

**NORMATIVE - LEGAL PROTECTION OF WATER**

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**Abstract:** *Water Framework Directive belongs to the basic EU legislation; it regulates water protection and preservation in Europe and ensures its long-term quality use through precisely determined standards that member states must reach by the set deadlines. The Directive applies to surface, transitional, coastal and ground waters. Water protection in the Republic of Serbia is legally regulated by means of the Law on Environmental Protection and the Law on Waters. The Law on Environmental Protection prescribes the adoption of the National strategy for sustainable management of natural resources and domains and of the National program of environmental protection as basic strategic documents. This law introduces the category of special state interest area in the field of environmental protection. The Government is the competent authority which establishes the criteria and identifies the area of special state interest in the domain of environmental protection and determines the amount and manner of payment of the compensation for environmental pollution in these areas. The Law on Waters regulates the legal status of waters, integrated water management, management of water objects and land, sources and the manner of financing water management as well as other issues pertaining to water management. The existing legislation should represent a foundation for further legal work in the field, in order to ensure water quality, water management, irrigation and drought management. Harmonization of the legislation of the Republic of Serbia with the legislation of the European Union, which primarily concerns more intense environmental protection, is developing in the direction of conforming to the understanding of water as a strategic resource in Europe.*

**1. INTRODUCTION**

Water framework directive of the European Parliament and of the Council was adopted on October 23<sup>rd</sup> 2000 [1], and amended two years later (November 20<sup>th</sup> 2001) [2]. This directive was a product of long-standing effort to ground the section of European environmental legislation dedicated to water resources, more precisely their management and protection, into a broader framework of general goals of environmental policy and law of the European Union. In order to improve community water policy, the Council of the European Union followed by the Economic and Social Committee demanded as early as 1995 that the Commission should prepare a proposal of Framework Directive setting guidelines for the community policy in this area. These demands are based on the previously developed principles of community legislation regarding water protection and management based on international conventions concerning water legislation signed by the European Union.

Water Framework directive defines legal framework for water policy with the objectives to:

- expand the scope of water protection to all waters (surface, transitional coastal and groundwater),
- improve the status of aquatic ecosystems by 2015,

- establish water management based on river basins,
- combine emission limit values and environment quality standards,
- ensure that prices of water will provide adequate incentive so that water users would use the resources efficiently,
- get the citizens involved more closely in ecologic activities in order to achieve sustainable water use based on long-term protection of available water resources,
- streamline national legislation[3].

This Directive applies to the field of ground water and priority substances where it was necessary to adopt highly specialized legislation. This resulted in the Groundwater Directive, and proposals of Priority Substances Directive, Marine Strategy Framework Directive and the Directive on the assessment and management of flood risks.

This piece of legislation restructures the existing legislation and repeals the previous regulations during the transitional period in the EU by introducing necessary mechanisms to achieve sustainable management of the water sector in the EU assuming that water is not a commercial product like any other but a heritage that must be protected and defended by harmonized legislation.

Management and protection of all water resources are of particular importance for the European Union, primarily due to the fact that they necessarily influence the hydrosphere and the environment

in general. When it comes to environmental protection, European Union has had a range of regulatory activities. Part of these activities was aimed at defining environmental liability, which is legally based in the Decision of the European Parliament and the Council of Europe laying down the Sixth Action Program [4]. The European Union sets as one of the tasks the establishment of the system of responsibility and the adoption of relevant directives. The basic source of legislation of the European Union in the domain of responsibilities for environmental pollution is the Directive of the European Parliament and of the Council No 2004/35/EC of April 21<sup>st</sup> 2004 [5]. Such legislative activity implies not only that directives are adopted as measures regulating environmental liability in the field of community law, but also that international agreements are signed within the international community to regulate the domain of environment and, being the source of international law, apply to the European Union member states as well, thus strengthening its legislative activity in the area. As this is a globally important problem, this area is regulated not only by the community law, but by international law as well [6]. Within its environmental protection activities, the European Union defined the goals of the system of environmental management and control (*Eco-management and audit scheme – EMAS*). To achieve the defined goals, the European Union adopted the Regulation (EC) No 761/2001 of the European Parliament and the Council of March 19<sup>th</sup> 2001 allowing voluntary access and participation by organizations in a Community eco-management and audit scheme [7].

