

AEAJ working group on environmental law Workshop on the EU Water Framework Directive (WFD) and some current issues, Tenerife 2016

Questionnaire - answers

Summary

In our courts throughout the Union we in many different forms meet disputes related to water; e.g. the lack of water, pollution of water by emissions from the industry or the agricultural sector, salination of water-resources in coast areas, due to over-exploitation, climate change urbanization, etc. The key-role water plays for our living conditions have since long been realised by the EC/EU and a rather extensive legislation has evolved since the first Directives in this field were launched in the 1970s.

The purpose of the Tenerife workshop was to give a more general view of the EU water-legislation with a special focus on the Water Framework Directive (WFD) and its rather complicated system of requirements regarding inter alia the quality of water. Also other issues connected to water were highlighted as well as the guiding material from the EU Commission.

As earlier years we developed a questionnaire, with two-fold purposes: to prepare the participants for the workshop by analyzing the different national approaches on the implementation but also to get a view of what is going on in the participant's home countries. Some issues raised here may be elaborated at future workshops.

The summary of the answers will focus on some issues of more principal nature that characterizes the different legal systems in the countries represented at the workshop: Austria, Belgium, Estonia, Finland, Germany, Greece, Italy, Latvia, Lithuania, Luxemburg, Spain and Sweden. In the attached compilation the answers can be found in extensio.

1. Some current issues

The task was to give a short description of the most important issues on environmental law that is currently discussed in the respective country.

A general reflection is that the discussion in the Member States covers a lot of important issues, whereof some, as the climate-change debate in Luxemburg, is globally on the top-priority list. Here is a list of some of the highlighted questions:

In Belgium (Flanders) the procedures for environmental permit will be merged in 2017 with the procedures for permits for building and land parceling. Wild life crime is another issue raised from Belgium.

Access to justice has during the last years been a clear favorite in the judicial debate and so also this year. In Belgium and Germany this has been pointed out as hot topics. In Germany the so called Protection Norm Doctrine (die Schutznormtheorie) still causes trouble but the legislator now has opened her ears and has taken steps in order to comply with the requirements of the Aarhus-Convention. Also Latvia, with an *actio popularis* in environmental matters, a question has risen regarding building permits and a private company's right. Sweden still has some problems on this theme but then mainly related to hunting licenses.

An application for permit for storage of nuclear waste has been delivered to the Land and Environment Court in Nacka, Sweden, and will help to increase the work-load at that court. In Finland new rules on compulsory review of permits for environmental harmful operations are introduced. The establishing of new industries is creating cases at the court, and problems, e.g. spill of waste water from mines, leaking its problems into the premises of the Vasa court.

In Germany the new Dresden Bridge, spanning the Elbe river, has been found not to cross over trouble water and ease the minds, rather the opposite and by itself causing different disputes and making the UNESCO react and withdraw an earlier qualification of Dresden as a world heritage. As a Natura 2000 area is involved by the exploitation, an administrative procedure has been initiated and is still going on. So far it has included a preliminary ruling from the CJEU and a judgment from the Federal Administrative Court, declaring the planning approval illegal.

In Greece the courts have received actions against administrative decisions on fines for land based sea pollution, from industry and intensive agriculture. Also fines for sea pollution, illegal water wells, illegal landfills and dumping etc. has been challenged. Further on, environmental impact statement regarding major infrastructure projects is on the agenda.

Also Spanish courts have been occupied with cases related to penalties. Other examples of issues raised from Spain are aquifers overexploitation, land erosion and desertification.

In Italy important issues are authorization to build renewable energy plants and treatment of sewage. In the region Veneto there are discussions on whether or not to permit the building of oilfields in the Adriatic Sea. In this region pollution to water and air, with its origin in emissions from the industry is causing problems. The disappearing of glaciers in the mountains, due to the rising temperature leads to loss of water reserves.

Lithuania has trouble with charges for collection and management of communal waste. Other problems are the non-execution of mandatory orders by the regional environmental protection departments and agencies etc.

From the answers, it is obvious that in principle every country has a number of cases related to EU-law, including the Aarhus Convention; Environmental Impact Assessments, and especially access to justice and Natura 2000. Cases related to certain kinds of operations seem to be rather numerous in several countries but also administrative penalties for illegal activities has been pointed out.

2. The implementation of the WFD-Directive into domestic legislation

All countries have amended their legislation in order to implement the WFD-Directive. The measures however differ regarding on which level the legislation is issued; by the parliament, altering existing legislation or issuing completely new.

In most countries this legislation is completed by more detailed provisions in Governmental ordinances. In some countries, as in Spain the federal legislation in this field is completed by regional legislation. In Belgium the implementation of the WFD-Directive belongs to the regional competence. In Germany the competence is shared between the Federation (Bund) and its members (Länder). Åland, though part of Finland, has its own competence in the field of environmental law and has issued its own legislation but similar to Finlands. In Åland the regional Water Act is about to face a total revision due to the requirements in the WFD.

3. The WFD-licenses and eventual problems with the implementation or the application of the Directive

In Austria there are some difficulties inter alia regarding the measures to be taken in order to achieve the environmental objectives and to maintain these levels. Also the flood-risk management is problematic.

In Belgium the legislation has been revised and improved in relation to the organization and planning of the integral water-policy as it was found complicated and not optimally coherent. Difficulties have been found in shaping a legislation implementing the WFD and addressing the Flemish challenges.

In Finland the implementation as such of the Directive has been rather unproblematic but the practical application in order to achieve a good status has been more difficult. This relates particularly in permits cases to emissions from the industry and also from agricultural activities outside the requirements to have a permit.

In Germany references are made to the Weser case (C-461/13) and a similar dispute is pending regarding the Elbe river. The CJEU has developed its practice with a judgment regarding a water power station in Austria, Schwartze Sulm, C-346/14.

The main problems in Greece are the time-limits. Also the seasonal water demand and over-exploitation of aquifers in certain areas is problematic. In Italy the time-limits for implementation has been exceeded and made the Commission to initiate an infringement procedure before the CJEU.

Likewise the Commission has initiated infringement procedures in Lithuania and Sweden.

4. Eventual national case law

In most countries there has been no or only a few cases related to the WFD.

In Finland there have been a couple of national cases related to peat production, mines and abstraction of water for human consumption. Also in Sweden there have been a couple of cases in the Land and Environment Court of Appeal, where the WFD has been interpreted – and references been made inter alia to the Judgment from the CJEU in the German Weser-case.

In Greece a reference for a preliminary ruling to the CJEU regarding diversion of water from one river to another, C-43-10. The German case regarding the Weser has already been mentioned.

In Italy a regional law, allowing the discharge of waste water into the sea was declared unconstitutional by the Italian Constitutional Court.

Also Spain can show a number of cases before national courts, both regarding the constitutionality of the legal measures and in substance as a case relating to dredging the Seville seaport.

/Anders Bengtsson

ANSWERS - Questionnaire – Water Framework Directive (WFD) and some current issues

Tenerife 10 – 11 November 2016

1. Give a short description of the most important issues on environmental law that you are dealing with or that are currently discussed in your country.

AUSTRIA

Austrian water law is part of Austrian environmental law. In Austria, environmental law is mainly based on administrative (public) law. Austria is a federal state. Government responsibilities are shared by three levels of territorial authority:

- Federal state
- Nine provinces
- Local Authorities/ municipalities

The distribution of the major government responsibilities between the federal state and the provinces is determined by the Federal constitution. Environment as such is not specifically mentioned in the Federal Constitution and hence treated as a cross-cutting issue, falling in the competence of the Federal State, the Provinces, depending on the issues involved. Legislation and execution in the water sector are within the competence of the federal state.

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Environmental law is complex and a large number of regulatory authorities are responsible for its enforcement:

- At federal level the district authorities and the nine governors of the provinces are competent for administering environmental law.
- For other federal environmental issues, the Ministry of Agriculture, Forestry, Environment and Water Management (BMLFUW) is the competent authority.
- At provincial level, the district authorities, the government of the provinces and the municipalities are responsible for administering environmental law.

Art. 18 B-VG provides for the entire administration to be based on law (legitimacy principle). This principle postulates a precise and exact legal basis for each administrative action.

