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# EU Water Legislation

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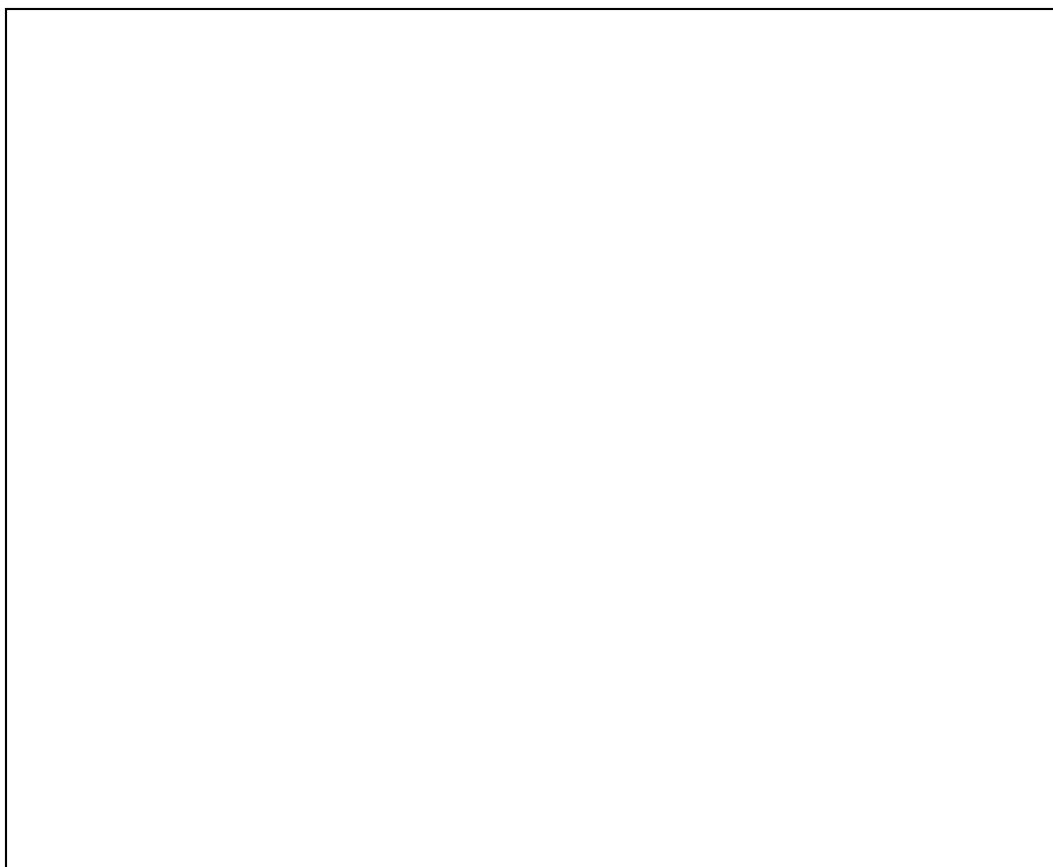
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## The general objectives of EU Water Legislation



- The main general objectives of EU water legislation are as follows:
  - Prevent and mitigate the impact of human activities on water bodies (especially surface water and groundwater), both in terms of quality and quantity;
  - Promote the sustainable use of (scarce) water resources;
  - Address new challenges: e.g. facing the new scenarios and new problems induced by climate change.

Today we will focus more on the Water Framework Directive, but before we start with the general objectives of the EU Water legislation.

Regarding the last point, those are, of course, global challenges, but may have some specificities for some parts of the European territory. Mostly problems of adaptation related to climate change.

We will focus now on the legislative framework in particular.

## The EU legislative framework for water (I)



- The EU legislative framework for water consists of several directives that aim to regulate the multiple causes of pressure on the quality and quantity of water bodies.
- Directive 2000/60/EC, better known as the Water Framework Directive (WFD Directive), is the main legislative instrument in this field. It defines the European framework for the protection of water (surface, transitional, coastal and underground water) and for the sustainable management of water resources.

When the WFD was adopted, it was very innovative, because it tried to put under the single text a lot of previously diverse types of legislation. But, of course, as we will see, it does not really manage to cover all the aspects and all the issues related to water protection and water management. So, this is the reference point, but there are still some other directives, and we will briefly mention the most important ones, which are outside the main body of the WFD, but are relevant for the application of EU Water Law.

