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## **WORKING DOCUMENT**

on the European Court of Auditors' Special Report N°23/2015 (2015  
Discharge): Water quality in the Danube river basin: progress in implementing  
the Water Framework Directive but still some way to go

Committee on Budgetary Control

Rapporteur: Tamás Deutsch

## Introduction

Making available a sufficient quantity of good quality water for people's needs and for the environment is the main aim of the EU water policy. Water pollution originates from various sources such as households, industrial installations and agriculture. The water framework directive<sup>1</sup> (WFD) harmonised the previously existing EU legislation in the field of water policy and introduced the river basin management plan as a key implementation tool. The WFD, whose main objective is to achieve good water quality by 2015, allows for time extensions up to the year 2021 and 2027, as well as less stringent requirements with regard to water quality under certain conditions. The key tool for implementing the WFD is the river basin management plan.

The Danube river basin is Europe's largest river basin district and touches 19 countries, of which 11 are EU Member States. Cooperation in the Danube river basin started in 1985 and in 1998 the Danube River Protection Convention came into force. In the same year, the International Commission for the Protection of the Danube River (ICPDR) was established in order to implement the convention. Since the coming into force of the WFD, the ICPDR also serves as a platform for the implementation of all transboundary aspects of the directive.

The main funding sources supporting the water policy from the EU budget are the European Regional Development Fund (ERDF) and the Cohesion Fund, as well as the European Agricultural Fund for Rural Development (EAFRD). The bulk of the funding allocated in the 2007-2013 programme period from the ERDF and the Cohesion fund went to infrastructure projects in the field of waste water, and amounted to EUR 6.35 billion for nine Member states in the Danube river basin. The ERDF, with EUR 6.39 billion under the 2007-2013 period, has a number of measures in the rural development programmes which can have either a direct or an indirect impact on water quality, such as compensating farmers taking up agri-environmental commitments.

The Court's audit assessed whether the implementation of the WFD by the Member States led to an improvement of the water quality. It focused on surface water quality in four Member States of the Danube river basin: the Czech Republic, Hungary, Romania and Slovakia, and covered the pollution from agglomerations, industrial installations and agriculture as the three main aspects.

According to the data included in the river basin management plans, the changes in water quality status do not appear to be significant, and the 2015 deadline for achieving good status was not met. The bodies with ecological status/potential that was 'good or high' only increased by a small percentage, and given a lack of monitoring data, Member States partly based their status assessment on indirect methods such as risk analysis and estimation, which has an impact on the degree of confidence with regard to the status classification. The Court's analysis showed that there were insufficiencies regarding the information by water body presented in the 2009 river basin management plans, as well as that plans suffer from insufficiencies and difficulties regarding the information available by pollution source.

The Court found that measures identified in the river basin management plans are not sufficient to adequately address pollution sources. Moreover, the 2009 river basin

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<sup>1</sup> Directive 2000/60/EC of the European Parliament and the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

management plans of the four Member States generally lacked information on the achievements to be expected from the implementation of the ‘basic measures’ (measures required to implement EU Directives) and the resulting need for additional measures to achieve good status.

The Court examined whether the measures and instruments as implemented in the four Member States are appropriate in addressing pollution from waste waters emitted by agglomerations and industrial installations. The focus was in particular on the progress with regard to the quantity of waste water that is properly treated, on the existence of an inspection system which ensures the enforcement of the emission limits set in the waste water discharge permits, and on whether the water pollution charge to be paid by urban waste water treatment plants is used as an instrument to deter the emission of pollutants. The Court noted that progress is made in terms of connection to the sewage network and treatment plants, and in terms of secondary and tertiary treatment of waste water in three of the Member States, but all are still behind schedule with regard to the interim or final deadlines for implementation of the WFD. Furthermore, the financial sustainability of the newly built or rehabilitated infrastructure cannot be guaranteed, which is a risk to water quality in the long run.

The legal framework of all four Member States provides for the application of a water pollution charge, to be paid by those discharging polluted water, in line with the ‘polluter pays’ principle. However, the authorities that set emission limits are often dependent on information provided by the dischargers themselves, due to the complexity of certain processes and continuous technological evolution. This leaves room for influence by the industrial installations, particularly those for which best available techniques have not been adopted. Water pollution charge is only partially used as an instrument to deter the emission of pollutants because the number of pollutants for which a charge is due is sometimes particularly limited. Therefore the charge can rarely serve as an incentive either to comply with or to go beyond the limits set in the permit.

