

LES SYNTHÈSES TECHNIQUES DE L'OFFICE INTERNATIONAL DE L'EAU

The Communal Competence « GEMAPI »

How to implement it ?

Marion HARLE

April 2015



*Office
International
de l'Eau*

In partnership with higher education institutions, IOW offers states of art on various topics related to water. These synthesis are written by students as part of their study program.

This synthesis « **The Communal Competence “GEMAPI” How to implement it ?** » was performed by **Marion Harle**, student in the AgroParisTech-ENGREF specialized master "Water Management" (post-master degree) in Montpellier.

This publication reflects the views only of the author, and the IOW cannot be held responsible for any use which may be made of the information contained therein.

Any use, dissemination, citation or reproduction, in whole or in part of this document must include an explicit reference to the author, the establishment of origin and the IOW.

TECHNICAL SYNTHESIS

THE COMMUNAL COMPETENCE « GEMAPI »

How to implement it?

Marion HARLE
marion-harle@hotmail.fr

April 2015

Résumé

La gestion des milieux aquatiques et la prévention des inondations (GEMAPI) est une compétence obligatoire nouvellement transférée au bloc communal (Communes et Etablissements Publics de Coopération Intercommunale à fiscalité propre) afin de répondre aux objectifs de moyens et de résultats de la politique européenne concernant la gestion de l'eau (Directive Cadre sur l'Eau de 2000 et Directive Inondations de 2007). Pour ce faire, l'Etat français a récemment modifié le système de gouvernance actuel par la promulgation de la loi MAPTAM. Cette affectation de compétence en matière de gestion des ressources en eau et des inondations implique une réorganisation pour les collectivités territoriales. En effet, en raison de la multiplicité des types de collectivités territoriales et de leurs groupements, le transfert ainsi que les différentes possibilités de mise en œuvre de la compétence interrogent sur le rôle des structures locales de gestion de l'eau (notamment celles labellisées EPTB et EPAGE) ainsi que sur les échelles géographiques pertinentes de gestion (échelles administratives et échelles hydrographiques). Cette synthèse se propose d'analyser d'abord le dispositif de création puis les dispositions prévues pour mettre en œuvre la GEMAPI à travers notamment l'exemple de deux collectivités aux statuts différents.

Mots-clés : GEMAPI, compétence, gestion des milieux aquatiques, prévention des inondations, collectivités territoriales, transfert, délégation, gouvernance, EPTB, EPAGE

Abstract

The management of aquatic environment and the prevention of floods (GEMAPI) is a mandatory competence that has been recently transferred to local authorities (municipalities and public institutions of Intercommunity Cooperation using their own funds) in order to meet the objectives set out by the European policy for water management (Water Framework Directive in 2000 and Floods Directive in 2007). To do so, the French State has modified its current system of governance by the enactment of the law MAPTAM (decentralization). This allocation of jurisdiction over water resource and flood management involves reorganization for local authorities. Indeed, due to the multiple types of local authorities and their groupings, the transfer and the various possibilities of implementation raise questions about the role of local water management structures (including those labeled EPTB and EPAGE) as well as the relevance of geographical scale (administrative and watershed scales).

This synthesis aims to analyze, first the creation of the competence device, the process of implementation of the GEMAPI through the example of two communities with different status.

Keywords: GEMAPI, competence, aquatic environment management, prevention of floods, local authorities, transfer, delegation, governance, EPTB, EPAGE

TABLE OF CONTENTS

FOREWORD	3
GLOSSARY	4
INTRODUCTION: CONTEXT AND OBJECTIVES OF GEMAPI COMPETENCE	5
DEVICE FOR THE COMPETENCE CREATION	6
AN OBLIGATORY COMPETENCE FOR THE COMMUNAL BLOC	6
MISSIONS RELATING TO THE COMPETENCE.....	6
WHAT CONSEQUENCES IN TERMS OF COMPETENCE IN CASE OF STRUCTURES SUPERPOSITION?	7
TRANSFER OR DELEGATION TO GROUPS OF MUNICIPALITIES.....	7
GEMAPI: A RISK LOSING THE WATERSHED AS A MANAGEMENT UNIT?.....	9
WHAT ABOUT THE EPTB AND EPAGE?	10
PROVISIONS FOR THE IMPLEMENTATION OF GEMAPI.....	13
THE TERMS OF EXERCISING THE COMPETENCE	13
PROVISION OF PROTECTION WORKS	14
AN OPTIONNAL TAX « GEMAPI ».....	14
THE TECHNICAL ASSISTANT MISSION.....	14
THE DEADLINES FOR THE IMPLEMENTATION	15
THE “SOCLE”: A MEAN TO RELEGITIMIZE THE WATERSHED?.....	15
CASE STUDY: FOCUS ON TWO STRUCTURES	16
NICE COTE D’AZUR METROPOLIS	16
THE “SYNDICAT MIXTE” OF AQUATIC ENVIRONMENTS AND RIVERS.....	16
REVIEW	17
CONCLUSION	18
BIBLIOGRAPHY.....	19

LIST OF FIGURES

1 : Taking over the « large water cycle » competences (Marc, 2014)	12
--	----

FOREWORD

Given the recent promulgation of law n°2014-58 of 27 January 2014 relating to modernization of territorial public action and affirmation of the metropolis, this synthesis could benefit from some bibliographic elements.

It relies mainly on legal documents, presentations made by the Ministry of Ecology, Sustainable Development and Energy and the analysis of Maître Philippe Marc, an expert in water law.

GLOSSARY

CGCT : Code Général des Collectivités Territoriales. General Local Authorities Code.

Communal block: made up of municipalities and EPCI-FP.

Competence: a collectivity which has a competence is responsible for conducting actions covered by this competence and is legally responsible/accountable.

EPAGE: Etablissement Public d'Aménagement et de Gestion des Eaux. Water management public body. This is a label for a « syndicat mixte » and not legal status.

EPCI-FP: Etablissement Public de Coopération Intercommunale à Fiscalité Propre. Intercommunal cooperation public body.

EPTB: Etablissement Public Territorial de Bassin. Territorial basin management public body. This is a label for a « syndicat mixte » and has not legal status.

FFD: Floods Framework Directive

GEMAPI : Gestion des Milieux Aquatiques et Prévention des Inondations. Management of aquatic environment and prevention of floods. This is a competence assigned to the communal block.

