

EXPLANATORY NOTE ON THE FULFILLMENT OF THE LEGAL COMPONENT – EU/TACIS PROJECT” ENVIRONMENTAL COLLABORATION FOR THE BLACK SEA”

The development of a draft law on coastal zones has already been initiated under the auspices of the Ministry of Environmental Protection about five years ago. This shows the complexity of this task. This is due primarily to an already elaborated and not always efficient existing legislative framework. For example, the project experts had to consider and address overlaps and inconsistencies in two major pieces of legislation, directly relevant to the topic, the Land Code and the Water Code. The comprehensive and detailed territorial planning legislation currently in force had also to be taken into account during the drafting process. Furthermore, the regulation of the coastal zone is a sensitive issue, especially considering the various and often contradictory interests of the numerous stakeholders. Therefore, the development of the present draft law on coastal zone has been guided by the following key principles, discussed with the Ministry and within the Legal and Institutional Working Group:

- Relying on the existing protection regimes, in particular the different types of protected areas
- Developing an integrated approach to the management of the coastal zone
- Establishing a differentiated regulatory approach for existing and planned activities
- Avoiding overlaps and inconsistencies in the legislative framework

Finally, it should be noted that the development of this draft law was also based on a thorough analysis of some Member States national legislation and other Black Sea countries. For this purpose the following legal documents were studied: French Law No.86-2 of 3 January 1986 “On the improvement, protection and enhancement of the coastal zone”; the Portuguese 1990 Decree-Law of Portugal and 1993 Decree-Law relating to the organisation, planning and management of the coastal zone; the Romanian Extraordinary Order No. 202 of 18 December 2002 concerning the integrated management of the coastal zone; the Bulgarian Law of 15 January 2007 “About the organisation of the Black Sea coast” (entered into force on 1 January 2008); the Greek Law No. 2344/40; the Great Britain Sea Bill (dated April 2008); the Georgian draft Law “On the integrated coastal zone management”.

The first section describes the way the authors of the Draft Law have reflected the key principles agreed at the outset of the drafting process while the second section provides comments on the main issues discussed and possible alternatives to the solutions selected in the present Draft Law.

1. Overall objectives and principles

1.1. Use as appropriate the categories of protected areas existing under the legislation of Ukraine in force when defining the coastal zone and setting up the corresponding regulatory regime in order to ensure additional incentive for compliance with the current legislation on protected areas.

Pursuant to the existing land and water legislation of Ukraine, the water protection zones – nature protected areas where economic activities are regulated (their borders are defined by land use plans) should be established along the seas (as well as along/around other water bodies); within these zones the coastal protection strips are to be established; the width of this stripe shall not be less than two km, and its legal regime is more stringent than that of the remaining part of the water protected zones.

As the borders of the water side of the coastal zone (the marine part) are not today established at the legislative level in Ukraine, it is suggested that the size of the water side of the coastal zone should be defined through a legal instrument. This being said, considering the fact that all categories of territories are currently defined by the Land Code of Ukraine (LCU), it is suggested to supplement the LCU with a new provision about the water part of the coastal zone, as well as with a provision defining the beach zones along the sea (this definition is also missing in the current legislation of Ukraine).

The present draft defines the border of the landside of the coastal zone along its water protection zone, while the border of the water side is delineated by the border of sea coastal area. Therefore, taking into account the difficulties experienced in defining various types of zones "in nature", i.e. through land use plans, the developers of the draft have considered expedient to define the size and borders of the key areas of the

coastal zone directly in the law, namely: the water side of the coastal zone, the beach zone and the coastal protection zone.

During the drafting process, the necessity of defining the landside of the coastal zone of the seas along the border of the existing administrative and territorial units was also actively discussed (the corresponding position was taken by the Ministry for the Environmental Protection of and Natural Resources and supported by town-planners). The main argument of such an approach is to co-ordinate the design of the coastal zone with the existing types of planning and town-building documents.

