

# Harmonizing Member State Water Policies to the EU Water Directive 2000/60/EU: The Case of Greece

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**Abstract**— Water is a resource with increasing pressure due to the increase in its demand for many diverse uses. This is why the European Parliament and the EU Council enacted a directive-framework (2000/60/EU) for the protection of the inland surface, coastal and ground waters. The harmonization of the legislations to the provisions of this directive is very important due, on the one hand, to the desired results and aims of the directive, on the other hand, due to the kind of measures that member states are required to take in order to protect the environment and their citizens. This study determines the margin of evaluation that member states have, according to the directive and the jurisprudence of the Court in order to establish the most effective Standards of Quality for the Environment (SQE).

**Keywords**—Greece, European Union water policy, Water Directive 2000, level of harmonization.

## I. INTRODUCTION

WATER is not only a commercial product, but is also considered to be an inheritance that should be protected and managed. In the European Union (EU), water resources are under increasing pressure due to the continuous increase in the demand of “good” quality water and larger quantities for many diverse uses. However, different solutions should be applied for the variety of needs and conditions existing in the EU in order for them to be effective and efficient. In order to deal with these issues, the European Parliament and the EU Council enacted a directive for the protection of the inland surface, coastal and ground waters.

This directive institutionalises the river basin as the basis for water resource management. Although the fulfillment of the ultimate objective of a “good” overall quality of all waters is questionable, the directive will change planning processes,

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generate information and try to ensure no further deterioration of waters [1]. This directive, the Water Framework Directive, will affect the national water policies of the member states. In addition, it will affect candidate EU member-states and even non-member-states especially when dealing with transboundary basins. Transboundary river basin management issues [2] have caused controversy among countries [3] as well as successful cooperation [4]. Europe has the most transboundary river basins of all continents.

The objective of this manuscript was to investigate problems that could arise from the harmonization of the provision of the directive with the national water policy of the member states. Special emphasis was given to the member state, Greece because ~ 25% of its water resources originate for neighboring countries [5].

## II. WATER FRAMEWORK DIRECTIVE

The purpose of this Directive is to establish a framework that will provide provision that will enable the EU to have a sufficient supply of “good” quality surface water and groundwater as needed for sustainable, balanced and equitable water use. The EU directive 2000/60 [6] in general:

- Protects all waters (inland surface, coastal and ground waters).
- Develops a management plan at the basin scale that recognizes that the water bodies do not stop in national borders.
- Connects the protection of biodiversity with integrated water management.
- Demands transboundary cooperation among member states and promotes cooperation among non-member-state countries.
- Ensures active participation of all organizations including non-government and local communities in the activities of the water management plan.
- Decreases and controls water pollution from all sources (agriculture, industrial, municipal etc) through the definition of emission limits values and environmental quality standards.
- Demands policy on water-pricing.
- Ensures the protection and improvement of the quality of the environment, based on preventive actions taken at the sources, to avoid environmental damage, and by polluters

being accountable and paying for their actions.

- In 2009 all the member states should have prepared a complete management plan for all their basins. Each plan should include a number of “basic” measures in addition to any “supplementary” measures that may be implemented.
- The management of transboundary basins shall be based on international agreements, such as the United Nations (UN) convention on the protection and use of transboundary water courses and international lakes. This is known as the Helsinki Rules [7].
- Obligations of monitoring and assessment of data in a systematic and comparable base for the entire community.
- Defines a specific timetable for the implementation of the requirements (Table 1).

An evaluation system has been developed that ranks the performance of member-state countries in the fulfillment of their obligations and harmonization of their national legislation with the directive.

This makes it clear that this directive is one of the most ambitious environmental legislation of the EU that will require the Member States to change their entire national water policies to meet the goals it has set [8].

**Table 1. Timetable of milestones for the implementation of WFD.**

Year	Milestones	Article
2000	Directive is adopted.	25
	Transposition in national legislation.	23
2003	Identification of river basin districts and authorities.	3
2004	Characterization of river basin: pressures, impacts and economic analysis.	5
2006	Establishment of water monitoring network.	8
	Start public consultation.	14
2008	Present draft of river basin management plan.	13
2009	Finalize river watershed management plan including the measures for the program.	11 & 13
2010	Introduce pricing policy.	9
2012	Implement the measures of the programs.	11
2012	Meet environmental objectives (first deadline).	4
2021	First management cycle ends.	4 & 13
2027	Second management cycle end (final deadline for meeting objectives).	4 & 13

### III. ISSUES WITH NATIONAL WATER POLICIES HARMONIZATION

The implementation of the directive has started and progress has been made [9] but still issues have emerged during the harmonization process with the national legislation.

