that the structure of that price must include the water protection component.

### 1.3.4. Law on Waters (Official Gazette of the Federation of Bosnia and Herzegovina, Vol: 70/06)

Article 21 of the Law on Waters prescribes that **“water management falls under the competence of Bosnia and Herzegovina, Federation, cantons, towns and municipalities in the manner prescribed under the Law.”**

Article 17(1) of the Law prescribes that waterworks facilities referred to in Article 14 Paragraph (1) sub-paragraph (3) line (1) (facilities for utilization of waters for water supply) and sub-paragraph 4 (wastewater collection and treatment facilities) are owned by the town or municipality unless otherwise specified by a cantonal regulation. Paragraph 2 of the said Article reads that „owners of waterworks facilities referred to in Paragraph 1 of the said Article can transfer the right to manage and use onto legal entities established under the regulations on communal affairs.”

The said provision of the Law is fully implemented in the Federation of Bosnia and Herzegovina as communal affairs of water supply and wastewater collection and treatment are conducted by utilities companies founded by municipalities (or towns) in accordance with the Law on Communal Affairs.

Article 22(2) of the Law prescribes that “cantonal laws shall regulate the issue of organization and manner of discharging the duties which were placed under the cantonal competence in accordance with this Law.”

This means that the issue of water supply and wastewater collection and treatment, as well as the issue of utilization and maintenance of infrastructure in these affairs is regulated by the competent Cantons by way of cantonal laws on waters and cantonal laws on communal affairs.

### 1.3.5. Law on Communal Affairs (Official Gazette of SRB&H, Vol: 20/90)

The Law on Communal Affairs of SRB&H taken over by the Federation of B&H from the former Socialist Republic of B&H is put out of force for the

territories of Cantons by individual cantonal laws on communal affairs. Considering that all cantons enacted their laws on communal affairs, this Law is not implemented in the Federation. However it has not been officially declared ineffective which means that the relevant authorities of the Federation can still act in line with the provisions of this Law.

Article 3(1) of the Law reads that “the municipality shall ensure an organized performing of communal affairs”, and Paragraph (3) of the same Article reads that “the municipality gives the management and maintenance of communal facilities and individual and joint communal consumption equipment to the communal service providers.”

Article 4(1) reads that “the municipality shall establish a public utility company by its decision”, while Paragraph (2) reads that „the decision shall closely determine affairs performed by the public utility company, conditions under which the production and sale of products are done, the conditions under which the services, rights and obligations of the founder are executed in the management of public utility company, the manner of tariff setting of products and services, and conditions under which a public utility company can entrust communal affairs to another company or a working individual who established a business for independent performance of affairs.”

The issue of communal service tariff is regulated by Article 12 of the Law which reads that “Means for performing of communal affairs of individual communal consumption shall be secured from the tariff of communal services.

The tariff of communal services shall provide the funds to cover the total expenditures of communal service providers and improvement of the existing communal facilities and equipment according to the norms and standards in communal affairs.

A municipal assembly shall determine the measurement unit and shall prescribe the manner of tariff setting of communal products and services while the tariff shall be determined by the communal service provider.”

Since the Constitution of the Federation of B&H did not regulate the legislative competence in communal affairs, through the application of Article 4 Chapter III of the Constitution determines that “Cantons have all responsibilities not expressly assigned to the Federation authority”, all cantons in the Federation of Bosnia and Herzegovina

reached their laws on communal affairs which, among other things, determined that the Law on Communal Affairs (Official Gazette of SRB&H , Vol: 20/90) ceased to be applied.

According to the available information, a new law on communal affairs is underway in the Federation of Bosnia and Herzegovina.

However, this begs a question as to what this law will regulate considering that the Constitution determined legislative competence of Cantons in the sector of communal affairs.

## 1.4. Cantonal level – Cantons in FB&H

### 1.4.1. Cantonal Constitutions

Analogously to the Constitution of the Federation of Bosnia and Herzegovina, “environmental protection policy” in the Constitution of Una-Sana Canton falls under the joint responsibilities of Cantons and Federation of Bosnia and Herzegovina. However, Chapter IV, Article 1 of the Constitution of Una-Sana Canton reads that “**the Canton shall have all powers that have not been expressly vested in the Federation authority by the Constitution of the Federation of B&H or the ones that have not been prescribed by the Constitution of the Federation of B&H as joint responsibilities of the Federation and Canton**”, and therefore the sector of communal affairs falls within the competence of the Canton and is regulated by the Cantonal Law on Communal Affairs.

With regard to municipal authority, Article 2 Chapter VI of the Constitution of Una-Sana Canton prescribes that “local self-governance shall be exercised at municipal level” and that “local self-governance shall be exercised in municipalities by way of exercising the powers determined by the Cantonal laws in accordance with this Constitution and according to local self-governance principles determined by the Federation legislation”.

Article 15 of the Constitution of Bosnia-Podrinje Canton prescribes that: “The Canton shall have powers determined by the Federation and this Constitution. In case of a need for interpretation, the Cantonal powers determined by this Constitution shall be interpreted to the benefit of this Canton, per assumed competence principle; individual powers mentioned in this Constitution shall not be interpreted as any limitations of general competences of the Canton”. Bearing in mind that

Article 16 prescribes exclusive competences of the Canton without mentioning communal affairs or environmental protection, a conclusion can be reached that the Cantonal competence for communal affairs stems from Article 15.

Article 17 determined the joint responsibility of the Federation and Canton: "The Canton, together with the Federation, shall independently or in coordination with the Federation authority exercise the following competences:...c) environmental protection policy".

Article 16 of the Constitution of Herzegovina-Neretva Canton determined, in line with the FB&H Constitution, the joint responsibility of the Federation and Canton in "environmental protection policy" which includes the sector of communal affairs.

Article 16 of **Herzegovina-Neretva Canton** also prescribed, in line with the Federation Constitution, that the Federation and the Canton shall jointly or separately exercise the powers in "environmental protection policy" including the communal affairs.

Article 16 of the Canton 10 Constitution refers to the provision of the Constitution of FB&H: the powers vested by Article III 2. of the Federation Constitution can be exercised jointly or separately, or can be exercised by the Canton in coordination with the Federation authority in line with the provisions of the Federation Constitution and laws.

Constitutions of other Cantons in the Federation of Bosnia and Herzegovina contain almost identical provisions (Constitution of Podrinje Canton Goražde – Article 17, Constitution of Central Bosnia Canton Travnik- Article 19, Constitution of Tuzla Canton – Article 12, Constitution of West-Herzegovina Canton – Article 16, Constitution of Zenica-Doboj Canton – Article 19.) Anyhow, the competence for the implementation of environmental protection policy, including communal affairs, remains a divided responsibility of the Federation and Cantons. This issue needs to be resolved as soon and as clear as possible.

### 1.4.2. Cantonal laws on local self-governance principles

The Law on Local Self-Governance Principles of Herzegovina-Neretva Canton (Official Gazette of Herzegovina-Neretva Canton, Vol: 4/98) in Article 9 prescribes the scope of self-governance for the

local self-governance unit (municipality): "Within the scope of self-governance, municipality shall:...13. ensure general conditions for supply and services to citizens". Article 15 of the Law on Local Self-Governance Principles of Sarajevo Canton (Official Gazette of Sarajevo Canton Vol. 19/97 and 14/00) prescribes that: "within its scope of self-governance in accordance with the law shall particularly: ....5. carry out communal and other services and local infrastructure."

Tuzla Canton also adopted the Law on Local Self-Governance Principles (Official Gazette of Tuzla Canton, Vol: 13/07), prescribing the scope of self-governance for the local self-governance unit (municipality and town) as follows: the Municipality, within its scope of self-governance in accordance with the law shall particularly: ... 8. ensure the performance of communal and other services and take care of the construction, maintenance and utilization of local roads, streets, bridges and other local infrastructure facilities of the interest for the Municipality..." The Law on Local Self-Governance of Una-Sana Canton (Official Gazette of Una-Sana Canton, Vol: 8/11), Article 12(3) (competence of the local self-governance unit) contains a provision similar to the aforementioned provisions of other cantonal laws: "Competences of local self-governance unit shall particularly include: "management, financing and improving affairs and facilities of local communal infrastructure: water supply, wastewater collection and treatment...". The Law on Local Self-Governance of West-Herzegovina Canton (Official Gazette of West-Herzegovina Canton, Vol: 3/09) prescribes in Article 14 that "local self-governance unit shall, within the scope of self-governance, be particularly competent for: ...management, financing and improving affairs and facilities of local communal infrastructure: 1) water supply, wastewater collection and treatment...".

The Consultant quoted the provisions of the Laws on Local Self-Governance available and known to him. These are the provisions compatible with Article 8 of the Federation Law on Local Self-Governance Principles which is directly applied in those Cantons which do not have their own laws on local self-governance.

### 1.4.3. Cantonal Laws on Environmental Protection

Herzegovina-Neretva Canton (Official Gazette of Herzegovina-Neretva Canton, Vol: --/12), Bosnia-Podrinje Canton Goražde (Official Gazette of Bosnia-Podrinje Canton, Vol: 5/05), Tuzla Canton

(Official Gazette of Tuzla Canton, Vol: 6/98, 15/00) and Zenica-Doboj Canton (Official Gazette of Zenica-Doboj Canton, Vol: 1/00); enacted the laws on environmental protection. When drafting this Study, only one of them was available to the Consultant. Article 13 of the Herzegovina-Neretva Canton Law (Official Gazette of Herzegovina-Neretva Canton, Vol: --/12), regulates the protection of water, as one of the environmental components, in the following manner: "Protection of waters encompasses the protection of surface and ground waters, stocks of water, regulating the quality, protection of riverbeds, embankments of land waters and aquifers. Waters can be used and loaded, and wastewater and sewage discharged into waters after applying certain treatment, in the manner which does not pose a hazard to natural processes or to restoration of water quality and quantity."

Bearing in mind that the environmental protection policy falls under the divided competence of the Federation and Cantons, those Cantons who do not have their own laws on environmental protection directly apply the provisions of the Federation Law on Environmental Protection.

#### 1.4.4. Cantonal laws on Communal Affairs

##### 1.4.4.1. Law on Communal Affairs (Official Gazette of Sarajevo Canton, Vol: 21/05, 31/04)

Article 5(4) of the Law reads that: "Pursuant to this Law and other special regulations, the Canton, City, municipalities, legal entities and natural persons which perform communal affairs shall:

1. Ensure the permanent and high-quality performance of communal affairs;
2. Ensure the maintenance of communal facilities and functional equipment;
3. Undertake measures of environmental protection;
4. Ensure the transparency of work."

Article 6 reaffirms the obligations assumed under the preceding Article: "Performance of communal affairs, in accordance with this Law shall be provided by the Canton, city and municipalities within the scope of their respective competences."

However, the Law does not regulate the manner, measures and activities by which the Canton, city and municipalities regulate the performance of communal affairs.

Article 8 prescribes the possibility for the Canton to enact a separate document and assign to the city and municipalities the performing of communal affairs in their entirety or in part.