The main aim is the protection of all types of water, which are defined by the Directive, and also the sustainable management of water resources.

## The EU legislative framework for water (II)

- The Water Framework Directive 2000/60/EC (WFD) is complemented by other two main directives:
  - a) the Groundwater Directive (Directive 2006/118/EC), which establishes specific measures, as provided for in Article 17(1) and (2) of Directive 2000/60/EC, in order to prevent and control groundwater pollution.
  - b) Directive 2008/105/EC (amended by Directive 2013/39), which lays down environmental quality standards for priority substances and certain other pollutants, as provided for in Article 16 of Directive 2000/60/EC.

Let's start by looking at the global picture regarding EU Water legislation. So, besides the WFD, and before we analyse the details of the WFD, we need to mention two other directives, which are related to the main one. In particular, the Groundwater Directive and the Directive on Environmental Quality Standards for priority substances.

Those two directives were adopted a few years after the adoption of the main directive. In particular, the Groundwater Directive (Directive 2006/118) was adopted six years after the WFD and it is somehow commanded by article 17 of the WFD. So, it is an implementing directive, it is completing the framework already created by the main directive. Then, another very important directive which completes the framework is Directive 2008/105, which has been amended by Directive 2013/39. This directive is important because it creates a list of priority substances for the most relevant pollutants, and is setting the environmental quality standards to be achieved on a compulsory basis by Member States in this field. So, it is creating a kind of regulation of the quality of water with regard to priority substances that may be found in the water, at the European level, while it is leaving to the Member States the possibility to set up quality standards for other substances not included in this list. So, in fact, under the regime created by the framework directive and by Directive 2008/105, we have a system which is based on a double layer level. First layer with regard to the most dangerous substances – so-called priority substances – and the less dangerous substances.

## The EU legislative framework for water (III)



- There are also other EU directives that regulate some aspects concerning the quality or quantity of water:
  - a) The Nitrates Directive (Directive 91/676/EEC);
  - b) The Drinking Water Directive (Dir. 98/83/EC, which will be replaced by Directive 2020/2184/EU);
  - c) The Urban Waste Water Directive (Directive 91/271/EEC);
  - d) The Bathing Water Directive (Directive 2006/7/EC);
  - e) The Flood Risks Directive (Directive 2007/60/EC);
  - f) The Marine Strategy Framework Directive (Directive 2008/56/EC).

Now we look at some other directives, which will NOT be analysed in detail during this lecture. But it is important to at least mention them, because this is also useful to complete the framework of the European legislation in this field.

The Nitrated Directive is mostly focused on the pollution caused by agriculture, which is the main source of nitrate which is then a relevant source for pollution.

The new Drinking Water Directive is based on the previous one, but is introducing some improvements, in order to re-create some trust of the general public on drinking water.


The Urban Waste Water Directive is quite old and very important. Some problems are of implementation in some Member States. This is the directive which is imposing Member States the installation of treatment for waste water in agglomerates above certain number of inhabitants.

The Bathing Water Directive is another old one and then re-arranged and re-published in 2006.

The Flood Risks Directive is one of the most recent ones. It is related to the prevention of floods and this is maybe the most recent one in the field, creating a framework for this theme at the European lever for the first time.

The Marine Strategy Framework Directive is also a new-comer in this field, adopted in 2008, which is creating a small structure framework of action for the European Union for the water protection in relation to the marine waters. This is also a new area if compared to the traditional fields, which date back to the legislation starting in the 1970s.

## The Water Framework Directive (WFD): purpose and main objectives (I)



- The purpose of the WFD is to establish a framework for the protection of all types of waters (including inland surface waters, transitional waters, coastal waters and groundwater).
- The WFD has five main objectives:
  - (a) prevent further deterioration and protect and enhance the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands depending on the aquatic ecosystems;
  - (b) promote sustainable water use based on a long-term protection of available water resources;

(-to be continued-)


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Some of the issues that arise here in the objectives will come back in the analysis that we will make of the different provisions of the directive and also in the analysis we will make in some of the issues in case-law.

