

Reviving the Kura River Basin

Harmonizing Azerbaijan's Water Resources Management with the EU's Water Framework Directive

Hajar Huseynova

Azerbaijan is one of the European Union's strategic partners specifically in terms of energy cooperation, however it has not yet finalized negotiations on the terms of an updated framework agreement. Its overall relationship with the EU thus remains based on the EU-Azerbaijan Partnership and Cooperation Agreement, which has been in force since 1999. The strategic partnership in energy has been updated in scale, scope, and depth under the terms of the July 2022 Memorandum of Understanding that was signed by the President of Azerbaijan, Ilham Aliyev, and the President of the EU Commission, Ursula von der Leyen.

This cooperation has been taking place in various fields for many years. Due to various geopolitical and geo-economic reasons, both sides are looking to further enhance the overall relationship. This analytic policy brief will examine Azerbaijani and EU relations from the water perspective and explore how the country's burgeoning partnership with the EU is shaping the issue of water cooperation in the regional context.

A Common Water Management Framework?

Azerbaijan and the EU have agreed on priority areas for cooperation, as laid down in the Country Strategy Paper 2007-2013 under the European Neighborhood and Partnership (ENP), which is itself undergoing intra-EU review as discussed by Samuel Doveri

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Vesterbye in his essay published in the Winter 2022-2023 edition of *Baku Dialogues*. In this context, Azerbaijan has committed to implementing the EU Water Framework Directive (WFD) and other water-related EU directives.

Georgia, too, has made a similar commitment. Its Association Agreement, which entered into force in July 2016, obliges the country to an approximation of national law to EU policy and directives. This includes the commitment to implement the WFD, as aligned to a road map.

The absence of an updated EU-Azerbaijan framework agreement has not seriously hampered Baku's ability to meet its WFD obligations, in part due to the existence of certain agreements and activities related to the ENP. Azerbaijan is a downstream country. Thus, irrespective of the outcome of the talks on updating the framework agreement with the EU, Azerbaijan will be better off by implementing the WFD, particularly the River Basin Management (RBM) approach, as it ensures regulated water quantity and quality intake into the country from upstream countries.

In general, both Azerbaijan and Georgia have largely realized the WFD's added value, its contribution to improved river basin management, and cooperation in the transboundary context of the Kura River Basin. Many related activities have been ongoing to implement the directive and to establish corresponding capacities.

This IDD Analytic Policy Paper will only discuss the Kura River as its main focus is analyzing the legal basis for Azerbaijan and Georgia over transboundary water resources. It should be mentioned, however, that the source of both the Kura and the Aras rivers lies in Türkiye. The Kura quickly exits Anatolia and flows through Georgia and Azerbaijan before discharging into the Caspian Sea (88 percent of the river is shared by Azerbaijan and Georgia). The Aras is the main tributary of the Kura (it is both the longest and biggest by water discharge). It too originates in Türkiye before becoming the natural border between that country and Armenia, then between Türkiye and Nakhchivan (Azerbaijan), then Iran and Nakhchivan (Azerbaijan), then Iran and Armenia, then Iran and mainland Azerbaijan, before entering Azerbaijani territory and discharging into the Kura near the Caspian coast.

As a downstream country, Azerbaijan depends on neighboring upstream countries' willingness to cooperate. International development projects are one of the platforms for regional countries to find common ground in their negotiations and achieve a harmonization of their approaches. Regrettably, Iran and Türkiye did not join the first phase of the GEF-UNDP project on Developing Transboundary Diagnostics Analysis for the Kura-Aras River basin, which speaks to their unwillingness to engage in regional cooperation over transboundary river basin management. Although Armenia joined the first phase, it did not sign the resulting Strategic Action Plan regarding water basin management. Only Azerbaijan and Georgia continued with the further steps. In this context, Azerbaijan needs to approach the basin countries to engage them in transboundary

management, and Georgia might be a good start: both countries have together joined a number of regional transboundary projects, conducted activities towards harmonization of their respective legislation and technical aspects of water resources management, and are willing to cooperate further on these issues as strategic partners.