Article 9 of the Law determines the competence of the city and municipalities for supply with drinking water and wastewater collection and treatment: "The city and its municipalities, as well as municipalities that do not belong to the city, shall provide the following communal service within the scope of their self-governance:

1. Supply with drinking water from the water supply system of the local importance;
2. Wastewater collection and treatment by the sewage system of local importance, as well as pumping, disposal of feces from septic tanks..."

"The city and its municipalities shall regulate their mutual relations and other issues under a separate document, with a view of ensuring the performance of communal affairs referred to in the preceding Paragraph."

Article 10 reads that: "In accordance with competences determined in Article 7, 8 and 9 of the Law the Canton, city and municipalities, shall ensure the performance of communal affairs by the following:

1. Public utility companies;
2. Business entities;

The Canton, city and municipalities can mutually assign the performance of communal affairs under their competence to communal service providers referred to in the preceding Paragraph which were established by another local self-governance unit within the Canton or by the Canton itself."

However, the Law does not prescribe which document will serve as the basis for the establishment of a public utility company, including the regulation of mutual relations, rights and obligations in the performing of communal affairs.

Article 13 of the Law prescribed that communal service providers must meet the requirements, among others:

1. To set tariffs of communal services according to the valid regulations;
2. To set norms of work and expenditure of finan-

cial means and to enable the control thereof by the competent bodies;

3. To set a tariff system that will serve as the basis for the payment of services.

However, the Law does not prescribe the manner of tariff setting, nor does it prescribe the tariff structure of communal services, or contents of the tariff system which would be used as the basis for the payment of services by service beneficiaries.

Articles 14, 15 and 16 prescribe that the basic provisions about relations in communal affairs: "Communal service providers shall render services whose quality and standard are proportionate to the tariff which service beneficiaries pay. The Cantonal Government shall set the standards and harmonize the quality and level of communal affairs with the tariff level."

Pursuant to Article 21 "Funds for performance of communal affairs shall be ensured from: 1. Tariff of communal services from among the segment of individual consumption..."

Articles 22, 23 and 24 regulate the issue of tariff of communal services. Article 22 defines the communal affairs performing of which is ensured from the tariff of communal service, including the service of supply with drinking water and wastewater collection and treatment.

Article 23 regulates the tariff setting of communal services: "The tariff amount and the manner of payment for communal services shall be proposed by the communal service provider based on an extensive calculation in line with Article 15." With regard to the tariff structure, Paragraph (2) reads that: "The tariff of communal services shall contain all costs of current maintenance and functioning of relevant communal system, as well as the costs of procurement of new fixed assets of the communal service provider..."; and Paragraph (3) reads that "the tariff of communal services shall include the amortization, which is consisted of amortization of fixed assets of the communal service provider and amortization of fixed assets of infrastructure communal system, that is, estates in general use."

Pursuant to Paragraph 5 of the said Article: "The validity of calculation and the final proposal of tariff of communal services shall be determined by an independent expert body of Cantonal, city or municipal Government, while the real tariff of communal services shall be determined and adopted by Cantonal Government or city/municipal

ipal council in accordance with the competence referred to in Articles 7, 8 and 9 of this Law."

Sarajevo Canton prescribed in Article 23(6) that "If the tariff of services is determined in the amount lower than the real amount of costs, the differential shall be compensated by the Canton, city or municipality".

#### 1.4.4.2. Law on Communal Affairs (HNK Official Gazette, Vol: 04/04)

Article 4 of the Law prescribes the competence of the Canton to ensure the organized performance of communal affairs of importance to the Canton. Paragraph 2 of the said Article reads that: "local self-governance units shall provide for the organized performance of communal affairs." Therefore, the competence for ensuring the organized performance of communal affairs is entrusted to local self-governance units except for those affairs of importance to the Canton. The Law does not go on to determine the affairs of importance to the Canton nor does it prescribe the criteria for determination of such importance. Furthermore, the Law does not define precisely as to how the competent bodies are obligated to ensure the organized performance of communal affairs.

Paragraph 3 of the said Article reads that "communal affairs may be performed by:

1. Business entities established by the local self-governance unit or the Canton;
2. Legal entities and natural persons registered to perform communal affairs which were entrusted with performing communal affairs under the decision of local self-governance unit's representative body following a conducted public call procedure;
3. Legal entities and natural persons based on the concession agreement.

The local self-governance unit gives the communal service provider to manage and maintain communal facilities and devices used in individual and joint consumption."

Article 6 reads that "local self-governance unit shall by its decision establish a business entity" and that "the decision referred to in the preceding Paragraph shall more closely determine the activities by which the production and sales of products is done, or how the services, rights and obligations of the founder are exercised in the management

of business entities, the manner of financing and tariffs of products and services." Article 8 stipulates that "legal entities and natural persons can perform communal affairs referred to in Article 3 of this Law based on the concession agreement."

Article 16(2) prescribes that "the amount of tariff and manner of payment of communal services shall be determined by the decision of the local self-governance units upon the proposal of the communal service provider."

### 1.4.4.3. Law on Communal Affairs (Official Gazette of Zenica-Dobož Canton, Vol: 17/08)

Article 5 of the Law is titled "public interest of communal affairs", and in Paragraph (3) it prescribes that "The meaning of public service in communal affairs shall include communal affairs referred to in Article 3 of this Law which are deemed as common interest affairs and as such make a systemic unit of organization and performance through state services, local self-governance units and specially organized independent entities accepted, supported and controlled by the community."

This Paragraph is not sufficiently clear and precise as to define competence or responsibility to ensure the performance of communal affairs.

Paragraph 4 of this Article describes in more details the obligations of the competent entities for performing of communal affairs: "Pursuant to this Law and special acts, municipalities and legal entities which perform communal affairs shall:

- a) ensure a permanent performance of communal affairs that are commensurate by its quality and standard to the determined amount of tariff paid by beneficiaries;
- b) ensure the maintenance of communal affairs and equipment which are under the competence of functional utilities companies;
- c) undertake measures for environmental protection;
- d) ensure the public and transparent work".

However, Article 6 of the Law titled "ensuring and performing communal affairs" reads that: "Municipalities shall ensure the performing of communal affairs determined in this Law." Furthermore, Article 7 of the Law prescribes possible competence

of the Canton for performing of certain communal affairs if the nature of those affairs is such that their performance at the cantonal level can be more cost-efficient and effective, as well as possible joint competence of two or more municipalities for ensuring the performance of communal affairs.

Article 8 (1) specifies that "communal affairs may be performed by an international and national legal entity and natural persons." Paragraph 2 contains the definition of terms used in the preceding Paragraph and so the term of legal entity is defined as a public company, national or international business entity, citizens associations or religious community, and the term of natural person is defined as an entrepreneur (national or international).

Paragraph 3 reads that "the municipality may entrust communal affairs to the entities referred to in Paragraphs (1) and (2) of this Article, starting from the nature of communal affairs and conditions and needs of local self-governance units in accordance with the law" and Paragraph (4) prescribes that "exceptionally, the supply of citizens with drinking water can be done only by public companies."

Article 9 reads that "performance of certain communal affairs which are financed from the municipal budget shall be entrusted by the municipality to public companies established by the decision of the municipal council for that purpose". Paragraph 2 of the said Article prescribes the possibility that these affairs are entrusted to another legal entity in case the public utilities company does not have appropriate technological and economic conditions for such performance. That legal entity is selected upon the procedure prescribed by the Law on Public Procurement of B&H (Official Gazette of B&H, Vol. 49/04, 19/05, 52/05, 8/06, 24/06 and 70/06), and thereafter the Municipality Mayor reaches the Decision on the selection of the entity to be entrusted with performing of communal affairs based on the contract.

Article 11 titled "Level of communal services" prescribes that "Communal service providers shall render services whose quality and standard are commensurate to the tariff that beneficiaries pay for the services", and also that the Municipal Council shall determine standards and harmonize the quality and level of communal services with the tariff amount.

Article 19 of the Law ("communal services tariff") prescribes the tariff setting of communal services in as much as to "the tariff amount and manner of payment of communal services shall be proposed

by the communal service provider based on an extensive calculation and in line with Articles 10, 11 and 12 of this Law". Articles referred to in this provision define the conditions for performance of communal affairs, level of communal services and the obligation of the service beneficiary to pay the set tariff. The tariff structure is prescribed in Paragraph 2: "The tariff of communal services shall contain all costs of current maintenance and functioning of relevant communal system, as well as the costs of procurement of new fixed assets of the communal service provider and annuities of credits for strategic projects according to Article 34(2) and (3) of the said Article" and Paragraph 4: "the tariff of communal services shall include amortization, which includes amortization of fixed assets of the communal service provider and amortization of fixed assets of the infrastructure communal system which, by their character must become or already are public estate in common use."

Paragraph 3 of this Article reads that "the Municipal Council shall render an act to regulate the ratio between tariffs of communal services and products of individual consumption in households, housing units and apartments, and the beneficiaries – legal entities in business facilities."

Paragraph 6 prescribes that "the validity of calculation and tariff setting of communal services shall be done in accordance with the statute of the public company" while Paragraph 8 reads that "in case the body referred to in Paragraph (3) of this Article determines the tariff lower than the economic tariff of use or if it does not harmonize it with the price rise, the body shall compensate the differential to the communal service providers."

Article 20 defines the communal service payer as follows: "The owner of the real estate shall be a communal service payer. An exception can be made only if the user of the real estate accepts to pay communal services tariff instead of the owner, which must be regulated under the contract between the communal service provider and the real estate user."

#### 1.4.4.4. Law on Communal Affairs (Official Gazette of Tuzla Canton, Vol 11/05, 7/07, 8/12)

Article 5(2) of the Law determined the following: Pursuant to this Law and other special acts, Municipalities, legal entities and natural persons which perform communal affairs shall:

- a) Ensure the permanent and high-quality performance of communal affairs;
- b) Ensure the maintenance of communal facilities and functional equipment;
- c) Ensure the performance of communal affairs on the principles of sustainable development;
- d) Undertake measures of environmental protection;
- e) Ensure the transparency of work".

Article 6 prescribes that: "Municipalities shall ensure the performance of communal affairs determined by this Law." Paragraph (2) of the said Article determines the obligation of the Municipality to have special acts regulating the conditions and manner of organizing the activities in performing communal affairs, one of the issues to be regulated in that way being "the manner of collection of tariff of communal services, as well as the rights of beneficiaries in case of non-performance or low-quality performance of affairs."

Article 8 of the Law is somewhat more precise in determining the manner of ensuring the performance of communal affairs: "In accordance with this Law, the Municipalities shall ensure the performance of communal affairs by:

- a) Public utilities company;
- b) Legal entity or natural person based on the contract entrusting the communal affairs;
- c) Legal entity based on the concession agreement".

Paragraph (2) of the said Article prescribes that "the municipal council may decide, upon the local community proposal, to entrust the local community with the organization of some communal affairs or tasks in rural and isolated inhabited areas when those affairs serve exclusively to the needs of population and other entities."