Each of the member states of the EU, need to take, based on its internal legal order framework, all the necessary measures required to ensure the full implementation of the directive according to the goals of its objective, of course regarding the directive that address the member state. In article 249, 3rd section, of the Treaty on the European Union (TEU), the member states can choose the type and means used to apply the directives, in order to ensure with the most effective way the results which are achieved [10]. From this provision it is

clear that the adoption of a directive as an internal law does not require necessarily legislative action by each member state. The Court of Justice has repeatedly judged that it is not always required to have a strict repetition of the directive's provisions in the internal laws, (for the approximation of the laws), because the application of a directive, depending on its content, can be achieved by a general legal framework. More specifically, the existence of general principles on the Constitutional or Administrative Law can render unnecessary the adoption of a specific regulation in the national legal orders under the condition, that these principles in fact ensure: a) the full implementation of the directive from the national governments provided that the provisions of the directive in question aim at the creation of rights for the public, and b) that the legal status that derives from these principles be sufficiently precise and explicit and the beneficiaries-individuals know all their rights and, potentially, can be able to invoke them before the national authorities.

The Court has also judged that it is not required to adopt in the national laws the provisions that concern only the relationships between member states and the Committee. However, since the member states have the obligation to ensure the complete and full observation of Community Law, the Committee has the opportunity to prove that, the application of the directive's provision that rules these relationships requires the adoption of specific regulation at the national legal order. Accordingly, it is important, in every case, to determine the nature of the provisions of the directive, when infringement is claimed, in order to evaluate the extent of obligations that member states should have for their harmonization.

The Community legislative practice proves that there can be big differences regarding the type of obligations that the directives impose on member states and consequently, also regarding the results that should be achieved. Specifically, certain directives require the adoption of legislative measures at the national laws that should be under judicial or administrative control. Other directives stipulate that member states have to take all the necessary measures in order to guarantee the objectives that are stated by a general and not determinate way, leaving the member states a small margin of assessment regarding the nature of the measures to be taken. Other directives also require, from the member states very specific results after a certain deadline expires. Directive 2000/60/EU is the framework on water policy and is based on article 175, paragraph 1, TEU. It establishes common principles and a general framework of action for the protection of waters and it ensures the co-ordination, the incorporation, as well as, in the long term, the growth of general principles and structures for the protection and the viable utilization of waters within the European Community [11]. The common principles and the general framework of action, that it places, should be developed by the member states that are called to establish special measures within the deadlines that the directive sets. The directive does not aim, in any case, at the complete-full

harmonization of legislation of member states in the sector of waters resources.

A careful examination of this directive indicates that it contains a great variety of provisions that impose obligations on the member states (see, as an example, article 4 by which the member states are obliged to take the necessary measures for the prevention of degradation of all surface and groundwater systems). In addition, the member states are obliged to the Commission and the Community (see, as an example, article 24, paragraph 2, with regard to the obligation of the notification of the measures of adoption in the internal legal order) [12]. Finally, the institutional bodies, according to articles 16 and 17 of the directive, have the obligation to establish measures in the sector of pollution of the surficial waters and groundwater (aquifers), and continually monitor them.

The overall examination of the directive shows that the majority of its provisions impose on the member states the obligation to take the necessary measures, in order to ensure the achievement of the objectives that occasionally are formulated generally, leaving the states in question a small margin of evaluation regarding the nature of measures that it should take.

Articles 1 and 2 of the directive state the objectives sought and the significant definitions on which the directive is based on, without stating the provisions of this directive in question nor the provision of other directives that indicate that the member states are compelled to establish the same legal frame, in order to properly and effectively adopt the directive in the internal legal order. Thus, they cannot support the reasons for which these provisions require the establishment of concrete legislation or the reason for which the establishment of such laws is necessary so that the member states can ensure the achievement of objectives that the directive places within the set deadline. If the purpose of the Community Legislator was to impose on the member states the obligation to establish, in their internal legal order, a legislative frame for the adoption of the directive, it could have added a relative provision in the text of this directive. However this did not happen.

Article 2 of the directive, in combination, for example, with article 4, imposes on the member states concrete obligations that should be completed within the specified deadlines, in order to prevent the degradation of the quality of the surficial waters and groundwater (aquifers). The same is also in effect for a lot of the other definitions from the same article 2 in combination, among others, with articles 5, 6 and 8, of the directive.

The incompatibility of a national legislation with the provisions of the Treaty, even with those that have direct applications, cannot finally be removed without internal provisions with binding characteristics.

