



LAW AND GOVERNANCE OF WATER IN THE EU

***DIRECTIVE 2000/60/EC ESTABLISHING A
FRAME FOR THE COMMUNITY ACTION IN
THE FIELD OF WATER POLICY***

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AN IMPORTANT DIRECTIVE

- 1.- *LONG & DENSE TEXT*
- 2.- *BUILDS ON EXISTING INSTRUMENTS*
- 3.- *INCORPORATE SHIFTS IN ENVIRONMENTAL LAW*
- 4.- *REFLECTS THE "NEW CULTURE" on WATER*
- 5.- *"Governance"-oriented Directive?*

Building on existing instruments



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- Different approaches in early legislation
 - The “fit-for-use approach” considering the purposes of water (Bathing Water Directive, Drinking Water Directive)
 - Sectorial approach considering particular pollutants (Dangerous Substances Directive, Nitrates Directive)
 - Mostly fragmented, qualitative oriented considering the uses or establishing maximum concentrations of pollutants in water

The shift towards integration in water law



Directive 2000/60/EC : General context: the paradoxical “water crisis” => favours renewal of classical approach to water management

The WFD = visible milestone in legal shift

- Integration
- Standard setting & Good status obligation
- Permit obligation
- Participation
- Pricing
- Implementation – theme of legal flexibility with practical constraints

Integration

- Integration of existing instruments into one single document
- Integration of the full water-cycle (ecosystemic approach to regulation)
- Integrated view of water policy : sustainable development influence but also the worsening of the "water crisis"
- Integration of permitting procedures into the directive
- Integration of economic aspects
- Striving towards integration of administrative and ecological territories: Adoption of the River basin unit (also called "integrated water resource management")
- Integration of different actors & stakeholders in policy-making

Standard-setting & good status obligations



- Art.4 “good ecological water status” = heart of the Directive
 - open-ended/vague concept, but in combination with the definitions and the annexes it gains substance and precision
 - ☞ Surface water / Annex V – High status: no, or only very minor anthropogenic alterations of the values (Chemical, biological...); Good, and
 - ☞ Groundwater
- ‘Member States shall protect, enhance and restore all bodies of groundwater, ensure a balance between abstraction and recharge of groundwater, with the aim of achieving good groundwater status’ by 2015 (Art 4.1.b)
- ☞ One has to taken into account a certain standardisation of environmental information, of environmental science concepts, of methodological approaches

The means to achieve the objectives: planning and participation in the WFD



- Article 14
 - Reflects the consensus that has been building around participation in water resource management & planning
 - Significant example of the affirmation and development of Principle 10
 - Correct implementation of the Aarhus Convention
 - Sensitive way to develop participation in strategic decision-making
 - Participation in planning
 - Planning participation

- Article 14.1. General principle of participation
 - Promotion of « active involvement of all interested parties in the implementation » of the Directive,
 - Most particularly (but not exclusively) « in the production, review and updating of the river basin management plans.
- Participation in the elaboration of River Basin management plans
 - Publication of the plans
 - Obligation to consult public, including users

Documents to make available to the public



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- a) timetable and work programme for the production of the plan, including a statement of the consultation measures to be taken, at least three years before the beginning of the period to which the plan refers; (also applies to the REVIEW of existing plans)
 - b) an interim overview of the significant water management issues identified in the river basin, at least two years before the beginning of the period to which the plan refers;
 - c) draft copies of the river basin management plan, at least one year before the beginning of the period to which the plan refers.
 - d) Annex VI specifies the minimum information that a River Basin Management must contain & Provide

Right to participate

- Right to participate in the elaboration of the working programme itself
 - Right to make comments during six months on each of those documents put to public consultation
- “ in order to allow active involvement and consultation”
- At the EU level, the Commission must also be very inclusive of all participants when reviewing implementation, future developments (art.18)

Implementation Obligations

- The WFD entered into force in 2000 (art.25)
- Deadline to transpose it in national legislation : December 2003 (art. 23) (few EU 15 managed to do so & transposition is valued as “poor” by the European Commission)
- Identification of river basin: pressures, impacts, and economic analysis (art.3)
- 2004 : 1° round of Reporting by states
- Start public consultation at latest by 2006
- Draft River Basin Management Plan: 2008
- 2001: Common strategy for implementation
- 2007: First stage report on implementation

The good pupil? The case of France



- Implementation of WFD Directive:
 - Supported by a pre-existing legislative and institutional setting very much compatible with the WFD provisions
 - First early stage of consultation in 2005 about the national water policy –linked with river basin plan review
 - 2007: 2° stage of consultation for the river basin management plan

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Other examples

- By reference to the french model, the cases of Spain & Italy show:
 - The importance of a consolidated, transparent administration and administrative structure
 - The importance of representation of interests in fostering trust in the institutions and among stakeholders
 - The difficulties that regional states might have => “classical” subsidiarity might not always be the best approach for good environmental protection : “balkanisation” of water protection/governance
(Italian difficulties pinpointed in the first stage of the analysis of implementation of the Directive by the Commission)

Bibliography

Policy documents

Directive 2000/60/EC

Common Strategy for Implementation (2006)

First stage report by the Commission on the Implementation of the WFD
SEC (2007)362 (march 2007)

Legal Doctrine

Maria Lee, *EU Environmental Law, Challenges, Change and Decision-Making*, Hart Publishing (2005)

Helmut Bloch, "European Water Policy and the Water Framework Directive" , *Journal of European Environmental & Planning Law* (2004), pp.170-178

Joanne Scott and Jane Holder "Law and New Environmental Governance in the EU", in De Burca G. & Scott J. *Law and New Governance in the US and the EU*, Hart Publishing (2006)

Bernad J. Wolhwend, "Legal and Institutional Means to implement Integrated Water Resources Management" (?)

William Howarth, "The Progression towards ecological quality standards" 2006:18, pp. 3-35

Practical-oriented documents

Learning Together To Manage together: Improving participation in water management
Harmonising Collaborative Planning (HarmoniCop) HANDBOOK