- Legal acts
- Federal laws,
- Provincial laws,
- Ordinances,
- Judgments and decisions by courts,
- Decrees by administrative authorities.

Environmental aspects are regulated in several laws such as:

- Trade Act
- Environmental Impact Assessment Act 2000
- Water Act (WRG)
- Forestry Act

- Federal Waste Management Act 2002
- Nature Conservation Act
- Federal Environmental Liability Act
- Air Immission Protection Act
- Mineral Resources Act
- Criminal Act
- Civil Code.....

Legal sources of national water law

- Water Act (WRG)
- Hydrography Act
- Act on Regulation of Mountain Streams
- Environmental Promotion Act
- Hydraulic Engineering Promotion Act

Ordinance on the national river basin management plan by the Federal Minister for Agriculture, Forestry, Environment and Water Management. Ordinance on the determination of the ecological status of surface waters...

BELGIUM

The main issues on environmental law currently discussed within the country differ according to the 'platforms' involved.

In Flanders, the imminent entering into force of the 'Omgevingsvergunningdecreet' is at the forefront of the stage insofar we look at the community of environmental stakeholders at large. 'Omgeving' literally means 'surroundings'. The Omgevingsvergunning merges the permitting procedures of the environmental permit, on the one hand, and the building and parcelling permits, on the other hand, into one procedure and establishes slightly more similar basic rules regarding permitting conditions. As both types of permits are core-pieces of environmental legislation, social and economic activity, and procedures involve local authorities that have to prepare for the new laws at hand, this evolution touches and involves wide ranges of stakeholders. The entry into force would happen on 23 February 2017. Rumours that some delay will occur keep going.

As regards more specialized circles of environmental academics, judges and prosecutors, topics that currently get increasing attention, a more central place in perception and discussion, are the following ones:

- wildlife crime, including 'local' wildlife crime namely wildlife crime ongoing within Member States in the EU such as wildlife poisoning, illegal capture and killing of (migratory) birds and illegal habitat deterioration and destruction.
- the Aarhus Convention third pillar regarding access to justice (Articles 9(1) to 9(4), and especially 9(3) and 9(4)).

FINLAND

Finnish environmental protection act have recently renew and one of the major change have been repeal compulsory review of permits. It leaves quite much in the hands of the supervisory authorities. New coming of forest industry is also in the way. There is construction of the one new pulp mill (or bioproduct mill, like they call it in the Metsä Group) on the way in Äänekoski (<http://bioproductmill.com/articles/environmental-permit-granted-for-the-bioproduct-mill>) and one new pulp mill in Kuopio (Finnpulp) in permit process.

(<http://finnpulp.com/press-archive/finnpulp-applies-for-the-environmental-permit.html>)

There is new biofuel factory (Kemi) in permit process (Kaidi Finland).

(<http://www.kaidi.fi/?locale=en>) There have been quite big problems with mining. Biggest was Talvivaara nickel mine in Sotkamo. There was big spill of wastewater to near by lakes (, http://yle.fi/uutiset/osasto/news/talvivaara_leak_report_blames_mining_company_officials_and_media/7066583), big faults in the bioleaching process mainly because use of sulphuric acid which cause big amounts of sulphate to the waste water. Main problem was lack of

information of the bioleaching process and big scale of the mine. I have been working with Talvivaara case 1,5 year time in Vaasa administrative court (http://yle.fi/uutiset/osasto/news/state_mine_owner_terrafame_gets_temporary_environmental_permit_to_discharge_waste_water/8843224) and case is now in the Supreme Administrative Court.

GERMANY:

(a) General issues

(i) Access to justice

- Access to justice in environmental matters seems to be a never ending story in the German legislation. Step by step but reluctantly the legislator follows the jurisprudence of the CJEU by amending the Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz).

- The first step was the reaction on the judgment of 12 May 2011 in case C- 115/09 (Trianel)¹ by the amendment of 21 January 2013.

- The second step was the reaction on the judgment of 7 November 2013 in case C-72/12 (Altrip) by the amendment of 20 November 2015. In the course of the parliamentary procedure AEAJ got the opportunity to give a statement which was delivered by the president's letter of 10 July 2015 (drafted by Werner Heermann).

- Meanwhile the EU Commission had initiated an infringement procedure against Germany, challenging several rules which were regarded to restrict access to justice (case C-137/14). The so called „protective norm doctrine“, a general principle governing the German administrative court procedure, was seriously endangered (see the opinion of the Advocate General of 21 May 2015, para 56 – 62). In its judgment of 15 October 2015 the CJEU did not follow the Commission's arguments in this point. However the restriction of standing to objections which were not made during the administrative procedure was found not to be in compliance with EU law. After that verdict the German jurisprudence recognized a direct effect of the relevant directives.

- The Aarhus Compliance Committee had adopted on 20 December 2013 findings and recommendations with regard to communication ACCCC/C2008/31 concerning compliance by Germany. The Committee found that the German provisions on the scope of judicial

¹Continuation of the Trianel case: The Higher Administrative Court of Nordrhein-Westfalen annulled the permit by its judgment of 1 December 2011.

The full text (in German) is available under:

http://www.justiz.nrw.de/nrwe/ovgs/ovg_nrw/j2011/8_D_58_08_AK_Urteil_20111201.html

The Federal Administrative Court did not admit appeal on point of law against this verdict by order of 5 September 2012.

The full text (in German) is available under:

<http://www.bverwg.de/entscheidungen/entscheidung.php?ent=050912B7B24.12.0>

The administrative procedure was reopened. A new EIA and a new AAoI was carried out. Again a permit was granted and the immediate execution of this decision was ordered by the administrative authority. The coal power plant is operating since 1 December 2013. The new permit was appealed by several plaintiffs. Subject to a judicial order in a interim relief procedure these actions do not have suspensive effect. (there was no interim relief procedure)

The Higher Administrative Court of Nordrhein-Westfalen dismissed the appeal of a NGO in the main proceedings by judgment of 16 June 2016 (reporting judge: working group member Karen Keller). A request on admit of appeal against this decision is pending.

review do not comply with article 9 para 2 of the Convention and the provisions on legal standing of NGOs do not comply with article 9 para 3 of the Convention.² The Meeting of the Parties to the Convention endorsed the findings in its session on 30 June and 1 July 2014 by Decision V/9h.

Despite the above mentioned procedures the amendment of the Environmental Appeals Act of 20 November 2015 did focus on compliance with the CJEU judgment of 7 November 2013(C-72/12)only . The German government presented now a draft act³ to bring the German law in line with the CJEU judgment in the infringement procedure C-137/14) and with the findings of the Aarhus Compliance Committee.

(i) *Natura 2000*

The long lasting drama “Walschlößchenbrücke” (a bridge spanning the Elbe river in Dresden) did not find a happy end for the developer (city of Dresden) until now. This project was highly disputed in the public. After the construction (due to the order of immediate execution of the planning approval) UNESCO has withdrawn the label “World Heritage” of the site. In the judicial proceedings initiated by an environmental NGO the Federal Administrative Court had asked the CJEU for a preliminary ruling, which was delivered by judgment of 14 January 2016 (C-399/14). The CJEU insisted on a strict interpretation of article 6 para 2 Habitatsdirective. Following this verdict the Federal Administrative Court declared the planning approval (date of the first version: 24 February 2004) illegal by judgment of 15 July 2016 (BVerwG 9 C 3.16)⁴. But this is not the end of the story. It is possible to improve the the planning approval in an additional procedure. But the worst case (demolition) seems not to be excluded.

(b) Issues in the practical work

Some examples:

- Soil protection: Clean-up of hazardous contaminations, liability
- Challenge of permits for Biogas plants
- Legal feasibility of Fracking
- Flooding of areas along the upper course of a river for the sake of preventing inundations farther down (e.g. River Rhine, near Freiburg)

GREECE

We are handling actions against administrative decisions of fines for land-based sea pollution originating in urban areas, either from industry and or intensive agriculture. Also fines for violations incurred in sea pollution, such as oil slicks from accidents and intentional releases. Another field of our jurisdiction, concerns actions for annulment of permissions of drilling and (on the merits) sequel condemnation because of the relevant damages.