However, it is considered an infringement on behalf of the member states if they do not harmonize their national legislation by rules of binding force, based on the definitions and conceptions that are included in article 2 of the directive

and deadlines within which the guidelines on the quality of water need to be followed, that are defined in articles 4 to 6 and 8 of the same directive and the obligations that are derived from article 2 of the directive. On the other hand, based on the provision in article 3 paragraph 4 of the directive, the member states are responsible for the co-ordination of the orders of the directive related to the achievement of the environmental objectives that are stated in article 4 and, more specifically, of all the programmatic measures for the entire basin of the river. However, article 3, paragraph 4, of the directive indicates that the obligations that derive from this article differ depending on whether the basin of the river in question belongs to one country or is transboundary (the basin boundaries are in more than one country) based on the directive definitions. For the transboundary basins of rivers, the interested member states ensure joint this coordination and can use the existing structures that derive from international agreements [13]. This obligation of member states is considered achieved when they establish a specifically ad hoc committee of co-ordination that is constituted of representatives of all the member states of the river basin.

According to article 7, paragraph 2 of the directive, for every water body that is determined by paragraph 1 of this provision, the member states need to attend that this water body: a) corresponds to the aims of article 4 of this directive, according to its requirements on the surface waters body, included the qualitative guidelines that are determined at the Community level based on article 16 of the directive, and b) that under the currently applied water treatment regime and according to the Community's legislation, the water available fulfills the requirements of directive 80/778/EU, as it was modified by directive 98/83/EU. With this provision the member states are imposed obligations of achieving specific results that are formulated in an explicit and specific way so they cannot be contested, in order for the water bodies to meet, among others, the particular objectives of article 4 of the directive.

Finally, article 14 of the directive aims to provide the private individuals and those interested, the right to participate actively in the application of the directive and, among others, in the development, the revision and the adaptation of the management plans on the basin of the river.

With the absence of any measures of adoption in the national legislation of the member states, their obligation is not satisfied as the deadline of article 13 paragraph 6 of the directive is not legally binding for the national authorities by national measures of adoption and individuals have not the possibility of knowing early on all their rights in the framework of the processes of article 14, paragraphs 1 and 2, of the directive [14].

By reviewing the community jurisprudence it is evident that enough member states did not meet their obligations based on the directive 2000/60/EU. The member states have omitted to develop programs for monitoring inland surface waters and starting them in accordance to article 8, paragraphs 1 and 2 of

the directive but also not observing their obligation of submitting concise reports on the monitoring programs of inland surface waters according to article 15, paragraph 2, of this directive.

#### IV. THE CASE OF GREECE

Greece has been harmonized with the provisions of directive 2000/60/EU by establishing Law 3199/2003 and Presidential Decree 51/2007. With the Directive 2008/32/EU that amends Directive 2000/60/EU, it has been ruled that it is not required for member states to harmonize legislations with this directive by establishing provisions ad hoc. Specifically, the Ministerial Decision No 1354/2641/E103/2010 of the Greek legislation has met the provisions of directive 2008/105/EC "with regard to the Standards of Quality of Environment (SQE) in the sector of water policy and in regard to the modifications and subsequent elimination of the directives of Council 82/176/EC, 83/513/EC, 84/156/EC, 84/491/EC and 86/280/EC and the modification of directive 2000/60/EC, as well as on the concentrations of special pollutants of surface freshwaters. Finally, with the establishment of Ministerial Decision No 39626/2208/E130/2009 for determining the measures for the protection of groundwater (aquifers) from their pollution and degradation, Greece is in compliance with the provisions of directive 2006/118/EC "with regard to the protection of underground waters from the pollution and degradation [15]."

#### V. CONCLUSION

In conclusion, the level of harmonization of the Greek legislation should be considered satisfactory in the field of water policy with the establishment of the Standards of Quality for the Environment (SQE) [16]. However, with recent judgment the Hellenic Council of State submitted a prejudicial question to the Court for the interpretation of certain provisions of the directive 2000/60/EC and specifically for the criteria that should be evaluated and the reasons that it should be justified in order to explain and allow the transportation of water from a region of one basin to the neighboring one. In this case the scale of forecasted interventions, the aims of water transportation but also the effect of interventions on the ecosystem could constitute important and critical criteria for the legality of such an action or decision.

However, member states may aim to achieve less stringent environmental objectives than those required under article 4 paragraph 1 of the directive, for specific bodies of water when they are affected by human activity, as determined in accordance with Article 5(1), or their natural condition is such that the achievement of these objectives would be infeasible or disproportionately expensive, and all the following conditions are met: the environmental and socioeconomic needs served by such human activity cannot be achieved by other means, which are a significantly better environmental option not entailing disproportionate costs.

In these cases it is important how member states (and their

authorities) will apply the SQE according to their discretionary power that article 5 gives them and how the general and not strict framework of the directive will be applied in the future, after the expiring of deadlines, in order to meet the interventions that have been done in the basins of national or transboundary rivers.

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