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# STATE REGULATION OF DRINKING WATER AND SANITATION SECTOR IN THE REPUBLIC OF TAJIKISTAN:

## Current Situation and Challenges



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AND SANITATION SECTOR  
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## **Abbreviations used**

RT – Republic of Tajikistan

CC RT – Civil Code of the Republic of Tajikistan

WC RT – Water Code of the Republic of Tajikistan

SUE – State Unitary Enterprise

DWSS – Drinking Water Supply and Sanitation

RF– Russian Federation

MUE– Municipal Unitary Enterprise

OECD – Organization for Economic Cooperation and Development

MEWR RT – Ministry of Energy and Water Resources of the Republic of Tajikistan

# I. CONCEPT AND PRINCIPLES OF REGULATION IN THE DWSS SECTOR

## 1.1. Commercialization of the DWSS sector and new approaches to regulation

Services that are rendered due to technological and economic characteristics and are of public nature are considered natural monopolies. Such natural monopolies include enterprises of electric, water and natural gas supply; companies that provide telecommunication services; stations, terminals and airports. Since the late 19th century during the period of development of capitalist relations in the world natural monopolies were in a special privileged position, often administered directly by the State. The economic effect from these natural monopolies covered all other "social" costs of such similar legal entities. The State directly funded their activities covering their economic hardships. But with the growth of cities and with development of market relations since the mid - 20th century the expanding enterprises of natural monopolists began experiencing more serious economic difficulties, which began to affect the State and municipal budgets. State-owned enterprises failed to meet changing market dynamics and the need for modernization and expansion required new approaches to financing and management mechanisms. Since the 60-es of the last century almost simultaneously in different European countries attempts commenced to reform natural monopolies. In view of the fact that the situation of a natural monopoly in the market was unavoidable, reformers began to search for other forms of commercialization of the sector.

Reforms related to the commercialization relationships in the sector of DWSS usually are complicated by a number of specific features of this field, in particular:

- High fixed costs and technology features transform the enterprise sector into natural monopolies;
- Water as a product indispensable for human life is perceived by population primarily as a social good, this, often justifies the direct intervention of state authorities into the economic activities of such enterprises in the sector;
- Water is a product of the so-called local consumption, and responsibility for water most often lies with the local authorities, but at the same time this is a resource, consumption of which, due to its natural features, must be regulated at the level of river basins and reservoirs, regions and at the national level, to ensure a balanced approach to the use of water resources;
- Water is a product of multi-use; in addition to drinking, it is also used for irrigation, communal and household purposes, as well as for production and industrial purposes. Therefore, a large number of stakeholders from different levels, sectors and legal forms are concentrated in the water sector;
- Potential investors in the DWSS sector face several risks typical of the field: commercial, contractual, challenging pricing policies, excessive state intervention, social costs, technological problems and other risks;
- Involvement and participation of the private sector in the DWSS should entail reforms and approaches in public administration.

Given these characteristics today, a commercialization of enterprises of DWSS are known as corporatization<sup>1</sup>, privatization, liberalization and/or transfer to the private management of the natural monopolies. And these reforms were inseparably linked with the definition of the role of the State in the sector, which withdrew from direct involvement in the sector; and with the regulation of processes taking place in the sector. Such regulation was now purely of economic nature, without direct intervention and involvement of the State in operational activities. New institutions were established – the regulating bodies.

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<sup>1</sup> **Corporatization** - the term used by the international financial institutions. It means privatization through corporatization of enterprises. State reorganize state-owned enterprises into joint-stock, initially with a predominant share of the shares owned by the state. – *Annotation by the author*

Market reform of the relationships in the housing and communal services (HCS) in Tajikistan was initiated with the first days of its independence. The ongoing reforms of the sector is reflected in the Concept of the Reform of Housing and Communal Services of the Republic of Tajikistan for the years 2010-2025, which was approved by the Government of the Republic of Tajikistan on July 1, 2010, No 321. In accordance with its provisions, the main purpose of this Concept is the creation of economic, legal and organizational conditions for break-even operations; further development and reform of housing and communal services, which aims at improving the efficiency, reliable operation of the systems of the sustenance of the population; improving the quality of services provided; the availability of utility services to each and everyone. Among its tasks, the Concept also has the task of *demonopolization of the industry*; creation of conditions for the development of market relations; the formation of contractual relations; development of competition environment in the market of utility services. However, the Concept does not consider the relevant public administration reform in the sector of DWSS.

In countries with developed market economies, the concepts of State regulation in the sector of public services are implemented differently using different approaches. Such approaches can be combined into following methods by a State regulation<sup>2</sup>:

### **Direct management of enterprises that are in the State (municipal) possession, from the State side (municipalities) as the owner**

This method of regulation in practice can be built differently. For example, in the United States a creation of so-called "public" companies –the public utilities have received a wide application. These are strictly unprofitable enterprises, where collected consumers payments and fees are intended only to cover the production costs of the enterprise and, if necessary, expansion of services. Another kind is when the State creates a Stock company (corporation) and keeps the controlling shares for itself, or in its Charter indicates a "shareholder's golden rule", according to which the shareholder could influence the economic decisions of the company. This approach is also widespread in the DWSS of Germany. A path that is taken in Tajikistan and other countries of the CIS is the establishment of State-owned enterprises, which, having a certain share of economic isolation, at the same time are subordinate to their parent governmental bodies. The activities of such enterprises in the CIS countries are traditionally governed by anti-trust authorities.

### **Creation of special regulatory authorities responsible for monitoring of the activities of companies, primarily in private sector**

Pioneers in establishing special authorities to regulate the sector can be named the United States, where regulators were created in various forms from the early last century. Their purpose was an economic control over the activities of private companies in public services with a view to achieving a balance of interests between suppliers and users of services. Such regulation in the United States is done at the Federal and State levels to this day. State does not carry out the regulation of state companies in the United States, due to the fact that public companies in the United States (public utilities) are non-profit, as indicated above. In some countries, regulatory authorities are also implementing regulation of State-owned enterprises, which are commercial enterprises and their activities are aimed at making a profit. Regulators are created in the form of Commissions to ensure collegiateity of their decisions. In order to ensure their political and financial independence from the Executive Branch, special legislation is developed and adopted giving such authorities wide-ranging powers and clearly defined rights and responsibilities.

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<sup>2</sup> "On the possibility of adapting foreign experience of state regulation of natural monopolies in modern Russian conditions" Radyukova, E.A.

### **Competitive access to market (or regulation through contractual relationships)**

One of the most popular current approaches both to regulate and to commercialize the sector. Among the European countries the leader in contract management in the DWSS sector is France, where the first contracts between the State and the private sector in the management of infrastructure and facilities were placed back in the 19 century. The object of the competition in this form of commercialization of the DWSS sector is the right to manage. Basic means of regulating are terms of the contract that originally prescribe conditions on tariffs and economic performance indicators. Competition is fostered between various managers of the organizations for the right to manage. Depending on the contract terms, the investment part remains with the State, or is partially passed to the management of the organization.

In all three methods of regulation the State plays primarily a role of the economic regulator, determining the scope of activities of enterprises through tariffs and licensing, as well as reserves the role of technical supervision over the safety and quality of services in the sphere of DWSS. In some countries, for example in Armenia, besides the regulation through contracts, it is also performed through the creation of special authorities, as described in the paragraph above.

Methods of regulation also vary, but can be applied in each ways described above. For regulating natural monopolies often price-tariff methods are applied. The State shall carry out such price/tariff regulation restraining, lowering or raising rates in a variety of ways, for example:

#### **Coordination and approval of fixed prices and tariffs**

A simpler method of regulation, not based on specialized calculations. Water supply company develops its rates and an appropriate regulatory authority assesses the feasibility of these tariffs on general basis and, accordingly, accepts, corrects, or rejects the requested need to raise tariffs. The object of the regulation is the declared tariff. Roughly, this is the process, by which the coordination and approval of tariffs for natural monopolies in Tajikistan is carried out.

#### **Establishment of marginal prices/tariffs**

The State solely establishes the maximum tariffs for services. A water supply company must carry out its activities based on a set marginal prices.

#### **Establishment of marginal rate of return**

It is a more structured method of tariff regulation of the activities of companies. The object of regulation here is the level of profitability. Profitability - is an overall economic efficiency of the enterprise or use of capital/resources (material, financial, etc.). Typically, the basis is the profitability of production, calculated as a ratio of gross revenue to the cost of goods manufactured (in liters in relation to the services of drinking water and sanitation), multiplied by 100 percent. Relevant public authority sets the marginal level of profitability as a percentage. Tariffs, which exceed the actual profitability of the established level must be reduced. Usually, this rate is 10-12 percent.

#### **Method of rate of return on invested capital**

(RAB - Regulatory Asset Base - adjustable base of invested capital) - is a system of long-term tariff, whose main goal is to attract investment for the expansion and modernization of infrastructure. The first time this technique of price formation based on the Regulated Tariff Base on invested capital (RAB) was applied in the UK in the late 1980s in the process of privatization of the electric grid system and liberalization of the energy sector. In the mid-1990s many countries of Western Europe, Canada, USA, Australia switched to the RAB, but with their own customization. The European Union obligated the Eastern European countries in 2002 to apply the RAB-regulation in setting tariffs for monopolies. The main idea of the formation of the necessary gross revenue (NGR) by the RAB method is a well-known and established principle,



according to which the investor is entitled to receive income from the investment, equal to the established interest recognized as fair by the market participants and to return all the capital invested by the end of the investment period. The object of regulation here is the income received on capital invested. The method allows to increase the investment attractiveness of the sector. For consumers, this method is similar to the mortgage, since the value of the tariffs includes the cost of the modernization and maintenance of networks and equipment. The State oversees the transparency of water charges of the enterprise. Such regulation is usually long-term and depends on the value of the invested capital.