Despite the fact that, at a certain stage, the developers of the draft Law have reflected this position, this approach has been considered as ineffective given that the "coastal" administrative and territorial units can cover very large areas, although different in extent and configuration, and their legal regime cannot be homogeneous. Therefore, the establishment of effective requirements to the coastal zone is only possible within the framework of specific planning and coastal zoning that should be developed «under separate planning documents»; however, the development of such documents is even more difficult and expensive than the elaboration of the documents necessary for the establishment of the borders of water protection zones that should be set up under the current legislation in force. In relation to the coastal zone as a whole, only general requirements of declarative character can be defined.

1.2 Developing an integrated approach to the management of the coastal zone through development plans for the coastal zone

As a core element of the integrated management of the coastal zone, the experts have suggested to set up so-called coastal zone development plans as a new type of planning documents for the coastal zone within the Crimean Autonomous Republic, the coastal area and the city of Sevastopol. Upon the initial Draft, such project should apply directly, irrespective of its inclusion into the town-planning and the land use documents. These development plans should be financed by the State or local budgets upon request of the regional councils (Supreme Council of Crimean Autonomous Republic, the Sevastopol City Council).

The legal basis for such development plans is provided by the Law of Ukraine ‘On planning and building of the territory’ within the framework of the national and regional territorial planning system (‘development of planning schemes for individual parts of the territory of Ukraine – several regions (oblast), coasts of the Black Sea and the Sea of Azov, international transport corridors, border territories, etc.’ - Part 3, Article 5 and Part 1, Article 6 of the Law). However, at present, the land use documents do not provide the possibility of developing such schemes, therefore, it is suggested that the Law of Ukraine ‘On land use’, as well as the Law ‘On state expertise of the land use documents’ are supplemented in this regard.

The present Draft incorporates democratic procedures for the development, public expertise, discussion and approval of corresponding development plans of the coastal zone and for modifying them, etc.

1.3 Establishing a differentiated approach towards the establishment of the legal regulation for existing and planned activities within the coastal stripe

According to the approach undertaken for the development of the present Draft Law, new construction within two kilometers from the water line is forbidden until the coastal stripe has been established. The limits of the coastal stripe should be established in the development plan of the coastal zone. This means that if there is no development plan, no new construction (building or facility) is allowed. This constitutes a powerful incentive for the preparation and adoption of the corresponding development plan.

With regard to buildings and facilities already existing prior to adoption of the Law, a different approach is followed: the present Draft Law provides that the limited use of the coastal stripe should be in compliance with the regime of the protected areas which are located within the stripe (beach zone, coastal zone protection stripe, water protection zone, districts of sanitary protection of resorts, water side protection area, etc.) according to the project of the use of the coastal stripe territory. Restriction of the economic activities within the water side coastal area, beach zones, coastal zone protection stripes, water protection zones are set forth by the legislation of Ukraine. Additional restrictions can be set forth by the concrete project of the use of the coastal stripe territory.

1.4 Avoiding overlaps and inconsistencies in the legislative framework

In order to meet this objective, alongside the present Draft Law, amendments to other existing legal acts are proposed, namely:

- the Land Code of Ukraine,
- the Water Code of Ukraine,
- the Laws of Ukraine 'On land use',
- the Law of Ukraine 'On state expertise of the land use documents',
- the Code of Ukraine 'On Administrative Offences',
- the Criminal Code of Ukraine.

In addition, the authors of the present Draft Law made all efforts to comply with the level of regulations established by the Constitution of Ukraine for each specific question. Therefore, in the Draft Law, the competences and responsibilities of the central executive authorities in the field of ICZM is only defined in general terms, as the detailed regulation of this question is under the responsibility of the Cabinet of Ministers according to Article 116 of the Constitution.

2. Key problems and alternatives

Traditionally, the coastal zone includes the area of the land influenced by the sea and the area of the sea influenced by the land. In other words the interaction between the terrestrial and the marine ecosystems is key to the definition of coastal zone.

Importantly, the width of this strip of land and sea territory would vary depending on the nature of the environment and management needs and calls for a specific policy of development, protection and enhancement. Besides, the limits of this area rarely correspond to existing administrative or planning units.