²,102. The Committee finds that: (a) By imposing a requirement that an environmental NGO, to be able to file an appeal under the EAA, must assert that the challenged decision contravenes a legal provision “serving the environment”, the Party concerned fails to comply with article 9, paragraph 2, of the Convention in this respect (para. 80). (b) By not ensuring the standing of environmental NGOs in many of its sectoral laws to challenge acts or omissions of public authorities or private persons which contravene provisions of national law relating to the environment, the Party concerned fails to comply with article 9, paragraph 3, of the Convention (para. 100).“

³https://www.bundesrat.de/SharedDocs/drucksachen/2016/0401-0500/422-16.pdf?__blob=publicationFile&v=1

⁴<http://www.bverwg.de/entscheidungen/entscheidung.php?ent=150716U9C3.16.0>

ITALY (1): The most important issues on environmental law treated in our courts concerning the authorization to build renewable energy plants, treatment of sewage.

About the sea it was recently discussed to build oilfields in the adriatic sea. There were two different opinions: one of the state that was to permit them and one of the authority of the region veneto that didn't want to permit them. The region veneto had underlined that it would have created problems about the stability of the ground. The italian state highlighted that in the adriatic sea oilfields are being permitted from the croatian state and this would make illogical refusing them in the italian waters.

- 1) In the venetian lagoon there are a lot of factories and among them chemistry factories and oil refineries. These factories were built between the thirties and the sixties and have deeply polluted the ground. In these past years there was not much attention to the pollution. Today also they are trying to remediate the ground and the lagoon. But it's a problem, between others, if you can oblige the current landlord that didn't cause the damage, to remediate the ground. So the public authorities spend a lot of money without knowing if this money will be reimbursed or doesn't intervene because there is not money.
An other problem in the venetian lagoon (about which the press has sometimes related) are the great cruise ships that sail near plaza san marco. The problem has not yet solved. Cruise enterprises claimed to our court if is adopted a too strict discipline of the sailing.
- 2) In the valleys (as in all po valley) the air is badly polluted by industries, cars, heatings. Our valleys are great, enclosed and with few wind. They have tried to fix emissions limits or timetables about circulating cars but it has been not succesful.
- 3) In these times the authority of the venetian region deals about the planning of the quarries where the building materials are mined. The quarries take environmental problems and local authorities try to object to their localization. So it has happened in our court that quarries enterprises claim to oblige the authority of the venetian region to adopt the planning and they hope to find in this way new quarries to mine.
- 4) In some parts of the region there are particular territories that have a special protection because of their landscape. One of these are for example the hills near the city of padua. In these territories there is a park, where are provided special regulations about environment and the use of the ground: here are forbidden cement factories, the hunting and the building need a special authorization about the observance of the landscape.
- 5) in the mountains we have the problem of the disappearing of the glaciers caused by the rising temperature linked to the global air pollution. This means a loss of water reserves.

LATVIA:

There is a discussion on legal standing of the private company to appeal against building permit of the reconstruction of the airport. As in Latvia we have introduced the broad legal standing set by the Aarhus Convention, we accept actio popularis in environmental issues. Nevertheless there is a discussion upon weather the legal entity may appeal on basis of incompliance of building permit with the territorial planning.

There is a portion of cases on pollution permits, then construction at the Baltic Sea and Gulf of Riga coastal protection zone; still most of the cases are based on legal disputes between neighbors.

LITHUANIA

As it can be noticed from the latest case law of the administrative courts of Lithuania, majority of the environmental law cases are related to unpaid local charges for collection and management of communal waste. There are also other cases, for example, related to assessment of the effects of certain plans and programmes on the environment, hunting

ground, various licences (permissions), non-execution of the mandatory orders given by the regional environmental protection departments' agencies, etc.

- Mitigating GHG emissions

LUXEMBURG

The most important issues on general environmental law that are currently discussed in Luxembourg are related to the following:

The EU "Climate and Energy Package" adopted in 2008 and its subsequent developments currently under discussion (the "2030 package") will be highly challenging for Luxembourg. By 2020, the country should:

- (i.) reduce GHG emissions by 20% below their 2005 level for the non ETS sectors;
- (ii.) achieve an 11% share of renewable energy in all forms in total energy consumption; and
- (iii.) achieve a 10% share of renewable energy in all forms in total transport.

With regard to "road fuel sales to non-residents", though price differences with neighboring countries is reducing over time (notably, through the increases in excises), it cannot be expected that they will be entirely offset in the coming years. Indeed, that would require aligning prices to those of the most expensive bordering country with a risk of reverse "fuel tourism" due to the size of Luxembourg. Moreover, such a policy will not lead to any substantial reduction of GHG emissions at the European level since "fuel tourism" related emissions are the smallest part of "road fuel sales to non-residents".

- Climate Agreement with municipalities –"Pacte Climat"

The Climate agreement with the municipalities was presented in October 2012 and entered into force on the 1st January 2013. It reinforces the role of municipalities in the fight against climate change through a legislative, technical and financial framework set up in order to promote action against climate change. The "Pacte Climat" means that municipalities commit themselves to implement a quality management system relating to their energy and climate policy as well as an energy management tool for their infrastructures and their equipment. In return they benefit from technical and financial support given by the Government. In mid-2016, 102 municipalities out of 106 were engaged in the Agreement.

- The planned modification of the current Law of 19 December 2008 on water with the aim to meet the challenges related to climate change.

The goal of the planned modification is to allow a better protection of the water but also a better protection of humans against the water, including against risks of flooding.

SPAIN

The most important issues on environmental law that we are dealing with are closely related with penalties (illegal water wells, uncontrolled and illegal landfills, illegal water extraction, illegal dumping, etc.), town/urban planning, demolitions, environmental impact statement regarding major infrastructures (roads, railways, etc.), infringements of the coastal law, among others.

On the other hand you can take into account the following issues:

a) Aquifers overexploitation. It means increase water production and decreases its quality, in such a way that aquifers can disappear. Main causes: high agricultural productivity, poor rainfall, reservoirs, illegal water wells. Bigger problem is the overexploitation of coastal aquifers because being close to the sea it makes easier the saltiness of waters.

b) Land erosion and desertification. Spain is a country in desertification process due to the semi-arid climate in many regions/areas, poor rainfall, water overexploitation, forest fires, mountainous and rugged terrain and rising of the temperatures.

c) Air pollution due to ozone layer destruction, greenhouse effect and urban pollution.

d) Uncontrolled waste. The European Commission has recently drawn attention to Spanish Government and has launched a case requesting information regarding an illegal tires-landfill located in Madrid/Toledo provinces where last May burned thousands of tires. It is estimated that in the landfill there were between 60,000 and 90,000 tons of tires.

SWEDEN:

Decisions on licenses for hunting (mainly the hunting of wolfs) and the right to standing and access to court in such cases is still a very hot topic (handled by the administrative courts and not the land and environment courts). Amendments in the legislation to stop the possibilities appeal, were followed up with a less restricted version, as the first one was overrun by a judgment in the Supreme Administrative Court. Since a couple of years there is a dispute on this in relation to the EU Commission which is still not settled.

Swedish Nuclear Fuel and Waste Management Company's (SKBs) application for permits to build the Spent Fuel Repository and an encapsulation plant. The applications were submitted to the Swedish Radiation Safety Authority and the Land and Environment Court in Stockholm on 16 March 2011. In its current timetable SKB plans to start construction of the Spent Refuel Repository and the encapsulation plant sometime early in the 2020s and they will take about ten years to complete.