### **Other methods**

In different countries such methods as "freezing of tariffs" - a temporary or partial ban on the increase in tariffs, is also used. Another method - the method of fixing prices or limiting the size of supply/ marketing and trade margins and discounts for natural monopolists.

Both, the methods and techniques are used in various combinations throughout the world. By analyzing their success in some countries and the failures in a number of other countries, international organizations have developed common principles for reforming the sector and the creation of effective mechanisms of state regulation, which were then set out in a number of international instruments.

### **1.2. International principles of reforming and adjusting the DWSS sector**

Effective regulation of the DWSS sector in Tajikistan cannot be built by simply copying the models and approaches to regulation in other countries, as these are complex changes that affect the economic and social aspects. In addition, each country has its own national context and specifics; different baseline conditions and economic and commercial opportunities. Therefore, the international practice recommends the use of guidelines for reforming the sector, which should be defined by the vectors in the planned changes. For purposes of this analysis, we can review some of the international instruments, which are of regional and international character.

In 2000 in Almaty at the inter-ministerial meeting of the CIS countries, the Guiding Principles for Reform of the Urban Water Supply and Sanitation Sector in the NIS<sup>3</sup> were adopted. These principles are primarily focused on urban areas, but have also been used in different countries and in rural areas. These principles are regional and designed with the participation of OECD<sup>4</sup> experts. Principles define the following areas of action in the reforming of the sector:

#### **Definition of objectives**

This basic principle defines the main aim of the reform, which should be focused on providing reliable and sustainable delivery of quality water and sanitation services with minimal cost to the public. Based on that, countries in the region are encouraged to develop national programs of action to create conditions for the participation of stakeholders, including government and non-governmental, as well as identify targets for the development of strategies to achieve them. The section also recommends sector reforms to integrate into systems on the basis of river basin management.

#### **The role of national authorities**

This principle is intended to clearly define the role of government in the sector of drinking water supply and sanitation at the national and local levels. In particular, States should carry out the basis of management of the DWSS sector through:

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<sup>3</sup> The text of the Guiding Principles: <http://www.oecd.org/environment/outreach/2390168.pdf>

<sup>4</sup> Organization for Economic Cooperation and Development (OECD abbr, English Organization for Economic Cooperation and Development, OECD..) - An international economic organization of developed countries, recognizing the principles of representative democracy and free market economy, more on the organization's website - <http://www.oecd.org/>

- *Decentralization* - the transfer of responsibility from the central government to local public authorities, subject to the development of appropriate legal and regulatory framework that enables to solve issues with the financing, ownership, at the same time avoiding excessive fragmentation;
- *The establishment and operation of the regulatory body.* This principle provides for the establishment of an independent national regulatory authority. To carry out its work effectively, States should create a tight but realistic performance standards in environmental, health aspects and aspects of water resource management. Also, an appropriate legal framework should be developed for the functioning of the regulatory authority and for exercising its powers.
- *Develop a strategy and technical assistance.* Recognizing the difficult economic situation of water supply enterprises, States should assist by (a) defining strategic measures of sectoral policies and development goals, including investment strategies, and methods of their financing; (b) assisting water supply entities and local public authorities in the areas such as the strengthening of their capacities; financing and coordination of international assistance; (c) supporting the certain water utilities transformation demonstration projects; (d) facilitating the establishment of the market and promoting competition in the supply of goods and services to water utilities.

### **Role of local authorities and water utilities enterprises**

This principle considers the development of a strategy for local authorities and relevant water utilities. The strategy considers the following priority areas:

- Creation of water supply enterprises on a commercial basis, with the necessary level of business and economic independence;
- Strengthening the capacity of local public authorities in the field of regulatory oversight for the water utilities activities;
- Invitation of private operators to participate in the provision of services of water supply and sanitation.

### **Public participation**

One key aspect of the success of reforms in DWSS sector is the public participation. In particular, the Government and the enterprises of water supply should be considered as a public process of decision-making on the reform of the sector and to ensure adequate access of the poor and vulnerable groups of the population to water supply and sanitation services. Special attention should be given to targeted social assistance to socially disadvantaged and vulnerable groups, developing their transparent subsidy scheme.

### **Establishing a framework of financial stability**

This principle involves issues of increasing collection and optimization of customer service, as well as a gradual increase in tariffs to cost-recovery levels.

### **Promoting the efficiency and cost-effective use of resources**

The strategy for implementing this principle consists of the following areas:

- Ensure an appropriate organizational structure of water utilities, which will contribute to the efficient use of water and other resources;
- Introduction of a new management culture in DWSS sector, which is based on well-defined functions, incentives for the initiative and the results of operations and proper accountability;
- Development of human resources management policies and achieving, in consultation with the workers, effective number of personnel;

- Development and implementation of strategies for the use of water meters, as well as the development of public awareness programs aimed at improving the efficiency of water use by consumers;
- Priority in the use of investment resources should be focused on projects that, (a) reduce operating costs through investments with high return; (b) enhance safety and reliability of water supply services, and (c) maintain and provide current repair and reconstruction of the most important elements in the DWSS infrastructure.

The Principles, according to the document, should be applied in the **following sequence of actions** agreed under the reform:

- Start of the multilateral process to support the development and implementation of strategies;
- Decentralization and transferring of authority to the local level;
- Creation of autonomous water utilities and independent regulatory body;
- Development of agreements between enterprises of water supply and local authorities aimed primarily at improving services through accessible and low-cost measures;
- Enhance financial stability of water utilities through reform of the tariff system, improving the payment collection and the arrears management.

These principles defined the strategy of reforms in the sector in the last 16 years. By analyzing the extent of **their application in the conditions of Tajikistan** the following conclusions can be made:

- The principles have been applied in certain parts and are being implemented with the reforming of the sector in the country to this day. They mainly concern the issues of developing sectoral strategies and involvement of external assistance programs. A definite legal framework (Law of RT "On Drinking Water and Drinking Water Supply", a number of changes and additions to the Water Code). Water treatment plants in some cities were established before 2000. Currently, the decentralization of the largest monopoly - the State Unitary Enterprise "Housing and communal services" is still ongoing;
- However, drastic changes in the sector on the above principles have not yet occurred. In particular:
  - Decentralization and the transfer of responsibility to local authorities and the creation of autonomous water treatment plants have not fully taken place, the process is just beginning and the separation continues;
  - A single independent regulator has not been established or is not operational;
  - Sustainability strategies of the sector are not available; all industry funding programs are based on external borrowing;
  - Legal and regulatory framework does not allow to effectively build effective economic relations between enterprises of water supply; almost no opportunities for private sector participation in the management of water supply enterprises;
  - Tariff policy is not revised; the existing tariffs do not provide reimbursement of costs to water supply entities;
  - The public is practically not involved in the reform process and decision-making in the DWSS sector.

Therefore, the application of these principles in Tajikistan is still to come and is a promising challenge in the sector.

## **II. REGULATION IN THE SECTOR OF DRINKING WATER SUPPLY AND SANITATION IN TAJIKISTAN: LEGAL AND PRACTICAL ASPECTS**

### **2.1. Economic and antitrust regulation**

After the change of political and economic course, the former Soviet republics commenced creation and development of market institutions. One of the first state institution regulating market processes is the Anti-monopoly authority. As mentioned above, the body is not directly involved in the regulation of natural monopolies, and oversees the activities of the various monopolies and companies that have dominating position in the market, so that they do not take advantage of their position and do not restrict competition for other market participants. But in several countries, including Tajikistan, the role of the Anti-monopoly body was transformed into a common regulatory body of natural monopolies. It is this body that is usually "accused" for raising rates.

However, in developed countries, antitrust regulation clearly separated from economic regulation of natural monopolies.

### **Regulation**

Regulation of natural monopolies is carried out with the purpose of state influence on the economic activity of entities of natural monopolies. The objectives of this regulation - to balance the interests of consumers and regulated entities designed for further sustainable development of the sector. Regulators are formed as independent commissions, which are a collegiate body. Collegiateity provides a more informed decision. Independence of such bodies is understood as isolation from the rest of the public authorities, in order to avoid their interference in the activities of the commissions. Control methods used by the regulating authorities are:

- The establishment of regulated tariffs;
- Licensing, establishment of license conditions and control in their relationship (in the countries where the activities of the DWSS is licensed);
- Establishment of rules and regulations of functioning of the market;
- Establishment of requirements to quality of service;
- Establishment of exemplary forms of contracts made with consumers;
- Participation in the development of normative legal acts, control over their execution, within their competence;
- The introduction of reporting for the regulating entities;
- The study of the development of investment programs submitted by persons having a license to operate, with a view to the inclusion or non-inclusion of investments (total or partial) in the future tariffs;
- Protecting the rights and interests of consumers of regulating organizations.

### **Anti-monopoly policy**

This is regulation to prevent the natural monopoly from the use of its monopoly position. Control and limitation of natural monopolies by the Anti-monopoly agency is carried out through:

- Restricting prices and, consequently, the monopoly profits by means of legislation and collective agreements;
- Prevention of decreasing of production by monopoly, usually through an agreement between the state and the monopoly;
- Restriction of discrimination of consumers. In particular, the restriction of discrimination of consumers the individuals;
- Control of the price formation of monopolies. That is, firstly, preventing monopoly from increasing their own overhead expenses; secondly, the prevention of the sale of by-

products to consumers at the same time as the sale of necessary goods; and thirdly, supervision to ensure that the monopoly charged for the actual consumed product.