In order to implement the Regulation, the Commission adopted several decisions and recommendations: Commission Decision (EC) No 681/2001 of September 7<sup>th</sup> 2001 on guidance for the implementation of Regulation (EC) No 761/2001 of the European Parliament and of the Council of March 19<sup>th</sup> 2001 [8]; Commission Decision 97/265/EC of 16 April 1997 on the recognition of the international standard ISO establishing specification for environmental management and control systems [9]; Commission Decision 97/264/EC of 16 April 1997 on the recognition of certification procedures [9]. The Commission also adopted the Commission Recommendation No 2001/681/EC of 7 September 2001 on guidance for the implementation of Regulation (EC) No 761/2001 of the European Parliament and of the Council allowing voluntary participation by organizations in a Community eco-management and audit scheme [10].

Within the broadly based, interconnected legislative activity of the European Union in the area of environmental protection, water protection particularly stands out since its natural characteristics necessarily demand harmonized legislation in the area.

## 2. EU MEASURES

The implementation of the Directive (WFD) started on different levels (European, regional and local) and in different forms in the majority of European countries in the period between 2001 and 2003. In May 2001, the European Commission published the Common Implementation Strategy for the Water Framework Directive with precise dynamics for the development of activities till the end of 2006. The goal of the strategy is to ensure coherent and harmonized process of implementation of the directive in all EU member states as well as candidate states [11].

The objective of the FWD implementation process is to achieve good water status by 2015, which implies:

- determination of hydrological, chemical and biological standards
- use of water for special purposes
- setting special objectives,
- systematic water monitoring
- integrated river basin management, even across administrative and international borders, which includes plans for river basin management and coordinated monitoring programmes based on quantitative, ecological and chemical characteristics and objectives of protection
- combined approach to standards for limit values of allowed emissions and missions which surmises that limit

values of allowed emissions by a source of pollution of aquatic environment must meet minimum water quality standards according to consumers' requirements.

The Directive stipulates particular approaches and activities, such as:

- a) EU member states and candidate countries must define river basins within state borders and establish river basin districts. These districts include ground and coastal waters, and represent basic unit for quantitative and qualitative estimation of water resources.
- b) EU member states and candidate countries are obliged to protect, improve, renew and bring to good status all surface and ground waters by 2015, and required to establish balance between use and renewal of ground waters.
- c) In order to provide for rational water use and environmental protection, the states should introduce pricing policy for water and related services in all areas of water management at the national level. When pricing water and related services, each state should consider socio-economic and environmental factors in order to raise citizens' awareness as to the of necessity water resources preservation and rational water use.
- d) EU member states and candidate countries are obliged to prepare plans for river basin districts within their territory, and ensure coordination of activities with all the states of the given river basin district in order to prepare a unified plan for management of the common river basin.
- e) All stakeholders at the national level should be encouraged to take active part in the process of preparation, presentation and innovation of the plans for river basin district management which must be transparent for the public and have a precisely set implementation deadline.
- f) Special measures should be adopted to progressively reduce hazardous substances in order to prevent the pollution of waters and aquatic ecosystems. Within these measures it is necessary to precisely define the list of particularly dangerous substances which must be removed first as well as the list of dangerous substances and determine limit values of other dangerous substances in emission.

Implementation of the set objectives requires adoption of new laws and subordinate legislation, formation of expert and trained administration in all the states where these approaches and activities apply including the countries which have initiated the accession procedure, but have not obtained the candidate status.