Large water cycle: the natural cycle dealing with water basin management.

MAPTAM Law: Modernisation de l'Action Publique Territoriale et d'Affirmation des Métropoles. Decentralization law promulgated on the 27th of January, 2014.

ONEMA : Office National de l'Eau et des Milieux Aquatiques

PAPI : Programme d'Actions de Prévention des Inondations. Floods prevention actions program.

PGRI : Plan de Gestion des Risques d'Inondations. Floods risk management plan.

PPRI : Plan de Prévention des Risques d'Inondations. Floods risk prevention plan.

River authority: "Syndicat de rivière", which legal status is "syndicat mixte".

SAGE : Schéma d'Aménagement et de Gestion des Eaux. Water development and management plan.

SDAGE : Schéma Directeur d'Aménagement et de Gestion des Eaux. Water development and management master plan.

Small water cycle: the artificial cycle which is to do with drinking water and waste water management

SMMAR: Syndicat Mixte des Milieux Aquatiques et des Rivières, labeled EPTB, department of Aude.

SOCLE : Schéma d'Organisation des Compétences Locales de l'Eau. Scheme for organizing local competences related to water management

Syndicat Mixte Fermé: form of intercommunal syndicate made up of municipalities and/or EPCI-FP. It concerns only a single level of collectivities.

Syndicat Mixte Ouvert: type of inter-municipal cooperation structure made up of the first level of collectivity (municipalities or EPCI-FP) and at least one higher level collectivity (department, region, consular body). So, it concerns at least two levels of collectivities.

WFD: Water Framework Directive

INTRODUCTION: CONTEXT AND OBJECTIVES OF GEMAPI COMPETENCE

Environmental legislation in France is 80% resulting from the European Union legislation, and these have been transposed into national law (Ministère des Affaires Etrangères et du Développement International, 2013). This is particularly the case for structuring directives on water, the Water Framework Directive (WFD) and the Floods Framework Directive (FFD) which promote integrated water resource management at the watershed scale.

The WFD sets out ambitious targets and imposes an obligation for results from Member States. First, France transposed the WFD by the law of 21 April 2004¹, completed by the law of 30 December 2006². By the law of 12 July 2010 on the national commitment to the environment, the French government goes further and sets out the aim to reach a good status or good ecological potential for 66% of water bodies by 2015. The FFD aims to reduce the negative impacts of flooding on human health, economic activity and the environment.

To reach these objectives, several tools have been developed, including planning tools; Water development and management master plan (SDAGE), Water development and management plan (SAGE), the environment contracts or flood risk management plan (PGRI) flood risk prevention plan (PPRI) and flood prevention action program (PAPI), which allow the implementation of integrated management at the catchment scale.

Despite this ambitious policy, the Council of State noted in 2010 a lack of structuring both for initiating projects at basin level and for responsibility in water management. Indeed, although the missions related to the management of aquatic environments and flood prevention are listed in the Code of the Environment, before MAPTAM law, they remained a French State competence, which local authorities could exercise through the general clause of competence.

Council of State report

*« À l'avenir, **L'État devra mieux distinguer entre la gestion du grand cycle et du petit cycle de l'eau** dont la responsabilité est confiée aux collectivités territoriales et souvent subdélégée. L'État doit laisser la gestion du second, en la simplifiant, à ces collectivités qui le maîtrisent bien et se saisir de la gestion, encore très déficiente, du premier, qui est de sa responsabilité et qu'il n'assume pas aujourd'hui. [...] Le Conseil d'État recommande que l'ONEMA et les agences de l'eau soient moteurs dans cette démarche. **L'État devra, dans la foulée, mettre en place une gouvernance adaptée pour la gestion de ce grand cycle**, les agences de l'eau ne jouant pas encore ce rôle mais étant bien placées pour l'assumer. »*
(Conseil d'Etat, 2010)

The legislature, by the promulgation of the law n°2014-58 of 27 January 2014 relating to modernization of territorial public action and affirmation of the metropolis ("MAPTAM" law), assigns these tasks concerning the management of aquatic environments and flood prevention ("GEMAPI") to the communal level.

What is the system which is set up for the creation of this competence? What are the key issues that make the provisions for its implementation stand out?

¹ Loi n° 2004-338 du 21 avril 2004 portant transposition de la directive 2000/60/CE du Parlement européen et du Conseil du 23 octobre 2000 établissant un cadre pour une politique communautaire dans le domaine de l'eau

² Loi n° 2006-1772 du 30 décembre 2006 sur l'eau et les milieux aquatiques

The first part of this synthesis will present the new municipal competence, its contours and the structural changes it causes. Then there is a presentation of the territorial basin management and the water management public bodies. Finally there is a look at the established drawbacks.

The second part presents the provisions for the implementation of the competence (deadlines, working conditions and means) and then suggests an answer for the drawbacks.

Finally, in the third part, a short case study focuses on two structures with different status.

DEVICE FOR THE COMPETENCE CREATION

AN OBLIGATORY COMPETENCE FOR THE COMMUNAL BLOC

To overcome the lack of structure pointed to by the State Council, the MAPTAM law of the 27 January, 2014, by the article 56, assigns and mandates the transfer of the competence "management of aquatic environments and flood prevention (*called "GEMAPI"*) to municipalities and a kind grouping of intermunicipalities, and the intermunicipal cooperation public bodies (EPCI-FP) in place of their member municipalities. The EPCI-FP are the « Communautés de Communes », the « Communautés d'Agglomération », the « Communautés Urbaines » and the « Métropoles ». There is one exception to the automatic transfer of jurisdiction mechanism; concerning the transfer to the « Communautés de Communes », it must be established in advance a recognition of a "community interest" (Article L. 5214-16 du Code Général des Collectivités Territoriales).