With sufficient similarity, at first glance, of the above mentioned market institutions, the main directions of economic regulation in the sector and competition policy, in fact, are different and often conflict of interests arises. For example, one method of regulation is licensing that in essence is a restriction of competition and becomes a barrier for entry for other companies. Antitrust policy is aimed at limiting certain behavior of natural monopolies in the market, and the regulation is aimed at the sustainable development of natural monopolies, which, at times and in the short term, may be detrimental to consumers. Another example, the Anti-monopoly policy, as a whole, aims to limit attempts of merging of monopolies. The regulatory authority may, on the contrary, advocate for the merger of large water utilities because of economic considerations and to reduce fixed costs for efficiency purposes.

There is no single industry regulator in the sector of drinking water supply and sanitation in Tajikistan today. Moreover, the very concept of the term regulation in the legislation of Tajikistan is not explicitly present, but instead, and close to the sector regulatory function, the "state control and supervision" stated, and the term the "authorized body" is used instead of "regulatory body". Indicated spheres of control and oversight and the direction of activities of the competent authorities, only distantly related to the functions of economic regulation of the sector.

Economic analysis of activity of the enterprises of drinking water supply and sanitation is carried out in the process of harmonization of tariffs by the Anti-monopoly Service under the Government of Tajikistan.

## **2.2. Legislative regulatory framework in the DWSS sector**

### **2.2.1. Overview with the regulatory framework in the field of the DWSS**

Special regulations in DWSS consist of a number of laws and legal acts. The two main laws regulating the DWSS are the Water Code of the Republic of Tajikistan dated 29 November 2000 (Akhbori Majlisi Oli of the Republic of Tajikistan, 2000, number 11, Article 510, 2006, No 3, Article 164, 2008, No 3, .. Article 200; 2009, No 12, art.824; Law of RT 28.06.11, No 744; from 16.04.2012, No821) and a special law – the Law of the Republic of Tajikistan "on drinking water and drinking water Supply" of December 29, 2010. Regulatory matters in these regulatory legal acts are presented as follows:

#### **Water Code of the Republic of Tajikistan**

The objectives of the Water Code of the Republic of Tajikistan are the protection of the water resources and the lands of the state water resources for the improvement of social conditions of the population and of the environment; protection of waters from pollution, depletion, prevention and elimination of harmful effects of water, improvement and protection of water bodies, and other relevant matters. Therefore, the state regulation of the DWSS sector separately in the Water Code is almost not considered. There are some general rules that can be attributed to regulatory issues also of the DWSS sector. For example, Article 6 of the Code states the Government's authority to "regulate issues related to the establishment of tariffs for water supply services, including their differentiation, depending on the actual cost of services."

#### **Law of the Republic of Tajikistan "On Drinking Water and Drinking Water Supply"**

This Law in accordance with the provisions of the Law "On normative legal acts" has greater legal force than the Water Code in relation to the sector of drinking water supply. Since, according to the provisions of Article 70 of the Law "On normative legal acts", first of all, by the date of entry into force is newer, second, it is more specific in relation to the regulated area. Therefore, norms of the Law "On Drinking Water and Drinking Water Supply" are of decisive

importance in comparison to the provisions of the Water Code. In cases of contradictions in the norms of these two legal acts, the provisions of the Law "On Drinking Water and Drinking Water Supply" shall apply. The law does not contain direct norms relating to regulation of the DWSS sector. **As indicated above, the term "regulation" is rarely used in its pure form in the national legislation.** Separate rules, which by nature can be attributed to some of the issues of a regulatory nature, are presented in the following norms of the Law:

▪ **Article 5** "The competence of the Government of the Republic of Tajikistan in the field of drinking water supply" also includes the "Determination of the procedure of the state control and supervision in the field of drinking water supply." The law does not elaborate only such procedure.

▪ **Article 6.** "The competence of the authorized body in the field of drinking water supply." This article introduces the concept of the authorized body in the sphere of drinking water supply and refers to its competence the following powers:

- Preparation and organization of the implementation of the main directions of the state policy in the field of drinking water supply;
- Enforcing a single state scientific and technical policy on consumers (individuals and legal persons) of drinking water in accordance with regulations and quality standards of drinking water consumption;
- Coordination of research in the field of drinking water and the production of the necessary materials and chemicals for cleaning and disinfection of drinking water; and the provision of funding;
- The organization of regulation and accounting of drinking water consumption;
- Approval of targeted regional programs and action plans for the creation, maintenance and development of drinking water supply systems;
- Determination of measures of protection and the protection of sources of drinking water supply systems;
- The organization of technological and environmental audit of drinking water supply systems;
- The organization of training, retraining and advanced training in the field of drinking water supply;
- Determination of the order of certification for standards for the drinking water quality;
- The introduction of in the prescribed manner to the Government of the Republic of Tajikistan drafts of regulatory - legal acts;
- Development, approval of standards and rules of operation of water supply systems in coordination with the relevant authorities.

**All these powers are of a technical, standard-setting, scientific and exploratory nature, but not of an industry regulator, as described in the previous section of this analysis.**

**Article 7.** Describes the following powers of local executive bodies of state authority in the field of drinking water supply:

- Approval of the target programs and action plans for the creation, maintenance and development of drinking water supply systems;
- Improving the quality of drinking water and its rational use;
- Protection of resources and sources of drinking water from pollution and depletion;
- Protection of systems and drinking water sources from damage;
- The organization of providing legal entities and individuals with drinking water in accordance with the norms of the drinking water consumption.

These powers are also not of regulatory nature, and in general do not affect directly the economic activities of enterprises of water supply.

## **Resolution of the Government of the Republic of Tajikistan "On approval of the procedure of state control and supervision of drinking water."**

In order to implement the provisions of Article 5 of the Law "On Drinking Water and Drinking Water Supply." The Government issued a special decree No 679 "On Approval of the Procedure of state control and supervision of drinking water supply" on December 31, 2011. The decree consists of the following three points:

- 1) Designate the State Unitary Enterprise "Khojagii manziliyu kommunali" as authorized state body in the sphere of drinking water supply.
- 2) Approve the procedure of state control and supervision of drinking water supply (enclosed).
- 3) The public authorities to enforce state control and supervision of drinking water in accordance with the provisions of this Law.

The Decree defines in paragraph 1 that "the authorized body in the field of drinking water" is the State Unitary Enterprise "Khojagii manziliyu Kommunalni" (SUE KMK). The very procedure of the state control is disclosed in the annex to the Decree, which is called the "Procedure of state control and supervision in the sphere of drinking water supply." Further, the third paragraph states that "competent authorities" are responsible for execution of the state control and supervision in the sphere of drinking water supply. From here follow the following conclusions:

- There is no single agency that would be recognized as the main coordinating body for the state control and supervision in this area.
- The authorities are shared between different government agencies, as indicated in the "Procedure of state control and supervision in the field of drinking water supply."
- In the text of the "Procedure of state control and supervision in the field of drinking water supply" there is a description of the functions and authority of the SUE KMK - there, according to the context of the Article 6 of the Law "On Drinking Water and Drinking Water Supply", part of the authority is described in it, the remaining part is distributed between other specified bodies.

If, according to the text of the Decree and the Law, the authorized body is the SUE KMK, several questions arise about the conformity of the norms and standards of the legislature. In particular, in accordance with the Law "On State-Owned Enterprises" of 28 February 2004 - "State Unitary Enterprise - is a *commercial organization*, not endowed with the ownership of the property assigned to it by the owner." Giving the commercial organization, which is itself engaged in drinking water supply, the authority to develop regulations that will be the same for other market participants, as well as other regulations in this area, is definitely a competitive advantage, and, in fact, is not allowed. Moreover, the regulation is a function of state bodies, not state established commercial structures, which is the State Unitary Enterprise. Finally, it is contrary to the provisions of the Law "On State-Owned Enterprises" of 28 February 2004, which states in Article 9 that "*it is not allowed to transfer the founder or the body authorized state enterprises or state control of licensing functions*".

Attached to the decision the "Procedure of state control and supervision of drinking water supply" defines as its main task of the state control and supervision in the field of drinking water supply to ensure compliance with legal entities and individuals the following rules and regulations:

- The legislation of the Republic of Tajikistan in the field of drinking water supply;
- The requirements of the protection of sources of drinking water supply systems;
- Organization of accounting standards of drinking water;
- Standards for safe operations in the construction of drinking water supply system;
- Mode of continuous supply of drinking water to consumers in accordance with the established norms of drinking water consumption and standards of quality of the water;

- Legal guarantees for the supply of drinking water to consumers in accordance with the established norms of drinking water consumption and quality;
- State guarantees of reliability and safety of drinking water, as well as liability for violations of norms in this field;
- Rights, obligations and responsibilities of public authorities, other legal entities and individuals in the field of drinking water supply.

The system of state bodies exercising control and supervision within its competence include:

- The Ministry of Health of the Republic of Tajikistan;
- The Committee for Environmental Protection under the Government of the Republic of Tajikistan;
- Agency for Standardization, Metrology, Certification and Trade Inspection under the Government of the Republic of Tajikistan;
- Committee on Architecture and Construction under the Government of the Republic of Tajikistan;
- Main Department of Geology under the Government of the Republic of Tajikistan;
- General Directorate of State Supervision over Safety in Industry and Mining under the Government of the Republic of Tajikistan;
- Local executive bodies of state authority.