This raises the question as to what needs to be defined in the law and for which purpose. It would not be relevant to try to set up fixed limits to the coastal zone through a legal act. On the other hand, in terms of regulation and planning, it is necessary to set up limits as to the territory subject to particular rules. Therefore, Article 2 could be about the scope of application of the law rather than the limits of the coastal zone which should stay undefined.

Concerning the regulation aspects, there is a consensus that a stripe of two kilometres (water protection zone) already provided for in the current legislation should be subject to specific prohibitions and restrictions. The main issue is that this stripe has not been delimited as required. Therefore, the draft law introduces two types of incentives to do so:

1. The stripe should be delimited through the document 'project of development' provided for by the draft law.
2. As long as the stripe is not officially delimited, all new construction are prohibited.
3. Finally, the water line from which to measure the 2 km zone is defined in the law itself.

With regard to planning aspects, many discussions have been held and it was not always possible to come to a consensus between the different experts. Key issues include:

1. Coverage of the water part of the coastal zone: the main question is how to make sure that planning documents also influence the use of the water part of the coastal zone. The problem is that the water part falls under the competence of different authorities (central government) and cannot be included as such in the planning documents. Therefore, the only option would be to involve these authorities (and more precisely, their representatives at the local and/or regional level) into the decision process. This can be achieved through their participation to the Coordination Council (which is involve in the

preparation of the project of development) and also in the approval procedure of the project of development.

2. Another key question is linked to the nature of the planning document, which would reflect the new ICZM approach. The proposed draft law on coastal zone establishes a new planning document, the 'project of development', which is falling under the land use planning system (zemleustroistvo). The land use legislation allows for a more transparent procedure of development and approval. In addition, the final document has a stronger legal status than under the other set of planning document provided for by separate legislation, the territorial planning documentation. However, this solution should be thought through with regard to the nature of the different planning documents. In particular, planning document for the coastal zone should include:
 - a. A strategic part, which would set up the main development priorities of the area following consultation with the stakeholders, based on a comprehensive assessment of the existing situation.
 - b. Very detailed maps/plans which would serve, among others, beach areas, the water protection zone/belt (Vodookhronni zoni moria and priberieshnaia zashitnaia polosa) and access to the sea. It is not realistic to develop such a small scale document for a whole administrative unit (e.g. rayon), therefore, this detailed map (proekt) could only focus in terms of geographical scope on the water protection zone.
3. A third question is that of the geographical scope of relevant planning document. In the draft as presented by the project, the 'project of development' can cover various administrative units (rayons, population centres, etc.). This allows planning within the limits of the various existing administrative units, which are located on the seashore (primorskie territorii). However, it also raises the question as to which authority would be responsible for approving the project. Pursuant to the draft law, this is the responsibility of the Verhovna Rada of the Autonomous Republic of Crimea, the councils of the oblasts, as well as the city council of Sevastopol.
4. An alternative solution has been considered by the project could be considered:
 - The geographical scope of the relevant planning document. This would be the 'coastal territories', i.e. rayons and population centres
 - The relevant planning document (project of development) would have to be included in the scheme for territorial planning of the relevant rayons and population centres (coastal territories). It should mainly serve to define the limits of water protection zones (Vodookhronni zoni moria) and belts (priberieshnaia zashitnaia polosa), to ensure that there is free access to beaches, to define sensitive areas such as dunes, to identify areas where the environment carrying capacity is at risk on the whole coastal territory. It should include two parts:
 - A scheme showing the main sensitivities, the outline of the water protection zone/belt and the relevant zones
 - A 'proekt' (detailed plan) showing more in details the exact borders of the beach, the water protection zones and belts.

This is providing that the scheme for territorial planning would be the right instrument to develop a strategic vision of development priorities for the corresponding territory, involving the local population.

However, it should be noted that any attempt to use the existing planning documents in order to avoid creating new types of plans or schemes and trigger additional expenses for the local authorities, could be regulated through amendments to existing territorial planning and/or land use legislation rather than by a separate law. As the Ministry has very clearly indicated that it wishes to develop a distinct legislation regulating the particularities of the coastal zone, this solution has not been fully studied.

20.10.2009