Harmonisation of Polish Legislation with the Water Framework Directive

Current Status, Proposals for New Measures and Implementation Problems

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The purpose of this paper is to evaluate the implementation status of the EU Water Framework Directive (WFD) in Poland (Directive 2000/60/EC of the European Parliament and of the Council 23/10/00). The Directive established a framework for Community action in the field of water policy (OJ L 327) and this paper will consider the extent to which this framework has been implemented in Poland, specifically through the Polish Water Act. In addition, the probable directions in the development of Polish legislation are outlined in relation to the need to implement the WFD, as are the basic problems arising in this context.

1. The procedure adopted for the harmonisation of Polish law with Community legislation in the late 1990s is important in any assessment of the existing relationship between the Polish Water Act and the WFD. Indeed, for a long time the Polish legislature focused primarily on the acquis communautaire which had been adopted by the end of 1998. More recent legal acts, including this Directive, made it necessary to revise the Polish negotiating position accordingly and to propose further legislative action.

2. The political situation also had an adverse impact on this process as the Parliamentary term was coming to an end and it was therefore necessary to pass quickly those laws which were indispensable for the completion and implementation of the programme of Community legislation. The effect of such haste was the fairly superficial transposition of the Directive into the Water Act as adopted on 18 July 2001, though it should be noted that the general framework of the Act was designed in such a way as to enable the Directive’s complete programme to be transposed without difficulty at a later stage.

3. More substantial work designed to achieve full alignment between Polish law and the WFD was only completed in the summer of this year. A proposal for a fairly extensive amendment to the Water Act was drafted and will be considered by Parliament following its summer recess (in September). This amendment will eliminate those gaps that have existed to date.

4. The adoption of the WFD by the European Parliament and the Council was greeted with much interest in Poland and publications appeared that considered it in both general terms as well as in terms of specific issues, e.g. its definitions. To date, these issues have been considered in only one extensive study, though several conferences have been held on the implementation of the WFD, primarily as a result of the efforts of Non-Governmental Organisations (NGOs).

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6 East of the Conference on the Implementation of WFD of the European Union in the Odra River Basin as organised by the international coalition The Time for the Odra, Landesverband Umwelt und Naturschutz Deutschland (BUND), WWF and the Lower Silesian Foundation for Sustainable Development. Another example is the conference on public participation in the implementation of WFD which was organised in February 2004 by WWF Poland and the National Foundation for Environmental Protection.
important to note the limited interest of the legal community – to date – something that is apparent from the small number of publications. On this basis, it could be concluded that issues related to the implementation of the Directive are of interest in Poland, on the one hand, to NGOs and a variety of non-governmental bodies (e.g. the National Water Management Council and (the President of) the National Water Management Board), and, on other, to social or professional groups concerned with water management and the national administration of environmental protection and water management.

2. In its current form, the Water Act transposes fairly accurately the principle laid down by the WFD that water management should be based on river basins. Even before work began on the Directive in Poland, there had been a very strong tendency towards basin-based management – the result of a national debate conducted over many years on the optimum model of water management. An additional driving factor was that the French water management model based on individual river basins had become popular in Poland and the organisational scheme developed in the first draft of the Polish Water Act closely resembled that of the French. However, in February 1997, this draft was rejected by the Polish Parliament, exactly because it obviously strengthened the special territorial administrations (specifically, the non-integrated administrations, i.e. ones that did not comply with the principle that territorial authorities should be subordinate to provincial governors as the regional representatives of the national government), as this was in contradiction with the public administration reform then under way. Despite this rejection, a policy of "small steps" strengthened the existing river basin administration bodies (i.e. the regional water management authorities, which have existed since 1993, although their structure has now been slightly changed). The adoption of the Directive was a factor which substantially strengthened this direction of development, though even today, the existing measures still continue to cause some concerns.

Art. 3 of the Water Act established the principle that water resources should be managed by dividing the country into river basins and water regions. Just as the Directive does, the Act makes a distinction between "river basins" as hydrological units (Art. 2(13) WFD and Art. 9(1)(3) Polish Water Act) and "River Basin Districts" as administrative units established for administrative purposes (Art. 2(15) WFD and Art. 9(1)(7) Polish Water Act). That a part of a river basin may be defined as a sub-basin (Art. 2(14) WFD), is not in the Polish Act, but is expected to be defined in an amendment to the WFD. The Ministry of the Environment itself, which is also responsible for water management, remains unclear on what the target form of the organisational scheme of water management should be, both at national level and at that of the River Basin Districts. Therefore, it should be noted that, in principle, this issue remains open. One should also add that the office of the President of the National Water Management Board has not been established yet (for economic reasons) and that up until the end of 2005 his tasks will be carried out by the Minister of the Environment.

The other area of concern is the manner and scope of the required co-ordination of administra-

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