The Importance of the EU's Water Framework Directive

The WFD establishes a comprehensive framework to protect and enhance the status of all waters and protected areas, including water-dependent ecosystems—i.e., forests, wetlands, ecosystems living in rivers and groundwaters, and many others. This is achieved by holistic measures both to prevent the deterioration of water resources and ensure their long-term, sustainable use. The WFD uses the Good Ecological Potential (GEP) and Good Ecological Status (GES) approach to water basins and updates it regularly in six-year cycles. GEP basically ensures the best ecology for water bodies that are altered by human activities whilst allowing human/economic activities to continue. GES helps to achieve the best ecology for surface water bodies that are not modified by human activities.

As part of the EU's ongoing drive to set many of the world's regulatory standards (it is often rightly described as a “regulatory superpower”), it has sought to expand the area in which the standards set by the WFD are implemented—that is to say, beyond the territorial agglomeration of EU member states themselves. The EU has pursued this goal through two basic approaches: *one*, the signing of various agreements between the EU and non-EU states; and *two*, the financing of projects in non-EU states. This has been done in furtherance of three basic EU objectives:

- to unify approaches among EU member states and neighbors (and in some cases, neighbors' neighbors);
- to ease transboundary river basin management in River Basin Districts (RBDs) that are shared between EU and non-EU member states; and
- to share WFD experiences for implementation in regions exclusively shared between non-EU states to make their own river basin management standards compatible with those in the EU.

For non-EU states, implementing the WFD requires the development of, what the EU calls River Basin Management Plans (RBMPs), which demands coordination all along a given River Basin District (RBD)—a term discussed below. Here it is sufficient to indicate that depending on the geography (hydrology), a RBD can be national or regional (i.e., transboundary or international).

In sum, the WFD provides an innovative approach for water management based on river basins, which are natural geographical and hydrological units. Unlike, say, a taxation policy, which can effectively be implemented within the borders of a nation-state, water management often cannot: nature rarely complies perfectly with sovereign borders. This sound principle of sustainable development informs the thinking behind the WFD.

The WFD requires the development of River Basin Management Plans (RBMPs) and Programmes of Measures (PoMs) in sexennial (six-year) cycles to achieve good water status for different categories of water: inland surface waters (rivers and lakes), transitional waters, coastal waters, groundwater, and, under specific conditions, water-dependent terrestrial ecosystems and wetlands. The WFD thus establishes several integrative principles for water management, including public participation in planning and the integration of economic approaches, and aims for the integration of water management into other policy areas. Figure 1 (below) provides a graphic illustration of the key elements of the WFD cycle.

