

The EU Water Framework Directive - a legal frame for adaptive governance of water resources within the EU

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Johanna Söderasp, LLD

Water Management Director

The Bothnian Bay Water District Authority



Background

- Early EU water legislation was perceived as fragmented, sectoral and difficult to overview:
 - Directives had been adopted since the 1970's to address certain problems such as drinking water quality, bathing water quality, protection of groundwaters, fish waters and shellfish waters, waste water treatment and water pollution by nitrates from agriculture.



Background

- Increasing pressures on Europe's waters, motivated the EU to a more global approach to water policy:
- The EU Water Framework Directive (WFD) (2000/60/EC) was adopted.
- Representing a new, holistic, integrated and adaptive approach to governing water within the Union.
- Sustainability and long-term protection of water resources in focus.



The EU Water Framework directive (WFD)

- “The most substantial and ambitious piece of EU environmental legislation to date” (Voulvoulis et al 2017)
- Recital 1: “Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.”
- Purpose, article 1, (summarized):
 - To establish a framework for the protection of surface waters (inland, coastal and transitional) and groundwaters
 - To prevent further deterioration of surface waters and groundwaters
 - To promote sustainable water use based on long-term protection of available resources
 - To progressively reduce pollution of both groundwaters and surface waters



Key elements of the WFD

- Environmental objectives (WFD article 4):
 1. *Prevent deterioration* of all waters.
 2. *Protect, enhance and restore* in order to achieve '**good water status**' (ecological, quantitative and chemical) by 2015, 2021 or 2027.
- Adaptive and ecosystem-based management:
 - 6 year management cycles (classification, environmental objectives, programme of measures, river basin management plan, reporting, monitoring)
 - Hydrological scales (River Basin Management, article 3)
 - Public information and consultation (article 14)
 - Getting the prices right (article 9)
 - Combined approach (article 10)



Exemptions

- Extended deadlines (2021 or, at the latest 2027) for the purposes of phased achievement, provided that no further deterioration occurs and the conditions of WFD Article 4.4 are met.
- Less stringent environmental objectives for waters so affected by human activity or their natural condition is such that the achievement of the original objectives would be infeasible or disproportionately expensive.



Derogation regime Article 4.7 WFD

- Possibility to allow for projects that causes adverse effects in two situations:
 1. New modifications to the physical characteristics
 2. New sustainable human development activities that causes deterioration in high status surface waters **if:**
 - a) all practicable steps are taken to mitigate the adverse impact on the water status
 - b) the reasons are explained in the RBMP
 - c) the project are of overriding public interest and/or its benefits outweighs the environmental objectives, *and*
 - d) the beneficial objectives cannot be achieved by other means



Case law of the European Court of Justice (ECJ)

- General principle of interpreting environmental directives from the ECJ:

The individual provisions of an environmental framework directive, such as the WFD, cannot be properly understood in isolation.

Rather, directive provisions must be interpreted within the context of the directive as a whole, including its overall purpose and more general objectives.



The "Weser-case" (ECJ C-461/13)

1. The WFD environmental objectives (of Art. 4) are legally binding in each stage of implementation of the Directive.
 2. Member States are obliged to refuse authorisation for individual projects that causes deterioration and/or negatively effects the water status, ***unless*** the project can motivated under the derogation regime of WFD Art. 4(7). (p. 50)
- The "Schwarze Sulm-case" (ECJ 346/14): National discretion when applying the derogation regime, as long as all conditions are met and well-documented in the grounds for the decision.



Where are we now?

- The question of whether the directive should be revised has been debated since 2017, when it was first initiated.
- On the 23rd of June 2020, the European Commission announced that the Water Framework Directive and its daughter directives *will not be revised*.
- Rather, the Commission announced, that more focus should be placed on future implementation support (and control)
- The next water management cycle starts (Dec) 2021 – 2027 (new cycles 2027-2033, 2033-2039 etc.)
- Public hearing in Sweden Nov 2020-April 2021



Thank you for your attention!