MISSIONS RELATING TO THE COMPETENCE

The law defines the competence GEMAPI by the missions on 1°, 2°, 5° et 8° of the paragraph I of the article L.211-7 of the Code of Environment :

- The catchment or fraction of catchment development
- The maintenance and the development of rivers, canals, lakes or bodies of water
- The defense against the floods and the sea
- The protection and the restoration of aquatic ecosystems, sites, wetlands, riparian vegetation

Article L.211-7 of Code of Environment

« 1° L'aménagement d'un bassin ou d'une fraction de bassin hydrographique ; 2° L'entretien et l'aménagement d'un cours d'eau, canal, lac ou plan d'eau, y compris les accès à ce cours d'eau, à ce canal, à ce lac ou à ce plan d'eau ; [...] 5° La défense contre les inondations et contre la mer ; [...] 8° La protection et la restauration des sites, des écosystèmes aquatiques et des zones humides ainsi que des formations boisées riveraines » (Code de l'environnement, 2014a).

However, these tasks relate more to flood protection than the preservation of aquatic environments. The maintenance of rivers, protection of wetlands and riparian vegetation are an additional to flood prevention to ensure the natural flow of water and flood expansion to fields. Other actions under the same article of the Environmental Code³ carry flood prevention, such as the control of storm water runoff or management of hydraulic structures, but are not

³ Article L211-7 of Code of Environment : « 4° La maîtrise des eaux pluviales et de ruissellement ou la lutte contre l'érosion des sols ; [...] 9° Les aménagements hydrauliques concourant à la sécurité civile ; 10° L'exploitation, l'entretien et l'aménagement d'ouvrages hydrauliques existants »

obligatory competences for the communal block. These other missions may be exercised by municipalities and EPCI-FP in addition to GEMAPI competence, or by other collectivities or group of collectivities.

WHAT CONSEQUENCES IN TERMS OF COMPETENCE IN CASE OF STRUCTURES SUPERPOSITION?

The GEMAPI competence has been affected by the MAPTAM law to the communal block. However, it happens that municipalities have already transferred these missions to union structures ("syndicat mixte" ou "syndicat de communes") before the promulgation of the law.

As said P. Marc, *"The diagnosis [...], carried nationally, shows that river authorities assume operational missions on aquatic environments management to reach these national and European targets. They are a vital link in the territorial declination of water policy. The Water Agencies, State services, Regions, Departments and their member municipalities solicit them to initiate, facilitate and implement the tools of environmental management: the water development and management plan (SAGE), the river contracts, the flood prevention actions programme (PAPI) ... "* (Marc et al., 2012).

Consequently, the affectation of the GEMAPI competence to the communal block implies consequences for authorities already exercising the optional competence instead of the State, by the way of the general clause of competence. As suggested by the Ministry of Ecology, "In some cases, the assignment of GEMAPI competence and transfer to an EPCI-FP (whether it is a creation, an extension of scope or an extension of competence of this EPCI-FP), carries either the withdrawal of this competence to authorities; or substitution of municipalities by the EPCI-FP; or the dissolution of the authority." (Butlen, 2014)⁴.

TRANSFER OR DELEGATION TO GROUPS OF MUNICIPALITIES

As for municipalities or EPCI-FP which did not affect the competence (under the general clause of competence) before the entry into force of the MAPTAM law to an authority, the law provides for the possibility of delegation or transfer (following the accession) to a "syndicat mixte".

Principle of transfer of competence

The transfer of competence takes place in the local cooperation framework, through statutory means. According to the exclusivity principle, the transfer of a competence to an EPCI by one of its member municipalities implies the total and correlative divestment of this competence. So, the municipality cannot exercise the competence, and cannot pay grants to EPCI. In addition, the municipality cannot transfer it to another EPCI, unless it leaves before-hand the EPCI. Finally, the exclusivity principle doesn't prevent dividing the competence when this one is breakable (Direction Générale des Collectivités locales et Direction Générale des Finances publiques, 2013).

Then, the article L. 5211-4-1 of General Local Authorities Code provides that the transfer of a competence from a municipality to an EPCI involves the transfer of the service or the service part responsible for its implementation. However, as part of a good organization of services, a municipality may retain all or part of the service concerned by the transfer of competence, due to the partial nature of the latter (Code général des collectivités territoriales, 2014a).

⁴ Butlen J.-B., 2014. *Création de la compétence GEMAPI : implications et enjeux*. Lyon, 11 p. [Broadcast on the 16/11/2014]

So, the transfer carries the assets, rights and obligations of member collectivities; as emphasized by P. Marc, as part of the GEMAPI, transfer gains including structures for protection against flooding (river dykes, dams clippers etc.).

According to the article L. 5211-61 du General Local Authorities Code, an EPCI-FP can transfer all competence to a « syndicat mixte » or to a « syndicat de communes » whose perimeters includes the entire community perimeter after the « syndicat » creation or membership (Code général des collectivités territoriales, 2014b).

So, the EPCI can transfer the competence GEMAPI to a “syndicat” on all or part of its territory or to several “syndicats”, each located on different parts of its territory.

The transfer of competence is reflected in the abandonment of the management of the competence domain, decision which is therefore final since the municipality or EPCI no longer have power over the transferred competence.

Principle of delegation of competence

The intervention by way of delegation of competence allows scope of union structures to define control and the responsibilities.

It follows from the article L.1111-8 and the article R. 1111-1 of General Local Authorities Code (made under the previous one) indicates that a collectivity can delegate to another one a competence. So this competence is exercised for the name of the delegator collectivity. The delegation is determined by a convention/contract, which sets out the duration, the objectives and procedures for control of the delegator authority over the delegate authority.

Article L.1111-8 of General Local Authorities Code

*« Une collectivité territoriale peut déléguer à une collectivité territoriale relevant d'une autre catégorie ou à un établissement public de coopération intercommunale à fiscalité propre une compétence dont elle est attributaire. Les compétences déléguées en application de l'alinéa précédent sont **exercées au nom et pour le compte de la collectivité territoriale délégante**. Cette délégation est **régie par une convention** qui en fixe la durée et qui définit les objectifs à atteindre et les modalités du contrôle de l'autorité délégante sur l'autorité délégataire. Les modalités de cette convention sont précisées par décret en Conseil d'Etat »* (Code général des collectivités territoriales, 2014c).