Article 9 regulates the entrusting of communal affairs. Paragraph (1) of this Article prescribes that "the Municipality may entrust some communal affairs financed from its budget to a legal entity or a natural person based on a signed contract." Paragraph (2) prescribes the role of Municipal Council in the process of entrusting the communal affairs so that "the Municipal Council determines the communal affairs referred to in Paragraph (1) of this Article and sets the conditions and measures

for collection of bids for communal affairs based on the contract” while Paragraph (3) refers the procedure of entrusting communal affairs to the Law on Public Procurement. Paragraph (4) determines that “after collecting the bids, the Municipal Council reaches the decision on the selection of persons who shall be entrusted with performing communal affairs based on the contract”, and pursuant to that decision “the Municipal Mayor concludes the contract on entrusting certain communal affairs which contain the following: ...the manner of tariff setting for the services, the manner and deadline of payment.” Article 10 reads that “Concessions for performance of communal affairs are given in line with the Law on Concessions” wherefore an inference can be drawn that one possible way of entrusting communal affairs is by way of concession.

Article 11 determines the conditions for performing of communal affairs and so prescribes that “communal service providers referred to in Article 8 of this Law must meet the following conditions: ... e) that tariffs of communal services are determined according to the existing regulations... g) to establish the tariff system that will serve as the basis for collection of services.”

Articles 20 thru 23 of the Law regulate the issue of communal services tariff. Article 20 prescribes the communal affairs whose performance is secured from the tariff of communal services, including the supply with drinking water and wastewater collection and treatment, except for collection of precipitation.

Article 21 defines the tariff setting of communal services, in Paragraph (1): “the amount of price and manner of payment of communal services shall be determined by the communal service provider with the previous approval of Municipal Council based on the following elements:

- a) Type, scope and quality of communal services determined with standards and norms in accordance with the municipal act;
- b) Value of means engaged in service rendering;
- c) Scope and quality of invested efforts in providing of communal services;
- d) Amount of costs in providing of communal services, standards and norms of power consumption, material and other costs or planned calculations;
- e) Amount for financing the construction of communal facilities according to the program of

communal facilities construction;

- f) Other elements depending on the conditions at the market”.

Paragraph (2) of the said Article defines the mandatory contents of the request submitted to the Municipal Council for approval to tariff of communal services: “The request to the Municipal Council for approval of communal services tariff must contain: communal service type, manner of calculation and payment of services; structure of existing tariff of communal service; proposed new tariff of services and its structure; percentage of a price change in relation to the existing price; reasons for a tariff change with a detailed explanation and calculation; date as of which the new tariff will be applied.”

With regard to the tariff structure, Paragraph (3) prescribes that: “The communal services tariff may contain the amount for financing the construction of facilities and equipment of communal infrastructure in the area or for the needs of the municipality to which the communal service is delivered in accordance with the investment construction program of communal infrastructure facilities and equipment, submitted by the communal service provider with a previously obtained approval of the Municipal Council”

Paragraph 6 contains an important provision related to the tariff setting of services: “In case the Municipal Council sets the service tariff lower than the actual cost tariff, the differential shall be compensated by the Municipality.”

Article 34 of the Law reads that the construction of communal infrastructure facilities and equipment and procurement of equipment for communal services, among others, is financed from the communal services tariff.

#### 1.4.4.5. Law on Communal Affairs (Official Gazette of the Central Bosnia Canton, Vol: 13/13)

Article 5 of the Law stipulates that: “Pursuant to this Law and special acts, Municipalities and legal entities that perform communal services shall:

- a) Ensure permanent performance of communal affairs whose quality and standard is proportionate to the set tariff paid by beneficiaries of services;”

Article 6 prescribes the municipal competence

for ensuring the communal affairs but it does not give a precise description of the manner in which that competence is exercised: "Municipalities shall ensure the performing of communal affairs determined under this Law."

Article 9 regulates the entrusting of communal affairs. Paragraph (1) determines that "performing certain communal affairs that are financed from municipal budget shall be entrusted to public utilities companies that were established by municipal decisions for the purpose of performing those communal affairs." Furthermore, the said Article prescribes that: "If the public utilities company does not meet the appropriate technological and economic conditions for performing entrusted communal affairs or some communal affairs, then it can entrust another legal entity with performing those communal affairs. The other legal entity for performing certain communal affairs that are financed from the budget shall be selected based on the procedure prescribed by the Law on Public Procurement of Bosnia and Herzegovina. The decision announcing the call for bids shall be reached by the Municipal Mayor. After collecting the bids, the Municipal Mayor reaches the Decision on the selection of the entity which will be entrusted with performing communal affairs based on the contract. Based on the decision referred to in Paragraph (4) of this Article, the Municipal Mayor shall conclude a contract on entrusting certain communal affairs which contains the following:

- a) Activity for which the contract is concluded;
- b) Period for which the contract is concluded;
- c) Type and scope of activities;
- d) Manner of tariff setting for activities and the manner and deadline for payment;
- e) Performance guaranty by the activity holder".

Article 10 sets the conditions for performance of communal affairs. Paragraph (1) reads that: "the communal service provider referred to in Article 8 of this Law must meet the following requirements:... e) that the tariff of communal services is set according to calculation parameters accepted by the Municipal Council, which ensures at least a simple reproduction for the period of two years."

With regard to the level of communal services, Article 11 prescribes that "The communal services provider shall render services whose quality and standard are proportionate to the price paid by the beneficiaries of those services. The Municipal

Council shall determine the standards and harmonize the quality and level of communal services with the tariff."

Article 19 of the Law regulates the issue of tariff of communal services. Paragraph (1) reads that "the tariff and manner of payment for communal services are proposed by the communal service provider, based on an extensive calculation, and in line with Articles 10, 11 and 12 of this Law." (Provisions on entrusting the communal affairs, conditions for performing of communal affairs and different communal services). Paragraph (2) and Paragraph (4) pertain to the tariff structure: "Tariff of communal services shall contain all costs of current maintenance and functioning of relevant communal system, as well as the costs of procurement of new fixed assets of the communal service provider and annuities of strategic project related-credits according to Paragraphs (2) and (3) Article 34 of this Law." "The tariff of communal services shall include amortization, which includes amortization of fixed assets of the communal service provider and amortization of fixed assets of the infrastructure communal system which, by their character must become or already are public estate in common use." Paragraph (3) stipulates that "the Municipal Council shall render the act to regulate "the ratio between tariffs of communal services and products of individual consumption in households, housing units and apartments, and the beneficiaries – legal entities in business facilities." Pursuant to Paragraph (6) of the Law "The validity of calculation and tariff setting of communal services shall be done in line with the Statute of the Public Company", and according to Paragraph 7: "the tariff of rendered communal service shall be paid to the communal service provider." An important provision is prescribed in Article 19 (8): "If the body referred to in Paragraph 3 of this Article determines the tariff which is lower than the economic tariff or does not harmonize the tariff with the price rise, the body shall by all means compensate the differential to the communal service provider."

#### 1.4.4.6. Law on Communal Affairs (Official Gazette of Posavina Canton, Vol: 1/98, 6/01)

Article 2 of this Law prescribes that: "Communal affairs shall be performed as public services. Pursuant to this Law and special acts, Municipalities, legal entities and natural persons that perform communal affairs shall:

- Ensure the permanent and high-quality performing of communal affairs;
- Ensure the maintenance of functional communal facilities and devices;
- Undertake measures for environmental protection when performing communal affairs."

Pursuant to Article 4 of the Law, communal affairs may be performed by:

1. Public company established by the Municipality;
2. Public company established by the Municipality on the basis of a special Law;
3. Service established by the Municipality;
4. Legal entity and natural person based on the concession agreement."

According to the Law, the Municipality may establish own services for performing of communal affairs.

Article 10(1) prescribes that "the concession obtains the right to perform communal affairs ... in the part related to pumping, disposal of feces from septic tanks, collection and pumping pits..." Paragraph (2) contains the provision according to which "the concession is assigned by the Municipal Mayor to the legal entity or natural person registered to perform those communal affairs, based on the collected bids or public call." It is further prescribed that: "The decision on concession shall be passed by the Municipal Council. The Municipal Mayor shall conclude a concession agreement with the bidder based on the decision on concession. The concession agreement shall contain: ... the tariff and manner of collection of tariff for rendered service."

Article 18 stipulates that: "funds for the performance communal affairs of individual consumption shall be ensured from the tariff of communal services."

Article 19 regulates the issue of the tariff of communal services. Paragraph (1) reads that "The tariff of communal services shall ensure the funds to cover the total expenditures of the communal service provider and improvement of the existing communal facilities and devices according to the norms and standards of communal affairs." Paragraph (2) pertains to the issue of tariff setting of communal services: "The amount of communal services shall be determined by the Municipal Council in its Decision upon the proposal of the communal service provider." Paragraph (4) of the

said Article contains the important provision: "In case the funds from the communal service tariff are not sufficient for performing communal affairs referred to in Paragraph (1) of this Article, the necessary differential shall be ensured from the municipality budget."

#### 1.4.4.7. Law on Communal Affairs (Official Gazette of Bosnia-Podrinje Canton Gorazde, Vol: 9/13)

Article 8 of the Law reads that: "Municipalities shall ensure the performance of communal affairs determined under this Law." Paragraph (2) of the said Article prescribes in more details: "By their special acts, Municipalities shall regulate the conditions and manner of organizing the activities in performing of communal affairs, particularly:... d) the manner of collection of the tariff of communal services, as well as the rights of beneficiaries in case the communal services are not rendered or are rendered in low-quality."

Article 10 (communal service providers) prescribes that: "In accordance with this Law, Municipalities shall ensure the performance of communal affairs by:

- a) Public utilities company;
- b) Legal entity or natural person based on the contract entrusting the communal affairs;
- c) Legal entity based on the concession agreement."

By its act, the Municipality shall determine as to which communal affairs shall be performed in one of the aforementioned manners (Paragraph 2).

Pursuant to Paragraph (3) "The Municipal Council may decide, upon the proposal of the Municipal Mayor, following the local community's initiative, to entrust the local community with the organization of some communal affairs or tasks in rural and isolated inhabited areas when those affairs serve exclusively to the needs of population and other entities."

Article 11 (Entrusting the performance of communal affairs) prescribed the following:

"Communal affairs that are performed with a single technical-technological system shall be entrusted only to one public company (water supply, wastewater collection and treatment)." On the

other hand, Paragraph (2) of the same Article prescribes that: "Communal affairs, performance of which does not require the condition referred to in Paragraph (1) of this Article, may be performed by one or several entities, communal service providers."

Pursuant to Article 12 of the Law: "Public utilities company shall be established by the decision of the Municipal Council. The Decision referred to in Paragraph (1) of this Article more closely prescribes the activity performed by the public company, conditions under which the production and sale are done, conditions under which the services, rights and obligations of the founder are exercised in the management of public utility company, manner of tariff setting of products and services, and conditions under which a public utility company can entrust communal affairs to another company."

In addition to the decision, the Municipality may entrust communal affairs by way of written contract as well as defined by Article 13 of the Law: "The Municipality may entrust some communal affairs financed from its budget to a legal entity or a natural person based on a signed contract. The Municipal Council shall determine the communal affairs referred to in Paragraph (1) of this Article, and also set the conditions and measures for collection of bids for communal affairs based on the contract. The procedure of entrusting the communal affairs to the legal entity or natural person is conducted in accordance with the Law on Public Procurement. After the collection of bids, the Municipal Council shall reach the decision selecting the entity to which the communal affairs shall be entrusted based on the contract. Pursuant to the Decision referred to in the preceding Paragraph, the Municipal Mayor shall conclude the contract entrusting the communal affairs which shall contain:

- a) Activity for which the contract is concluded;
- b) Period for which the contract is concluded;
- c) Type and scope of activities;
- d) Manner of tariff setting for activities and the manner and deadline for payment;
- e) Performance guaranty by the activity holder
- f) Conditions of the contract termination."