With regard to tackling pollution from agriculture, the Court examined, inter alia, whether the nitrates directive<sup>1</sup> is used to best effect as an instrument to address nitrate pollution, as well as whether cross-compliance is effective in requiring good farming practices and ensuring compliance with these practices. The Court found that the Member States are not using all possibilities offered by the nitrates directive, however most Member States gradually strengthened the requirements to be respected by farmers in nitrate-vulnerable zones with a room for further improvement, as well as that the mechanism to enforce the nitrates directive lacks deterrent effect.

The extent to which improvement of water quality can be achieved by cross-compliance, which links direct payments under the common agricultural policy to the respect of a number of requirements, depends mainly on how demanding the Member States’ requirements are and on the effectiveness of the enforcement mechanism in place. The Court found that the potential of rural development measures to address water quality issues is not being fully exploited, as less than 30 % of the agricultural land is covered by agri-environment schemes that can lead to an improvement in water quality.

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<sup>1</sup> Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 375, 31.12.1991, p. 1).

## **Court's Conclusions**

The Court arrived at the conclusion that the four Member States have to make significant improvements if they are to achieve good surface water quality, the main objective of the WFD, as well as that these Member States will have to step up their efforts to accelerate progress on water quality. Shortcomings in the monitoring systems of the four Member States resulted in a lack of data both on the type of pollution causing a water body to fail good status as well as on the relative importance of the various pollution sources. Comparability of data was also affected by the fact that there were big differences among the four Member States regarding the number of specific physico-chemical pollutants evaluated. The lack of comprehensive data hampers the identification of targeted and cost-effective measures.

Member States showed limited ambition with regard to the identification of measures to remedy the situation and as a result the river basin management plans provided limited added value in that respect. In particular, the Member states are focused mostly on the implementation of existing legislation (EU directives) and 'other basic' and 'supplementary measures' either do not cover all pollution issues or do not include an assessment of the opportunity offered by some instruments, or their scope is not clear.

Furthermore, the expected impacts of the various measures are at best only partially indicated in the river basin management plans. Information on the amount of funds required for implementing the measures as well as their likely availability is incomplete. Coordination between those preparing the river basin management plans and those approving and allocating funds has not always been provided for. The Commission, in cooperation with the Member States, developed guidelines for the application of the WFD and presented the Member State specific recommendations regarding the 2009 river basin management plans. Actions specified in the 2014-2020 operational programmes as a result of the non-fulfilment of the relevant ex ante conditionality did not cover all of the shortcomings noted in the 2009 plans.

The Court noted the progress made by the Member States in removing organic and nutrient pollution from waste waters emitted by urban waste water treatment plants. However, the instruments available to reduce pollution in waste waters, such as the enforcement mechanism and the water pollution charge, were not used to best effect. The 2009 river basin management plans lacked 'other basic' and 'supplementary measures' for water bodies which fail to achieve good status: there were no measures targeting specific pollutants or specific dischargers, such as an indication of specific substances and limits to be included in the discharge permits.

The Court concluded that the competent authorities are to a certain extent dependent on the information provided by the dischargers themselves for setting emission limits. This is particularly the case where national legal provisions either set limits for guidance only or did not set limits at all. Moreover, the waste water discharge permits of urban waste water treatment plants receiving industrial waste water only in some cases include limits for pollutants other than organic material and nutrients.

Few public inspections are carried out in the case of indirect discharge, via a public sewage network, by installations not falling under the industrial emissions directive. Instead, in a majority of cases the operators of the urban waste water treatment plants carried out on-the-spot checks at the sites of the industrial installations. The water pollution charge can only rarely serve as an incentive to either comply with or go beyond the emission limits set in the

permits as the charge is only due for a limited number of pollutants.

The application of the 'polluter pays' principle in the field of diffuse pollution from agriculture faces methodological problems. Imposing obligations on farmers without the provision of financial compensation is commonly considered as one way of implementing the 'polluter pays' principle. The application of penalties in the case of non-compliance can compensate for the costs caused by pollution. However, the Court identified a number of shortcomings regarding the use of fines. The Commission did not request the four Member States to take specific action for ensuring cost recovery, or issue guidance on possible cost recovery methods.