Article R. 1111-1 of General Local Authorities Code

« La convention prévue à l'article L. 1111-8 est élaborée par les présidents des assemblées délibérantes des collectivités territoriales ou des établissements publics de coopération intercommunale à fiscalité propre concernés. **Elle détermine la ou les compétences déléguée (s), fixe la durée de la délégation de compétence ainsi que les modalités de son renouvellement, définit les objectifs à atteindre et les modalités de contrôle de l'autorité délégante sur l'autorité délégataire.** Elle fixe des indicateurs de suivi correspondant aux objectifs à atteindre. Elle détermine également le cadre financier dans lequel s'exerce la délégation, les moyens de fonctionnement et les services éventuellement mis à la disposition de l'autorité délégataire ainsi que les conditions dans lesquelles des personnels de l'autorité délégante peuvent être mis à disposition de l'autorité délégataire ou détachés auprès d'elle. **L'autorité délégataire est substituée à l'autorité délégante dans tous ses droits et obligations relatifs à l'objet de la délégation pendant la durée de celle-ci.** La convention prévoit le cas échéant les modalités de sa résiliation anticipée. Elle est approuvée par délibérations concordantes des assemblées délibérantes des collectivités territoriales ou des établissements publics de coopération intercommunale à fiscalité propre qui y sont parties » (Code général des collectivités territoriales, 2014d).

So, the competence transfer tends to a sustainable setting up of the union structure. By contrast, the competence delegation allows to **the delegator to recover the competence** within the convention framework. Furthermore, the competence is exercised under the name of the delegator, who has control of power over the delegated.

Municipalities or EPCI-FP competent in the management of aquatic environments and flood prevention will choose to delegate or to transfer all or part of the competence.

GEMAPI: A RISK OF LOSING THE WATERSHED AS A MANAGEMENT UNIT?

The allocation of the GEMAPI competence to the communal block raises the issue of the suitable water management territorial scale. Indeed, if the communal block (municipalities and EPCI-FP) wishes to exercise the competence themselves, the management scale will be the administrative boundaries (communal). However, European Union directives recommend the watershed scale, as a suitable unit for integrated water resources management. There may be political differences within a territory, where a collectivity would not want to share the competence with the neighboring one; **is there a risk of losing the watershed scale as a suitable scale of management?** Due to the **principle of free administration of collectivities**, the law cannot impose the communal block transfer or delegation of competence to a union structure established at the watershed level.

The article L.213-12 of the Environment Code forecasts that in the production or reviewing of the SDAGE, the "Préfet Coordonnateur de Bassin" can determine the basin, sub-basins or groups of sub-basins that justify the creation or modification of an EPTB or EPAGE. So, this can be considered as a safeguard, of course fragile since it only encourages the collectivities.

Article L.213-12 of Code of Environment

« III. — Dans le cadre de l'élaboration ou de la révision des schémas directeurs d'aménagement et de gestion des eaux prévus à l'article L. 212-1 du présent code, le préfet coordonnateur de bassin détermine le bassin, les sous-bassins ou les groupements de sous-bassins hydrographiques qui justifient la création ou la modification de périmètre d'un établissement public territorial de bassin ou d'un établissement public d'aménagement et de gestion de l'eau » (Ministère de l'Ecologie, du Développement Durable et de l'Energie, 2014b).

WHAT ABOUT THE EPTB AND EPAGE?

A strengthened role

To exercise the competence, the legislator forecasts a model scheme. Indeed, as states the law, **EPTB and EPAGE will exercise all of the part of the GEMAPI competence** by the transfer or delegation.

Article L.213-12 of Code of Environment

« V. — *Les établissements publics territoriaux de bassin et les établissements publics d'aménagement et de gestion de l'eau constitués conformément aux II et III du présent article exercent, par transfert ou par délégation conclue dans les conditions prévues à l'article L. 1111-8 du code général des collectivités territoriales et conformément à leurs objets respectifs, tout ou partie des missions relevant de la compétence de gestion des milieux aquatiques et de prévention des inondations définie au I bis de l'article L. 211-7 du présent code* » (Ministère de l'Ecologie, du Développement Durable et de l'Energie, 2014b).

In addition, the decree draft relating to EPTB and EPAGE plans to strengthen the role of the union structures established at the watershed scale. It proposes three management scales to the management of aquatic environments and flood prevention.

- The communal block, which ensure a close link between the local planning policy and the management of aquatic environments and flood prevention;
- The EPAGE, "syndicat mixte" in charge of the initiating project at sub-basin level and for responsibility in the management of aquatic environments and flood prevention;
- The EPTB, "syndicat mixte" in charge of missions of coordination in the water management and the initiating project of common interest at the group of basins level.

Decree draft relating to EPTB and EPAGE (Ministère de l'Ecologie, du Développement durable et de l'Energie, 2014b) :

- « *Le bloc communal et intercommunal au travers des établissements publics de coopération intercommunale à fiscalité propre (EPCI-FP) assurant un lien de proximité entre la politique locale d'aménagement et la gestion des milieux aquatiques et la prévention des inondations ;*
- *l'établissement public d'aménagement et de gestion de l'eau (EPAGE), syndicat mixte en charge de la maîtrise d'ouvrage locale pour les compétences de gestion des milieux aquatiques et de prévention des inondations à l'échelle du sous-bassin versant hydrographique ;*
- *l'établissement public territorial de bassin (EPTB), syndicat mixte en charge de missions de coordination dans le domaine de l'eau et de maîtrise d'ouvrage de projets d'intérêt commun à l'échelle des groupements de bassins versants, dont les compétences sont renforcées par la même loi ».*

The MAPTAM law further consolidates the EPTB in their role of initiating project at the watershed scale. Also, it encourages this management scale by creating EPAGE.

The article L.213-12 of the Code of Environment defines an EPAGE as a group of collectivities established at the scale of coastal river watershed which is subject to recurrent floods or at the scale of a great river sub-basin. Its role is to ensure the prevention of floods and the non-domain river management.

Article L.213-12 of the Code of Environment

EPAGE : « *un groupement de collectivités territoriales [...] à l'échelle d'un bassin versant d'un fleuve côtier sujet à des inondations récurrentes ou d'un sous-bassin hydrographique d'un grand fleuve en vue d'assurer, à ce niveau, la **prévention des inondations et des submersions ainsi que la gestion des cours d'eau non domaniaux**. Cet établissement comprend notamment les collectivités territoriales et les établissements publics de coopération intercommunale à fiscalité propre compétents en matière de gestion des milieux aquatiques et de prévention des inondations en application du I bis de l'article L. 211-7 du présent code* » (Ministère de l'Ecologie, du Développement Durable et de l'Energie, 2014b).