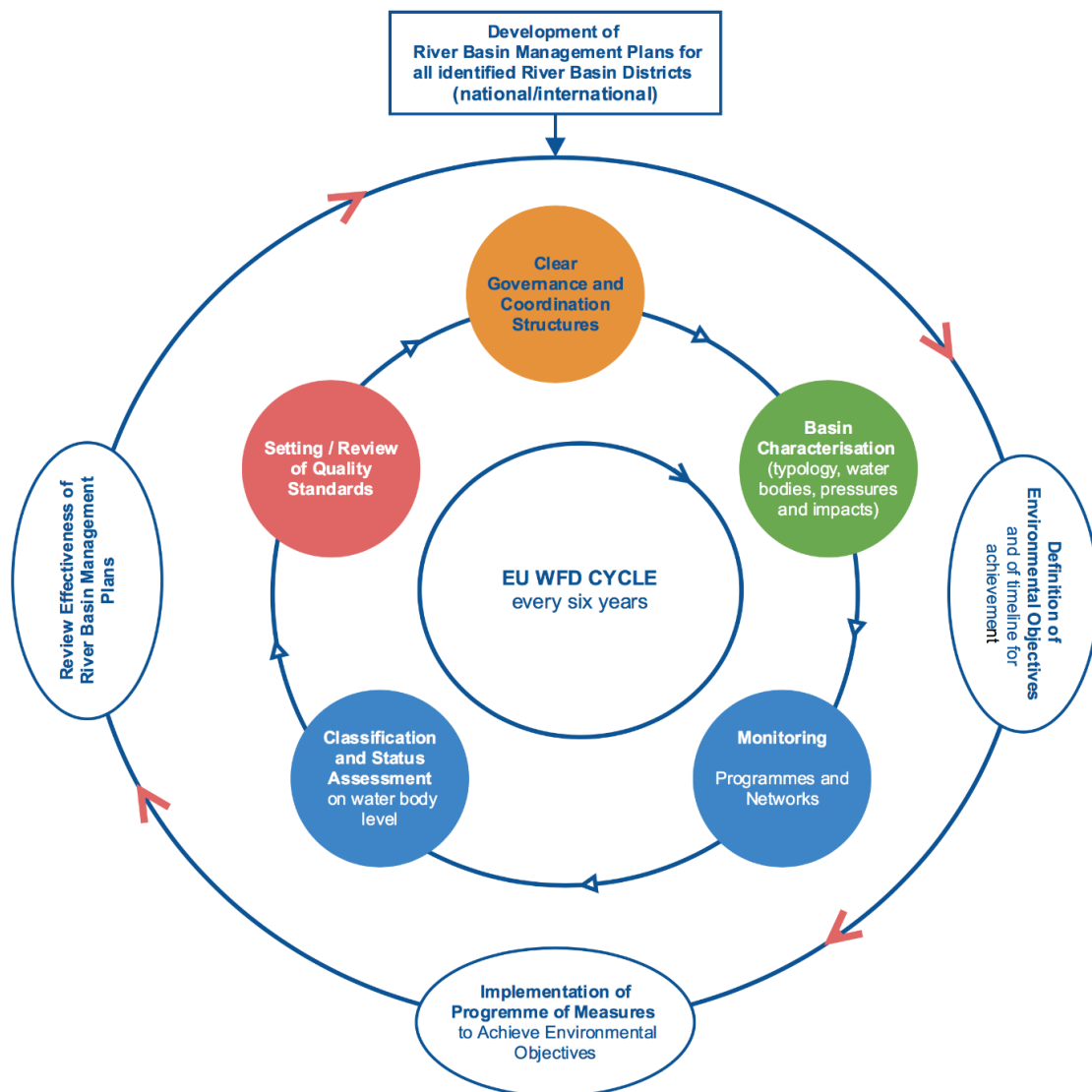


Figure 1: Key Elements of the EU’s Sexennial WFD Cycle

In general, meeting the WFD's environmental objectives—in particular all its PoMs—requires coordination all along the territory of a given River Basin District (RBD), a term that was introduced but not explained at the beginning of this section. To grasp the significance of this, an explanation is in order: an RBD can consist of one or more neighboring river basins, whether national or regional. In the specific case of the Kura River Basin, to be effective, the RBD ought to be regional due to the basin's geography or hydrology (to repeat: nature rarely complies perfectly with sovereign borders). This is particularly important for Azerbaijan in the present case, since the part of the Kura River Basin that is located on Azerbaijani sovereign territory is the downstream part, which means that the absence of a WFD (or its approximation)—i.e., the uncoordinated management of the upstream parts—can have particularly deleterious consequences.

In the case of a transboundary RBD like the Kura River Basin, a WFD aim to develop a single international RBMP through coordinated action between basin-sharing countries. In the case of the Kura River Basin, these would be Azerbaijan, Georgia, and Türkiye. Now, the conception of the EU's WFD recognizes that geopolitical complexities can prevent agreement on a transboundary RBMP. A suboptimal alternative—which is still much better than nothing—is the elaboration of a national or partial transboundary RBMP (e.g., an Azerbaijani RBMP or a Georgia-Azerbaijan RBMP) in such a way that the objectives of the WFD are achieved to the maximum extent possible.