Article 14 of the Law prescribes another possibility of entrusting the affairs: "Concessions for perform-

ing of communal affairs shall be granted in accordance with the Law on Concessions."

According to Article 15 of the Law, communal service providers must, besides meeting other conditions, "set tariffs of communal services according to the existing regulations" and "set a tariff system that shall be the basis for collection of the service tariff."

With regard to the level of communal services, Article 16 prescribes: "Communal service providers shall render services whose quality and standard are proportionate to the tariff that beneficiaries pay for the services. The Municipal Council shall determine standards and harmonize the quality and level of communal services with the tariff amount."

Pursuant to Article 22, funds for the performance of communal affairs shall be provided from, among other things, "the tariff of communal services from the segment of individual consumption" which is more closely defined in Article 23(1): "The tariff of communal services in individual consumption segment shall provide the funds for performing the following communal affairs: a) supply with drinking water; b) wastewater collection and treatment..." With regard to the tariff structure, Article 38(1) is also relevant: "Construction of facilities and devices of communal infrastructure and procurement of equipment for communal affairs shall be financed from: a) the tariff of communal services..."

Article 24 of the Law is titled "Setting the amount of communal services tariff." Paragraph (1) of this Article reads that: "The tariff amount and manner of payment for communal services shall be determined by the communal service provider, based on an extensive calculation, with a prior approval of the Municipal Council, based on the following elements:

- a) Type, scope and quality of communal services determined with standards and norms in accordance with the municipal act;
- b) Value of means engaged in service rendering;
- c) Scope and quality of invested efforts in providing of communal services;
- d) Amount of costs in providing of communal services, standards and norms of energy consumption, material and other costs or planned calculations;
- e) Amount for financing the construction of com-

municipal facilities according to the program of communal facilities construction;

- f) Other elements depending on the conditions at the market“.

Paragraph (2) determines the obligatory contents of the request for the approval of the Municipal Council to the communal service tariff: “The request for the Municipal Council approval of the communal service tariff shall contain:

- a) communal service type, the manner of calculation and payment of services;
- b) structure of existing tariff of communal service;
- c) proposed new tariff of services and its structure;
- d) percentage of a tariff change in relation to the existing tariff;
- e) reasons for a tariff change with a detailed explanation and calculation;
- f) date as of which the new tariff will be applied.”

Paragraph (3) of this Article prescribes the obligation of the Municipality to compensate the differential to the communal service provider in case the service tariff set by the Municipal Council is lower than the actual tariff of costs.

According to Article 2 of the Law “Communal affairs shall be performed as public services” while pursuant to the Law and special acts “the municipalities, legal entities and natural persons that perform communal affairs shall:

- a) Ensure the permanent and high-quality performance of communal affairs,
- b) Ensure the maintenance of functional communal facilities and devices,
- c) Ensure that public services are performed on the principles of sustainable development,
- d) Ensure the transparency of the work.”

Article 4 defines the entities that can perform communal affairs: “Communal affairs may be performed by:

- a) Business entity established by the Municipality,
- b) Legal entity based on the concession agreement, while for the chimney sweeper activities

and funeral activities or maintenance of cemeteries – legal entity or natural person based on the concession agreement.

Organization of communal affairs in the manner prescribed by Article 2 of this Law may be transferred to the public entities (institutions) established by the municipality for that purpose.”

As specified in Article 9 of this Law “The municipality holds the major shareholding percentage in the business entities referred to in Article 4(1) of this Law.”

Another possibility for entrusting the communal affairs of wastewater collection and treatment in Article 10 of this Law: “The concession gives the right to perform communal affairs referred to in Article 3(1)(2) in the part related to pumping and disposal of feces from septic tanks, collection and pumping pits...” According to Paragraph (2) of this Article “the concession shall be granted by the Municipal Council to the legal entity or natural person registered for that specific activity.”

Pursuant to Articles 11 and 12 of this Law, the Decision on concession is passed by the Municipal Council based on the tender procedure. Based on the Decision on concession, the Municipal Mayor shall conclude a concession agreement with the selected bidder.

Article 17 regulates the manner of setting the communal services tariff. Paragraph (1) reads that: “At any occasion of tariff changing, the service provider shall obtain a prior approval of the Municipal Council.” Although Paragraph (1) mentions the prior approval, Paragraph (2) prescribes that: “the request for a tariff change shall contain:

- a) communal service type, the manner of calculation and payment of services;
- b) structure of existing tariff of communal service;
- c) proposed new tariff of services and its structure;
- d) percentage of a tariff change in relation to the existing tariff;
- e) reasons for a tariff change with a detailed explanation and calculation;
- f) date as of which the new tariff will be applied.”

Paragraph (3) and Paragraph (4) of the said Article

prescribe that: "The Municipal Council shall decide on the request within 30 days as of the day of its receipt. In case the Municipal Council does not decide upon the request within the deadline referred to in Paragraph (2) of this Article, it shall be considered that the approval is granted."

Article 22 determines the sources of revenues for performing of communal services: "the funds for performing of communal affairs shall be provided from:

- a) communal services tariff,
- b) communal fee
- c) concession fee,
- d) municipal budget,
- e) other sources in line with special laws."

The aforementioned provision, according to which a part of the communal service tariff structure is foreseen as a source of revenue for performing communal services, is further developed in Article 23: "The communal services tariff shall provide the funds for performing of the following communal services:

- a) supply with drinking water,
- b) wastewater collection and treatment except for precipitation...".

Article 27(2) prescribes that: "Construction of communal infrastructure facilities and devices and procurement of equipment for transportation of passengers, cleaning, communal waste disposal and retail markets shall be financed from:

- a) communal service tariff,
- b) municipal budget,
- c) concession fee,
- d) donations and
- e) other sources determined in special acts."

Competence and responsibility for performing of communal affairs is determined by Article 6 of the law: "The Municipality shall ensure the performance of communal affairs within the scope of its self-governance, in accordance with this Law."

Entities through which the Municipality ensures the performance of communal affairs are defined in Article 10: "The Municipality shall ensure the performance of communal services through:

- a) public utilities company,
- b) business entity,
- c) independent entrepreneur,
- d) legal entities based on the concession agreement in accordance with the law that regulates the issue of concessions,

which meet the requirements to perform communal services in line with Article 15 of this Law."

The aforementioned Article is further developed in Article 11, 12, 13 and 14 of the Law. Article 11 reads that: "the Municipality shall establish a public utilities company in accordance with the law and other regulations." Article 12 reads that: "The Municipalities may entrust the performing of communal affairs to a business entity while a special contract shall regulate their mutual rights and obligations." Article 13 prescribes: "When the Municipality entrusts the performance of certain communal affairs to an independent entrepreneur referred to in Article 7 of this Law, they shall regulate the mutual rights and obligations in a separate contract." Article 14 prescribes that: "the legal entity may perform communal affairs referred to in Article 2 of this Law based on the concession agreement in accordance with the Law which regulates the issue of concessions."

Article 15 prescribes the requirements which the communal service providers must meet:

1. that they are registered for performing of communal affairs,
2. that they have adequate equipment and means for work in performing communal affairs,
3. that they have adequate professional staff which can ensure a permanent and high-quality performing of communal affairs,
4. that they ensure that communal affairs are performed in accordance with this Law and other regulation,
5. that communal services tariffs are set according to the existing regulations,
6. that they set the norms of work and expenditure of material assets and enable the control by the competent bodies,
7. that they set the tariff system that shall be the basis for collection of services tariff;

8. That they continuously invest efforts in raising the level of communal services and improvement of communal affairs.

Pursuant to Article 16 of the Law: "Communal service providers shall render services whose quality and standard are proportionate to the tariff that beneficiaries pay for the services and the Municipal Council shall determine standards and harmonize the quality and level of communal services with the tariff amount."

Article 22 reads that "The funds for performing of communal affairs shall be provided from:

1. Communal services tariff..."

Article 23 lists the communal services of individual consumption the funds for which are provided from the communal services tariff. The said services include "supply with drinking water" and "wastewater collection and treatment except for precipitation."

Article 24 regulates the issue of tariff setting of communal services: "The tariff of communal services shall provide the funds to cover the total expenditures on the part of communal service providers according to the market conditions, and based on the norms for all expenditure elements. In accordance with the determined competence in Article 7 of this Law, the Municipal Council shall determine the measures as the basis for tariff setting of communal services. The tariff amount, the manner of calculation and payment of communal services shall be proposed by the communal services provider upon an extensive calculation and in line with Article 16. The tariff of communal services shall include amortization, which includes amortization of fixed assets of the communal service provider and estates in general use. The validity of calculation and the final proposal of tariff of communal services shall be determined by an independent expert body of the Municipality, while the real tariff of communal services shall be determined and adopted by Municipal Council. The communal service tariff for the rendered service shall be paid to the communal service provider."

### 1.4.4.8. Law on Communal Affairs (Official Gazette of Una-Sana Canton, Vol: 4/11)

Article 7 of the Law prescribes the principles of performing of communal affairs.

„Performing of communal affairs shall be established on the following:

- a) permanent and continuous activity in performing of communal affairs;
- b) quality in performing of communal affairs, particularly including: technical, health and sanitary regularity in accordance with the prescribed standards and norms and punctuality in terms of deadlines for provision of communal services;
- c) maintenance of functional communal facilities and devices;
- d) policy of communal services and products tariff which provide self-sustainability and sustainable development of communal affairs;
- e) mandatory utilization of communal services by natural persons and legal entities;
- f) beneficiary-pays-for-a-rendered-communal-service principle;
- g) securing the measures of environmental protection;
- h) public and transparent work."

Pursuant to this Law, the communal affairs are defined as the affairs of common interest. Article 8 determined the manner in which that interest is exercised:

"With the aim of exercising the public interest in public utilities services in the territory of the Canton, the Canton reaches the development strategy of communal affairs for the territory of the Canton. With the aim of exercising the public interest in public utilities services in the territory of the Municipality, the Municipality reaches:

- a) the development strategy of communal affairs for the territory of the Municipality;
- b) Mid-term and annual plan and programs of performing and developing communal affairs in the territory of the municipality.

With the aim of creating the conditions for optimal development and performing of communal affairs, the Canton and Municipality shall:

- a) provide permanent sources of financing the performing and development of communal affairs;
- b) Continuously follow the provision of communal affairs and as needed undertake measures

and activities with a view of resolving the problems and improving the communal affairs.”

Article 9 prescribes somewhat more closely than the Laws on Communal Affairs in other Cantons that: “The municipalities shall provide for performing of communal affairs on the principles of sustainable development by the manner of organizing and entrusting of communal affairs and communal products and services tariff policy.”