### **ECA Recommendations**

In lights of its findings, the ECA recommended that:

1. The Commission should provide guidelines for a more differentiated reporting on progress with regard to water quality currently masked due to the application of the 'one-out all-out' rule;
2. The Commission should foster comparability of data, for example, by reducing the discrepancies in the number of physicochemical substances that are assessed for the ecological status;
3. The Commission should continue its follow-up of Member States' progress in reaching good water quality, the objective of the water framework directive;
4. Member States should ensure good-quality water monitoring to have accurate information on the situation and origin of pollution by water body to allow better targeting and increase cost-effectiveness of the remedial measures. For agriculture for example this might mean finding an effective combination of compulsory and voluntary measures;
5. Member States should provide in their river basin management plans clear justifications for the use of exemptions from the deadlines of the water framework directive, information on how the implementation of measures will be funded and information on the expected impact of the measures;
6. Member States should ensure coordination between those bodies defining measures in the river basin management plans and those approving projects for funding;
7. The Commission should assess how to best set binding criteria for effective Member State inspections on waste water treatment plants not falling under the industrial emissions directive;
8. Member States should indicate for which water bodies, due to their unsatisfactory quality, measures are required for specific dischargers. For urban waste water treatment plants this will include setting emission limits in the permits that are stricter than those set by law for organic and nutrient pollution parameters and setting limits for priority and other chemical substances or micropollutants;
9. Member States should assess and ensure the effectiveness of the enforcement

mechanisms, in particular the coverage to be achieved and the deterrent effect of the penalties applied;

10. Member States should assess the potential of using the water pollution charge as an economic instrument and as a way to apply the 'polluter pays' principle at least for the main substances which negatively affect water quality;
11. The Commission should continue its efforts in ensuring that Member States make the best use of the requirements under the nitrate action programmes and that they implement the pesticide action plans within a reasonable timeframe;
12. The Commission should systematically assess not only the existence, but also the adequacy of the good agricultural and environmental condition (GAEC) standards and minimum requirements adopted by the Member States;
13. The Commission should consider the introduction of an obligation to set limitations on the quantity of phosphorus to be applied on land, as is the case for nitrogen;
14. The Commission should reduce the possibility of Member States' double reporting on the eutrophication status by aligning the reporting under the nitrates directive and the water framework directive and promote the use of the 2009 guidance on eutrophication assessment so that the same assessment parameters are used under both directives;
15. The Commission should provide guidance on the possible methods for cost recovery in the field of diffuse pollution;
16. Member States should set requirements in the nitrate action plans, in the pesticide action plans, under GAEC and for agri-environmental payments that are ambitious enough to achieve a reduction of fertiliser and pesticides input and adequate protection from erosion;
17. Member States should assess the potential of using economic instruments (such as environmental taxes) as an incentive to reduce pollution and as a way to apply the 'polluter pays' principle;
18. The Commission and the Member States should, on the basis of an inventory of the enforcement mechanisms (both EU and national), identify ways for simplifying the set-up and implementation of the checks and for ensuring their effectiveness.

### **Recommendations by the Rapporteur for possible inclusion in the 2015 Commission discharge report**

The European Parliament,

1. Believes that the guidelines for a more differentiated reporting on progress with regard to water quality should be provided by the Commission;
2. Agrees with the Court that the Commission should foster comparability of data, for example, by reducing the discrepancies in the number of physicochemical substances that are assessed for the ecological status;

3. Highlights the need for the Commission to continue its follow-up of Member States' progress in reaching good water quality, the objective of the water framework directive;
4. Invites the Member States to ensure good-quality water monitoring in order to have accurate information on the situation and origin of pollution by water body, to allow better targeting and increase cost-effectiveness of the remedial measures;
5. Encourages the Member States to ensure coordination between those bodies defining measures in the river basin management plans and those approving projects for funding;
6. Encourages the Member States to assess and ensure the effectiveness of the enforcement mechanisms, in particular the coverage to be achieved and the deterrent effect of the penalties applied;
7. Invites the Member States to assess the potential of using the water pollution charge as an economic instrument and as a way to apply the 'polluter pays' principle at least for the main substances which negatively affect water quality;
8. Calls on the Commission to consider systematically assessing not only the existence, but also the adequacy of the good agricultural and environmental condition (GAEC) standards and minimum requirements adopted by the Member States;
9. Notes that the Commission should provide guidance on the possible methods for cost recovery in the field of diffuse pollution;
10. Calls on the Member States to assess the potential of using economic instruments, such as environmental taxes, as an incentive to reduce pollution and as a way to apply the 'polluter pays' principle;
11. Invites the Commission and the Member States to identify ways for simplifying the set-up and implementation of the checks and for ensuring their effectiveness, on the basis of an inventory of the enforcement of both EU and national mechanisms.