EPTB and EPAGE don't have their own missions. These are the competences which are transferred to them which define their activities. In order to be complementary, these structures manage at different scales. For instance, EPTB are associated to a basin or a group of sub-basins whereas EPAGE are associated to smaller basins. Thus, in the GEMAPI framework, EPTB ensure the coherence of the initiating project activities of EPAGE (Article L.213-12 of Code of Environment).

Therefore, several EPAGE (or a single one) can join a similar EPTB. This kind of organization is one among others: one territory may support one EPAGE without EPTB, and conversely, one EPTB without EPAGE. Likewise, a territory may have neither EPTB nor EPAGE.

According to the draft decree, it is up to the "Préfet Coordonnateur de Bassin" to demarcate the EPTB and EPAGE area in order to ensure territoriality coherence. This area must respect:

- hydrographical coherence
- coherence between its specific missions and its interventional area
- coherence between its missions and its technical and financial means
- the limitation of overlapping structures

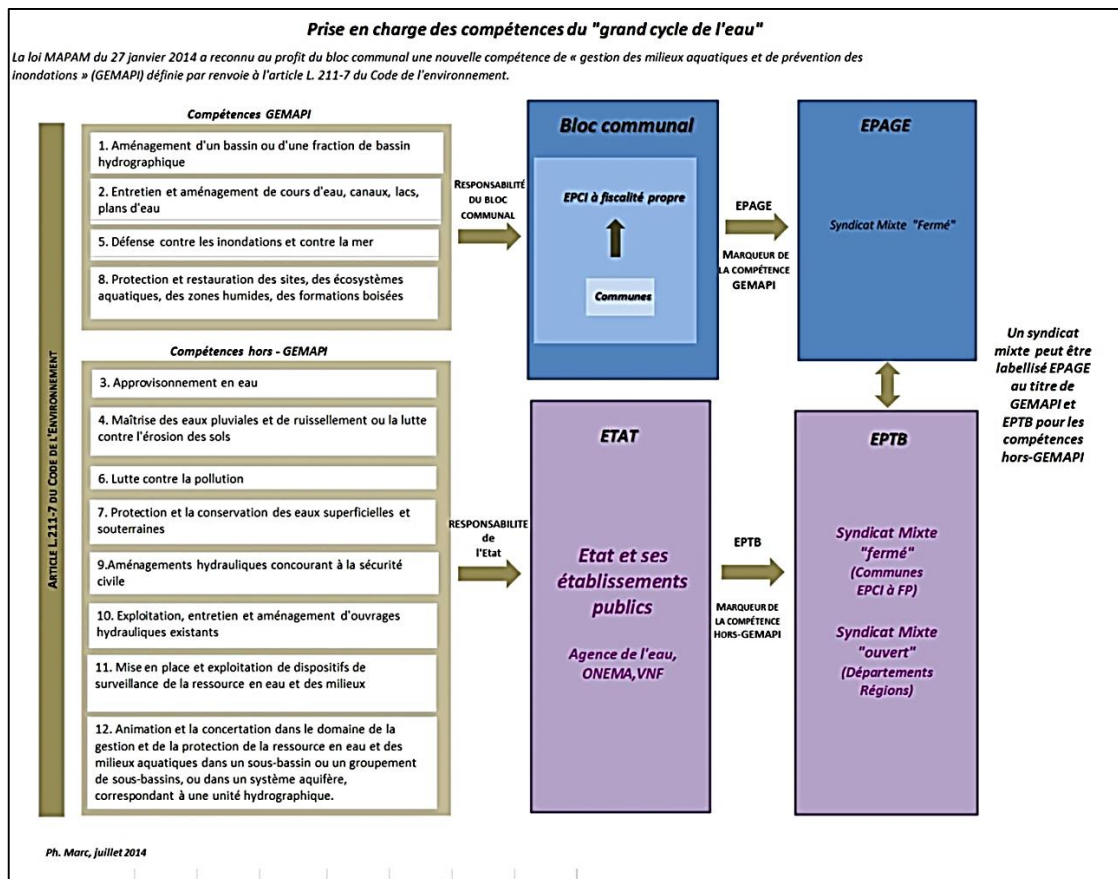
Draft decree relating to EPTB and EPAGE

« *La délimitation [...] du périmètre d'intervention [...] respecte : 1° La **cohérence hydrographique** du périmètre d'intervention, d'un seul tenant et sans enclave, correspondant à l'ensemble d'un bassin ou d'un groupement de sous-bassins hydrographiques ; 2° Une **adéquation entre les missions définies par ses statuts et le périmètre sur lequel il les conduit** ; 3° La nécessité de disposer des **capacités techniques et financières** en cohérence avec la conduite de ses missions ; 4° La **limitation de la superposition** du périmètre d'intervention d'un établissement public avec celui d'un autre établissement public de sa catégorie, aux seuls cas où la préservation d'un estuaire ou d'une masse d'eau souterraine justifierait la création d'un établissement public territorial de bassin* » (Ministère de l'Ecologie, du Développement durable et de l'Energie, 2014b).

Despite this, it is the EPTB which ensures the initiating of a project at the watershed level, the EPAGE has been created in order to carry out the GEMAPI mission; they are the main local and operational actor for flood prevention and aquatic environment management. Moreover, a "syndicat mixte" can be declared EPAGE only when the whole GEMAPI mission has been transferred to it.

EPTB and EPAGE, for whom and for what?

While the legislation provides for an implementation of GEMAPI competence according to an entry by management scale (EPCI-FP, EPAGE, EPTB), the author P. Marc says there is a key difference: this is an entry by GEMAPI competences or outside-GEMAPI competences that characterize the EPTB and EPAGE role; “Regarding EPAGE and EPTB, they do not see themselves as structures but as 'labels' that identify the nature of the competences exercised: EPAGE = GEMAPI, EPTB = outside-GEMAPI”. His diagram below shows the statement of the device to create the GEMAPI competence:



1 : Taking over the « large water cycle » competences (Marc, 2014)

The conclusion that can be made from reading articles 56, 57, 58 and 59 of the MAPTAM law is the following (Marc, 2014)⁵. The French State gives the GEMAPI competence to communal block. This one is exercised on behalf of the municipal or intermunicipal block (municipality or EPCI-FP) by a Water management public body, defined as operational and a local contractor ("syndicat mixte fermé", i.e. consisting only of municipalities and / or EPCI).