Article 11 determines the entities which can perform communal affairs in the territory of Una-Sana Canton: “In accordance with this Law, communal affairs may be performed by:

- a) public utilities company;
- b) business entity;
- c) entrepreneur.

By its act, the Municipality shall determine which communal affairs shall be performed in one of the manners described in the preceding Paragraph.”

However, Article 12 limits the possibility of entrusting of certain communal affairs: “Communal affairs which are performed with a single technical-technological system (water supply, wastewater collection and treatment) may be entrusted only to one utility company. Communal affairs whose performance does not require the condition referred to in Paragraph (1) of this Article may be performed by one or more entities or communal service providers.”

The requirements that the entities referred to in Article 11 must meet in order to be entrusted with communal affairs are prescribed in Article 13: “The Municipality entrusts the performing of communal affairs to the entities referred to in Article 11 of this Law if they meet the following requirements:

- a) that they are registered for performing of the respective communal affairs;
- b) that they have adequate equipment and means of work for communal affairs;
- c) that they have adequate professional staff that can provide for a permanent and continuous performing of entrusted communal affairs.”

Article 14 of the Law regulates the establishment of public utilities companies: “A public utilities company shall be established by the Decision of the Municipal Council. The decision shall closely determine affairs performed by the public utility

company, conditions under which the production and sale are done, conditions under which the services, rights and obligations of the founder are executed in the management of public utility company, manner of tariff setting of products and services, and conditions under which a public utility company can entrust communal affairs to another company.”

Entrusting the performance of communal affairs to other entities, except public utilities companies, is regulated by the contract which determined mutual rights and obligations in performing those affairs as prescribed by Article 17 of the Law. According to Article 18 of the Law, entrusting of works based on the contract is done in line with the Law on Public Procurement of B&H, the decision on the selection of entities is reached by the Municipal Mayor who then, based on such Decision, concludes the contract with the selected entity.

According to Article 19 of the Law; “Concessions for performing of communal affairs are granted in accordance with the Law on Concessions of Una-Sana Canton.”

Anyhow, the Municipality concludes a contract on entrusting of communal affairs with the communal service provider in accordance with Article 20 of this Law.

When performing the entrusted communal affairs, the entity entrusted with communal affairs must abide by the requirements referred to in Article 21 of the Law. One of the determined requirements reads: “to set the tariff of communal services according to the existing regulations.”

Article 23 determines the ratio between the quality and tariff of communal services: “Communal service providers shall render services whose quality and standard are proportionate to the tariff that beneficiaries pay for the services and the Municipal Council shall determine standards and harmonize the quality and level of communal services with the tariff amount.”

According to Article 31(1) “The funds for performing of communal affairs of individual consumption shall be provided from the tariff of communal services.”

Article 34 is titled “The manner of tariff setting of communal products and services”, and it determines in Paragraph (1): “By its act, the Municipality shall determine the measurement unit and

prescribe the manner of tariff setting of communal products and services, while the tariff shall be determined by the communal service provider." Pursuant to Paragraph (2) "the tariff of communal products and services determined by the communal service provider cannot be applied without a prior approval of the Municipal Council."

Article 35 regulates the tariff structure of communal products and services. According to this Article: "The tariff of communal products and services must provide the level of simple reproduction and shall contain:

- a) covering material and other costs;
- b) costs of current and investment maintenance and functioning of the communal system;
- c) amortization which comprises the amortization of fixed assets of the communal service provider and amortization of permanent infrastructure systems, or estates in common use;
- d) statutory and contractual obligations;
- e) payments of credits;
- f) funds for salaries and joint consumption of workers (employees);
- g) funds of accumulation;
- h) reserve funds in accordance with the regulations;
- i) Funds for necessary reconstruction and modernization of the existing capacities, facilities and devices."

In accordance with the spatial development plans and municipal development plans, the Municipality may decide that the tariff of communal products and services also contain the funds for expanded reproduction. The funds for expanded reproduction shall be determined in a percentage out of the tariff of communal products and services which is valid for the period determined in the program, and they are used strictly for that purpose."

According to Article 37(2): "the procurement of fixed assets of the communal service provider for performing of communal affairs shall be financed from:

- a) The tariff of communal services (from the segment of individual and joint communal consumption)..."

## 1.4.5. Cantonal Laws on Water

Pursuant to Article 11(1) of the Law on Waters of **Bosnia-Podrinje Canton** (Official Gazette of Bosnia-Podrinje Canton Goražde, Vol: 6/10), "Water facilities referred to in Article 10.(1) (a) which serve for the supply of drinking water to consumers in the territory of two or more municipalities in the Canton (hereinafter referred to as: Cantonal water supply facility) are owned by the Canton except for those built and owned by other legal entities for their needs." Paragraph (3) of the said Article regulates the management of those facilities: "Water facilities referred to in Paragraph (1) of this Article are managed by the legal entity to which the Canton transferred the management of water supply facility in accordance with the laws on communal affairs." The said Article of this Law contains two provisions that are directly related to the tariff setting: "The tariff of water delivered from the Cantonal water supply facility shall not be set below the amount which provides for covering of the costs of maintenance and functioning of such water supply facility, amortization and payment of annuity for credits which shall provide for the construction of the water supply facility. The tariff of water which is delivered to consumers from Cantonal water supply facilities shall be determined by a separate regulation or act of the Canton." Article 12 pertains to local/municipal water supply facilities: "(1) Water facilities referred to in Article 10 (1) (a) for water supply to consumers in the territory of one municipality shall be owned by the Municipality. (2) Water facilities referred to in Paragraph (1) of this Article for water supply to consumers in municipal centers (hereinafter referred to as: municipal water supply facilities) shall be entrusted for management and utilization to a legal entity by the Municipal Decision in accordance with the communal regulations. (3) Water facilities referred to in Paragraph (1) of this Article for water supply to areas outside the municipal centers (hereinafter referred to as: local water supply facilities), shall be entrusted for management and utilization to a legal entity by the Municipal Decision in accordance with the communal regulations." With regard to the tariff of water supply services, the said Article specifies that: "(5) The Municipality shall ensure that the tariff of water supply services referred to in Paragraph (1) of this Article and other sources of financing are used to cover the costs of current and investment maintenance of water facilities, allocation of funds for amortization and payment of annuities for credits which will be used for construction, reconstruction and restoration of water supply facility, costs of mandatory health control

of drinking water, and to cover other obligations entailing from this Law with a view of saving lives and health of consumers. (6) The tariff of water supply from municipal and local water supply facilities shall be determined by separate regulations or acts of the Municipality."

Article 22 of this Law regulates the issue of water management: "Water management is made of a series of decisions, activities and measures aimed at maintaining, improving and achieving the necessary and sustainable water regime at a specific area in accordance with natural conditions, plans, needs and possibilities. (2) Water management referred to in Paragraph (1) of this Article shall be exercised especially by ensuring the necessary water quantities of quality adequate to different purposes, protection of water from pollution, development and water and water courses and protection from detrimental effects of water. (3) Water management in the territory the Canton shall be exercised in accordance with the Law and other regulations."

Law on Waters of **Zenica-Doboj Canton** "Official Gazette of Zenica-Doboj Canton, Vol: 17/07) Article 5 Paragraph (2) and (3) prescribes that: "The public water estate for all surface waters of II category shall be owned by the Municipality. Management of the public water estate shall be conducted by the authorities, legal entities and other institutions in the scope and manner prescribed by this Law and other acts of the relevant body on which the right of management was transferred."

Article 10 of the Law prescribes that: "Protective water facilities referred to in Article 9 (1) (1) of this Law on the water courses of II category surface waters and developed riverbeds in the urban parts on I category surface water courses shall be owned by the Municipality. (2) The Municipality may transfer the right of management and utilization to other authorities, legal entities or other institutions in the scope and manner prescribed by this Law or municipal acts."

Law on Waters of **Una-Sana Canton** (Official Gazette of Una-Sana Canton, Vol: 4/11) regulates the competence for water management in Article 11, Paragraphs (2), (3) and (4): "The water management in the territory of the Canton shall be under the competence of the Federation of Bosnia and Herzegovina, Canton and municipalities in the manner determined by the Federation and this law. (3) Municipalities shall manage the public water estate referred to in Article 7 of this Law and water facilities referred to in Article 10 of this Law.

(4) The Canton shall manage the water facilities referred to in Article 9 of this Law." Article 16 pertains to the supply with drinking water: "Utilization of waters for the purpose of supplying with drinking water shall be regulated by the communal affairs act and municipal decision in accordance with that act."

Article 17 of the Law on Waters of **Herzegovina-Neretva Canton** (Official Gazette of Herzegovina-Neretva Canton /HNK/, Vol: 6/13) prescribes that "the water management in terms of Article 1 of this Law, shall be under the competence of Bosnia and Herzegovina, Federation of FB&H, HNK, town and municipality in the manner determined by this law and Federation law. Article 20 prescribes that "HNK and town/municipality shall implement the water management policy developed in strategic and planning documents reached on the basis of this Law and Federation Law." Article 25 regulates the issue of supply with drinking water: "Capture of water for the purpose of supply with drinking water is regulated by this Law, Federation Law and special regulations, and water supply as communal affairs is regulated by the communal affairs regulations which includes the performing of communal affairs, provision of communal services to beneficiaries, utilization and maintenance of communal infrastructure facilities and devices, establishment of communal entities, principles of tariff setting of communal services and communal fee, financing of communal affairs and financing of the construction of facilities and devices", while Article 29 is about the issue of wastewater collection and treatment: "Natural persons and legal entities shall discharge wastewater into the public sewage system or otherwise in accordance with the decision on wastewater collection reached in line with the communal affairs regulations... The Decision referred to in Paragraph (1) of this Article on the wastewater collection in the territory of town or municipality shall be reached by the Town or Municipal Council..."

Article 9 of the Law on Waters of Bosnia-Podrinje Canton Goražde (Official Gazette of Bosnia-Podrinje Canton Goražde) prescribes that: "Water drainage facilities are: basic and detailed drainage canal network, pumping stations for drainage and other respective facilities. The water facilities referred to in Paragraph (1) of this Article which are built by the state assets shall be owned by the Canton."

With regard to water facilities intended for water supply Article 11 prescribes that: "The water facilities referred to in Article 10 (1) (a) which serve for supply of water to consumers in two or more

municipalities of the Canton (hereinafter referred to as: Cantonal water supply facilities) shall be owned by the Canton except for those built and owned by other legal entities for their needs ... The water facilities referred to in Paragraph(1) of this Article shall be managed by a legal entity to whom the Canton transferred the right of management in accordance with the communal affairs regulations. The tariff of water delivered from the Cantonal water supply facility shall not be set below the amount which provides for covering of the costs of maintenance and functioning of such water supply facility, amortization and payment of annuity for credits which shall provide for the construction of the water supply facility...The tariff of water which is delivered to consumers from Cantonal water supply facilities shall be determined by a separate regulation or act of the Canton." Article 12 reads that "Water facilities referred to in Article 10 (1) (a) for water supply to consumers in the territory of one municipality shall be owned by the municipality. The water facilities referred to in Paragraph (1) of this Article for water supply to consumers in municipal centers (hereinafter referred to as: municipal water supply facilities) shall be entrusted for management and utilization to a legal entity by the Municipal Decision in accordance with the communal regulations. The Municipality shall ensure that the tariff of water supply services referred to in Paragraph (1) of this Article and other sources of financing are used to cover the costs of current and investment maintenance of water facilities, allocation of funds for amortization and payment of annuities for credits which will be used for construction, reconstruction and restoration of water supply facility, costs of mandatory health control of drinking water, and to cover other obligation entailing from this Law with a view of saving lives and health of consumers. The tariff of water supply from municipal and local water supply facilities shall be determined by separate regulations or acts of the Municipality".