- Water management, The implication of the Weser verdict.
- The environmental quality objectives
- Ecological compensation, e g in relation to the protection of species

2. Give a short description on how the WFD is implemented into your domestic legislation.

AUSTRIA

Implementation WFD

The Treaty leaves the MS the choice of form and methods necessary to achieve the aims of the directive. WFD has a rather "vague" nature. The following steps have been taken in order to implement the WFD in Austria:

- Amendment of the Water Act in 2003
- Sec 30 WRG: General objectives
- Sec 30a, c and d WRG : Specific environmental objectives
- Sec 30e, f and 104a WRG: Exemptions to the principle of non- deterioration
- Sec 55 WRG: Targets of WFD
- Sec 55b WRG: Requirement of the creation of river basin districts (RBDs).
- Sec 55c WRG: Requirement of management plans for each district.
- Sec 55f WRG: lays down that the measure programmes emanated by the minister have to be installed for each district defines that these programmes should be based on the results of the analysis in sec 55d WRG.
- Sec 55e WRG: Clear descriptions as to how the programmes should be structured.

- The public- participation- principle can be found in several provisions of the WRG: Sec 55i WRG states that management plans have to be made accessible to the public.
- Ordinance on the national river basin management plan by the Federal Minister for Agriculture, Forestry, Environment and Water Management
- Ordinance on the monitoring of water status by the Federal Minister for Agriculture, Forestry, Environment and Water Management
- Ordinance on the determination of target state of surface waters
- Ordinance on the determination of the ecological status of surface waters
- Ordinance on the good chemical status of groundwaters

Implementation Floods Directive

- Amendment of the Water Act in 2011
- Sec 55i, Sec 55j WRG: Preliminary flood risk assessment (2011 □ 2018)
- Sec 55k WRG: Flood hazard and risk maps (2013 □ 2019)
- Sec 55l WRG: Flood risk management plans (2015 □ 2021)
- Sec 55m WRG: Public participation
- Updating every 6 years

Aims of the Water Act

The regulations of the Water Act apply to water “in its natural cycle”: It does not matter whether the water is polluted, whether it is above or below ground, or whether it is flowing or stationary; all bodies of water, including artificial and heavily modified ones.

Responsibility for making decisions in matters relating to water legislation lies, in principle, with the district authorities; Certain competencies are reserved for the governor of the province and the Minister for Agriculture, Forestry, Environment and Water Management (BMLFUW).

Differentiation between public and private waters

Water is for use by individuals and by the general public.

Bodies of water need to be classified as public waters or private waters. In principle, it is supposed that a body of water is legally considered public property unless it is expressly designated as a private body of water.

In the case of surface water bodies, a distinction is made between the water wave and the water bed (and the banks); in terms of legal ownership as a public water, this only applies to the ownership of the water wave.

In the case of above-ground private waters, it is supposed that they are to be considered part of the plots of land which they are situated on or between.

In the case of groundwater and spring water, the water which is situated in or which reaches the surface in the plot of land belongs to the owner.

Water management planning goals

Sustainable management of water bodies. Sec 30 WRG: General aims of keeping water clean and protecting it. All bodies of water, including groundwater, are to be kept clean and protected to such an extent:

- that the wellbeing of neither humans nor animals can be endangered,
- that damage to the appearance of the landscape and other noticeable damage can be avoided,
- that deterioration is avoided and so that the status of the aquatic ecosystems and the land ecosystems and wetlands which directly depend on them are protected and improved in terms of their water balance,

- that sustainable water use is promoted on the basis of long-term protection of the available resources,
- that an improvement in the aquatic environment is guaranteed via, among other measures, specific measures for the gradual reduction of discharges, emissions and losses of dangerous pollutants.
- In particular, groundwater and spring water must be kept clean enough so that it can be used as drinking water.
- Groundwater must also be protected so that a gradual reduction in the pollution levels of the groundwater can be guaranteed, in addition to further pollution being prevented.
- Surface water must be kept clean enough so that surface water can be used for public use and commercial purposes, and so that fishing waters can be maintained.

Sec 30 WRG also provides for: a reduction in the effects of droughts and floods, balanced and sustainable use of water, a reduction in groundwater pollution and protection of territorial waters and sea water in accordance with international agreements.

Sec 30a to d WRG - Special environmental objectives for: surface waters, groundwater, protected areas and artificial and heavily modified water bodies.

Sec 30a to d WRG substantiate the water pollution control goals, the principle of non-deterioration, and the cleanup and improvement principle of sec 30 WRG. Environmental objectives describe/set out the (target) status to be brought about by cleanup programmes and therefore measures in (standardised and significant) parts of bodies of water; give a scale according to which the keeping clean and protection of waters can be measured in terms of weighing up public interests when permits are issued for projects planned in such bodies of water.

In accordance with the instruction to improve water quality in sec 30 WRG a good status should, in principle, be achieved in all waters by 2015.

- Surface water bodies must be shown to be in a good ecological and chemical status.
- Heavily modified water bodies must be shown to have good ecological potential and chemical status.
- Bodies of groundwater can be said to have reached their target status once they contain a good quantity of water and have a good chemical status.
- Special protection goals can exist for protection areas in accordance with sec 30d WRG.

The ordinance on the determination of target state of surface waters establishes environmental quality norms to describe the good chemical status, and the chemical components of the good ecological status for synthetic and non-synthetic pollutants in bodies of surface water. Furthermore, the states which are decisive for the application of the principle of non-deterioration are described. This ordinance applies to all bodies of surface water including heavily modified and artificial bodies of surface water.

The ordinance on the determination of the ecological status of surface waters establishes values for the biological, hydromorphological, and general physical and chemical quality components of the high, good, moderate, poor and bad ecological status of surface waters.

The ordinance on the good chemical status of groundwaters describes the good chemical status by setting threshold values for pollutants in addition to criteria for evaluating the chemical status of groundwater.

Sec 30a to d WRG expressly set out a principle of non-deterioration. This principle is about banning any deterioration from the starting status, though this principle of non-deterioration refers to "status classes". The principle of non-deterioration applies to a change from one

status class to a lower one (i.e. from “good” to “moderate”), but not to a change within one class, however.

Exemptions from the environmental objectives:

- Designation of artificial or heavily modified bodies of surface water
- Gradual implementation of environmental objectives:
- An extension of the deadline may be carried out as part of the analysis of RBDs over the time period between two updates, beginning from the first Austrian National River Basin Management Plan. This means that the target status must be reached, at the latest, by 22/12/2021 or by 22/12/2027.
- Constant deviation from the environmental objectives/ Less strict environmental objectives
- If it will not be possible to reach the environmental objectives by 22/12/2027 due to damage as a result of human activity or due to natural conditions, then it is possible to set less strict environmental objectives for certain bodies of surface and groundwater, if the ecological and socio-economic aims served by such human activity cannot be achieved by other means which represent a much better option for the environment and are not associated with disproportionately high costs.
- Natural disasters: Temporary deviation from the standard environmental objectives is permitted in the event of floods, droughts and other natural disasters.

Exemption from the principle of non-deterioration in accordance with sec 104a WRG: New projects can be made possible even if they have certain effects on the status of the water or are shown to deviate from the environmental objectives and therefore represent an exception to the principle of non-deterioration.

Deviation from the environmental objectives is only possible under precisely defined provisions, in which case a certain check procedure is to be followed.

Exceptions can only be permitted for projects which may – due to changes in the hydromorphological characteristics of a body of surface water or in the water level of bodies of groundwater – result in failure to achieve a good groundwater status, a good ecological status or a good ecological potential, or deterioration of the status of a body of surface or groundwater, or which may – due to pollutant inputs – result in the deterioration of the status of a body of surface water from high to good.

BELGIUM

Belgium is a federal state. Environmental competences are partly federal partly regional. The implementation of the WFD belongs to the regional competence. We have three regions: Flanders, the Brussels-Capital Region, and Wallonia. I limit the description to the Flemish implementation of the directive.

In Flanders, the FWD has been implemented through new legislation: the ‘Decreet 18 juli 2003 betreffende het integraal waterbeleid’ [Decree 18 July 2003 on integral water policy] and its regulatory orders. The Decree has been amended a few times, most importantly by Decree of 19 July 2013 and most recently by Decree of 18 December 2015. Its main regulatory order is the ‘Besluit Vlaamse Regering 9 september 2005 betreffende de geografische indeling van watersystemen en de organisatie van het integraal waterbeleid in uitvoering van het decreet van 18 juli 2003 betreffende het integraal waterbeleid’ [Flemish Regulatory Order of 9 September 2005 relating to the geographical division of water systems and the organisation of the integral water policy as provided for by the Integral Water Policy Decree].