The French State remains responsible for other competences defined in Article L.211-7 of the Environmental Code. These tasks are exercised on its behalf and on behalf of its Public Institutions, by a territorial basin management public body (EPTB), responsible for the coordination of actions established at the sub-basin scale and for the initiating project of operations covering the basin. The EPTB are "syndicat mixte fermé" whether "syndicat mixte ouvert", in which case the Department or the Region can constitute an EPTB.

⁵ Marc P., 2014. Advocate and expert in water law. Email exchanges at the 11/20/2014.

PROVISIONS FOR THE IMPLEMENTATION OF GEMAPI

THE TERMS OF EXERCISING THE COMPETENCE

Although GEMAPI is transmitted to the communal block, the maintenance of rivers is the responsibility of the private owner or the riparian collectivity in the case of a non-state owned river. Also, this is a responsibility of the French State if the river is non-state owned. So, the riparian owner has to maintain the river.

Article 59 of MAPTAM law

« *Les communes et les établissements publics de coopération intercommunale à fiscalité propre exercent leur compétence prévue au I bis de l'article L. 211-7 du code de l'environnement, [...] **sans préjudice de l'obligation d'entretien régulier du cours d'eau par le propriétaire riverain** prévue à l'article L. 215-14 du même code, ni des missions exercées par les associations syndicales de propriétaires* » (Loi n° 2014-58 du 27 janvier 2014 de modernisation de l'action publique territoriale et d'affirmation des métropoles, s. d.).

Article L.215-14 of Code of Environment

« **Le propriétaire riverain est tenu à un entretien régulier du cours d'eau.** L'entretien régulier a pour objet de **maintenir le cours d'eau dans son profil d'équilibre, de permettre l'écoulement naturel des eaux et de contribuer à son bon état écologique** ou, le cas échéant, à son bon potentiel écologique, notamment par enlèvement des embâcles, débris et atterrissements, flottants ou non, par élagage ou recépage de la végétation des rives » (Code de l'environnement, 2014c).

Article L.2124-11 of General Code on Public Property

« L'entretien, tel que défini aux articles L. 215-14 et L. 215-15 du Code de l'Environnement, des cours d'eau domaniaux et de leurs dépendances est à la charge de la personne publique propriétaire du domaine public fluvial » (Code général de la propriété des personnes publiques, 2014).

Therefore, the MAPTAM law does not modify the rights and duties of riparian owners, whether it is an individual, a community or the State. They have an obligation to maintain the rivers to help flood prevention and aquatic environment preservation; so it is to these people that the missions under the GEMAPI are addressed first. The collectivity does not have to intervene if the river maintenance is carried out.

Conversely, in case of failure and/or emergency, the collectivity replaces the riparian owner to implement river maintenance actions related to the GEMAPI competence through a Declaration of General Interest with a public inquiry.

Article L.211-7 of Code of Environment:

« **Les collectivités territoriales et leurs groupements, [...] ainsi que les établissements publics territoriaux de bassin [...] peuvent, [...] entreprendre l'étude, l'exécution et l'exploitation de tous travaux, actions, ouvrages ou installations présentant un caractère d'intérêt général ou d'urgence** » (Code de l'environnement, 2016).

Note that this version of the article which will come into force on 1 January 2016 removes "syndicats mixtes", but adds EPTB to local collectivities as being able to make a Declaration of General Interest procedure, which affirms the role of the EPTB for initiating a project.

PROVISION OF PROTECTION WORKS

To implement GEMAPI competence, covering measures to protect against floods, the legislator in article 58 of the MAPTAM law provides for free provision of dykes belonging to public officials to the competent municipalities or EPCI-FP. Dikes are defined as "built or works to prevent floods and submergences" (Code de l'environnement, 2015). The "mixed" works that means those which contribute to flood prevention. Similarly, concerning private owners dikes, public right of way will be created to allow operations for flood prevention.

Thus, the collectivities (municipalities and EPCI-FP) will be the only managers of protection works, which implies a duty of maintenance and creation of new protection works.

The provision of the dikes is a means of action for the exercise of GEMAPI but remains focused on flood prevention, but not for the preservation of aquatic environments.

AN OPTIONNAL TAX « GEMAPI »

This protection works provision may result in significant costs relating to maintenance operations and dyke creation, which will cause considerable expense to the competent collectivities. So, the MAPTAM law forecasts an optional introduction of a tax by municipalities and EPCI-FP.

Article 56 of the MAPTAM law:

« Les communes ou les établissements publics de coopération intercommunale à fiscalité propre substitués à leurs communes membres pour l'exercice de la compétence en matière de gestion des milieux aquatiques et de prévention des inondations prévue au I bis de l'article L. 211-7 du présent code peuvent instituer, en vue du financement d'une ou plusieurs des missions mentionnées au I du même article, à l'exception des missions mentionnées aux 3° et 6° du même I et dans les conditions prévues à l'article 1379 du code général des impôts, la taxe pour la gestion des milieux aquatiques et la prévention des inondations. L'objet de cette taxe est le financement des travaux de toute nature permettant de réduire les risques d'inondation et les dommages causés aux personnes et aux biens » (Loi n° 2014-58 du 27 janvier 2014 de modernisation de l'action publique territoriale et d'affirmation des métropoles, s. d.)

This tax will replace the users fee and the collectivity will have to respect the ceiling fixed to 40€ per year for each habitant residing on the competence territory. The municipalities and EPCI-FP are the only structures which can raise the tax; if the GEMAPI competence is delegated or transferred to a "syndicat mixte", the financial supplies will come from the members' contributions of Water Basin Agency grants or the Barnier Fund.

However, as it is stated in the law, this tax will fund external missions at the GEMAPI competence, whether 10 missions out of 12 with the goal of financing operations against flooding. Therefore, it emerges from this text, as P. Marc underlines, that this tax appears to be more "PI" (flood prevention) than "GEMA" (aquatic environments management) and also its scope goes beyond GEMAPI (Marc, 2014).

