

EU Environmental and Water Law

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Contents

- EU Environmental Law
 - Leading objectives and principles
 - EU's competence
 - Primary and secondary legislation
 - Sectors
- EU Water Legislation and Case Law
 - Water Framework Directive
 - Other water directives
 - Case law of the European Court of Justice

EU Environmental Law

Leading objectives and principles

- Treaty on the Functioning of the European Union (TFEU, Art. 191)
 - Union policy shall contribute to
 - Preserving, protecting and improving the quality of the environment
 - Protecting human health
 - Prudent and rational utilisation of natural resources
 - Promoting measures at international level
 - High level of protection
 - Diversity of situations in various regions
 - Precautionary principle, polluter pays principle

EU's competence in environmental law

- TFEU (Art. 192)
 - The European Parliament and the Council decide what action is taken to achieve the environmental objectives of the EU
 - Demand for unanimity
 - Fiscal provisions, town and country planning, quantitative management of water resources, land use, energy issues
 - However, e.g. the Water Framework promotes sustainable water use and the recovery of the costs of water services
- Treaty on European Union (Art. 5)
 - Conferral, subsidiarity and proportionality principles
- Does it work?

EU's competence in environmental law

- TFEU (Art. 258)
 - Infringement procedures against Member States
 - The Commission must deliver a reasoned opinion if a Member State has failed to fulfil an obligation under EU law
 - If the State concerned does not comply, the Commission may bring the matter before the Court of Justice of the EU
- Treaty on EU (Art. 19)
 - The Court of Justice of the EU
 - Rules actions and gives preliminary rulings

Primary and secondary EU legislation

- Primary legislation
 - Supreme source of law in the EU
 - Founding treaties of the EU
 - Treaty on European Union
 - Treaty on the Functioning of the European Union (TFEU)
- Secondary legislation (TFEU, Art. 288)
 - Regulations, directives, decisions, recommendations and opinions
 - A regulation has general application, binding and directly applicable
 - Directive is binding, as to the result to be achieved, but leaves to the national authorities the choice of form and methods

EU Environmental Law Sectors

- Nature and biodiversity
 - Natura 2000 network, conservation of natural habitats and of wild flora and fauna
 - Birds Directive and Habitats Directive
 - Many infringement procedures and court cases
- Pollution prevention and control
 - Air pollution: Air Quality Directive – quality objectives
 - Industrial emissions directive: permitting, integrated approach, BAT
 - Transport pollution: regulations on emission limits
 - Environmental Noise Directive

EU Environmental Law Sectors

- Chemicals
 - REACH regulation: Registration, evaluation, authorisation and restriction of chemicals
- Environmental Assessment
 - Environmental Impact Assessment Directive: Mandatory and discretionary EIA
- Waste
 - Waste Framework Directive: Prevention, preparing for re-use, recycling, recovery, disposal
- Emission trading
 - Emission Trading Directive

Discussion points

- How has EU environmental law become such a wide-ranging supranational legal system?
- What the future holds for EU environmental law?
 - Has it reached its limits or will it continue to develop?

EU Water Legislation and Case Law

EU Water Policy

- Competence (TFEU, Art. 192)
 - Unanimity needed: Measures affecting quantitative management of water resources or affecting, directly or indirectly, the availability of those resources
- Numerous water directives and decisions
 - Emission limits, quality requirements, permitting, environmental objectives, BAT
 - Emission and quality provisions

Important water directives

- Water Protection and water resources management
 - Water Framework Directive (2000/60/EC)
- Marine Protection
 - Marine Strategy Directive (2008/56/EC)
- Floods
 - Floods Directive (2007/60/EC)
- Water and health
 - Drinking water directive (98/83/EC)
 - Bathing water directive (2006/7/EY)

Important water directives

- Water protection
 - Urban Waste Water Directive (91/271/EEC): Urban waste water treatment requirements
 - Industrial Emissions Directive (2010/75/EU)
 - Nitrates Directive (91/676/EEC): Agricultural nitrates pollution
 - Groundwater Directive (2006/118/EC): Groundwater quality standards and prevention of pollutants

Water Framework Directive

- Framework for the protection of inland surface waters, transitional water, coastal waters and groundwater
- Objectives
 - Protect and enhance the status of aquatic ecosystems, promote sustainable water use
 - Specific environmental objectives
 - Deterioration prevention and good water status by 2015
- Measures
 - River basin management plans, programmes of measures, permitting, water-pricing to recover the costs of water services

Water Framework Directive

- Opinion of Advocate General Jääskinen (C-461/13)

“Even though the WFD sought to establish a fundamental common basis to coordinate the patchwork of Community and national legislation in force, **the fact remains that the WFD is a complex and particularly elaborate measure which is unusually difficult to understand.**”

Environmental objectives in the WFD (Art. 4)

- In making operational the programmes of measures specified in the river basin management plans
 - Deterioration of the status of water bodies must be prevented
 - Aim is to achieve good water status by 2015
- Derogations in relation to new activities
 - New modifications of physical character
or
 - Deterioration from high to good status due to new sustainable development activities
and
 - All mitigating measures, reasons explained in the river basin management plan, overriding public interest, no other options

Water Framework Directive

- Two approaches to the water **FRAMEWORK** directive
 - Minimalist: WFD as a tool for large-scale water management planning
 - Environmental objectives not legally binding
 - Deterioration prohibition linked to the status of waters at the time when the directive entered into force
 - River basin management plans must be taken into account in environmental permitting
 - Maximalist: Planning + legally binding environmental objectives + strict interpretation of deterioration
 - Environmental objectives bind environmental permitting
 - Deterioration prohibition linked to the up-to-date status of waters

Water Framework Directive

- The Weser Case (ECJ C-461/13, Bund v. Germany)
 - Scheme to deepen the river Weser to enable larger container vessels to call at some ports
 - Extremely maximalist approach
 1. The Member States are required – **unless a derogation is granted** – to refuse authorisation for a project where it may cause deterioration of the status of a water body or jeopardise the attainment of good water status
 2. Deterioration occurs as soon as the status of at least one of the quality elements falls by one class even if that fall does not result in a fall in classification of the body of water as a whole

Water Framework Directive

- The Schwarze Sulm Case (ECJ C-346/14, Commission v. Austria)
 - Authorisation for the construction of a hydropower plant on the Schwarze Sulm
 - Commission: Austria had failed to prevent the deterioration of the status of the body of surface water and had not examined whether the derogation from the prohibition of deterioration may be relied on
 - Court dismissed the action
 - Construction of a hydropower plant may be an overriding public interest
 - Authorities weighed up the expected benefits with the resulting deterioration based on a particular study
 - All of the conditions for the derogation were taken into account and were rightly considered to be met

Discussion points

- Do you find the decisions of the ECJ consistent?
- Is the EU Water Law going to be a success story?
 - Are its environmental objectives realistic?

Thank you!



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