However, the main ministry- the Ministry of Energy and Water Resources of the Republic of Tajikistan (MEW RT) is not on the list of authorized bodies, which is explained primarily by the fact that when this decision was passed, the Ministry of Energy and Water Resources did not exist and was created later<sup>5</sup>. The Provision on the Ministry specified number of authorities that are directly related to water resources and facilities. Therefore, with the adoption of the decision of the Government of RT on December 30, 2015 No 791 on a program of reforms in the water sector of Tajikistan for 2016-2025 and the plan of its implementation there seems necessary redistribution of functional responsibilities between ministries and agencies in the water sector, with a view of the authority of the RT MEWR and to approve them by the respective decision of the Government of Tajikistan.

The "Procedure of state control and supervision of drinking water supply" (hereinafter Procedure) contains the following basic functions of authorized bodies in the sphere of drinking water supply:

**State Unitary Enterprise "Khojagii manziliyu communal" within its competence, carries out the following:**

- implementation of state programs for the development of drinking water supply systems and the rational use of funds allocated for this purpose;
- rational use of established standards and limits of water consumption by consumers and compilation of summary data on the use of drinking water supply system;
- ensuring the protection and safety of sources and drinking water supply systems;
- formation and rational use and protection of drinking water supply systems;
- organization of valuation and accounting of drinking water;
- maintenance of state registration and monitoring of the status of drinking water supply systems, monitoring the technical condition of water supply facilities;
- organization of technological and environmental audit of drinking water supply systems.

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<sup>5</sup> PROVISION on the Ministry of Energy and Water Resources of the Republic of Tajikistan, approved by Decree of the Government of Tajikistan on March 3, 2014, number 149



**The Ministry of Health of the Republic of Tajikistan within its competence, carries out state control and supervision in the following areas:**

- compliance of the drinking water quality regulatory requirements in compliance with the established special regimes of economic and other activities in the areas of sanitary protection;
- observance of sanitary rules and norms in the location, design, construction, reconstruction and commissioning of drinking water supply systems;
- activities to prevent and eliminate pollution of drinking water sources.

**The Committee for Environmental Protection under the Government of the Republic of Tajikistan within its competence, carries out state control and supervision in the following areas:**

- compliance with environmental requirements for the location, design, construction, reconstruction and commissioning of drinking water supply in compliance with the established special regimes of economic and other activities in the areas of sanitary protection;
- conditions, usage and protection of sources of drinking water from clogging by household waste;
- compliance with drilling wells of drinking water in accordance with the legislation of the Republic of Tajikistan.

**Agency for Standardization, Metrology, Certification and Trade Inspection under the Government of the Republic of Tajikistan within its competence:**

- carries out state control and supervision over observance of the technical regulations, standardization, mandatory certification, metrological requirements for drinking water.

**Architecture and Construction Committee under the Government of the Republic of Tajikistan within its competence carries out:**

- state control and supervision over compliance with building regulations for the location, design, construction, reconstruction and commissioning of drinking water supply in compliance with the territorial zones modes for functional use of territories, settlements and other administrative-territorial units.

**Chief Department of Geology under the Government of the Republic of Tajikistan within its competence carries out:**

- state control and supervision of exploration on groundwater sources of drinking water.

**Chief Department of State Supervision over Safety in Industry and Mining under the Government of the Republic of Tajikistan within its competence carries out:**

- state control and supervision of safe operations; implementation of technical and technological requirements for the siting, design, construction and operation of wells and other structures in the ground, intended for the abstraction of groundwater.

Special authorities of the “Procedure” also define powers for local state executive bodies as:

**Local executive authorities within their competence, exercise state control and supervision in the following areas:**

- local target programs and action plans for the creation, maintenance and development of drinking water supply systems;
- ensuring the quality of drinking water and its rational use, protection of resources and sources of drinking water from pollution and depletion;
- use and protection of sources of drinking water supply systems, as well as the organization of works to provide businesses and individuals with drinking water in

accordance with drinking water consumption; forecasting emergency situations in drinking water supply; providing consumers with drinking water in accordance with the rules in order to overcome the consequences of emergencies;

- organization and control of timely information to users about the quality of drinking water and interrupted provision of it.

All these powers do not apply to the functions of regulatory agencies, except for certain rules, but only in certain parts. In general, these functions are of technical nature, providing supervision and control of established technical standards and regulations. Separate powers are of statistical and normative character. As mentioned above, the traditional functions of regulatory bodies include:

- The establishment of regulated tariffs;
- Licensing, establishment of license conditions and their control (in the countries where the activities of DWSS are licensed);
- Establishment of rules and regulations of functioning of the market;
- Establishment of requirements to quality of service;
- Establishment of exemplary forms of contracts concluded with consumers;
- Participation in the development of normative legal acts, control over their execution, within its competence;
- The introduction of reporting for the regulated entities;
- The study of the development of investment programs submitted by persons having a license to operate, with a view to the inclusion or non-inclusion of investments (total or partial) in the future tariffs;
- Protecting the rights and interests of consumers of regulated organizations.

The above state supervision functions relate only to drinking water and drinking water supply. Regulatory Issues of another important industry – the sewerage (sanitation), closely related to water supply, in all the above-mentioned legal acts are completely absent.

One of the most important tools of regulation of economic activities of DWSS enterprises in Tajikistan today are partially performed by the Anti-Monopoly Service under the Government of Tajikistan in the framework of the anti-monopoly legislation. There are no special rules for water supply and sanitation in the Anti-monopoly Law, so the law's provisions equally apply to services in both of these sectors.

### ***2.2.2. Review of regulatory legal acts on Anti-monopoly regulation***

The main Law regulating the activities of natural monopolies, is the Law of the Republic of Tajikistan "On natural monopolies", dated 5 March 2007 (Akhbori Majlisi Oli of the Republic of Tajikistan in 2007, No 3, Article 168; 2008, No 10, art.814, LRT of 28/12/2013 of No1055). This law, according to its preamble, "defines the legal basis of the state policy in relation to natural monopolies in the Republic of Tajikistan and is aimed at achieving a balance of interests of consumers and the entities of natural monopolies, ensuring the availability of goods sold (works, services) for consumers and the effective functioning of natural monopolies" . Thus, the basic prerequisites for economic regulation, as described in the previous section, are stated in this law.

RT Law "On natural monopolies" was adopted to replace the previous version of 13 December 1997. Changes in the new version of the March 5, 2007 were intended to bring the Law in line with changes in national legislation and with the level of development of the society. Recent changes and additions were made in 2013, dealing mainly with the special legal situation for the approval of electricity tariffs.

The Law of RT "On natural monopolies" consists of 5 Chapters and 25 Articles. **The following key provisions of this Law** are relevant to the purpose of the present study:

▪ **Article 2. Scope of the present Law.** The article defines the scope of the present Law, according to which:

- The Law regulates relations arising in the market of goods (works, services) related to the existence and activities of natural monopolies. Moreover, the provisions of the Law apply to the actions and inaction of natural monopolies in Tajikistan and beyond, if such actions (or inaction) are detrimental to consumers of goods (works or services).
- Actions of the Law do not apply to the activities, referred to the sphere of natural monopoly, but only associated with the construction and operation of facilities for their own needs. For example, if a natural monopoly is building an office building or a utility room, the activity itself is not regulated by the construction. But if these costs are included in the tariff estimates, these costs may be the subject of monitoring by the anti-monopoly authority.
- If a natural monopoly has added other activities, such as providing repair services of pumps for various organizations, and this activity is not related to the laws of natural monopoly, then this part of the activities are not subject to regulation. The sphere of natural monopolies are specified in Article 5 of the Law.

▪ **Article 4. Basic concepts.** This article introduces the basic terms and definitions, specifying that:

- **Natural monopoly** - state of the market of goods (works, services), in which the creation of a competitive environment to meet the demand for a certain kind of goods (works, services) is impossible or not economically feasible due to technological peculiarities of production (due to a substantial decrease in production costs per unit of product during the increase of the volume of production). The definition is general and does not contradict the classical definition of natural monopolies.
- **Entity of natural monopoly** – an entity (legal entity) engaged in production (sale) of goods, works and (or) provision of services to consumers in conditions of natural monopoly. The entities of natural monopolies, as per the definition, are considered only legal and related to those individuals (type of entrepreneurship of citizens without forming a legal entity<sup>6</sup>), regardless of the organizational-legal form and ownership, providing the DWSS services respectively.
- **Consumer of goods (works, services) of natural monopolies** – an individual or legal entity acquiring the goods (works, services) of natural monopolies. The Law encompasses all categories of consumers, in contrast to the Law "On Protection of Consumers' Rights". According to the Law "On Protection of Consumers' Rights of 9 December 2004, the consumer is considered only individuals or legal entities, who purchase or are with the intention to purchase, or enjoying the goods, works or services, exclusively for personal, family or household purposes, not associated with an entrepreneurial activity.
- **Tariffs or price** are considered, the monetary expression of value of goods (works, services) of natural monopolies, approved in the established order. That is, the announced price by the natural monopolist cannot be regarded as a tariff, until its confirmation. To provide tariffs scheme, natural monopolies present **tariff estimate** - a summary of the income and expenses of a natural monopoly, approved annually by the competent authority.
- In a variety of situations when setting tariffs, a **temporary compensating** tariff can be established- the tariff set by the authorized body to compensate for the damage a natural monopoly caused to consumers, or a **temporary reduction coefficient** - the value specified by the authorized body and applied to the tariff in order to protect the interests of consumers and entities of the natural monopoly.

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<sup>6</sup> Article 24, p.3, part 1, Civil Code of RT

- The Law also contains the possibility of a **public hearing** - the procedure of discussion of the price making (tariff) draft or their maximum level, inviting representatives of public authorities, consumers and their associations, the media and entities of the natural monopoly.
- In accordance with the Law, **the authorized body** is a recognized by the state body, responsible for the control and regulation of the activities in activities of natural monopolies. Such authority in Tajikistan is the Anti-monopoly Service under the Government of the Republic of Tajikistan.