Article 9 of the Law on Waters of **Tuzla Canton** ("Official Gazette of Tuzla Canton, Vol: 11/08) defines the drainage water facilities and reads that: "Water facilities referred to in Paragraph (1) of this Article constructed by the state assets shall be owned by the Canton." Article 10 pertains to the water facilities for utilization of water and so prescribes under Paragraph (1), sub-paragraph (a): "Water supply (except for common use of waters), dams and accumulations, catchment areas, wells, captures with adequate equipment, drinking water treatment plants, reservoirs, pipelines and other respective facilities...", while Article 11 prescribes the water facilities owned by the Canton except

for those built and owned by other legal entities for their own needs.

## 1.5. Brčko District

### 1.5.1. Statute of Brčko District

Pursuant to Article 1(1) of the Statute of the Brčko District of B&H: "The Brčko District is a single administrative unit of local self-government existing under the sovereignty of Bosnia and Herzegovina."

Article 8(1) of the Statute of the Brčko District of B&H determines the functions and powers of public bodies in the District which include: "public services/infrastructure" and "environmental protection", which also include communal affairs of supply with drinking water and wastewater collection and treatment.

Article 60(1) of the Brčko District Statute prescribes that "a District law may prescribe the transfer of competences from the District Government and public administration to public companies which render services to the District residents or on behalf of the District residents manage the public finances or public property."

### 1.5.2. Law on Environmental Protection (Official Gazette of the Brčko District of BH, Vol: 24/04, 1/05)

Article 14 of the Law regulates the protection of waters as one of the environmental components. Paragraph (6) of this Article prescribes that: "Planning of water protection, water protection, protection of waters and ecosystems, organization of water protection, supervision, public participation and financing of water protection are prescribed by the Law on Water Protection. The said Law (Official Gazette of the Brčko District, Vol: 25/04, 1/05, 19/07) prescribed the competence of the Brčko District for certain issues of water protection and reads that: "The District shall cooperate with associations and other citizens' groups through its Department in charge of Water Protection in the manner determined by this Law."

### 1.5.3. Law on Waters

Law on Water Protection (Official Gazette of the Brčko District, Vol: 25/04, 1/05, 19/07) prescribed

in Article 4 the competence of the Brčko District for certain issues of water protection and reads that: "The District shall cooperate with associations and other citizens' groups through its Department in charge of Water Protection in the manner determined by this Law." Article 3(1) reads that the water protection, as one of the principles of environmental protection: "economic approach to waters, implementation of the policy that the beneficiary pays a realistic tariff for the use of water and polluter compensates the damage caused by waters..." This is the "polluter pays" principle which is reflected as the payment of appropriate fee (tariff) for the rendered services of water supply and wastewater collection and treatment.

## 1.5.4. Law on Communal Affairs

### 1.5.4.1. Law on Communal Affairs (Official Gazette of the Brčko District, Vol: 30/04, 24/07, 9/13)

In accordance with Article 3 of the Law: "Communal affairs in accordance with this Law may be performed by:

- Relevant Departments of the Brčko District Government;
- Legal entities and natural persons with whom the Mayor entrusts the communal affairs by the contract.

The responsibility for communal affairs lies with the Head of the Department competent for these affairs, or legal entity or natural person with whom the Mayor entrusts the performing of communal affairs."

Pursuant to Article 4 "Communal affairs, which are performed by the single technical-technological system (production and delivery of water, wastewater collection and treatment and the like), shall be entrusted to only one Department, or legal entity or natural person."

The manner of entrusting of communal affairs is regulated by Article 5: "Entrusting communal affairs to another legal entity or natural person shall be done by the contract which regulates mutual rights and obligations. The selection of another legal entity or natural person for performing of communal affairs shall be done by the public competition."

According to Article 11(1) of the Law: "Funds for

the performance of communal affairs in individual consumption shall be provided from the tariff of communal services." Paragraph (2) of the said Article prescribes that "the Government shall determine the measurement unit, the manner of tariff setting and the tariff of communal services referred to in Paragraph (1) of this Article unless otherwise determined under this Law."

Article 16(2) of the Law determines the competence for supply of Brčko District residents with drinking water: "The Department in charge of water supply or the natural person or legal entity with whom the Government entrusted these communal affairs shall be responsible for supplying the Brčko District residents with drinking water."

Article 49 of the Law determined the competence for wastewater collection and treatment: "The activities of construction, management and maintenance of public sewage shall be conducted by the relevant Department or the natural person or legal entity with whom the Brčko District Mayor entrusted these communal affairs – the communal service provider."

## 1.6. Municipal level of authority – Federation of Bosnia and Herzegovina and Republika Srpska

A full and consistent application and implementation of regulations in the domain of waters and communal affairs of water supply and wastewater collection and treatment can be exercised only by the enactment and implementation of municipal/town regulations in communal affairs, the obligation to enact these regulations entails from the laws on communal affairs (RS, Cantons in FB&H). This Chapter will give an analysis of municipal regulations in several municipalities/towns in the Federation of Bosnia and Herzegovina and Republika Srpska. The analysis will cover the provisions of the local self-governance units' statutes and decisions of local self-governance units which regulate the issue of communal affairs with a special focus on the issue of tariff of communal services.

### 1.6.1. Statutes of local self-governance units

The analysis covered the statutes available to the Consultant, such as the Statute of the municipalities of Bihać, Bosanska Krupa, Velika Kladuša and

city of Banja Luka through competences, tasks and activities in communal affairs.

The Statutes of the municipalities of Bihać, Bosanska Krupa, and Velika Kladuša took over the provision of the Federation Law on Local Self-Governance Principles which determined that the municipality shall conduct the activities that pertain to: **“management, financing and improving affairs and facilities of communal infrastructure: water supply and wastewater collection and treatment.”**

The Statute of the city of Banja Luka contains the provision taken over from the Law on Local Self-Governance of RS which reads as follows: “As for the communal sector, the city shall ensure, among others, the performance of communal affairs, organizational, material and other conditions for construction and maintenance of communal facilities and communal infrastructure.”

All Statutes of municipalities in Una-Sana Canton contain the provision that “the Municipal Council shall by its decision establish public companies in the domain of communal affairs which shall be responsible to ensure a permanent and high-quality performing of those affairs and maintenance of facilities and devices, and especially supply with drinking water and wastewater collection and treatment...”

The Statute of the city of Banja Luka contains the provision that the Assembly of the city “shall establish companies and communal and other institutions to perform affairs of the interest for the city and shall manage them in accordance with the Law.”

The Statute of the Municipality of Bihać prescribes that the Municipal Mayor, among other things and within the scope of his competence, “shall execute the management supervision over the legality of the work of public institutions and companies established by the Municipality and shall give them the instructions for work.”

The said provisions of the Statutes entail that the Municipality/town has a full responsibility and obligation to secure the conditions for performing of communal affairs, including water supply and wastewater collection and treatment.

## 1.6.2. Decisions on the establishment – organization of public utilities companies for water supply and wastewater collection and treatment

All laws on communal affairs (Republika Srpska, Cantons in FB&H, the Brčko District) prescribe that a public utilities company is established by a decision of a Municipal/Town Council (Assembly). However, only several of them did determine the contents of the decision on the establishment of a public utilities company (Una-Sana Canton, Hercegovina-Neretva Canton, Bosnia-Podrinje Canton, Republika Srpska).

The said laws prescribed the contents of the decision on the establishment of a public utilities company as follows: the activity performed by the public company, conditions under which the activity is performed, rights and obligations of the founder in the management of public companies, manner of tariff setting of products and services, the manner of financing the activity and the like.

The Consultant had a chance to obtain only several decisions on the establishment (organization) of public utilities companies which perform the activity of water supply and wastewater collection and treatment.

One of them is the **Decision on the harmonization of the Decision on organizing the 10. Juli public utilities company Bosanska Krupa No. 01/V-I-5/97 dated 17 March 1997 in accordance with the Law on Business Entities and the Law on Companies.** The public company performs, among other things, the activities of water supply and wastewater collection and treatment. The Decision does not regulate the rights and obligations of the founder in relation to the public company, does not regulate the manner of communal services tariff setting and tariff approval, and it even goes on to declare ineffective the decision which is being harmonized. The same goes for all other public utilities companies in Una-Sana Canton. Furthermore, there is not a single decision on the establishment of a public utilities company harmonized with the Law on Communal affairs of USK.

One of the recent decisions on the establishment of a utilities company is the **Decision on the organization of Komunalno limited liability company and services Bosanski Petrovac.** This Decision introduced a status change of the earli-

er *Komunalno* Public Utilities company Bosanski Petrovac into the limited liability company. This Decision partly regulates the manner of tariff setting of communal services. It is prescribed that the tariff of communal services is determined by the company with the approval of the Municipality as a founder. It is further prescribed that the tariff of communal services should "provide for a simple reproduction and a program-determined level of expanded reproduction." Yet, this Decision as well is not harmonized with the new Law on Communal Affairs of Una-Sana Canton.

In the territory of Republika Srpska, the communal services of water supply and wastewater collection and treatment are performed by legal successors of pre-war public utilities companies that were established by the decision of municipal assemblies. However, there have been some status changes in the post-war period that were not in accordance with the Law on Communal Affairs.

In the process of the state capital privatization in RS pursuant to the Law on Privatization of State Capital, there was a change of the capital ownership from the municipal to state, as well as the change of the decisions on the organization of public utilities companies into shareholding companies. At the same time, the rights and obligations of municipalities/towns as founders of public utilities companies were not taken into consideration neither were the provisions of the existing RS Law on Communal Affairs and the RS Law on Local Self-Governance.

The Consultant is not aware whether the RS municipal/town regulations on the establishment/organization of utilities companies to perform water supply and wastewater collection and treatment were harmonized with the provisions of the Law on Local Self-Governance and Law on Communal Affairs, after they were passed.

In order to provide for an unhindered optimal performing of these affairs, it is necessary to harmonize the decisions on the organization of former public utilities companies, currently the shareholding companies with the Law on Local Self-Governance, Law on Communal Affairs, Law on the Determination and Transfer of Rights to Dispose with Property of Local Self-Governance Units and the Law on the Transfer of Ownership Right over the RS Capital in the Companies that Perform Communal Affairs to Local Self-Governance Units as soon as possible.

### 1.6.3. Decisions on performing communal affairs of water supply and wastewater collection and treatment

The majority of laws on communal affairs prescribe the obligation of local self-governance units to reach their own decisions to regulate the performing of communal affairs. These decisions, among other things, regulate the manner of calculation and payment of fee for received (delivered) communal service, the manner of tariff setting and approval of the tariff of communal services. This chapter will analyze some of these decisions that the Consultant found available.