Objective (a) is one of the few examples of the EU legislation that you will find reference to the concept of ecosystem. With respect to the aquatic ecosystem, of course, but this was a very important innovation. So, it looks at the quality not only of the water bodies but also of the entire ecosystems surrounding the water body. And you can see that there are two concepts here that then we come back in the case-law of the Court, which is the prevention from further deterioration, but trying to enhance the quality of the aquatic ecosystem. So, it is not enough to maintain the current level of a certain body, but it is important to try and improve the quality. Then, there is the promotion of sustainable water use, based on a long-term protection. And we will also see that when we refer to the management plans which Member States are required to prepare.

## The Water Framework Directive (WFD): purpose and main objectives (II)



(-continued-)

- (c) aim at enhanced protection and improvement of the aquatic environment, inter alia, through specific measures for the progressive reduction of discharges, emissions and losses of priority substances;
- (d) ensure the progressive reduction of pollution of groundwater and prevent its further pollution;
- (e) contribute to mitigating the effects of floods and droughts.

## The Water Framework Directive (WFD): the main features (I)



- The main features of the WFD directive are:
  - The rationalization of EU water legislation to overcome the previous regulatory fragmentation.
  - A new approach based on the river basin as the physical reference unit for waters.
  - The choice of the river basin district as the organizational reference unit for management of river basins, also for transboundary water courses.
  - The adoption of environmental quality standards (based on the concentration of pollutants in the water).

After this general overview on main objectives, let's now concentrate on the main features and main innovative choices made by the framework directive.

So, first of all, as already mentioned, the main aim of this directive when it was adopted, was to rationalize all existing EU water legislation, in order to overcome the legislative fragmentation that was typical at the time in this field.

There are some essential features. For example, there was a choice that the river basin would be the physical reference unit for waters. So, all Member States and territories have to be mapped in order to identify the river basins, and, on the basis of this physical unit, all the system for the protection of water will be built. So, it is a kind of centralized way of managing, at least in the approach.

The river basin district is composed by river basins, depending on the geographical aspects of each country. ...

Another innovative element is the adoption of environmental quality standards, which are based on the concentration of pollutants in the water. Before the framework directive, the attention was mainly on emission limits for discharges, whereas for this directive the shift was moved for environmental quality standards.

## The Water Framework Directive (WFD): the main features (II)



- Member States must pursue an integrated management of waters, aimed at the protection of ecosystems, in each river basin district, to be achieved through:
  - The establishment of a programme of measures for each river basin district, in order to achieve the environmental objectives for waters set by the WFD (article 11 WFD).
  - The production of a river basin management plan for each river basin district (article 13 WFD).
  - The active involvement of all interested parties in the implementation of the Directive and in the production of the river basin management plans (art. 14 WFD).

Now let's look at the main features of the directive from the different point of view of the duties of the Member States.

With active involvement, it also means the participation of citizens.

## The main duties of Member States for water management and protection (I)



- Article 4 WFD defines the environmental objectives (environmental quality objectives) for waters.
- Member States, in making operational the programmes of measures specified in the river basin management plans, have two main obligations relating to the achievement of water quality objectives:
  - a) prevent deterioration of the status of all bodies of surface water and groundwater;
  - b) protect, enhance and restore surface water and groundwater bodies, with the aim of achieving good water status by 2015 (with possible delay up to 2027).

Here, we get into the details of what are the obligations of the Member States. So, we need to go to article 4, which is a very key provision of the WFD.

So, we come from the premise that the first step for each country is to define the river basin and the river basin district, and to monitor the quality of waters, on the basis of certain criteria and guidelines set by the European Union. Once the water courses have been mapped, we know which is the status of these water bodies (very good, poor, etc). Based on that come the two obligations for Member States.

## The main duties of Member States for water management and protection (II)



- Environmental (quality) objectives may be different for surface water bodies, groundwater, and for artificial and heavily modified bodies of water.
- Member States have specific obligations in two cases, in order to:
  - a) Progressively reduce pollution from priority substances, as defined by Directive 2008/105 (as amended by Directive 2013/39);
  - b) Achieve compliance with standards and objectives set by the WFD for protected areas within a maximum period of 15 years.

There are also more obligations that are more specific.

...

For water bodies in protected areas, there is an absolute obligation to achieve the good water status and comply with all objectives and standards set by the WFD, within the period of 15 years. So, in those cases, it is not possible to make use of the possible delays (until 2021 or 2027, mentioned in the previous slide). So, it is a more stringent timeline for implementation.