THE TECHNICAL ASSISTANT MISSION

To implement the GEMAPI competence, it is forecasted that collectivities will be assisted until the 1st of January 2018 by a technical mission, at the watershed scale by the "Préfet Coordonnateur de Bassin". The purpose of this mission is to make recommendations to identify

and to define adapted tools. To make it possible, the mission must assess an inventory of the rivers and the works and installations needed for the GEMAPI exercise.

THE DEADLINES FOR THE IMPLEMENTATION

The MAPTAM law set up deadlines for the implementation; the provision of the GEMAPI creation and its transfer to the communal block entering into force at **the 1st of January 2016**, but it may be advanced to the entering into force of the MAPTAM law, 27th of January 2014.

So, the other collectivities that have already exercised one or several missions of GEMAPI competence have **until the 1st January 2018** to transfer them to municipalities or EPCI-FP. This envisaged transition allows the preservation of the actions of existing structures and in particular to reaching the UE objectives.

Concerning dyke provision, it must be realized at the latest **by 27 January 2024**. Present managers have to continue to ensure this management on behalf of the communal block for ten years from the promulgation of MAPTAM law.

Article 59 of MAPTAM law :

« *L'Etat ou l'un de ses établissements publics, lorsqu'il gère des digues à la date d'entrée en vigueur de la présente loi, **continue d'assurer cette gestion pour le compte de la commune ou de l'établissement public de coopération intercommunale à fiscalité propre compétent pour la défense contre les inondations et contre la mer pendant une durée de dix ans à compter de cette date*** » (Loi n° 2014-58 du 27 janvier 2014 de modernisation de l'action publique territoriale et d'affirmation des métropoles, s. d.).

THE “SOCLE”: A MEAN TO RELEGITIMIZE THE WATERSHED?

After the foreseen device to implement GEMAPI competence, there are limitations. In response to the risk of imprecision of GEMAPI missions, P. Marc recommends the introduction of a “SOCLE”, an **organizational scheme of local water competences** (“*Schéma d'Organisation des Compétences Locales de l'Eau*”) (Marc, 2014)⁶. MAPTAM law excludes others collectivities of the GEMAPI exercise (French State, Regions and Departments), he indicates that the precise definition of its scope is necessary to its operational implementation and to define the other collectivity scopes (missions and competences outside of GEMAPI). **In fact, in this case of the competence will be not precise, it will be as many definitions of content of GEMAPI as EPCI-FP.**

This “SOCLE” could be established by the different collectivities (municipalities, EPCI, departments, regions, State) in collaboration with the Water Basin Agencies. So, the large water cycle will be managed by an effective framework and an effective water competence distribution too.

In this way, GEMAPI missions and actions could be defined at the watershed scale (due to the cooperation with the Water Basin Agency); so, it will ensure the territorial and hydrographical coherence of the actions. So, the requirement specifications which will be fixed at an appropriate scale **could be a means to confirm the watershed as the pertinent water management scale.**

⁶ Marc P., 2014. *Compétences des acteurs et emprise du projet : impact sur le choix de la maîtrise d'ouvrage et le déroulement du projet*. Orléans, AgroParisTech, 40 p.

CASE STUDY: FOCUS ON TWO STRUCTURES

The GEMAPI competence which has recently been transferred to the communal block pushes the current water governance. Collectivities have until 31 December 2015 to organize and think about how they will handle the competences (exercise, transfer, delegation).

Below, it was decided to make a focus on two structures with different status.

NICE COTE D'AZUR METROPOLIS

Metropolis Nice Côte d'Azur is an intercommunal cooperation public body grouping 49 communes. It was created on 1 January 2012 following the reform of local collectivities from 2010 (Métropole Nice Côte d'Azur, 2014).

A metropolis includes several municipalities "in one piece and without enclaves" which associate within a space of solidarity to develop economical, ecological, educational, cultural and social projects on their territory in order to improve competitiveness and cohesion (Direction de l'information légale et administrative, 2014).

When it was created, the Nice metropolis took the competences related to water (Jeanne, 2014)⁷ ; the storm water management, sanitation, quality control (chemical, physical, biological, ecotoxicological) of natural habitats, water consumption and leisure, etc. The MAPTAM law transfers GEMAPI competence to municipalities or EPCI-FP, so this is the metropolis that has the GEMAPI competence.

Nice Côte d'Azur Metropolis which is already organized for the exercise of competences relating to the "large water cycle"; will it transfer or delegate the competence? If this is the case, to whom will it be transferred? To existing river authorities? Will there be an EPTB or EPAGE created?

THE "SYNDICAT MIXTE" OF AQUATIC ENVIRONMENTS AND RIVERS

The Syndicat Mixte of aquatic environments and rivers (SMMAR) was established 30th may 2002 under the impulse of the "Conseil Général" of the Aude *département*, following the devastating flood of 1999. It includes 18 river authorities and the department of Aude; 438 municipalities of the Aude department and 30 of the Hérault one are adherent to SMMAR. Its initial mission was to restructure the "syndicats intercommunaux" and to recreate anew throughout the watershed of the river Aude (Lorente, 2014)⁸.

First created for the defense against floods, the syndicate became an EPTB in December 2008 in order to have an action scope covering quantitative management of water resources and the management and conservation of wetlands. Today, the SMMAR ensures the initiating project of studies at the Aude watershed scale, and ensures the assistance to the river authorities initiating project of the works. G. Lorente indicates that river authorities that are members of the SMMAR are invited today to change their status to be labeled EPAGE.

How will the communal block of Aude department be organized? Will it be a transfer or a delegation of GEMAPI to the SMMAR or, in the continuity of what currently exists to the river authorities?

⁷ Jeanne J., 2014. Water, air and environments quality direction of Nice Côte d'Azur Metropolis. Phone interview at the 11/28/2014.

⁸ Lorente G., 2014. SAGE Fresquel animator. Interview at the 11/24/2014.

REVIEW

The issues currently raised are the next: which organization will be set up? Which collectivities or collectivity groups will exercise the competence? Why? What are the arguments: legal, financial, territorial?

The two examples treated previously are different by their status: Nice Metropolis is an EPCI-FP, the GEMAPI competence is rightfully return to it; SMMAR is a “syndicat mixte ouvert”, the GEMAPI competence is rightfully return to the municipalities and EPCI-FP which makes it up to what it is. Nevertheless, these two cases are already well structured, it appears that the implementation of the competence forecasted by the MAPTAM law will not be complex.