▪ **Article 5. Scope of activities of entities of natural monopolies.** In accordance with the provisions of the Article:

- The Law contains a closed list of areas, where the regulation of natural monopolies are carried out. This list, along with the services of electricity, gas, airports and air navigation facilities and services also include services of water and (or) sewer systems.
- Authorized body forms a register of entities of natural monopolies, consisting of national and local branches, indicating the specific types of regulated goods (works, services) by this Law. For example, the SUE KMK is a natural monopoly of the national total, and the State Unitary Enterprise "Khujandvodokanal" - is local.

▪ **Article 6. Methods of regulation of activities of entities of natural monopolies.** The Law defines only two main methods of regulation of natural monopolies:

- **Through price regulation** (the definition and approval of tariffs or their marginal level). For the DWSS services the more common concept is the "tariff regulation." When making decisions on tariffs in accordance with the provisions of the Article, a competent authority shall take into account the following factors:
  - the cost of production (sale) of goods (works, services), including wages, cost of raw materials and overheads;
  - taxes and other payments;
  - the cost of fixed production assets, the need for investment necessary for their reproduction and depreciation charges;
  - projected profit from the sale of goods (works, services) at different rates;
  - remoteness of different groups of consumers from the place of manufacture of the goods;
  - compliance with the quality of produced (sold) goods (works, services) as per consumer demand.

Another method of regulation is **to determine the categories of consumers that are subject to obligatory service and establishing a minimum level of the provision** in case of failure to meet in full. In accordance with this method, the state establishes a category of consumers, which is obligated to provide services by a monopoly, even if, for example, there is a debt for obtained services. Typically, these categories are defined for security reasons, social aspects, etc. The method is difficult to attribute to a method for regulation of natural monopolies, it is rather a kind of "insurance" for the strategic and humanitarian purposes. For example, Russian Federation adopted the Decree of the Government dated 29 May, 2002 No 364 "On ensuring the sustainable supply of gas and energy, financed by the federal budget to organizations that ensure the security of the state". These are defined as the category of consumers who would receive the relevant services of natural monopolists regardless of the debt and other factors. The state in this case acts as a guarantor. Despite the existence of such a norm, in practice today in Tajikistan it is not directly applicable. The analogue may be considered the annual Decrees of the Government of Tajikistan to the introduction of a limit to the supply of electricity, when certain objects - strategic and social - are not subject to the restrictions in the supply.

▪ **Article 7. Procedure of submission of draft of tariffs of entities of natural monopolies.** Changes in tariffs can be offered by the natural monopoly, or can be initiated by the competent authority. The term of consideration of the draft of tariffs in both cases is one month, and consequently, the proposals to change the tariffs must be submitted one month before the anticipated introduction of them into action.

▪ **Article 8. The order of consideration of draft of tariffs of entities of natural monopolies.** The decisions on tariffs by the competent authorized body are made on the basis of economic, financial, and, if necessary, technical expertise of the tariffs draft.

▪ **Article 9. Procedure for approval of tariffs of entities of natural monopolies.** The final decision on tariffs is taken by the authorized body in relation to all natural monopolies, with the exception of tariffs for electric and heat energy. Tariffs for electricity and heat are approved by the Government of the Republic of Tajikistan. (Amended on 28.12.2013, the No1055).

▪ **Article 10. State regulation of activities of entities of natural monopolies.** Described in the Article 5 of the price regulation method is described in more details in Article 10, according to which state regulation of entities of natural monopolies is carried out:

- by tariff approval;
- by the approval of the marginal level of tariffs;
- by the approval of the tariff estimate;
- by the approval of the temporary reduction coefficient;
- by the approval of a special order of formation of costs;
- by the approval of the order of separate accounting of revenues, costs and involved assets by each type of regulated goods (works, services), and in general for any other activity;
- by the approval of the marginal level of profitability;
- by the approval of the temporary compensatory tariff.

▪ **Article 11. The state control in the spheres of natural monopolies.** In addition to regulating, the authorized body carries out control over the activities of natural monopolies to prevent abuse of its monopoly position. The authorized body shall exercise control over:

- Any transaction as a result of which the subject of natural monopoly acquires the right to ownership to fixed assets, intended and not intended for production (sale) of goods (works, services), in respect to which the regulation is applied in accordance with the present Law;
- Investment of a natural monopoly in the production (realization) of goods (works, services), for which the regulation does not apply in accordance with this Law;
- The sale, lease or other transaction, as a result of which an entity or a subject of natural monopoly acquires the right to possession and use or ownership of parts of the fixed assets of the subject of natural monopoly, intended and not intended for production (sale) of goods (works, services), in respect of which the regulation is applied in accordance with this Law;
- Reorganization and liquidation of the subject of the natural monopoly.

These actions can be done only with the consent of the authorized body. The deadline for decision making by the authorized body is also one month, unless additional information is required.

▪ **Article 14. The functions and rights of the authorized body.** For the implementation of the Law, the authorized body performs a number of **basic functions**:

- creates and conducts the Registry of natural monopolies, which are subject to state regulation and control;

- determines the methods of regulation under this Law, in relation to a specific entity of natural monopoly;
- controls, within its competence, compliance with the requirements of this Law;
- develops and approves standard contracts concluded by entities of natural monopolies with consumers;
- develops and approves instructions on the procedure for determination, approval and introduction of tariffs and tariff estimates for goods (works, services) of entities of natural monopolies; rules of forming and maintaining the Registry of natural monopolies; the rules on the procedure for consideration of cases of violations of this Law;
- introduces proposals for improvement of legislation on natural monopolies in an established order;
- summarizes the practice of the Republic of Tajikistan’s legislation on natural monopolies and, on this basis, develops and approves guidelines.

To implement its functions the authorized body has the **following rights**:

- Take the required decision for entities of natural monopolies to impose, change or terminate the regulation; the application of methods of regulation, considered by this Law; including the decision on the establishment of tariffs;
- Take decisions within its competence on the facts of violations of the Law; on the suppression of violations and elimination of their consequences in the spheres of natural monopolies;
- approve tariffs or their marginal limit level for the regulated goods (works, services) of the subject of natural monopolies taking into account the quality requirements set by the state bodies within their competence;
- direct the entities of natural monopolies binding instructions;
- direct the public authorities, local executive bodies of state authority, local authorities binding orders to cancel or to change their decisions inconsistent with the present Law;
- make decisions on inclusion into the Registry entities of natural monopolies or on exclusion from it;
- initiate a change in the tariffs for goods (works, services) of entities of natural monopolies;
- monitor the procurement conducted by the entity of a natural monopoly, in accordance with the legislation of the Republic of Tajikistan;
- appeal to courts, as well as to participate in the trial in cases related to the application and violation of the present Law;
- approve annual tariff estimates of an entity of natural monopoly;
- monitor the adherence to the tariff estimate by an entity of the natural monopoly;
- approve, in coordination with the authorized body in the valuation activity, a procedure and conditions for the revaluation of fixed assets of an entity of the natural monopoly;
- provide clarifications on the application of the Republic of Tajikistan legislation on natural monopolies;
- exercise other powers established by the normative legal acts.

▪ **Article 16. The right of access to information on the activities of entities of natural monopolies.** The authorized body has sufficiently broad powers to request information about the activities of natural monopolies, including from the State bodies, local executive bodies and local self-government, as well as the entities of natural monopolies. The authorized body shall not disclose information that constitutes a trade secret and which was obtained by the authorized body on the basis of this Article.

▪ **Article 17. Informing by the competent authority of taken decisions.** The Law requires that the authorized body informs the media about the decisions taken by it within thirty days. This Article contains a list of the decisions, which are subject to mandatory publication in the mass and media:

- on decisions made on introduction, modification or termination of regulation of activities of entities of natural monopolies;
- on inclusion into the Registry entities of natural monopolies or exclusion from it;
- on applied methods of regulation of entities of natural monopolies;
- on specific indicators and requirements, brought by the bodies regulating the activities of entities of natural monopolies;
- on all cases of prosecution of persons for violations of the present Law.

▪ **Article 18. Rights and obligations of the entity of natural monopoly.** Natural monopolies, in the framework of the present Law, are provided with a number of rights and responsibilities. **Rights** of a natural monopoly:

- presenting to the authorized body an application for approval of tariff or its marginal level for the regulated goods (works, services);
- reducing tariffs for provided goods (works, services) for all consumers in the period of payments as agreed with the competent authority;
- submitting proposals to the authorities that make decisions affecting matters of its operations and legal status;
- appealing in court actions (inaction) of the authorized body, that contradict to the laws of the Republic of Tajikistan;
- appeal to the authorized body or court actions (inaction) of other entities, which are affecting its activities, revenues, ownership or legal status;
- have other rights guarded by the legislation of the Republic of Tajikistan.

**The duties** of an entity of the natural monopoly:

- to implement the decisions of the authorized body, not contradicting the legislation of the Republic of Tajikistan;
- to ensure high-quality universal service to consumers of goods (works, services) taking into account the tariff defined by the authorized body for the provided goods (works, services);
- to provide equal conditions for consumers of goods (works, services) of an entity of the natural monopolies, except in cases of goods (works, services) that take into account the benefits established by the legislation of the Republic of Tajikistan;
- to establish, in accordance with the legislation, technical requirements that must be observed by consumers;
- to carry out maintenance and to organize the verification of metering devices in accordance with the legislation of the Republic of Tajikistan;
- at the request by an authorized body, provide financial statements and other relevant information;
- to choose the most effective methods and technologies of production and rendering of services of the natural monopoly, while ensuring public safety and security;
- to conduct annual financial audits (mandatory audit) by audit organizations (auditors); the results to be published in the media;
- to enter into contracts with consumers for the provision of goods (works, services);
- not to violate the rights of consumers when concluding contracts for the provision of goods (works, services);
- ensure the collection of payments from consumers for goods (works, services) provided to them through their own offices as well as banks and other credit organizations;

- to install metering devices for rendered services to consumers;
- to submit tariff estimates to an authorized body for approval.