After an introductory chapter with an extended set of definitions, including the definitions set out in the FDW, the Decree sets off with a chapter detailing objectives and principles. The

principles aim to guide the public authorities when preparing, deciding, implementing monitoring and evaluating policy decisions in their realm of competences. In other words: they frame the public authorities' discretionary powers. The principles are the standstill principle, the prevention principle, the source principle, the precautionary principle, the polluter pays principle, the cost recovery principle, the restoration principle, the participation principle, the principle of a high level of protection the water system principle, the *ex ante* evaluation principle and the solidarity principle. A third chapter elaborates the general instruments for integral water policy: the water test, the riparian zones and a set of tools taking care of interference of water policy on property rights (expropriation competence, a first choice for buying right and buying, compensation and information obligations). Next, a chapter detailing the geographical division of water systems implements the views of the WFD on water basins and so forth. This chapter is paired with a chapter organising the administrative structures required to manage the water system divisions. Thereafter, the Decree organises water policy preparation and follow-up, through policy notes, river basin management plans and management plans for smaller water system divisions and flood sensitive areas. A seventh chapter goes into environmental quality goals and into specific measures for qualitative and quantitative management and protection that should allow to reach the goals set. The Decree ends with enforcement provisions and the classical provisions wrapping up such legislation (transition law, modifications of other laws, entry into force). It is completed by four annexes, detailing a.o. the contents of river basin management plans.

The water test deserves some additional context. This policy tool was introduced to counter the flooding problems Flanders was increasingly meeting with since some decades. It aims more specifically to counter each significant damaging effect on the environment resulting from a change in the situation of water systems or parts thereof caused by human activities. The effects considered comprise (non-limitative enumeration) effects on: human health; the safety of licenced infrastructure and buildings located out of flooding areas; the sustainable use of water by man; fauna, flora, soil, air, water, climate, landscapes, cultural heritage; the connections / interactions between two or more of the previous. Activities needing a licence, plans and programs, have to be submitted to the water test. If a damaging effect would occur that cannot be prevented by conditions or modifications, the licence can only be given, the plan/program only be approved for coercive reasons of high social importance.

FINLAND

The Act on Water Resources Management (1299/2004), the Decree on River Basin Districts (1303/2004), the Decree on Water Resources Management (1040/2006) and the Decree on Hazardous and Harmful Substance on Aquatic Environment (1022/2006) implement the EU Water Framework Directive at national level. The Environmental Protection Act and the Water Act have both been amended as necessary.

GERMANY

In Germany the competence for legislation is shared between the Federation (Bund) and its members (Länder). Some matters of the WFD fall under the competence of the Länder.

The WFD was implemented by amendment of the federal Law on the management of water resources (Wasserhaushaltsgesetz) of 19 September 2002 and of 31 July 2009 (in the course of a national reform in the field of legislation on water) and by water acts of the Länder.

The problems lie in enforcement of WFD related programmes of measures⁵ and not in compliance of German legislation with EU law.

⁵ See the report of the Umweltbundesamt "Interim results 2012"
http://www.umweltbundesamt.de/sites/default/files/medien/378/publikationen/water_framework_direktive_2012_broschuere_wrrl_en_bf.pdf

GREECE

According to Directive of 2000/60, law 3199/2003 “for the Protection and Management of the Waters” was enacted which establishes a framework of the sustainable water policy. Also provisions of the water Directive of 2000/60 not included in law 3199/2003 are embodied in many Presidential Decrees.

ITALY

The European Parliament and Council Directive 23 October 2000 no. 60 that establish a framework for Community action in the field of water has been implemented by the Italian law with the Legislative Decree 3 April 2006 no. 152 and subsequent amendments and additions, and in particular with articles 73 and ff. The Legislative Decree 152/2006 contains provisions on the protection of waters against pollution according to the principles of the Directive no. 60/2000).

The article 73 of the Italian law corresponds to the article 1 of the Directive about the purpose of EU environmental legislation.

The calendar of environmental objectives under article 4 of the Directive (i.e. to prevent deterioration of the status of all bodies of surface water and at the same time improving them in order to achieve good surface water status) has been transposed by article 76 of Decree no. 152.

The provision of the Directive (article 13) about the hydrographic basin management plans is implemented with articles 65 and 117 of Decree no. 152.

In Italy the hydrographic basin districts have been identified by Legislative Decree no. 152/2006 (article 64), as amended by Act no. 221/2015 and currently are seven.

The hydrographic basin management plans have been adopted in Italy later.

Hydrographic basin management plans shall include the following elements:

- general description of the characteristics of the hydrographic basin district;
- summary of significant impacts and pressures exerted by human activity on the status of surface water and groundwater;
- list of the environmental objectives established under article 4 of Directive no. 2000/60.

LATVIA

Water Management Law contains norms of WFD, as well legal norms which arise from the Directive on management of bathing water quality, the Directive on the protection of groundwater against pollution and deterioration etc. There are lot of governmental rulings based upon Water Management Law. The legal frame on protection of water sets the Law on Pollution.

I haven't had any case of these type, therefore I cannot provide more specific information on that.

LITHUANIA

There are 41 legal acts implementing the WFD into Lithuanian national legislation, including few laws and many by-laws that implement provisions of the laws. In this context, it can be mentioned that this is a common practice of implementation of directives into our national law. As there are lots of legal acts implementing the WFD, only a few main acts will be mentioned – Water Act, regulating relations arising from the use, management and conservation of the water in the natural environment, and Drinking Water Act, regulating relations, arising from the production of drinking water, waste water processing to ensure subscribers', drinking water suppliers' and waste water handlers', waste water management service providers' legitimate interests and rights of consumers.

LUXEMBURG:

The WFD has been implemented into Luxembourg legislation by the Law of 19 December 2008 on water (“Loi modifiée du 19 décembre 2008 relative à l'eau”), which replaced the Law

of 29 July 1993 on water protection and management (“Loi du 29 juillet 1993 concernant la protection et la gestion de l’eau”), which has been the first modern law in terms of protection of water resources whose only goal was however to protect the water from any human intervention without considering questions related e.g. to the protection of the humans against damages caused by the water.

Apart from dealing with purely qualitative and quantitative aspects related to the management of water as a resource, the Law of 19 December 2008 also introduces the “user pays” and the “polluter pays” principles. The new law furthermore combines the legal provisions on water protection with those related to the urban development in general and the municipal development in particular. In sum, it gives a coordinated legal framework to all the activities relating to the water.

SPAIN

WFD has been implemented into Spanish legislation by law 62/2003. This law amended the Waters Law 1/2001 on inland surface waters, transitional waters and coastal waters protection.

In accordance with the Directive the main purpose of the Spanish law is to obtain suitable protection of continental, coastal and transitional waters, to regulate the river basin district and the river basin management plans, set the standards of the environmental objectives for groundwater; artificial water body and heavily modified water body as well as the establishment a register of protected areas, public information and active involvement of all interested parties. The economic and financial arrangement of water is amended on having introduced the principle of recovery of the costs of services regarding to the management of the waters.

SWEDEN

The WFD is implemented in Swedish law by

- Chapter 5 in the Environmental Code. Chapter 5 Section 1 says: “The Government may issue rules with respect to certain geo-graphical areas or to the country as a whole concerning the quality of land, water, air or the environment in general if this is necessary in order to provide lasting protection for human health or the environment or to remedy adverse effects on human health or the environment (environmental quality standards).

The Government may instruct a public authority to issue environmental quality standards arising out of Sweden’s membership of the European Union.”

- The Regulation on Administration of the Quality of Water Environment (SFS 2004:660)
- The Regulation on Instruction of the County Administration Boards (SFS 2007:825)

The responsibility of implementing the water administration lies with the five county administration boards that are appointed water boards (vattenmyndighet). The Swedish Agency for Marine and Water Management supports the water boards through guidance and regulations. The Swedish Agency for Marine and Water Management reports to EU.

The introduction of the EU water framework directive into Swedish legislation in 2004 meant a new holistic approach (= helhetssyn) to water issues, and a water authority was created to coordinate the work on preserving and improving the quality of our water in accordance with the directive. We also decided on new rules on water quality in the Water Quality Management Ordinance.