## 3. WATER PROTECTION LEGISLATION

Water pollution in the Republic of Serbia is increasing on daily basis so that currently this country cannot be regarded as an area rich in quality water. Many communities still lack the awareness of the necessity of water protection, considering water as the most appropriate place to dispose of some types of waste [12].

Sudden increase of water pollution is triggered by rapid industrialization, inadequate spatial planning and uncontrolled transportation of oil, petroleum products and hazardous substances via water transport [13]. Water is also polluted by communal waste water discharged by populated areas and industrial plants, by chemical substances used in agriculture and forestry as well as by thermal and nuclear pollution [12]. Water pollution includes pollution of coastal and marine waters by mineral oils and their derivatives emitted by coastal industrial plants and means of water transport, as well as penetration of waste waters into drinking water and accidents at drinking water sources.

Law on Environmental Protection is of special significance as it addresses environmental liability [14]. This law stipulates that all legal and natural persons are obliged to conduct their activities in such a way to provide environmental protection by applying and implementing environmental legislation, sustainable management of natural resources, goods and energy, introducing energy efficient

technologies and using renewable natural resources, using environmentally friendly products, processes, technologies and practices; employing preventative or remedial measures in case of environmental threat or damage; keeping proper record of material and energy consumption and emission of polluting substances and energy; classifying and providing characteristics and quantity of waste as well as other data and submitting these to competent authorities; controlling activities and operation of plants which may present risk or environmental or health hazard.

Law on Environmental Protection establishes compulsory insurance for polluters whose plants or activities present high risk to human health and environment covering potential liabilities to third parties in case of accident. All natural and legal persons who suffer damage due to polluter's activities are entitled to compensation and will submit the claim directly to the polluter, insurance company or the financial guarantor of the polluter. The polluter that causes environmental pollution is liable for the inflicted damage according to the principle of absolute liability. Where more polluters are liable and it is impossible to determine their part in the inflicted damage, they all share the cost equally and although individual compensation claims become obsolete three years after the claimant has learned about the damage or the perpetrator, this claim becomes obsolete 20 years after the damage occurred. The state retains the right to compensation for the inflicted damage if no other persons are entitled to it.

The Law on Waters [15] addresses the issue of water protection under „other significant issues concerning water management“, contrary to FWD, where it is of primary importance. The Law on Waters is partially harmonized with Directive 2000/60/EC, Directive 91/271/EC, Directive 91/676/EEC, Directive 93/83/EC, Directive 75/440/EC, Directive 76/160/EC, Directive 76/464/EEC, Directive 80/68/EEC, Directive 2000/118/EC, Directive 2007/60/EC and Directive 2007/2/EC. This law pays particular attention to floods.

This law specifies offences like unauthorized accumulation filling and use and damage caused while exploiting the river alluvium [15].

Considering the fact the competence is, according to the Law on Waters, shared among the Ministry of Health, Ministry of Agriculture and the Ministry of Environment and Spatial Planning, it is necessary to precisely define their respective roles and responsibilities. As it is, in some cases, difficult to make an optimal water management plan due to potential conflict of interest between public water management enterprises, it is necessary to clearly define the procedure for resolution of such problems. The Republic of Serbia needs a precise legal definition of the terms ‘waste water’ and ‘nitrate substances’.

The Law on Waters unjustly excludes ground waters from which useful mineral raw material and geothermal energy can be obtained [15]. Unlike the Directive 2000/60/EC which does not define the terms ‘water domain’ and ‘water terrain’, the Law defines both [15]. The Directive 2000/60/EC considers draught an issue of global importance, while the Law on Waters does not apply to this area. The Law on Waters stipulates that relevant Ministries should be informed about the risk to ground waters caused by mining, which the WFD does not [15].

The Law does not consider the size of water flow as a parameter of hydrological regime, as the Water Framework Directive does, but discusses excessive use of surface and lake water [15]. The Law requires that the Government of the Republic of Serbia should identify priority substances, although they are listed in the Directive 2000/60/EC. While the Directive 2000/60/EC requires that all data should be entered in relevant Geographic Information System (GIS), the Law on Waters mentions no such requirement.