▪ **Article 19. Rights and obligations of consumers of goods (works, services) of entities of natural monopolies.** In turn, consumers of goods, works or services of natural monopolies also have a number of rights and duties. **Consumers rights** of services of natural monopolies:

- to buy goods (works, services) of natural monopolies in the manner and at the rates established by the competent authority; require the installation of devices for accounting of actual services rendered;
- to submit to the authorized body statements on amendments and additions, on adoption of new or cancellation of existing decisions;
- to appeal in court the actions (inaction) of the authorized body and its decisions;
- to appeal to the authorized body or court actions (inaction) of a natural monopoly that contradict to legislation of the Republic of Tajikistan;
- to participate in public hearings of issues related to the activities of entities of natural monopoly;
- to enjoy other rights provided for by the legislation of the Republic of Tajikistan.

**Duties of consumers of goods (works, services) of natural monopolies:**

- timely and fully pay for goods (works, services) provided by entities of natural monopoly in accordance with the terms of contracts;
- fulfill the technical requirements set by the entity of natural monopoly in accordance with the legislation of the Republic of Tajikistan.

▪ **Article 20. Features of the reorganization and liquidation of a natural monopoly.** As already stated in the Article 11 of this Law, reorganization and / or liquidation of a natural monopoly is carried out only by agreement with the competent authority. Rehabilitation procedures, in order to prevent an interruption, or a significant reduction in the volume of provided regulated goods (works, services), can be applied to the entity of natural monopoly.

**2.2.3. Anti-monopoly Service under the Government of the Republic of Tajikistan**

The authorized body on regulation of natural monopolies is the Anti-monopoly Service under the Government of Tajikistan. This body was established May 3, 2010 in implementation of the Presidential Decree of the Republic of Tajikistan of March 9, 2010 No 832 “On further improvement of the structure of central bodies of executive power of the Republic of Tajikistan.” The Service is the successor for Anti-monopoly Policy of the Ministry of Economy and Trade, which carried out the regulation from 2006 to 2010. This Department has been created as a result of the reorganization of the Anti-monopoly Agency in 2006. The Service is guided by the Constitution of the Republic of Tajikistan; the Law "On competition and restriction of monopolistic activity on commodity markets" of the RT; the Law of the Republic of Tajikistan "On natural monopolies"; the Law of the Republic of Tajikistan "On Protection of Consumer Rights"; the Law of the Republic of Tajikistan "On Advertising" and other normative legal acts of the Republic of Tajikistan, and also international normative legal acts recognized by the Republic of Tajikistan and by the Regulation "On the Anti-monopoly Service under the Government of the Republic of Tajikistan" dated May 3, 2010.

Direct regulation of operations of natural monopolies is carried out by the **Administration of regulation of the natural monopolies of the Anti-monopoly Service under the Government of the Republic of Tajikistan, acting on the basis of the regulation** approved by the order of the Anti-monopoly service under the Government of the Republic of Tajikistan on January 31, 2014 No 11. In this Regulation, the powers, rights and duties of the Department are defined in details.



In order to carry out its regulatory activities, the Administration uses the following special regulations approved by the Anti-monopoly Service:

- The rules of the Registry of entities of natural monopolies;
- Instructions on the procedure for determination, approval and introduction of tariffs and tariff estimates for goods (works, services) of entities of natural monopolies;
- The procedure for consideration of draft of tariffs for goods.

All three documents are approved by the unified order of the Head of the Anti-monopoly Service under the Government of the Republic of Tajikistan, dated October 5, 2011. No 107. These legal acts are adopted on the basis of the Law "On natural monopolies".

For the purposes of this analysis, the greatest interest is the "Instruction on the procedure for determination, approval and introduction of tariffs and tariff estimates for goods (works, services) of natural monopolies", which introduces an additional list of grounds for the tariff changes. In accordance with paragraph 4, section 2 the Instructions, the **regulated tariffs can be reviewed again at:**

- The need to develop and improve the quality of services in this area;
- The transition to regulation of tariffs for certain categories of consumers, as well as certain types of services;
- If the tariffs for the services do not cover the costs of their provision, and impede the development of services in the industry;
- Increasing the volume of the costs attributable to the cost of services, mandatory contributions and payments to the relevant budgets;
- Inflationary processes and changes in other factors affecting the price of goods and materials used in this industry.

If the tariff changes are dictated by other reasons, then the authority may have the right to not accept for consideration proposals.

The document also identifies a **list of documents**, which the entity of natural monopoly shall **provide to the authorized body with the request on change of tariffs:**

- The reasons and basis for changes in tariffs;
- A draft of new tariffs;
- Justification that take into account the costs and the need for the entities of the industry in funding, providing the amount of investment required for the development of the industry and satisfying the demand of consumers, as well as the solvency of consumers;
- Accounting documents (for costs incurred and financial results; the movement of financial resources , loans, investments, etc.).
- Documents of economic reporting and scheduled payments (on production costs, the cost of services, cost-effectiveness, etc.).

### III. INTERNATIONAL EXPERIENCE OF REGULATION

#### 3.1. Principles of effective regulatory models

Organization for Economic Cooperation and Development (OECD) has repeatedly advocated a number of initiatives in the field of efficient organization of drinking water supply and sanitation in the market conditions. Their policy documents often played roles of catalyst for reform in many countries. For the purposes of this analysis, the interest in the first place is a document prepared and published by the OECD in 2014, "The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy."<sup>7</sup> This document is intended to assist in the development of such policies, the principles set out therein are aimed at provision of further improving the effectiveness of regulatory systems in terms of the activities of national regulatory authorities or organizations. These principles will allow on the basis of best practices in regulation in countries with developed market economies to evaluate the current practice of regulation in Tajikistan and make the necessary changes and reforms. This document sets out seven key principles of management of regulators:

##### **Role clarity**

In accordance with the principle, an effective regulator must have clear objectives, with clear and linked functions and the mechanisms to co-ordinate with other relevant bodies to achieve the desired regulatory outcomes. Goals should be set to determine the results to be achieved, or the expected results, but not to determine the means by which such results will be achieved.

##### **Preventing undue influence and maintaining trust**

According to this principle, it is important that regulatory decisions and functions are conducted with the utmost integrity to ensure that there is confidence in the regulatory regime. This is even more important for ensuring the rule of law, encouraging investment and having an enabling environment for inclusive growth built on trust. Therefore, the regulatory framework should ensure that regulators have an appropriate level of political interference from other state bodies, taking objective and impartial decisions. For the operation of the activities of the regulatory body it is necessary to provide an organizational and financial independence and secure these positions by law.

##### **Decision making and governing body structure for independent regulators**

Regulators require governance arrangements that ensure their effective functioning, preserve its regulatory integrity and deliver the regulatory objectives of its mandate. The regulator should be able to engage the relevant industry and technical experts. Also in accordance with the principle, the management of the regulator should be represented by a collective governing body, with the necessary diversity of experience and knowledge necessary to implement regulating functions to facilitate the reliable decision-making process. The relevant legislation should define a set of competencies and areas of expertise related to regulatory functions, which must be submitted to the governing body.

##### **Accountability and Transparency**

The regulator should be accountable, in turn, to three stakeholder groups: the executive and the legislature, regulated entities and the public, respectively:

- Regulators are required to report to ministers or to supervisory committees of the legislature in all major actions and decisions on a regular basis and on request. The

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<sup>7</sup> OECD (2014). The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy, OECD Publishing <http://dx.doi.org/10.1787/9789264209015-en>

- executive and / or legislative authorities are obliged to monitor and regularly check on the compliance of the regulatory framework with legal requirements;
- Regulators should ensure access to information, as well as to ensure the availability of procedures and the system of appeal of their decisions. Regulated entities should have the right to appeal against decisions that have a significant impact on them, preferably in the framework of the judicial process;
  - Key aspects of the operational policies and other guidance relating to issues such as legal compliance, enforcement and verification of the decisions taken should be accessible openly. All the major decisions taken by the regulator are subject to public justification.

## **Engagement**

Effective regulatory bodies should have established mechanisms for engagement with stakeholders as part of achieving their objectives. The knowledge of regulated sectors and the businesses and citizens affected by regulatory schemes assists to regulate effectively. Regulators should be in constant interaction with the regulated businesses and other stakeholders, with special emphasis on improving the quality of work and results of operation of the legal system or scheme. Procedures for engagement should provide protection against possible conflicts of interest of participants and the risk that the regulatory body will be influenced by the prevailing interest groups.

## **Financing**

The amount and source of funding for a regulator are determined by its organizational structure and operations. It should not influence the regulatory decisions and the regulator should be enabled to be impartial and efficient to achieve its objectives. The level of funding should be sufficient to allow the regulator acting effectively, realistically achieve the goals set by the Government, including the fulfillment of the obligations imposed on him by other entities of the legislature. The financing procedure should be transparent, efficient, and as far as possible, simple, and also legally binding.

## **Performance evaluation**

Evaluation of the effectiveness of the regulatory authorities is an important tool for improving the decisions taken by the regulator. Regulators should assess what impact their regulatory actions and decisions make. This will stimulate positive changes and with the expense of internal resources, improve systems and procedures. It also demonstrates the effectiveness of the regulators to whom they are accountable and helps to build confidence in the regulatory system.