By holistic I mean that there are no longer administrative boundaries between municipalities and counties, for example, but instead natural water boundaries (watersheds) (=

vattendelare) between water systems. Drainage areas are therefore the starting point for our work.

Water management is carried out in a six-year cycle that is comprised of a number of recurring elements. The first cycle concluded in December 2009. The next ended in 2015. The goal was for all of Sweden's waters to have achieved at least adequate status by 2015. But the presented management-plan was not considered finished by the government so a new decision for the period 2017-2021 is expected in December this year. In the cases where this is not possible for various reasons, the deadline can be pushed forward to as late as 2027.

3. So far, do you in your country have had any problems regarding the implementation or the application of the Directive? If so, which are the main problems?

AUSTRIA

Measures to be taken in order to achieve the environmental objectives and maintain these levels

2009 Austrian National River Basin Management Plan divided up and designated bodies of surface water on the basis of a comprehensive status analysis; established where significant pressure is being put on river basins; set out the maintenance and cleanup plans to be achieved. The goals for the protection of river basins are worked towards through the cleanup programmes and the associated technical measures. The programmes of measures must support the use of state-of-the-art technology or the best available practice in terms of environmental standards.

The 2009 River Basin Management Plan is the first of at least three planning documents to be issued at six-year intervals. Austrian ordinance on the national river basin management plan issued by the BMLFUW on 30/03/2010 included the publication of the planning document on the Austrian national river basin management plan and a validation of the programme of measures. The governor must approve regional water management plans, if it is necessary for achieving and maintaining the environmental objectives set as part of the implementation of the programmes or for reducing flood-related disadvantageous consequences on human health, the environment, cultural heritage and economic activities.

The water management aims and programmes of measures set out in the Austrian national river basin management plan 2009 must be checked and updated by 22/12/2015 at the latest.

Protection from and defence against the dangers posed by water

Protection from floods which occur for a limited period of time. Aims to create structures and instructions for how to produce protective and regulatory hydraulic structures, to prevent against recurrent flooding, to be ensured that water can flow away unimpeded. The production of equipment and structures to protect against the damaging effects of water shall be left to those who own the plots of land and facilities threatened by the water. There is no obligation to take such measures, however the authorities may ask the owners of these plots of land to take measures for the sake of the interests of third parties.

Measures to be taken in order to achieve flood protection

Construction of protective and regulatory structures, flood walls and flood control storages in addition to torrent and avalanche controls.

Water cooperatives and water associations: where the (preventative) measures to be taken require several people to work together or where the implementation of the measure involves several communities.

Flood risk management plans: valuable basis for the establishment of priorities and for the making of technical and financial decisions.

Creation of hazard zone plans and adoption of regional programmes: The hazard zone plans are meant to make evident the risks facing individual areas in regions with potentially significant flood risks. As part of the implementation of this intention to prevent, other regions can also be made evident on a planning level, which are suitable for flood control storages and can therefore play a fundamental role in flood risk management. On the basis of this, it should be possible to approve a regional programme with the aim of using it for the purposes of flood risk management and all relevant related special orders.

Other preventative measures

Ordinance on the protection of water supply systems. Water management framework plans - Anybody may submit such plans for consideration, in the form of a draft written by an expert together with the application. If the order presented in a framework plan is considered to be in the public interest, then BMLFUW can recognise the framework plan in the context of the creation of rafts of measures for the national river basin management plan.

Cleanup instruments

Immissions restriction

Programme for the improvement of groundwater quality

Types of water use

Use of hydropower defined as the use of the force of water's movement. The extent of the water use refers to the significant demand for water on the basis of the performance of the damming and inlet devices and for the powering of turbines in the entire facility (including the electrical power unit) – it does not refer to the demand for electrical energy.

Water supply systems. Use of untreated water is regulated by the water legislation permit obligation for water extractions. Protected areas / closed areas

General principles of permission

Public interests may not be infringed upon. Sec 105 is the central provision which regulates public interests. A final listing of interests does not occur, however, so that other public interests which must be equal to those in Sec 105 are considered. An application for permission to carry out a project can be seen to be non-permissible in terms of the public interest or only permissible if it complies with certain conditions and ancillary provisions if:

- it could be feared that there would be damage to national defence, public security or consequences which could be damaging to health;
- it could be feared that there would be considerable damage to the runoff of floodwaters, ice or to the routes used by ships or rafts;
- the intended action would not be in harmony with existing water regulations or those being planned;
- there would be a damaging influence on the flow, height, gradient or banks of the natural water bodies;
- the nature of the water would be affected in a disadvantageous way;
- there could be a substantial hindrance to general use, an endangering of the essential water supply, of land cultivation or significant damage or endangering of a monument of historical, artistic or cultural significance, or of a site of natural beauty, the aesthetic effect of the appearance of a place, natural beauty, or of a species of animal or plant;

- the planned water facility, if it is meant for industrial purposes, would cause insurmountable obstacles to agricultural use of the body of water, and this conflict of interests could be resolved without any disadvantage for the industrial plan by selecting another site on the water body in question;
- water would be wasted as a result of the planned facilities;
- it turns out that a plan to use the movement energy of a public water body will not adequately exploit the economic benefits of the hydropower to be used; water is to be diverted abroad to the detriment of the water supply within Austria; the plan contradicts the interests of water management planning in order to ensure the supply of water for drinking and industrial purposes; it can be feared that substantial damage will occur to the ecological status of the water body; there is a substantial hindrance to the other goals which result from the other provisions set out in EU law. "Public interest" = the total of the numerous, sometimes contradictory, different types of public interest which result from a weighing up procedure. The infringement of public interests will lead to permission not being granted, insofar as the damage of public interests cannot be eliminated through conditions.

Existing rights may not be violated

Existing rights shall be considered to be rights to the use of water enjoyed in accordance with the law with the exception of general use, use permits, landed property.

Landed property: changes in the status of the groundwater associated with planned water use facilities shall not stand in the way of permission being granted, as long as it remains possible to continue to use the plot of land affected in the way it has always been used. Only in the case of a possible deterioration of soil quality must appropriate compensation be paid to the owner of the plot of land.

If no restrictive right can be allowed, the violation of existing rights can lead to the rejection of an application for approval. Provisions in the Water Act set out the possibility to eliminate or limit existing rights by granting restrictive rights:

□

The granting of a restrictive right may be necessary: if the planning or implementation of water facilities require preliminary works or construction works to be carried out on other pieces of land, and the landowners do not agree to them; in order to support profitable use of the waters, in order to protect against any damaging effects the water may have, in order to dispose of wastewater and to protect the waters themselves. Restrictive rights can be granted through expropriation or by justifying easements.

The planned project may not contradict the principle of non-deterioration.

Sec 104a WRG sets out the possibility of deviating from the environmental objectives: The evaluation shall occur within the context of the assessment of public interests which is to be carried out. These public interests may also be in conflict to one another, meaning that in many cases, interests must be weighed up. Sec 104a sets out the boundaries for such a weighing up of interests, by allowing, under strict conditions, for an exception to the principle of non-deterioration (which also includes the achievement of a "good status") in the case of the effects of hydromorphological interventions and of the taking of groundwater.

In this case, a check must be made as to what benefit the planned project will bring about for people's health and security or sustainable development, and as to whether this benefit surpasses the maintaining of the high ecological and chemical status in the body of water. There must be a check as to whether or to what extent the implementation of the project is suitable or necessary in order to fulfil a specific need in the public interest.

The planned project must use state-of-the-art technology.

State-of-the-art technology must be used in individual cases – especially to prevent infringement of the public interest.

BELGIUM

After some years of experience with the new legislation, main points for improvement related to the organisation and planning of the integral water policy. It was felt these were needlessly complicated, loaded with administrative burdens and not optimally coherent. Additionally, the policy tools against flooding were felt to be insufficient. This evaluation led to the modification of the Integral Water Policy Decree in 2013, mentioned above. The 2013 modification simplified planning levels, putting the focus on river basin management plans, in this way creating the possibility for a more coherent planning and reducing administrative burdens. The protection of riparian zones was extended, the determination of flooding areas fine-tuned and an information obligation introduced for real estate transactions regarding goods located in flood sensitive areas.