It should be emphasized that it is necessary to legally regulate the tracking system for nitrates concentration and ground waters contamination and define legislation pertaining to infrastructure for waste water treatment in the entire country.

Apart from these two laws, in May 2009, the Parliament of the Republic of Serbia adopted a set of environmental protection laws, known as ‘the green package’ which is in harmony with European Union Directives:

- The Law on Waste Management [16]
- The Law on Packaging and Packaging Waste [17]

- The Law on Air Protection [18]
- The Law on Chemicals [19]
- The Law on Biocidal Products [20]
- The Law on Environmental Protection [14]
- The Law on Environmental Impact Assessment [21]
- The Law on Protection From Ionizing Radiation And Nuclear Safety [22]
- The Law on Protection From Non-Ionizing Radiation [23]
- The Law on prohibition of development, manufacturing, storage and use of chemical weapons and its destruction [24]
- The Law on protection from environmental noise [25]
- The Law on protection and sustainable management of fishing resources [26]
- The Law on the acceptance of the Amendment to Annex B of the Kyoto Protocol to the United Nations Framework Convention on Climate Change [27]
- The Law on the acceptance of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade [28]
- The Law on acceptance of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) [29]

This set of laws was adopted with the aim to protect all environmental segments (water, air, soil) and to regulate the area of proper use and storage of hazardous chemicals, waste disposal, landfill maintenance and anything in any way hazardous to the environment, human, animal and plant health.

These laws give local governments much more authority and responsibility in the area of environmental protection, while the finance allocated to be invested in environmental protection cannot be reallocated for other purposes.

#### 4. DATE OF LEGISLATION COMING INTO FORCE

Management of waters as strategic resource started in Europe on December 22<sup>nd</sup> 2000 when the Water Framework Directive was published in the Official Journal of the European Community [1]. In accordance with the Common implementation Strategy for Water Framework Directive, by adopting the Water Framework Directive, all member states and candidate countries of the time committed to integrate this Directive into their legislations by the end of 2003. These countries also committed to establish national registries of protected areas by 2004. The above mentioned states, as well as those which had in the meantime made progress in the EU accession process, committed to cooperate with the European Commission to calibrate the classification of the ecological status by 2006.

Directive 2007/60/EC on the assessment and management of flood risks is aimed at establishing legal framework for flood risk assessment and management in order to reduce the risks to human health, the environment, cultural heritage and economic activity. Member States are required to first carry out a preliminary assessment of flooding risk for each river basin and associated coastal area and identify potentially threatened zones. For such zones they would then need to draw up flood risk maps by 2012 and establish flood danger and flood risk management charts.

Directive 2006/118/EC on the protection of groundwater against pollution and deterioration was adopted on December 12 2006 [30]. Water Framework Directive stipulates adoption of measures for prevention and control of groundwater pollution. These measures are defined in Directive 2006/118/EC, consequently called the ‘daughter directive’ of the Framework Directive. These measures particularly deal with

- criteria for assessment of the chemical status of groundwater
- identification criteria for significant and sustained upward trends in groundwater pollutant concentrations



- prevention and limitation of inputs of pollutants into groundwater.

Directive 2006/113/EC on the quality required of shellfish waters was adopted on December 12<sup>th</sup>, 2006 [31]. Member states and EU candidate countries are required to identify bodies of water suitable for the development of shellfish. The Directive establishes recommended and mandatory values of certain parameters to be applied to the identified shellfish waters.

Directive 2006/44/EC on the quality of fresh waters needing protection or improvement in order to support fish life was adopted on September 6<sup>th</sup> 2006. In order to protect and improve the quality of running or standing fresh waters capable of supporting fish, with the exception of natural or artificial fish ponds, the above mentioned states identify and specify salmonid and cyprinid waters. The Directive establishes minimum quality criteria that these waters must meet.