The Decision on Supply with Drinking Water in the Territory of the Municipality of Cazin (2014) prescribes that **"measurement units and manner of tariff setting of water supply services shall be determined by municipal decisions on the manner of tariff setting of communal products and services for individual consumption"** while the tariff amount is determined by the service provider, but it cannot be applied without a prior approval of the Municipal Council.

The Decision on Production and Delivery of Drinking Water (Kozarska Dubica, 2012) established that the tariff of services is determined in accordance with the municipal decision that regulates the issue of setting the measurement unit and the manner of tariff setting and payment of communal services. The tariff of services is determined by the utilities company (service provider) with the approval of the founder.

The decision on wastewater collection and treatment (Kozarska Dubica, 2012) established that **"the tariff of services shall be set by the service provider with a prior approval of the authorized municipal body."**

The Decision on wastewater collection and treatment in the territory of Cazin Municipality (2014) determined the same manner of tariff setting as regulated by the Decision on supply with drinking water in the territory of Cazin Municipality.

Some local self-governance units regulated both water supply and wastewater collection and treatment by one decision.

The Decision on public water supply and sewage (Official Gazette of the city of Banja Luka, Vol 8/12) prescribes that the tariff of services (water and sewage) is set by the utilities company (service

provider), and it is applied upon an approval of the competent body of the city of Banja Luka.

The Decision on water supply and sewage (Official Gazette of the Municipality of Derвента, Vol: 9/13) prescribes that **“the beneficiaries pay the fee for the use of water from water supply network and use of sewage network per price-list of the utilities company which is determined by the Management and Supervisory Body of the utilities company, with the approval of the Municipal Mayor.”**

The Decisions on water supply and sewage of the city of Banja Luka and the Municipality of Derвента do not regulate the manner of tariff setting of services.

#### 1.6.4. Decisions on the manner of tariff setting of communal services

Some of the Laws on Communal Affairs determined that the local self-governance unit (municipality/town) by its decision regulates the manner of tariff setting of communal services and products of individual consumption. This chapter will give an analysis of two such decisions: the decision of the Municipality of Cazin in Una-Sana Canton and the Municipality of Kozarska Dubica in Republika Srpska.

The municipality of Cazin reached the Decision on the manner of tariff setting of water supply and wastewater collection and treatment (Official Gazette of the Municipality of Cazin, Vol: 9/13). The Decision sets as a measurement unit in water supply as 1 m<sup>3</sup> of delivered water at the measurement device, which is the basis for the services of wastewater collection and treatment. The decision provides the tariff structure of services which must provide a level of simple reproduction. The tariff structure is taken over from the Cantonal Law on Communal Affairs. The Decision did not regulate the methodology of the tariff setting and tariff approval.

The Municipality of Kozarska Dubica reached a 2012 Decision on the establishment of measurement unit of calculation and the manner of tariff setting of communal services and products. The Decisions determined that “the measurement unit is m<sup>3</sup> of delivered or released water for the supply with water and wastewater collection and treatment.” The Decision determines in detail the tariff structure as well as the contents of request

for approval of the services tariff. The Decision determines that the tariff of services must provide the level of simple reproduction, and that the Municipal Assembly may decide that the tariff contains also a part of expanded reproduction. The Decision also determines the manner of harmonizing the tariffs between the Municipality and service provider as well as the obligation of the Municipality that, in case the requested tariff is not approved, must restore business losses to the company in the part which occurred because the Municipal Assembly did not give an approval to the “economic” tariff of services. The Decision also determined the possibility that the Municipal Assembly issues a special decision to prescribe subsidizing of communal services tariff for certain categories of beneficiaries. This Decision did not regulate the methodology of tariff setting.

#### 1.7. Legislation of the European Union relative to water

Although the application of the European Union legislation and requests is not yet binding, considering the determination of Bosnia and Herzegovina to join the European Union, it is recommended to start harmonizing our legislation with the European Union Legislation.

The basic document which sets a long-term water policy in the territory of Europe is the **Directive 2000/60/EC of the European Parliament and Council of the European Union.**

The Entities laws on waters are largely harmonized with this Directive. In addition to that, the Entities water laws are harmonized with other EU Water Directives.

One of the foundations of the Directive is that **“The use of economic instruments by Member States may be appropriate as part of a programme of measures.”** In line with that, **“the principle of recovery of the costs of water services”** should be taken into account, particularly in accordance with the **“polluter pays”** principle.

**Article 9** of the Directive regulates the recovery of costs of water services. According to that Article, Member States shall ensure that **“those water-pricing policies provide adequate incentives for users to use water resources efficiently, and thereby contribute to the environmental objectives of this Directive.”**

Annex III to the Directive pertains to the **economic analysis**. It mentions that “economic analysis must contain sufficient information and detailed data for:

- a) make the relevant calculations necessary for taking into account the principle of recovery of the costs of water services, taking account of long term forecasts of supply and demand for water in the river basin district and, where necessary:
  - estimates of the volume, prices and costs associated with water services, and
  - estimates of relevant investment.
- b) Make judgments about the most cost-effective combination of measures in respect of water uses to be included in the programme of measures under Article 11 based on estimates of the potential costs of such measures.”

Therefore, the Directive pushes the principle of full recovery (covering) of costs and service-pricing policy which incites the water service beneficiaries to saving in the domain of waters.

Pursuant to the Drinking Water Directive, the Member States have the following obligation:

- To set quality standards for drinking water quality at the tap (microbiological, chemical and organoleptic parameters),
- To regularly follow the quality of drinking water where the frequency depends on the scope of supply,
- To provide the regular information to consumers on the drinking water quality.

Urban Wastewater Treatment Directive requests the following:

- Specific regulations for wastewater collection and treatment,
- Specific monitoring procedures and evaluation of treatment plants and receiving waters,
- Control of discharge and recycling of sludge and recycling of wastewater whenever appropriate,
- Prior authorizations for all discharges of urban wastewater, industrial wastewater discharges into collection system of urban wastewater.

These two Directives do not cover the issue of tariff setting for water supply and wastewater collection and treatment services.

# **Annex II**

## INSTITUTIONAL FRAMEWORK

## 2. INSTITUTIONAL FRAMEWORK

### 2.1. Institutions at the level of Bosnia and Herzegovina

There is not a single appropriate state institution in charge of waters or communal affairs at the level of Bosnia and Herzegovina. In accordance with the constitutional provisions, the institutions competent for this sector are organized at the Entity, Cantonal and Brčko District levels.

Pursuant to the Law on Ministries and other Bodies of Administration of Bosnia and Herzegovina (Official Gazette of B&H, Vol: 5/03) certain competences in environmental protection are assigned to the **Ministry of Foreign Trade and Economic Relations**, as prescribed by Article 9(2) of the Law: **“This Ministry shall also be responsible for carrying out tasks and discharging duties which are within the competence of BiH and relate to defining policy, basic principles, coordinating activities and harmonizing plans of the Entity authorities and bodies at the international level in the fields of:**

- agriculture;
- energy;
- **protection of the environment, development and use of natural resources;**
- Tourism.”

There are eight sectors within the Ministry, among them the Sector for Natural Resources, Energetic and Environmental Protection. There are six departments within this Sector, including the Department of Water Resources and Department of Environmental Protection.

### 2.2. Institutions at the Entity level – Republika Srpska

Institutions in charge of the sector of waters and their competences are defined in the Law on Waters (Official Gazette of Republika Srpska, Vol: 50/06, 92/09 and 121/12) and the Law on Republic Administration (Official Gazette of Republika Srpska, Vol: 118/08, 11/09, 74/10, 86/10, 24/12 and 121/12). Pursuant to Article 28 of the Law on Republic Administration, **the Ministry**

**of Agriculture, Forestry and Water Management**, among others, performs the administrative and other expert activities which pertain to: “implementation of the integral water management in accordance with the Law, organization of the water management, enactment of plans, programs and strategies, organizing the monitoring and supervision of necessary measures so to prevent derogation of surface and ground waters in accordance with the Law and directives, prescribing of water supply conditions, wastewater collection and treatment, determination of public interest for the use of public water estate, determination of belonging to water estate and decision-making on the status of certain types of water estates, keeping of an integral information system of RS, establishing a special security measure, division and coordination of the use and earmarked expenditure of water fees in the territory of RS, assigning certain duties to the organization in the field of waters prescribed by the Law or other regulation, developing of laws and bylaws under the competence of the Ministry and other activities in accordance with the Law.”

Activities in the field of communal affairs, including supply with drinking water and wastewater collection and treatment are performed in the **Ministry of Spatial Development, Civil Engineering and Ecology**.

In addition to the said RS bodies of administration, expert and other activities in the sector of waters are performed by **Vode Srpske public institution**, which based on the law “manages waters, public water estate, and water and hydro technical facilities and systems, rivers, streams, lakes, in the manner prescribed by the Law in the territory of Republika Srpska in accordance with this Law (Law on Waters) and other appropriate regulations.”

### 2.3. Institutions at the Entity level – Federation of Bosnia and Herzegovina

The main institution in charge of waters in the Federation of Bosnia and Herzegovina is the **Federation Ministry of Agriculture, Water Management and Forestry**.

Pursuant to Article 19 of the Law on Federation Ministries and other bodies of Federation Administration (Official Gazette of FB&H, Vol: 58/02, 19/03, 38/05, 2/06, 8/06, 61/06, 52/09, 48/11) this Ministry, among others, “performs the administrative,

expert and other duties under the competence of FB&H which pertain to: water springs, water basics and balances, capture and use of waters, securing water for the needs of water supply to citizens and industry, inspection supervision and other activities determined by the Law.”

Although Article 20.a of the Law on Federation Ministries and Other Bodies of Federation Administration does not mention it, the activities of communal affairs, including water supply and wastewater collection and treatment are performed within the **Federation Ministry of Environment and Tourism**.

Pursuant to Article 152 of the Law on Waters (Official Gazette of FB&H, Vol: 70/06) agencies were established for water basins with a view of conducting the tasks of water management which were put under their competence by the Law on Waters and other regulations. In the territory of the Federation of Bosnia and Herzegovina, two agencies are established as follows: **Sava River Basin Agency** and **Adriatic Sea Basin Agency**.

## 2.4. Institution at the Cantonal level – the Federation of Bosnia and Herzegovina

The Constitution of the Federation of Bosnia and Herzegovina and the Cantonal Constitutions prescribe the joint competence of the Federation and Cantons, among others, for “the environmental protection policy.” Considering that the Law on Environmental Protection (Official Gazette of FB&H, Vol: 33/03, 38/09) prescribes that the sector of waters is one of environmental components, this sector of waters falls under the joint competence of the Federation and Cantons. The activities in the sector of waters in Cantons are mainly carried out in the Ministries of Agriculture, Water Management and Forestry, and at some instances with the Ministry of Economy.