### **3.2. Regulation of DWSS sector in the CIS and other foreign countries**

In practice, the application of the given principles can be analyzed by the example of some CIS countries and abroad. As part of this report, the regulatory structures in the DWSS sector of England and Wales and Armenia were studied.

#### ***3.2.1. Regulation of DWSS sector in England and Wales***

The DWSS sector reform began in the 60s and went with varying success. After a series of unsuccessful attempts in 1986, the Government of England and Wales have begun to develop a program of privatization of the DWSS industry. To attract investments, water supply enterprises were corporatized and shares were issued on the stock market; the government has provided tax incentives for private companies; write off the debts and made a one-time major investments in water utilities. In 1989, all water companies were privatized, the functions of protection and water resources management were completely separated from the DWSS enterprises. Along with the privatization of the industry, the state began to create new institutions to regulate operations of the enterprises of water utilities. To date, the current regulatory structure is as follows:

## **BODIES THAT PROVIDE OVERALL INDUSTRY REGULATION:**

**Department for Environment, Food and Rural Affairs (Defra)**, develops and establishes the general policy on water and sanitation, including:

- Establishing standards;
- Develop sectoral regulatory acts;
- Issue of special permits (for example, during a drought)).

### **Welsh Government**

develops and establishes the general policy on water and sanitation in Wales, including:

- Establishing standards;
- Development of industry regulatory legal acts;
- Issue of special permits (for example during a drought).

Welsh Government is working in close cooperation with the Department for Environment, Food and Rural Affairs.

### **Environment Agency**

The main government agency for the environment in England and Wales performs a so-called "environmental" regulator role for the water and wastewater, carries out in partnership with other organizations in the industry the following functions:

- Reduction of flood risks;
- Support of sustainable development.

### **Competition Commission**

The role of the State Commission - monitoring of companies on the subject of healthy competition benefiting the companies, consumers and the economy. In the DWSS sector, they checked cases of merger and separation of companies, also acts as authority to resolve disputes between companies in the areas of the DWSS and the economic regulator of the sector - the Office for Water Services.

## **BODIES THAT PROVIDE SPECIAL INDUSTRY REGULATION:**

**Consumer Council for Water**, a public council established under the Department of Environment, Food and Rural Affairs. Its functions include:

- The representation of consumer interests in the areas of the DWSS;
- Consumers Complaints whose complaints were not satisfied by the enterprises of water supply and sanitation;

### **Drinking Water Inspectorate**

"Drinking water quality Regulator" is a state authority for the technical control over the quality of drinking water. The Authority verifies compliance with drinking water quality to established in England and Wales standards.

## **ECONOMIC REGULATION**

**The main economic regulator in the DWSS sector in England and Wales – the Office of Water Services (Ofwat, hereinafter the Office)**. For the purposes of this report, this is the body of the main interest. Ofwat duties include:

- Protection of consumers' interests, as appropriate, to promote competition;
- Monitoring of the proper execution of water supply and sanitation functions;
- Ensuring the financial viability of water utilities by setting a reasonable rate of return on their investment,

and:

- Promotion of economy and efficiency;
- Contribution to the achievement of sustainable development;

Water and Sanitation Services in England and Wales are licensed. The Office does not receive funding from the state budget, its operating expenses are covered by fees paid by regulated companies for the licenses. In its activities, the regulator is accountable to Parliament, providing a report on funds spent. Also, on-demand regulator submits reports to the Treasury, the National Office for Audit and the Committee on Public Accounts (Public Accounts Office). There are no other Superior bodies above the Office for Water Services. This provides financial and political independence of the Office.

Main body of the Office is the Board. The Board - a collegiate body composed of 11 members. Decisions are made by consensus among the members; in the exceptional cases - by ballot. In accordance with the rules, all of the Office's meetings are logged and posted on the website.

One of the main tasks of the Board of the Office is to review current rates every five years. Tariffs are set based on the results of the analysis of the provided business plans, projected revenues and profits, and then the maximum amount of the tariff is determined for a period of five years. The tariff must allow the companies to carry out their functions of water supply and sanitation properly. Each step in making decisions on tariffs is described in special instructions and rules that establish the principles and methods of making such decisions.

### **3.2.2. Regulation of the DWSS sector in Armenia**

As in all post-Soviet countries, the Republic of Armenia had a series of tasks related to reforming of relations in the field of major natural monopolies that traditionally were controlled by the State. The need for reform was dictated by the general course towards the market economy; the economic and financial recovery of the sector that was left without state subsidies. Since 1997, with the assistance of international development partners, Armenia has started to build a new system regulator of public-sector by the nature of its services, primarily in the energy sector. On April 3, 1997 the Energy Commission of the Republic of Armenia was established. This body was the first attempt at separating functions of management and regulation of the energy sector. The Commission is an independent body to carry out the regulation of the electricity sector by tariff and non-tariff methods. Experience of the Commission has allowed to expand the scope of the commission and its powers to also include the regulation of the water sector in 2003. Accordingly, the name of this body has changed into the Commission on Regulation of Natural Monopolies.

In 2003, the Law of the Republic of Armenia "On the Authority of Public Services Regulation" was adopted. To the scope of regulation areas were added that are natural monopolies, in particular:

- telecommunications (*on the part of the radio spectrum, ensuring competition and regulation of public electronic communication, etc.*);
- postal services (*on the part of the establishment of tariffs for universal services*);
- railway transportation (*on the part of the establishment of charges for the use of the infrastructure*);
- mandatory technical inspection of vehicles (*on the part of the tariff setting*)).

### **Public Services Regulatory Commission (PSRC)**

In accordance with the provisions of the Law of the RA "On the Authority of Public Services Regulation" – "**regulation in the field of public services** - is part of the state policy, the aim of which is to ensure that the regulatory body through the exercise of statutory rights and balancing of interests of individuals carrying out a regulated activity in the consumer field and in the area of public services (hereinafter - regulated entities); the creation of equal conditions for

the activities of the regulated entities; to promote the formation and development of competitive markets and encouraging the rational use of resources.”

**The main principles of regulation are as follows:**

- a) independent regulation by the state authority within the powers granted to it by law;
- b) the collective nature of decision-making by the regulatory body;
- c) ensuring the transparency of regulation to society;
- d) non-discrimination in respect of consumers or other entities that are being regulated;
- e) ensuring a balance of interests of consumers and the regulated entities;
- f) the restriction of the limits of regulation at the same time with the development of competitive markets.

**Legislative measures to ensure the independence of the Commission**

The Commission consists of 5 members: 1 chairman, 1 vice-chairman and three members. Under the Law, at least one member must have a legal and one an economic education. Commission members are appointed by the President upon the recommendation by the Prime Minister for a term of five years, with an annual rotation of one of the members.

Recognizing the importance of the independence of the Commission from other state bodies and to avoid pressure on the decisions taken by it, this Law establishes a number of relevant requirements relating to the appointment and possible dismissal of the commission members. Powers of the members of the commission may be terminated by the President only on the grounds specified in the Law:

1. Assumed omissions in the performance of official duties, if in connection with which there is a corresponding decision of the Commission;
2. Absence without a valid reason from the Commission sessions more than five times in one year;
3. Recognition by a legally effective court decision of incapability or limited capability;
4. Deprivation of the right to hold a certain position in the manner prescribed by law;
5. In case of loss of citizenship of the Republic of Armenia;
6. Convicted under an enforceable court sentence for a deliberate crime, as well as for a crime committed by negligence, for which the Criminal Code of the Republic of Armenia has considered the deprivation of liberty;
7. Voluntary resignation of the member;
8. On the grounds specified in Article 9 of the Law:
  - Member of the Commission may not be a member of any representative body, hold any other office or perform other paid work, except for scientific, pedagogical and creative work, with the provision that these activities are not funded by regulated entities;
  - Members and staff of the Commission may not have a share, securities in the regulatory entities or make other contributions during the execution of their duties;
  - Member of the Commission has no right to work in the field of regulated public services for 3 years from the date of expiry of the term of office or early termination of his powers;
  - the Commission staff during the term of office may not carry out paid work for regulated entities.

In all other cases, the commission member’s authority can not be terminated.