As regards the implementation of the FWD, the above can be summarized as difficulties in shaping a legislation implementing the directive while meanwhile addressing the challenges proper to the Flemish (densely populated low land) situation.

FINLAND

There is no big problems with implementation of the Directive. The nature of Finnish lakes and rivers and Finnish climate is quite different compared to the rivers and lakes in Central Europe. Application is quite easy if effects of industry are significant to water system and if the project may cause a deterioration of the status of a body of surface water. More difficult question is projects that may or may not jeopardises the attainment of good surface water status etc. What kind of means are required from the industry in treatment of industrial effluent in these cases. And industry is in quite often smaller polluter than agriculture which is not under environment permits. There is need of new legal praxis by the European Court of Justice in these cases. Weser case is good starting point, but it leave quite much in the hands of local administrative and courts in the cases concerning forest industries and mines.

GERMANY

First of all the case "Weser river deepening" is to be mentioned. The Federal Administrative Court had asked the CJEU for a preliminary ruling, which was delivered by judgment of 1 July 2015 (C-461/13). Following this verdict the Federal Administrative Court declared the planning approval illegal by judgment of 11 August 2016 (BVerwG 7A 1.15).⁶

A similar case (Elbe river deepening) is pending before the Federal Administrative Court since 2012. The Court has ordered the suspensive effect of actions⁷.

GREECE

The problems concern mainly the time limits of the Directive (I suppose this is a common problem), the seasonal water demand, the extensive coastline that exists in our country, the overexploitation of aquifers shown in certain areas, the cross-border dependencies from neighboring countries e.t.c

ITALY

Italy as other countries omitted to transpose into national law by 22 December 2003 the WFD.

This Directive constitutes a key element for both the protection of water resources policy framework and the protection of all types of water bodies throughout the European Union. The Commission has therefore decided to refer Italy to the Court of Justice for that violation. On proposal of the Government, the transposition of Directive has been delayed to May 2005.

⁶<http://www.bverwg.de/entscheidungen/pdf/110816U7A1.15.0.pdf>

⁷<http://www.bverwg.de/entscheidungen/pdf/161012B7VR7.12.0.pdf>

The next delegation for the reorganization of the collection of environmental legislation (Act no. 308/2004) allowed to the Government to transpose the Directive in July 2006.

On the 22 December 2015 expired the deadline foreseen in the article 4 of this Directive for the achievement of the environmental objectives of attainment or maintenance of good environmental status for all water bodies.

In particular, the article 4 of the Directive requires that Member States have to protect, improve and restore bodies of surface water and groundwater in order to achieve good ecological and chemical status of surface waters and good quantitative and chemical status of underground water.

The most complete and consistent framework about implementation of the Directive in Italy is provided by Commission staff working documents accompanying the report delivered in November 2012 by Member States to the European Parliament and the Council.

In Italy, as reported in the document, it is not known the ecological status for 56% and the chemical status for 78% of the surface water bodies.

It has also been opened a case number 2007/4680, in phase of reasoned opinion, concerning the non-conformity of part three of the Decree no. 152/2006 with Directive no. 2000/60.

It is expected that by 2015 only the 52% of water bodies will achieve good environmental status as provided by the WFD.

LATVIA

Not in my practice.

LITHUANIA

Considering the implementation of the Directive, it should be mentioned that Lithuania had extended the deadline of transposition of the WFD's provisions into national law. There has also been one formal notice (Art. 258 TFEU) from the European Commission, due to a proper transformation of one concept. This case was closed because Lithuania duly adjusted national legislation.

Considering the application of the Directive, it should be mentioned that there is no national case law where the WFD had been applied.

LUXEMBURG: No

SPAIN: Not that I am aware of.

SWEDEN

A Governmental Enquiry delivered a report in 2014 with inter alia a proposal that all waterworks operations (several hundreds of old and minor water power stations and dams) without a permit (under the Environmental Code or the previous Water Acts) should be subject to a mandatory permits procedure with the aim to complete and update the requirements for the operations. This proposal is disputed especially by the industry and as it is politically sensitive, it is still pending at the Government. A Governmental bill was planned and listed on the Governmental web-site to be delivered this autumn, September, but it was lifted out in order to be handled as part of a package decision regarding a general national energy agreement in 2017. – The county administrative boards, governmental authorities at the regional level, already have initiated a campaign to approach these operations. At our court we now has some cases on appealed decisions from the county administrative boards to remove the installations, to prohibit further use of the installations or to apply for a permit. We also got some applications for a permit (the land and environment courts handle permits for water operations in first instance).

The Commission has initiated an infringement procedure against Sweden regarding the implementation of the WFD. The procedure commenced with a formal notice in November 2007. The Commission delivered a completed formal notice in March 2010, a second one in

November 2014 and now a third one the 30 September 2016, now regarding the Articles 2.31, 2.33, 2.38, 2.39, 4.1, 4.7, 9.1 and 9.4.

4. In your country, do you have any national case law related to questions under the WFD? If so, which aspects have been dealt with by courts in your country?

BELGIUM:

There is little case-law related to questions directly under the WFD.

Most case law relates to the water test: cases where it was illegally ignored, cases where it was not properly conducted, cases where the final decision did not respect its contents, ...

FINLAND

We have quite many cases by the Vaasa administrative court and Supreme Administrative Court mainly concerning peat production (Weser type decisions->no permit), mines (mixing zones) and some concerning abstraction of water for human consumption and its affect to surface water (Weser type)

GREECE

Yes. The most important one, is about a reference for preliminary ruling made by the Supreme Administrative Court (Council of State) by judgment No 3053/2009 to the European Court of Justice. The dispute in the main proceedings concerned a project for the partial diversion of the upper waters of the one river into another one in central Greece. That major project, intended to serve not only the irrigation needs of the region and electricity production but also the supply of water to towns and cities in that region, has long been the subject of litigation. A number of actions, seeking the annulment of the ministerial decrees approving successive versions of that project, have been brought by environmental organisations, international non-governmental organisations and local authorities concerned. The Supreme Administrative Court referred a lot of questions about the interpretation of the above Directive and the European Court by judgement No C-43/10 was held the follows: " --

Directive 2000/60 must be interpreted as meaning that: it does not preclude, in principle, a provision of national law whereby consent is given, prior to 22 December 2009, to a transfer of water from one river basin to another or from one river basin district to another where the managements plans for the river basin districts concerned were not yet adopted by the competent national authorities; such a transfer must not be such as seriously to jeopardise the realisation of the objectives laid down by that directive;— however, to the extent that that transfer is liable to have adverse effects on water of the kind stated in Article 4(7) of that directive, consent may be given to it, at the very least if the conditions set out in Article 4(7)(a) to (d) are satisfied, and— the fact that it is impossible for the receiving river basin or river basin district to meet from its own water resources its needs in terms of drinking water, electricity production or irrigation is not a sine qua non for such a transfer of water to be compatible with that directive provided that the conditions listed above are satisfied. -- The fact that a national parliament approves management plans for river basins, such as the plans at issue in the main proceedings, where no procedure for public information, consultation or participation has been implemented does not fall within the scope of Article 14 of Directive 2000/60, and in particular the scope of Article 14(1) thereof. ---

Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, and in particular Article 1(5) thereof, must be interpreted as not precluding legislation such as Law 3481/2006, adopted by the Greek Parliament on 2 August 2006, which approves a project for the partial diversion of the waters of a river such as that at issue in the main proceedings on the basis of an environmental impact assessment for that project which had served as the basis for an

administrative decision adopted on the conclusion of a procedure which complied with the obligations in terms of public information and participation laid down by that directive, even where that decision was annulled by court order, provided that that legislation constitutes a specific legislative act, so that the objectives of that directive can be achieved through the legislative process. It is for the national court to determine whether those two conditions have been complied with. --- A project for the partial diversion of the waters of a river, such as that at issue in the main proceedings, is not to be regarded as a plan or programme falling within the scope of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment. -- The areas which were listed in the national list of sites of Community importance transmitted to the European Commission pursuant to the second subparagraph of Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and were then included in the list of SCIs adopted by Commission Decision 2006/613/EC of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region were entitled, after notification of Decision 2006/613 to the Member State concerned, to the protection of that directive before that decision was published. In particular, after that notification, the Member State concerned also had to take the protective measures laid down in Article 6(2) to (4) of the directive. --- Directive 92/43, and in particular Article 6(3) and (4) thereof, must be interpreted as precluding development consent being given to a project for the diversion of water which is not directly connected with or necessary to the conservation of a special protection area, but likely to have a significant effect on that special protection area, in the absence of information or of reliable and updated data concerning the birds in that area. --- Directive 92/43, and in particular Article 6(4) thereof, must be interpreted as meaning that grounds linked, on the one hand, to irrigation and, on the other, to the supply of drinking water, relied on in support of a project for the diversion of water, may constitute imperative reasons of overriding public interest capable of justifying the implementation of a project which adversely affects the integrity of the sites concerned. Where such a project adversely affects the integrity of a site of Community importance hosting a priority natural habitat type and/or a priority species, its implementation may, in principle, be justified by grounds linked with the supply of drinking water. In some circumstances, it might be justified by reference to beneficial consequences of primary importance which irrigation has for the environment. On the other hand, irrigation cannot, in principle, qualify as a consideration relating to human health and public safety, justifying the implementation of a project such as that at issue in the main proceedings. --- Under Directive 92/43, and in particular the first sentence of the first subparagraph of Article 6(4) thereof, for the purposes of determining the adequacy of compensatory measures account should be taken of the extent of the diversion of water and the scale of the works involved in that diversion. --- Directive 92/43, and in particular the first subparagraph of Article 6(4) thereof, interpreted in the light of the objective of sustainable development, as enshrined in Article 6 EC, permits, in relation to sites which are part of the Natura 2000 network, the conversion of a natural fluvial ecosystem into a largely man-made fluvial and lacustrine ecosystem provided that the conditions referred to in that provision of the directive are satisfied”.

After that, the case came back to the Council of State which by the judgement 26/2014, accepted the actions for annulment and all ministerial and other administrative decisions were annulled.

ITALY:

The regional Law of Campania no. 2 of 2010 (article 1, paragraph 12, last part) provides that, pending the implementation of remedial measures necessary to obtain water treatment plants compatible with the reuse of wastewater for irrigation, the Campania Region finances, along the canals with higher pollution of the shoreline Domitio / Flegreo, the construction of underwater pipelines through which download to depth the flows of low water.

According to this provision, the funding of these interventions must weigh on resource of the European Regional Development Fund.

The Presidency of the Council of Ministers has proposed the question of the constitutionality of this regional Law with appeal notified on 22 March 2010.

The Italian Constitutional Court in its judgment no. 44/2011 pointed out that the purpose of the contested regional provision is the removal into the high sea, by underwater pipelines, of the wastewater of the tributary rivers, in the coastal stretch Domitio - Flegreo, during dry period. As a stopgap measure pending on the realization of projects for the purification of polluted water, discharge takes place without subjecting wastewater to treatment.

According to the Constitutional Court this regional provision of Campania is grossly derogatory to Community rules on sea pollution and to state standards.

Both the Community rule and the state law pursue the protection of the environment and water sea.

In particular the Constitutional Court shows that Directive no. 2000/60 (articles 1 and 11) and the Decree no. 152/2006 (article 73) promote the protection of territorial and sea waters and aim to prevent and eliminate pollution of the marine environment and to stop or phase out the discharges in the sea.

For these reasons, the Constitutional Court declared unconstitutional the provision of the Campania regional law, that allows the discharge of wastewater into the sea, because of the contrast with the objectives of the Community directive no. 2000/60 and with article 117, paragraph 1 of the Constitution, which requires the regional legislation to conform to the constraints arising from Community Law.

LATVIA

There was a highly topical case on construction of HPS (hydroelectric power station). The plan was to alter the gully of the river, therefore it would lead to flood of surroundings. It made impact on the fish paths and nearby ecosystem.

LITHUANIA

As it was mentioned answering the previous question, there is no national case law where the WFD had been applied.

LUXEMBURG

We have very few case law related to these questions. We had mostly to deal with issues in relation with the refusal or the granting of an administrative authorization to abstract groundwater. In other matters, we had e.g. to analyze the compliance by planned sanitation infrastructure or other constructions with the provisions of the Law of 19 December 2008, particularly with respect to risks of flooding.

SPAIN

a) Regarding Article 23 of the Directive -“Member States shall determine penalties applicable to breaches of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive”- the Spanish law in accordance with WFD regulates the liability for infringement of the provisions of WFD, by saying that Public Administrations, when exercising their powers, breach their obligations and fail to comply with UE rules giving rise to Spanish Kingdom be punished by the UE institutions, they will take charge from their default -not Central Government-. To this end the law provides a compensation system.

By judgment on February 14th 2013 regarding Article 23 of the Directive -“Penalties”-, and similarly by judgment on March 31th 2016, the Constitutional Court states under the Constitution the Spanish law and the obligation of the Autonomous Regions to compensate damages in such cases.

b) Regarding Article 4, paragraph 7, WFD -“Environmental objectives. Member States will not be in breach of this Directive when: - failure to achieve good groundwater status, good

ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, - or failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities and all the following conditions are met: a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water; b), c), d)..."-, by Judgment on February 26th 2015 the Supreme Court invalidated Article 11, paragraphs 1 and 4, of the Decree 355/2013 regarding the River Basin Management Plan of the Guadalquivir River Basin District.

To dredge in depth Seville seaport navigation channel was allowed by the Decree as a complementary measure in order to increase the channel river volume. However the Supreme Court considered that dredge in depth the channel could have a negative impact in the morphology and biological diversity of "Doñana" -National Park- estuary: turbidity and salt content waters, among others, as well as it could not consider this kind of work -to dredge in depth de channel- as a complementary measure. On the other hand the Court estimated that water modification requires a clear and specific explanation which cannot accept a general statement as was the case. The Court estimated that to dredge in depth the channel involved a risk and danger whose need was not justified and explained enough.

The Court considered that when reasons of overriding public interest require new modifications or alterations to physical characteristics of a surface water body and it can mean degradation of the good water status, as dredge in depth the channel was, the precautionary and preventive action principles demand to justify the reasons or grounds of the alterations according to Article 7 WFD.

c) Taking into account that Spain is a State structured from the politic and territorial point of view in Autonomous Regions (Comunidades Autónomas), some of them with more autonomy than others, the question has been raised whether the Autonomous Regions have sole competence regarding surface waters passing by their territory, when or taking into in account that the same surface waters pass through territories belonging to other Autonomous Regions. The problem was referred to "Guadalquivir" river which runs through more than one Autonomous Region from its sources until flows into the sea.

Properly speaking this issue is not directly linked to WFD but could be interesting as a part of our territorial framework and different powers exercised -competences- between Central Government and Autonomous Regions.

By judgment of March 30th 2011, and similarly by judgment on March 17th 2011, the Constitutional Court invalidated the Article 51 of Andalucía Regional Statute because it conferred to Autonomous Region of Andalucía the sole competence on Guadalquivir river basin, notwithstanding the fact that the Autonomous Government advocated that his competence was only on water runs his territory.

However the Constitutional Court argued that the river basin concept as a unit management enables a balanced administration of the river resources taking into account that the river basin extends over more than an Autonomous Region and in such a way the water of a same river basin is part of a coherent ensemble that must be homogenously managed.

The Constitutional Court agued as well that Article 51 of Andalucía Regional Statute provides criteria that fragment the management of river basin when it runs over more than one autonomous territory.

SWEDEN

There now are a few cases. Eg M 6574-15 of the Land- and Environmental Appeal Court. The case is about a new hydropower plant. From perspective of the Weser judgment, the issue was if the requirement of non-deterioration was fulfilled on the parameter level. Also a

matter when it comes to not jeopardize the goal for good biological status when it is not possible to achieve this due to an existing dam's function as flood protection.

/AB