In any case, the idea is for participating basin-sharing states to ensure appropriate administrative arrangements that enable them to apply the rules and standards of the EU's WFD within the part of the transboundary RBD that falls within their purview. Related coordination mechanisms can make use of existing structures found in other, existing international agreements. This can include River Basin Organizations (RBOs)—i.e., entities that deal with the river from the basin point of view, not from the political borders approach. These types of organizations provide a platform for ensuring that both land use and water management are considered in planning.

State of Play and Challenges

Responsibility for water resources management in Azerbaijan is split between several institutions across the country. The recently established Water Commission is the entity tasked with overseeing, coordinating, and ultimately unifying all water-related structures in the country, yet the overall scope and jurisdiction of its responsibilities remains similar. In Azerbaijan, water resources are still managed in administrative, not hydrological, units.

The country's Water Law (1997) and other water legislation and regulation tackles water resources management related to administrative borders rather than hydrological catchment areas. Hence, RBDs have not yet been properly identified, as the law does not foresee the identification of these management units to which an RBO could be allocated.

In the existing legislative and regulatory set up, the use and protection of water bodies in Azerbaijan is based on, and regulated through, four key aspects: *one*, economic development and environmental protection; *two*, ensuring water quality for the population; *three*, approaching water resources management aligned to administrative but not hydrological units, and *four*, addressing management functions of water bodies through water use and water industry. This archaic method is a legacy of the Soviet conception of water resources management, in so far as it existed. And it certainly does not comply with the RBM water resources management concept. Consequently, Azerbaijan's current water legislative and regulatory framework does not and cannot follow the EU's WFD requirements.

The institutional setting is similar in Georgia too, with several public and private institutions in charge of water resources management. The legislative setup is also similar to that of Azerbaijan. Georgia's new draft Water Code actually follows the EU's WFD and its RBMP principles, but it has not yet been officially adopted.

As of this writing, WFD River Basin Management Plans have been developed for selected sub-basins within the framework of international (mainly EU) projects, but not for all sub-basins in Azerbaijan and Georgia—and certainly not for the entire Kura-Aras River Basin.

In fact, even just in the context of Azerbaijan, there does not exist a WFD River Basin Management Plan for the portion of the Kura River Basin that is located in the country. The implementation of the current legislation seems challenging due to its large number of regulations and related practical complexities. In addition, competences regarding its implementation are manifold, and coordination seems challenging. For instance, Azerbaijan's main legislative document is the Water Code (1997), and this does not take into account Integrated Water Resources Management (IWRM) or RBO principles; it also does not foresee or regulate water resources planning.

To meet the requirements of the WFD, it will therefore be necessary to amend Azerbaijan's current water legislation and to align the national Action Plans to guide WFD implementation through various regulatory adjustments.

Still, opportunities can be identified to strengthen water resources management towards WFD harmonization through an adapted institutional set-up and the allocation of clear roles as well as responsibilities. In this context, the streamlining and harmonization regarding the activities of the Ministry of Ecology and Natural Resources, the Amelioration JSC (the irrigation water supply company), and Azersu should be considered.

International cooperation between Azerbaijan and Georgia in the Kura River Basin follows the provisions of international conventions. However, neither a formal bilateral agreement nor a joint coordination body is yet in place. Technical approaches

in RBM and the development of RBMPs still lack harmonization in the Kura River Basin and related efforts should be undertaken towards effective RBM. The present legal provisions neither regulate the identification of RBDs, nor the establishment and operation of RBMOs.

Several challenges and capacity gaps can still be identified regarding the implementation of the elements of the WFD RBM cycle, including the development of RBMPs. It seems essential to start establishing appropriate capacities, applying a stepwise approach that enables the implementation of basic WFD elements following priorities. Priority implementation topics include typology, identification of reference sites, water body delineation, and pressure/impact analysis. Capacity development regarding other implementation steps can be undertaken in follow-up.

When developing technical approaches and capacities, existing projects and resources needs to be utilized in the best possible and most coordinated way.