In some Cantons, the competence for the water management is as follows:

- Una-Sana Canton–Cantonal Ministry of Agriculture, Water Management and Forestry;
- Posavina Canton – Ministry of Agriculture, Water Management and Forestry;
- Tuzla Canton – Ministry of Agriculture, Water Management and Forestry;

- Zenica-Doboj Canton – Ministry of Agriculture, Water Management and Forestry;
- Bosnia-Podrinje Canton – Cantonal Ministry of Economy;
- Central Bosnia Canton – Ministry of Agriculture, Water Management and Forestry;
- Herzegovina-Neretva Canton – Ministry of Agriculture, Water Management and Forestry;
- West Herzegovina Canton – Ministry of Spatial Development, Resources and Environmental Protection;
- Sarajevo Canton – Ministry of Economy;
- Livno Canton – Ministry of Agriculture, Water Management and Forestry.

With regard to the communal affairs issues, including the activity of water supply and wastewater collection and treatment, the majority of Cantons organized them in different ministries, mainly the ministries in charge of spatial development and environmental protection. This is the case in Una-Sana Canton which organized the communal affairs within the Cantonal Ministry of Civil Engineering, Spatial Development and Environmental Protection. However, this Canton initiated the activities in reorganization of Cantonal ministries with a view of joining the activities of environmental protection and waters within one Ministry. The Consultant is not aware of such or similar activities in other activities.

## 2.5. Institutions at the level of Brčko District

According to the Law on Public Administration of Brčko District of Bosnia and Herzegovina the activities of “regime, utilization, use and protection of waters and water courses” are carried out in the Department **of Agriculture, Forestry and Water Management of the Brčko District Government**.

The activities in the field of communal affairs such as “the development of policy, strategy and legal framework for the water supply management” and “monitoring the communal services tariff policy” are carried out in **the Communal Affairs Department of the Brčko District Government**.

## 2.6. Institutions at the municipal/town level

The activities in the sector of waters and communal affairs are differently organized in local self-governance units (municipalities and towns) in Bosnia and Herzegovina. The majority of municipalities organized the activities in the field of waters and communal affairs in two or more municipal bodies of administration. In preparing this Study, the Consultant did not analyze municipal acts on the organization of works but he used available documents relevant to the topic.

**As part of the Municipal Water and Environmental Development "GOV-WADE" Project-** analyses were made in 2008 and 2011 of the organization of municipal services in the field of water and environmental protection. The analyses covered the municipalities in Una-Sana Canton (Bihać, Bosanska Krupa, Cazin, Bužim, Sanski Most) and Republika Srpska (Prijedor, Novi Grad, Kostajnica, Kozarska Dubica), and the municipality of Drvar in Livno Canton.

The activities in the field of waters, environmental protection and communal affairs were organized within one Service in one Section in the Municipality of Bihać only, and in all other municipalities they are organized in two or more Services (Departments).

In 2013, the municipality of Bihać had made a new reorganization of municipal services and organized a special Service of communal affairs, water, environmental protection and inspection, which carries out all activities within the competence of the Municipality in the sector of communal affairs, waters and environmental protection. Using the experience of GOV-WADE Project, other municipalities of Una-Sana Canton organized the activities of communal affairs, waters and environmental protection within one Service that is as one organizational unit within the Service. However, terms of reference in the organizational unit as well as each working post in the Service are scarce and mainly refer to "activities in the domain of communal affairs, waters and environmental protection" without mentioning specific activities. With the exception of the Municipality of Bihać, the majority of work posts include also carrying out of other tasks. Although the Consultant did not have available data from other municipalities in Bosnia and Herzegovina, it can be assumed that situation is similar as in the municipalities mentioned in this analysis.

2.7. Entities which perform communal affairs of water supply and wastewater collection and treatment

### 2.7.1. Republika Srpska territory

Article 12 sub-paragraph b) line 2 of the Law on Self-Governance (Official Gazette of Republika Srpska, Vol: 101/04), prescribed the independent competence of municipalities which include "regulation and provision of communal affairs: production and delivery of water, gas, heating energy, public transportation, sanitation, wastewater collection and treatment, maintenance of cemeteries and provision of funeral services, maintenance of streets, roads, parks, green areas, recreational and other areas, collection of precipitation and cleaning of public areas."

Article 7(1) of the Law on Communal Affairs(Official Gazette of Republika Srpska, Vol: 124/11) prescribes that "the local self-governance unit may establish a public utilities company or entrust other business entities which are obligated to perform the entrusted communal affairs in accordance with this Law and other regulations." Paragraph (4) of the said Article reads that "the local self-governance unit gives communal facilities and devices of individual and joint consumption to the communal service provider to manage, use and maintain."

Article 8 of the Law on Communal Affairs reads that "The Assembly of the local-self-governance unit shall closely describe in the Decision on the establishment of a public company:

- a) Affairs of the public company;
- b) Conditions on which communal affairs are performed;
- c) Rights and obligations of the founder in terms of public company management;
- d) Manner of setting tariffs of products and services and
- e) Conditions in which a public company may entrust the performing of communal affairs to another business facility in accordance with a separate law".

The said provisions of the Law on Communal Affairs are taken over from the previous Law on Communal Affairs (Official Gazette of RS, Vol: 11/95, 18/95 and 51/02) and they are almost identical to the pre-war Law on Communal Affairs (Official Ga-

zette of SRB&H, Vol: 20/90). Similar provisions also existed in the past Law on Communal Affairs (Official Gazette of SRB&H, Vol: 40/75, 16/82, 29/86 and 12/87).

All entities in Republika Srpska which perform communal affairs of water supply and wastewater collection and treatment were established as public utilities companies before the war in accordance with the then existing Law on Communal Affairs. However, in the post-war period there were some status changes in the operations of public utilities companies in the RS, and they were not in accordance with the valid Law on Communal Affairs. In the process of the state capital privatization according to the Law on Privatization of State Capital (Official Gazette of RS, Vol.: 24/98, 62/02, 65/03, 38/04), a change was made in the capital ownership in the public utilities companies in as much as that Republika Srpska became the majority owner of the capital in most of public utilities companies in Republika Srpska, and got the majority management package in those companies. At the same time, the form of public utilities companies' organization was changed in as much as the public utilities companies became shareholding companies without taking into consideration the rights and obligations of municipalities as founders of the public utilities companies or a special common interest in the provision of communal affairs. In most cases the municipalities were not even consulted in the process of the state capital privatization and changes in the organization of public utilities companies.

During the procedure of changes in the organization of shareholding companies, there was no consideration for the Law on Communal Affairs or Law on Local Self-Governance according to which the affairs performed by public utilities companies are categorized as "independent competence" of local self-governance units.

This situation in Republika Srpska had some effects on the relations between municipalities and communal affairs companies (former public utilities companies - current shareholding companies) and on the provision of communal affairs in their entirety.

Only after the enactment of the Law on Local Self-Governance, Law on Determination and Transfer of Rights to Dispose with Property to Local Self-Governance Units (Official Gazette of RS, Vol: 70/06) and the Law on Transfer of Right to Capital of Republika Srpska in Communal Affairs Companies to Local Self-Governance Units (Offi-

cial Gazette of RS, Vol: 50/10), were the conditions met to reinstate the rights of local self-governance units in the provision of communal affairs. This is to be followed by organizational changes of current shareholding companies in accordance with the Law on Communal Affairs. Without these changes there will be no active role of local self-governance units in the provision of conditions for performing of communal affairs of water supply and wastewater collection and treatment.

There are other activities performed within utilities companies in addition to the communal affairs of water supply and wastewater collection and treatment.

## 2.7.2. The territory of the Federation of Bosnia and Herzegovina

Communal affairs of water supply and wastewater collection and treatment in the Federation of Bosnia and Herzegovina are performed by public utilities companies which are legal successors of public utilities companies established before the war in accordance with the then valid Law on Communal Affairs of SRB&H. Municipalities were the founders of public utilities companies and they were also the capital owners of those companies.

Although the then valid Law on Communal Affairs regulated the contents of municipal decisions on the establishment of public utilities companies the following was not properly regulated therein: rights and obligations of the municipalities as the founders of public utilities companies, mutual relations between the municipalities as founders and public utilities companies as service providers, the manner of tariff setting of communal products and services, as well as other conditions related to the provision of communal affairs.

In accordance with the powers vested in them by the Constitution, all FB&H Cantons reached their Laws on Communal Affairs in the period from 2004 to 2013 declaring ineffective the pre-war Law on Communal Affairs (Official Gazette of SRB&H, Vol: 20/90). In the meantime, the majority of municipalities in the Federation of B&H harmonized the decisions on the establishment (organization) of public utilities companies with the new Federation Laws: Law on Business Companies and Law on Public Companies in the Federation of B&H. However, the decisions on the establishment of public utilities companies were not harmonized with new Cantonal Laws on Communal Affairs wherefore

the valid municipal decisions on the organization of public utilities companies remained incomplete and deficient in the part related to the rights, obligations and responsibilities of the municipalities as founders of public utilities companies, mutual relations between the municipalities as founders and public utilities companies as service providers, the manner of tariff setting of communal products and services, as well as other conditions related to the provision of communal affairs.

In the meantime, the Law on Local Self-Governance Principles was enacted in the Federation of B&H (Official Gazette of FB&H, Vol: 49/06) which prescribed, among others, that the local self-governance units' own competences include communal affairs, among them water supply and wastewater collection and treatment.

With a view of improving the provision of communal affairs, it is necessary to harmonize Cantonal Laws on Communal Affairs with the Law on Local Self-Governance Principles in the Federation of B&H especially in the part related to the establishment of public utilities companies and securing the conditions for the provision of communal affairs and after that to start updating the municipal decisions on the establishment (organization) of public utilities companies.

There are other activities performed within utilities companies in addition to the communal affairs of water supply and wastewater collection and treatment.

### 2.7.3. Territory of Brčko District

Article 60(1) of the Statute of the Brčko District of Bosnia and Herzegovina – revised text prescribes that “a District law may prescribe the transfer of competences from the District Government and public administration to public companies which render services to the District residents or on behalf of the District residents manage the public finances or public property.”

Article 3(1) of the Law on Communal Affairs (Official Gazette of the Brčko District of B&H, Vol: 30/04, 24/07,--/13) prescribes that “Communal affairs in accordance with this Law may be performed by:

- Relevant Departments of the Brčko District Government;
- Public companies;
- Legal entities and natural persons whom the

Mayor entrusts the communal affairs by the contract.”

Paragraph (2) of the said Article prescribes that: “The responsibility for communal affairs lies with the Head of the Department competent for these affairs, or legal entity or natural person whom the Mayor entrusts the performing of communal affairs.”

The Law on Communal Affairs did not regulate the manner in which and acts under which public utilities companies are established, and the manner in which certain communal affairs are entrusted to a public company. Furthermore, it is not prescribed as to how and under which conditions the communal facilities and devices are entrusted to service providers for management and maintenance.

Communal affairs of water supply and wastewater collection and treatment in the Brčko District territory are performed by the public utilities company Komunalno Brčko d.o.o. Brčko District established in late 2007 by the Decision of Brčko District Assembly. Before the public company was established, communal affairs were under the competence of the Brčko District Government, that is, the competent Department of the Brčko District Government. Besides the activities of water supply and wastewater collection and treatment within the public utilities company Komunalno Brčko d.o.o. Brčko District, other activities are also performed such as: electricity distribution, waste transport and disposal and maintenance of public areas. The public company is made of four public units: Administration, Electricity Supply, Water Supply and Sewage/Sanitation.

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