## The concept of good water status (I)



- The concept of good water status (of surface waters) is defined by article 2 WFD as follows:
  - Good surface water status: the status achieved by a surface water body when both its ecological status and its chemical status are at least “good”.
  - Ecological status: an expression of the quality of the structure and functioning of aquatic ecosystems associated with surface waters, classified in accordance with Annex V WFD.
  - Good ecological status: the status of a body of surface water, so classified in accordance with Annex V WFD.

We need to combine these five definitions in order to understand and apply the concept of good water status.

So, for good surface water status, there are two important aspects, which are the ecological and the chemical status. They give the parameters to say which status is good.

....

So, it is not enough to get a sample of the water, it is also important to understand the status of the aquatic ecosystems associated with it.

## The concept of good water status (II)




- Good ecological potential: the status of a heavily modified or an artificial body of water, so classified in accordance with the relevant provisions of Annex V WFD.
- Good surface water chemical status: the chemical status required to meet the environmental objectives for surface waters established in Article 4(1)(a) WFD, that is the chemical status achieved by a body of surface water in which concentrations of pollutants do not exceed the environmental quality standards established in Annex IX and under Article 16(7) WFD.
- Similar definitions are given by the WFD with regard to groundwater.

Here we look at the other dimension, the chemical status.

Putting in a simple way, we can say that the chemical status regards the quality of water concerning the concentration of pollutants.

## The concept of «deterioration» of the status of surface water bodies (I)



- The concept of “deterioration” of the status of water bodies (surface and underground) is not defined by the WFD.
- The case-law of the Court of Justice of the European Union has shed some light on this issue, in the following two cases:
  - *Weser* case (C-461/13): the Court has interpreted the concept of 'deterioration' of the status of (surface) water bodies.
  - *Schwarze Sulm* case (C-346/14): the Court has interpreted the conditions for the derogation (provided for by article 4(7) of the WFD) from the “obligation to prevent the deterioration of the water status”, with regard to projects defined by a Member State of “overriding public interest”.

Here we start looking at the contribution of the case-law. I decided to focus on those two cases, which are examples of recent cases where the Court of Justice has dealt with some of the controversial issues regarding the application of the WFD.


The main issue – the common line – in the case-law of the Court is around the concept of deterioration of the status of the water body. Remember that we say the the Member States have the main obligation to prevent the deterioration of their water bodies, so it is obvious that the concept of deterioration has become topic of great discussion also in the judiciary, both at the national and at the European levels.

*Weser* is a river in the area of Bremen, in the North of Germany. And this case was promoted by Germany in order to allow bigger ships in Bremen. So, this is a typical situation of projects interfering with the river and possibility creating deterioration of the water status of this river. In this case, the Court as interpreted the concept of deterioration of the status of the water body in particular with regard to the surface of water bodies. And we will look at some aspects from this case, and the language used by the court.

The second case, *Schwarze Sulm*, regards a river in Austria which was in a good ecological status, and the Austrian authorities decided to build an hydropower station. So, here, the need to produce electricity from hydropower was considered by the national authorities as an overriding public interest and, therefore, the authorities approved the project, which obviously interfere with the river. There was a debate whether it was possible to make use, by the Austrian authorities, of the derogation provided by article 4.7 of the WFD, which creates, in some cases where there is an overriding public interest, the possibility to derogate from the general obligation to prevent further deterioration of the water status. So, a key provision of the directive that was interpreted by the Court in this case.

So, we will look now at the details of those cases to explain some of these concepts and to see how the Court is approaching these issues.

## The concept of «deterioration» of the status of surface water bodies (II)




- Firstly, in the *Weser* case, the Court of Justice clarified that the obligation to prevent “deterioration” is “binding”:
  - ✓ § 37: “The ultimate objective of Directive 2000/60 is to achieve, by coordinated action, ‘good status’ of all EU surface waters by 2015.”
  - ✓ § 38: “The environmental objectives that the Member States are required to achieve are specified in Article 4(1) of Directive 2000/60.”
  - ✓ § 39: “That provision imposes two objectives that are separate, although intrinsically linked. First, in accordance with Article 4(1)(a)(i) of Directive 2000/60, the Member States are to implement the necessary measures to prevent deterioration of the status of all bodies of surface water (obligation to prevent deterioration). Second, pursuant to Article 4(1)(a)(ii) and (iii), the Member States are to protect, enhance and restore all bodies of surface water with the aim of achieving good status by the end of 2015 at the latest (obligation to enhance).”