However, this will not be the case for small or non-organized territories. Indeed, if the GEMAPI competence is shared between different structures at different scales (particularly due the general clause of competences), its implementation will be more difficult. For example, it is possible that in a given territory, the mission relating to flood prevention is exercised by a “syndicat intercommunal” whereas the mission for the management of aquatic environments is exercised by the *Department*.

CONCLUSION

The affectation of the competence Management of Aquatic Environments and Prevention of Floods to the communal block generates a change in the current organizational scheme: municipalities and EPCI-FP are now at the center of the large water cycle management.

To ensure its effectiveness, locally elected officials have the responsibility to define the structures that will be competent for the management of aquatic environments and flood prevention, and which will be best adapted for the exercise of this competence. What links will there be between GEMAPI competence and the management scale? What link will there be between territories with administrative boundaries and overlapping watersheds? What links will there be between the various competent structures in terms of management of the large water cycle?

Moreover, the available resources for implementing the competence question the State's role. Indeed, in the process put in place, first the State grants GEMAPI competence to municipalities but it also declines the management of protection works against flooding; a transfer of State property to collectivities is planned. Thus, a question emerges: did the State disengage to reach the objectives of the European Water Framework Directive and Flood Directive?

In addition, the draft law on the new territorial organization of the Republic of Madame Lebranchu, Minister of Decentralization and Public Service, forecasts the possibility for a State action against collectivities in the case of a sentence by the Court of justice of the European Union. In fact, the collectivities will participate in paying the fines resulting from the breaches of the law, in the framework of the exercise of decentralized competences (Sénat, Commission des lois, 2014)⁹. Did the State relinquish its responsibilities (including financial) in order to reach EU objectives?

Draft law relating to the New Territorial Organization of the Republic:

« L'article 33 vise à permettre **la participation des collectivités territoriales au paiement des amendes** résultant de la reconnaissance **de manquements de la France à ses obligations** nées de l'application du Traité sur le fonctionnement de l'Union européenne lorsque ce manquement est constaté **dans le cadre de l'exercice d'une compétence décentralisée**. ».

⁹ After Senate reading, this article has been proposed to be deleted.

BIBLIOGRAPHY

- Butlen J.-B., 2014. *Création de la compétence GEMAPI : implications et enjeux*. Lyon, Agence de l'Eau Rhône Méditerranée Corse, 11 p. [Broadcast on the 16/11/2014].
- Code de l'environnement, 2014a. Article L211-7.
- Code de l'environnement, 2014b. Article L213-12.
- Code de l'environnement, 2014c. Article L215-14.
- Code de l'environnement, 2015. Article L566-12-1.
- Code de l'environnement, 2016. Article L211-7.
- Code général de la propriété des personnes publiques, 2014. Article L2124-11.
- Code général des collectivités territoriales, 2014a. Article L5211-4-1.
- Code général des collectivités territoriales, 2014b. Article L5211-61.
- Code général des collectivités territoriales, 2014c. Article L1111-8.
- Code général des collectivités territoriales, 2014d. Article R1111-1.
- Conseil d'Etat, 2010. *L'eau et son droit : rapport annuel du Conseil d'Etat*. Paris, La Documentation Française, 582 p. Etudes et documents du Conseil d'Etat, vol.2.
- Direction de l'information légale et administrative, 2014. *Les collectivités territoriales*. Disponible sur Internet: <http://www.vie-publique.fr/decouverte-institutions/institutions/collectivites-territoriales/intercommunalite-cooperation-locale/que-sont-metropoles-creees-par-loi-2010.html>, [Consulted on the 16/01/2015].
- Direction Générale des Collectivités locales, Direction Générale des Finances publiques, 2013. *Les transferts de compétences*. Disponible sur Internet: http://www.collectivites-locales.gouv.fr/transferts-competences#_RefHeading_8_587734144, [Consulted on the 08/12/2014].
- Jeanne J., 2014. Water, air and environments quality direction of Nice Côte d'Azur Metropolis. Phone interview at the 11/28/2014.
- Loi n° 2014-58 du 27 janvier 2014 de modernisation de l'action publique territoriale et d'affirmation des métropoles.
- Lorente G., 2014. SAGE Fresquel animator. Interview at the 11/24/2014.
- Marc P., 2014. Advocate and expert in water law. Email exchanges at the 11/20/2014.
- Marc P., 2014. *Compétences des acteurs et emprise du projet : impact sur le choix de la maîtrise d'ouvrage et le déroulement du projet*. Orléans, AgroParisTech, 40 p. [Broadcast on the 01/11/2014].
- Marc P., Couprie B., Desagher V., Charoy M., 2012. *La gestion des cours d'eau : une organisation existante à adapter aux enjeux actuels*. Aix-en-Provence, ARPE (Agence Régionale pour l'Environnement / PACA), 143 p.

Métropole Nice Côte d'Azur, 2014. *Métropole Nice Côte d'Azur - Présentation*. Disponible sur Internet: <http://www.nicecotedazur.org/la-metropole/l-institution>, [Consulted on the 16/01/2015].

Ministère de l'Ecologie, du Développement durable et de l'Energie, 2014a. *Décret n° 2014-846 du 28 juillet 2014 relatif aux missions d'appui technique de bassin*.

Ministère de l'Ecologie, du Développement durable et de l'Energie, 2014b. *Projet de décret relatif aux établissements publics territoriaux de bassin et aux établissements publics d'aménagement et de gestion de l'eau*.

Ministère des Affaires Etrangères et du Développement International, 2013. *Les politiques environnementale et climatique de l'Union européenne*. Disponible sur Internet: <http://www.rpfrance.eu/Les-politiques-environnementale-et>, [Consulted on the 16/01/2015].

Sénat, Commission des lois, 2014. *Texte n° 636 : Projet de loi portant nouvelle organisation territoriale de la République, présenté par Marylise Lebranchu*.



648 rue Jean-François Breton – BP 44494
34093 MONPELLIER CEDEX 5

Tél. : (33) 4 67 04 71 00

Fax. : (33) 4 67 04 71 01

www.agroparistech.fr



*Office
International
de l'Eau*

15 rue Edouard Chamberland
87065 Limoges Cedex

Tél. (33) 5 55 11 47 80

Fax. (33) 5 55 11 47 48

www.oieau.org