Directive 2006/11/EC on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community was adopted on February 15<sup>th</sup> 2006. The Directive establishes rules for protection from and prevention of pollution caused by discharge of certain substances into aquatic environment. In order to prevent pollution of these waters, two lists of dangerous substances were formed; pollution caused by discharge of list I substances must be eliminated, while pollution caused by discharge of list II substances must be reduced.

Directive 2008/115/EC on environmental quality standards in the field of water policy was adopted by the European Parliament and the Council on December 15<sup>th</sup> 2008. The aim of the Directive is to establish environmental quality standards in relation to surface water presence of certain polluting substances or groups of substances identified as priority substances in terms of risk for or via aquatic environment. This Directive applies to the total of thirty-eight substances or groups of substances, thirty-three of which are priority substances established by the Water Framework Directive 2000/60/EC, while the remaining five are other polluting substances. Twenty of the priority substances are defined as hazardous [32].

Directive 2006/7/EC of February 15<sup>th</sup> 2006 concerning the management of bathing water quality repeals Directive 76/160/EEC. The Directive lays down provisions for:

- quality monitoring and classification of bathing water
- bathing water management
- the provision of information to the public on bathing water quality.

State administrations must, on yearly basis, identify all bathing waters, determine the bathing season, etc.

Directive 2008/1/EC of January 15<sup>th</sup> 2008 concerns integrated pollution prevention and control. This Directive is a modified version of IPPC Directive 96/61/EEC and includes all its amendments and modifications from the date it came into force. The essence of the Directive was not altered, as it establishes that industrial plants with high polluting potential must obtain permission which can be issued only if certain environmental protection requirements are met [33].

Directive 2009/90/EC of July 31<sup>st</sup> 2009 lays down, pursuant to Directive 2000/60/EC of the European Parliament and of the Council, technical specifications for chemical analysis and monitoring of water status. This Directive establishes measures to ensure the quality and comparability of analytical results generated by laboratories appointed by competent authorities of the Member States to perform water chemical monitoring.

On the basis of the monitoring and analysis of river basin characteristics, the states were required to establish a set of measures to achieve environmental goals of the Water Framework directive, to produce and publish river basin management plans for each river basin including highly altered bodies of water by 2009 [1,34]. Operationalization of the activities at the EU level meant 2012 as a set deadline for the implementation of the set of measures, and 2015 for its complete implementation.

## 5. CONCLUSION

In efforts to join the European Union, domestic legislation is being harmonized with the EU legislation in several phases covering different fields of law.

Water Framework Directive, as part of European legislation, regulates water protection and preservation in Europe through precisely set standards that member states must reach by set deadlines, so it is justified to expect that it will be fully implemented in Serbian national legislation. Considering the fact that the Republic of Serbia shares certain river basins with the member states, as well as with those in the process of accession, it is their common interest to harmonize interior water legislation with the community law for the welfare and positive ecological effects on the quality of life of the citizens of the European Union. In such a field, it is impossible to resort to partial legal regulation as they demand joint effort of broader communities: the European Union, to begin with, and the international community.

Long-term quality water management is the primary goal of implementation of Water Framework Directive and its 'daughter directives' in Serbia. Its implementation is preconditioned by comprehensive restructuring of water management in order to completely improve the manner, organization and financing of management of water resources. In addition, although a set of ecological laws was adopted in 2009, it is necessary keep working on improving legislation, public involvement and education and strengthening of expert and scientific institutions in the field of environmental protection.

The basic water management reorganizing principles are: river basin based water management, legislative support, provision of adequate financial means, exchange of information regarding water quality and quantity. River basin based management must be incorporated into the Law on Waters, which is partially harmonized with the current European legislation. Once harmonized, the legislation will be a starting point for further planning, management, decision-making, integration and coordination of activities, financing, implementation of executive decisions, issuance of permits, inspection work, implementation of the penalty system and other activities related to the water management system.

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