In the *Weser case*, we focus on two issues that have been addressed by the Court.

The first one is the obligation to prevent deterioration. In this case, the Court clarified that this obligation is binding upon the Member States. In the slide, there are references to some key paragraphs of the decision.


## The concept of «deterioration» of the status of surface water bodies (III)



- ✓ § 43: “Article 4(1)(a) of Directive 2000/60 does not set out, in programmatic terms, mere management-planning objectives, but has binding effects.”
- ✓ § 44: “The derogation regime provided for in Article 4(7) of Directive 2000/60 [...] likewise confirms the interpretation that prevention of deterioration of the status of the bodies of water is binding in nature.”
- ✓ § 50: “Unless a derogation is granted, any deterioration of the status of a body of water must be prevented, irrespective of the longer term planning provided for by management plans and programmes of measures. The obligation to prevent deterioration of the status of bodies of surface water remains binding at each stage of implementation of Directive 2000/60 and is applicable to every surface water body type and status for which a management plan has or should have been adopted.”
- ✓ § 51: “Article 4(1)(a)(i) to (iii) of Directive 2000/60 must be interpreted as meaning that the Member States are required — unless a derogation is granted — to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water.”

The Court also says that the obligation to achieve the environmental objectives is not an obligation set out in programmatic terms, is not a management planning obligation. But is a binding obligation. So, the stages for implementing the directive have to consider that preventing is a priority. And this is important because the Court says that, unless the derogation is granted (see paragraph 51 in the slide), according to article 4 of the directive, which is setting the environmental quality, Member States are required to refuse authorization for an individual project where there will be the deterioration of the status of a body of surface water, unless there is the possibility to give the derogation following the rules set by article 4, paragraph 7, of the directive.

## The concept of «deterioration» of the status of surface water bodies(IV)



- Secondly, in the *Weser* case, the Court of Justice determined the meaning of the concept of “deterioration”:
  - ✓ § 52: “The referring court asks, in essence, whether the concept of ‘deterioration of the status’ of a body of surface water in Article 4(1)(a)(i) of Directive 2000/60 must be interpreted as covering only detrimental changes which result in classification of that body of water in a lower class in accordance with Annex V to the directive (the status classes theory). If the answer is in the negative, that is to say, if that concept covers any detrimental change to the body of water at issue (the status quo theory), the referring court wishes to ascertain the criteria for concluding that there is a deterioration of the status of a body of surface water.
  - ✓ § 55: “The wording of Article 4(1)(a)(i) of Directive 2000/60 supports an interpretation according to which the concept of ‘deterioration of the status’ of a body of surface water also covers deterioration which does not result in classification of that body of water in a lower class.”

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In the second part of the *Weser case*, the Court focuses on the concept of deterioration. Here, the Court addresses a very complex issue: how to determine if there has been deterioration or not. The Court, then, exposes two theories, as displayed in the slide.

The status classes theory says that the deterioration of the status of a body of surface water only when there are detrimental changes which result in a lower class in accordance with Annex V of the directive. So, only when the whole body of water is reduced to a lower class in relation to a certain project or activity, there is deterioration under the directive.

The second theory, the status quo theory, says that there is deterioration when there is any deterioration change to the body of water. So, also when there is not a change of class, if some parameters are getting worse.

After describing those two theories, the Court positions, in paragraph 55, and says that the wording of article 4 ... (see slide). So, the Court takes a very important position here and says that it is not necessary that there is a degradation of the water body even when there is an important deterioration, certain parameters of certain elements of this body of water. So, even if there is not an official degradation of the status, this might be considered a deterioration under the terms of article 4. So, the Court takes, let's say, a more environmentally oriented reading of these provisions.


