The Water Convention and the European Union: The Benefits of the Convention for EU Member States

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1 Introduction

Over the past three decades the European Union, a supranational organisation of European countries, has developed the most extensive, sophisticated and cumbersome body of transnational water legislation in the world. This corpus of water law has a broad purpose and a wide scope aiming at the all-encompassing protection of all freshwater bodies under the jurisdiction of EU member states. It also establishes forward-looking environmental quality objectives, strict monitoring requirements, public participation as well as international cooperation mechanisms. The EU also promotes its internal water policy as a successful governance model world-wide.

More than half of the parties to the Convention are EU member states (and the EU itself). Evidently, vis-à-vis third countries the Convention will not lose its relevance for EU member states. However, in their intra-EU relations member states may come to the conclusion that the Convention is just an international legal relic, whose practical and political importance has been superseded by the EU’s own water resources law, in particular by the Water Framework Directive.

This chapter aims to clarify the relationship between the Convention and the EU’s water legislation, focusing on the mutual benefits of the interaction of the two legal regimes.

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2 See e.g. the China-Europe Water platform, the EU Water Initiative, etc., <http://eeas.europa.eu/delegations/china/documents/eu_china/development_cooperation/rbmp_6083_20120627.pdf> accessed 28 February 2014.
The Water Legislation of the European Union

2.1 The General Framework: The Environmental Policy of the European Union

The law-making authority of the European Union stems from its founding treaties. The EU can adopt legislative acts that bind its member states only in policy areas specifically mentioned by these treaties, notably the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), collectively: the Treaties. Under the Treaties, regulating the aquatic environment comes under the heading of environmental policy. It is an important qualification as EU water policy remains subject to the general principles and the limitations of environmental policy that flow from the Treaties.

The Treaties call upon the EU to pursue its basic social and economic objectives ‘taking into account of the principle of sustainable development’ and ‘aiming at [...] a high level of the protection and improvement of the quality of the environment’. These objectives are also at the core of the EU’s external action, more particularly its international development policy.

The objectives of EU environmental policy are defined by the TFEU as follows: the preservation, protection and the improvement of the quality of the environment, the protection of human health, the prudent and rational utilisation of natural resources, and the promotion of measures at international level dealing with regional or worldwide environmental problems. To the latter end the EU and its member states have to cooperate with third countries and international organisations and may enter into international agreements. Importantly, these agreements form an integral part of the EU’s legal system and, as such, are binding on the EU institutions and its member states.

The objectives of EU environmental policy must be pursued in accordance with a number of principles, notably the principle of high level of protection, the precautionary principle, the principle of preventive action, the principle that environmental problems as a priority should be rectified at source and the principle that the polluter should pay.

3 Article 4.1, 5.1–5.2 TEU, Article 2.1–2.2 TFEU.
4 Preamble to the TEU, Article 3.3 TEU.
5 Article 21.2 point (d), (f) TEU.
6 Article 191.1 TFEU.
7 Article 191.4 TFEU.
8 Article 216.2 TFEU.
9 Article 191.2 TFEU.