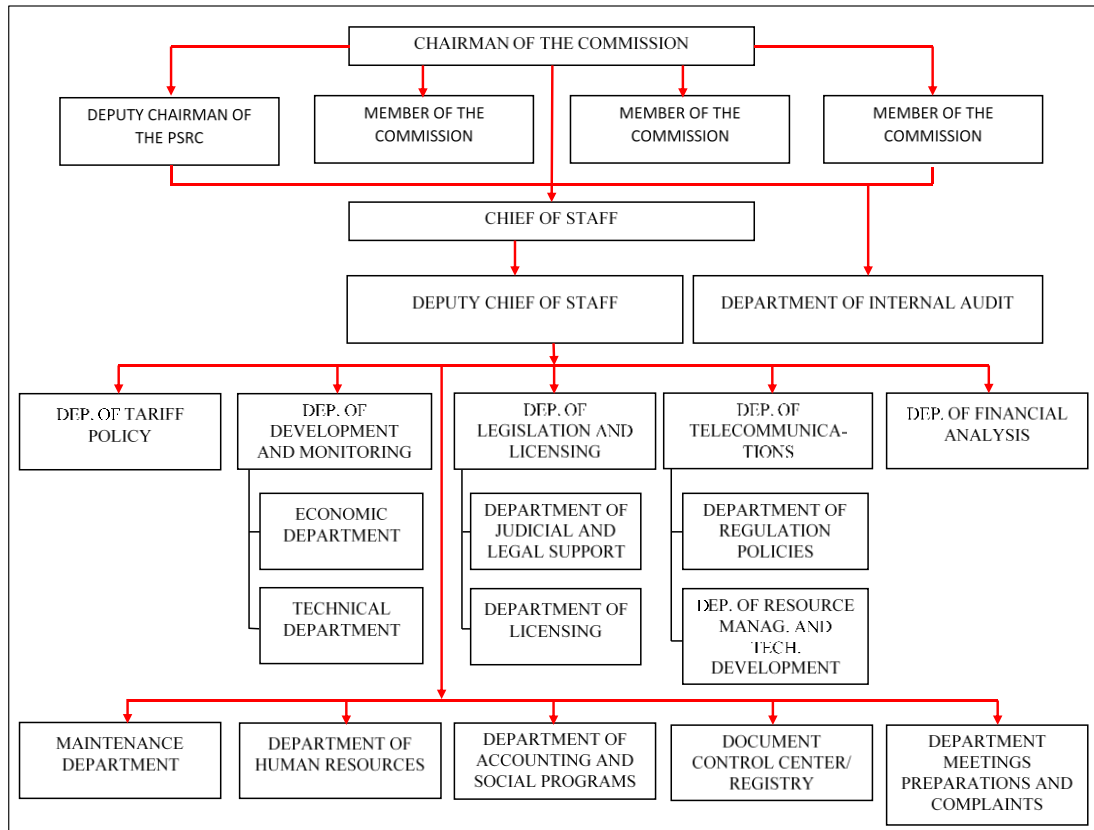
Legal acts of the PSRC may be challenged only in court. The tariffs set by the Commission can not be challenged even in court and are final.

Also, this Law sets PSRC's budget and wages for members of the commission. The budget of the PSRC, as in England, are covered by the regulated entities. In accordance with Article 15 of the Law "On the Authority of Public Services Regulation":

1. Regulated entities pay to the state budget of the Republic of Armenia mandatory payments on regulation in the order and the amount established by law;
2. Mandatory regulation payments are included in the tariffs of regulated entities or in payments for the provision of services;
3. The annual amount of obligatory payments to regulate can not be less than the annual estimate for the Commission's costs.

### Structure and Staff of the PSRC

Public Services Regulatory Commission of Armenia carries out its activity by 5 members of the commission and the unit number of 118 employees, and has a structure with the following units:



### Methods and scope of regulation

Regulation in the sphere of public services is carried out by the Public Services Regulatory Commission of the Republic of Armenia, which operates on the basis of the powers granted by the Law "On the Authority on Regulation of Public Services", sector-specific laws and other laws, and is independent within its competence. In its activities, the PSRC has adopted the following regulatory tools:

- Licensing, establishment of license conditions and their monitoring;
- Implementation of reporting accounts and sub-accounts for the licensed persons;
- The establishment of regulated tariffs;
- Establishment of rules and regulations of functioning of the market;
- Establishment of requirements for quality of services;
- Establishment of exemplary forms of contracts or mandatory terms of delivery between persons having a license to operate, as well as those entered contracts with consumers;
- Establishing regulations, monitoring their execution, within its competence;
- The study of the development of investment programs submitted by persons having a license to operate, with a view on the inclusion or non-inclusion of investments (total or partial) in the future tariffs.

## **Other sanctions**

In cases of violation of the law, failure, improper performance or breach of legal acts of the Commission, the license conditions on the activities of persons who have a license to operate, the Commission is empowered to make recommendations to eliminate violations and apply the following penalties:

- warning;
- fines (statutory);
- suspension of business licenses;
- revoking license to operate.

## **Licensing and tariff regulation of the PSRC**

PSRC is responsible for general regulation in the areas of: energy, telecommunications and water sector. In the postal service, railways, and mandatory vehicle inspection the PSRC carries only tariff regulation.

Licensing Department of the PSRC has the following functions:

- ❑ Licensing of activities in the energy and water sectors:
  - In the water sector, subject to licensing are activities in water supply and sanitation (waste water treatment).
  - Activities subject to licensing in the energy sector are on:
    - The generation of electricity and thermal energy (including their combined production);
    - Transfer (transportation), distribution of electricity, heat energy and natural gas,
    - The implementation of the services of the operators of electric power and gas supply systems;
    - Import and export of electricity and natural gas;
    - Provision of services in the energy market.
- ❑ The collection, accounting, forecasting of state fees, financial guarantees and reporting.

Tariff regulation in the sphere of water supply is carried out in accordance with the practice of the organization of water supply in Armenia. According to the Water Code of the Republic of Armenia, the following forms of transfer of right to use the water systems:

1. Through the transfer to the trust management;
2. Under a concession agreement;
3. The creation of a commercial organization;
4. The forms of leasing;
5. Through a contract for gratuitous use of the property.

In order to involve the private sector into the operations of the drinking water system, currently two of the above forms are used in the Republic of Armenia:

- 1) contractual form of government by transferring to trust management, based on the enforcement of indicators;
- 2) the form of leasing..

Procedure for the application of forms of management are established by the legislation.

At the moment there are 5 companies in the country engaged in the drinking water supply and sanitation:

1. CJSC "Yerevan Jur"
2. CJSC "Armvodokanal"
3. CJSC "Shirak-Vodokanal"
4. CJSC "Lori-Vodokanal"
5. CJSC "Nor Akunk".

In relation to CJSC "Yerevan Jur" the leasing form of management is applied. The rest of the companies are transferred to the trust management to foreign companies. Depending on the



different forms of management different tariff policy is carried out. A certain level of water tariffs is established for each company, however, in the service area of each company, the water supply tariff for all consumers is the same.

For companies, transferred to the trust management, calculation of tariffs for the provision of drinking water services, sanitation and wastewater treatment are carried out on the principle of providing the necessary income, according to the appropriate Methodologies, approved by a Decree from the Public Services Regulatory Commission of RA.

Development of the tariff system is carried out in 3 stages:

1. Determining the annual income of the Company;
2. Analysis of costs and valuation of services provided to consumers and consumer groups;
3. Development of the structure of tariffs and the determination of tariff rates.

Required Income (RI) of the Company is determined by the following formula:

$$RI=AC+D+AI-OI,$$

Where: AC – the allowed annual costs;

D – the amount of the annual depreciation of fixed assets;

AI – allowable income;

OI – other income.

The eligible costs include necessary for the provision of services in the billing year current and reasonable costs. The amount of annual depreciation is calculated by a straight-line method, based on the initial value of fixed assets recognized by the Commission as useful and still used in the provision of services or other substitute of its amount in the financial statements, as well as their useful lives. That profit margin is considered permissible, which makes it possible to ensure the obligations related to the attraction of investments to finance assets and not to hinder the attraction of the necessary additional own or borrowed funds for the development of the Company. Other incomes include the difference between additional income derived from the use of (alienation) for other purposes raised to provide asset services, and, the emerged for this reason, other additional costs.

## **CONCLUSIONS AND RECOMMENDATIONS**

Well- established state economic regulation of enterprises in the sphere of drinking water supply and sanitation is a key factor for the cost-effective, productive activities in the provision of the quality services to the population. Such regulation should be created in parallel with the actual commercialization, de-monopolization and liberalization in the sector of the DWSS. Enterprises with professional experience in the field, regardless of their legal form of ownership and nationality should be able to compete for the right to the management of state properties that will attract domestic and foreign investments. The role of regulators is designed to balance the interests of consumers and suppliers of drinking water supply and sanitation services in market conditions.

Currently in Tajikistan, an economic regulation in the form of an independent state body in the sector is absent. An independent regulatory body is considered, as described in the present analysis, the degree of the necessary political and financial isolation, allowing to make relatively independent decisions. The de-monopolization and the actual liberalization of the sector, despite the declared reforms, is very weak trend. But even for the existing state-owned enterprises of drinking water supply and sanitation, the economic regulation leaves much to be desired. The partial transferring of the authority of economic regulation to antitrust bodies, carried out in Tajikistan, is going to a contrary to the interests of the latter, creating a conflict of interest for the body designed primarily to restrict the activities of natural monopolies.

The main recommendation from the outcomes of this report is the need for the development and adoption of a legislative framework for the establishment of the regulatory body, based on the following principles:

### **Setting clear goals and objectives and the role of the regulator**

An effective regulator must have clear objectives and clear and interrelated functions and mechanisms for coordinating their activities with other bodies to achieve the desired regulatory outcomes;

### **Financial and political independence**

The regulatory body must have the proper level of political and financial independence, which will take impartial decisions primarily based on the economic efficiency of enterprises in the field;

### **Collegiality**

Regulators around the world are created in the form of collective bodies - commissions - to achieve a common, balanced decision on the matters of regulation;

### **Transparency and Accountability**

The activities of the regulatory body should be primarily transparent to the public, all the decisions and their rationale should be available to the general public to increase confidence in the decisions made;

### **Determination of Powers and Structures**

The regulatory body shall be provided with the necessary level of authority to carry out its activities with respect to water supply and sanitation and to the public authorities at all levels. Also, the regulator must be equipped with the necessary staff, able to carry out their functions;

### **Capacity and relevance of knowledge and skills of members of a regulatory body**

The necessary knowledge and skills to carry out activities on regulation by members of such collegiate body should be fixed by law;

These and other guidelines and recommendations set out in detail in a number of international documents, as described in this analysis, including:

- The OECD Principles in the field of regulatory policy based on best practices, 2014;
- In the Almaty Guiding Sector Reform Principles of Urban Water Supply and Sanitation, 2000.

These documents may serve as a basis for the development and adoption of a relevant law in the Republic of Tajikistan.