## The concept of «deterioration» of the status of surface water bodies (V)



- ✓ § 56: "the assessment of surface water status is based on analysis of the ecological status, which covers five classes."
- ✓ § 66: "if the concept of 'deterioration' is interpreted by reference to a quality element or a substance, the obligation to prevent deterioration of the status of a body of water retains all its practical effect, since it encompasses all changes liable to undermine achievement of the principal objective of Directive 2000/60."
- ✓ § 70: "the concept of 'deterioration of the status' of a body of surface water in Article 4(1)(a)(i) of Directive 2000/60 must be interpreted as meaning that there is deterioration as soon as the status of at least one of the quality elements, within the meaning of Annex V to the directive, falls by one class, even if that fall does not result in a fall in classification of the body of surface water as a whole. However, if the quality element concerned, within the meaning of that annex, is already in the lowest class, any deterioration of that element constitutes a 'deterioration of the status' of a body of surface water, within the meaning of Article 4(1)(a)(i)."

Then the Court continues by expanding the concept of deterioration: paragraph 17. As we see here, the Court also goes into the detail of explaining the deterioration of water bodies that were already in the lowest class. This reinforces the environmentally friendly position.

## The concept of «deterioration» of the status of surface water bodies (VI)



- In sum, in the Weser case (C-461/13), the Court of Justice of the European Union interpreted the concept of 'deterioration' of the status of (surface) water bodies.
- To this effect: firstly, it clarified that the obligation to prevent deterioration of the status of bodies of surface water is binding at each stage of implementation of Directive 2000/60; and secondly, it stated that the concept of 'deterioration of the status' of a body of surface water covers any detrimental change to the concerned body of water, including any deterioration which does not result in classification of that body of water in a lower class.

To summarize the findings of this case...

First of all, it was useful because it clarified that this obligation to prevent deterioration is binding at all stages of implementation of the directive. And it clarifies that the concept of deterioration of the status of the body of surface waters covers any detrimental changes, even if there is not a decrease of the class.

## The derogation foreseen by article 4(7) WFD (I)



- Article 4(7) of Directive 2000/60 provides for a derogation from the obligation to prevent ‘deterioration of the status’:
  - Member States will not be in breach of this Directive when: [...] 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) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13;
    - ✓ (c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and
    - ✓ (d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.

Before we look into the details of the second case, it is important to have a quick look at the provision of article 4(7) of the WFD, which is the one referring to the possibility of derogation from the obligation to prevent the deterioration of the status.

## The derogation foreseen by article 4(7) WFD (II)



- In the Schwarze Sulm case (C-346/14) the Court of Justice dealt with the derogation provided for in Article 4(7), letters a) to d), of the WFD:
- ✓ § 65: “when a project 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) of that directive are satisfied (judgment of 11 September 2012, C 43/10, § 67 and 69).”
- ✓ § 74: “in the present case, the national authorities weighed up the expected benefits of the contested project with the resulting deterioration of the status of the body of surface water of the Schwarze Sulm. On the basis of that weighing-up, they were entitled to find that the project would give rise to benefits for sustainable development, that all practicable steps had been taken to mitigate the adverse impact of the contested project on the status of that body of surface water and that the objectives pursued by the project could not, for reasons of technical feasibility or disproportionate cost, be achieved by other means which would have been a significantly better environmental option.”

Here the Court says that the national authorities weight up the benefits of the contested project. In this weighting process, the authorities should identify the benefits for sustainable development, [...] (read paragraph 74)

So, the Court is saying that when the Austrian authorities decided to approve the project, they have based their approval on scientific analysis and studies that supported that there would not be a very important deterioration of the water, and, on the other side, there would be important gains in terms of energy production and development. Also, it was relevant that this was a hydropower project, so it was promotion of renewable sources. So, the Court seems to be very influenced by that and also by the fact that there seems to be a series of documents supporting this choice, which was not only political, but a choice based on scientific data.

## The derogation foreseen by article 4(7) WFD (III)

- ✓ § 80: “Thus, contrary to the Commission’s assertions, the Governor of the Province of Styria did analyse the contested project as a whole, including its direct and indirect impact on the objectives of Directive 2000/60, and weighed up the advantages of the project with its negative impact on the status of the body of surface water of the Schwarze Sulm. In particular, in that analysis, he took account of the fact that the Schwarze Sulm showed very high ecological quality, but found that, given the various expected advantages of the project, the appurtenant public interests clearly outweighed the negative impact on the objective of non-deterioration pursued by Directive 2000/60. Thus, contrary to the Commission’s assertion, he did not merely refer in the abstract to the overriding public interest in the production of renewable energy, but rather based himself on a detailed and specific scientific analysis of the contested project, before going on to conclude that the conditions for a derogation from the prohibition of deterioration were met.”
- ✓ § 81: “The Governor of the Province of Styria [...] did take account of all of the conditions laid down in Article 4(7) of Directive 2000/60 and could rightly consider them to be met.”

We don't have the time to go into the details, but in this passage you can see that the Commission was against the approval of this project by the Austrian authorities. Austria was supporting the decision of the Province of Styria to authorize the project. But... [paragraph 80].

That is why the Court agreed with the position of Austria.

## The derogation foreseen by article 4(7) WFD (IV)

- In sum, in the Schwarze Sulm case (C-346/14), the Court of Justice of the European Union ruled that the construction of a hydroelectric power plant can be considered in itself a reason of overriding public interest and that member states enjoy a some margin of discretion in determining whether an individual project serves a priority public interest and/or whether the benefits of the project, in the light of sustainable development, outweigh the benefits to the environment and society of achieving the environmental quality objectives set out in article 4(1) WFD. ( § 74, 80, 81).

I have to tell the truth, that I am not completely convinced about this decision of the Court. In the sense that I fear a bit the situation in which there is balancing two different situation and both are considered to be useful for environmental purposes. In particular, here the hydro electrical production, which can be justified by saying that hydro electrical production may be negative in this case for the environmental quality of the river, but is good in climate terms, because we have clean energy production and, on the other side, we have the traditional environmental protection related to the quality of the water. So, here, the Court seems to say that the Austrian authorities clarified that the balancing can go in favour of the hydro electrical production. Bu I think that here the Court is a bit influenced by this need to support renewable energy, and maybe the balancing is not so perfectly done. I don't want to say that the Court is wrong, but certainly I see that this balancing seems to be easier when there is an environmental situation on the one side and a non-environmental situation on the other side. But when there is a situation where also on the side of development, there is renewable energy, this seems to play an important role in this balancing, and somehow to display a correct analysis. And in this case we see very clearly that the Commission was against the position of the Court. Also, the fact that the Austrian authorities had correctly run the administrative procedure, was not easy to find failures. I believe that a similar case in different circumstances could not have been decided the same by the Court.

Anyway, I think that these two cases are useful to clarify also the position of the Court.

## Conclusion

- In my view, it can be concluded that the implementation of the EU water legislation has not been fully effective so far for the following main reasons:
  - 1) an excessive decentralization of the setting up of many quality objectives and of the monitoring activities;
  - 2) a poor enforcement by the European Commission;
  - 3) too many derogations for Member States.
- However, in the future, something could change for two main reasons: the implementation of the European Green Deal and the withdrawal of the United Kingdom (Brexit).

First of all, there has been criticism to the WFD in the literature, because there is centralization in the management system, but there is a lot of decentralization for quality objectives for many pollutants and for monitoring activities. This has been criticized in the sense that the application of the directive is not really the same in the different parts of the EU. And, as happens in other fields, the EU tends to give a lot of discretionary power to the Member States and this may end up in having different ways of applying the directive, and maybe is not creating the same conditions for the activities and for the environmental quality. So, this might be the first criticism to this directive and to the EU water legislation in general.

Second criticism, which is common to other fields, is saying that the European Commission is looking very often at the formal implementation of the directives, but very rarely is looking at complete cases of incorrect implementation. These two cases that I showed are a good example of an enforcement that get into the details, but this is not the majority of the situations. These cases went before the Court, but maybe there are many other cases which did not reach the Court, and this is a signal that the enforcement by the European Commission could be stronger.

The third criticism to the directive is that there are too many derogations by Member States, particularly provisions of having possibilities of delays in reaching the good water status for certain river basins and river basins districts up to 2027.

Finally, the last comment... There has been two events in recent times that may play a role in the future of EU water legislation. One is the European Green Deal, that is creating a big change in the approach of the European Union towards the economy in general, and this will have an influence also in the application of the environmental legislation – some environmental legislation may even be revised, and there will be a lot of pressure, for example, for carbon neutrality. And if we look at the *Schwartz v. Sulm* case we can say that this might have an influence in the balancing of climate interest and environmental interests related to the quality of water. Another element that might be very relevant in the long term for the application of the EU water legislation is the Brexit, because the UK has been one of the main supporters of this approach related to environmental quality objective, and not so much focus on the emission limits, and of the idea that there should be more discretionarity to the Member States and a more decentralized approach.