



30.1.2024

NOTICE TO MEMBERS

Subject: Petition No 0687/2023 by Noël Lucia (French) on an alleged breach of Directive 2000/60/EC on water policy in France

1. Summary of petition

The petitioner considers that France has not fully transposed Article 9(1) of Directive 2000/60/EC as regards the principle of recovery of the costs of water services, including environmental and resource costs. At the very least, he takes the view that national provisions are insufficient to ensure effective transposition in France. He explains that water resource development and management plans (SDAGE) fail to transpose the cost recovery framework by category of user because they are not downwardly binding or binding as regards water pricing decisions. The petitioner also points out that, generally speaking, agriculture in France does not cover the direct and environmental costs it generates through its use of water. He considers that the situation can only deteriorate because of more frequent occurrences of droughts and increased water quality requirements, introduced in particular by Directive 2020/2184 of 16 December 2020 on the quality of water intended for human consumption. The petitioner is asking the European Parliament to hold a hearing with the French Government on this issue and to take any investigative measures in its power to shed light on the matter and ensure that the principle of cost recovery is fully taken into account in France, including, if necessary, by making a referral to the Court of Justice of the European Union.

2. Admissibility

Declared admissible on 27 October 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 30 January 2024

The Commission's observations

The Water Framework Directive (WFD) specifies, in its Article 9, the following framework conditions for the cost recovery efforts:

First, water pricing policies should take account of their incentive impacts (“adequate incentives to use water resources efficiently”), next to their revenue raising capacity. Second, all the efforts to recover the costs of water services should take account of the equity impacts, namely that the different water user sectors should each provide an adequate contribution to cover for the costs linked to water service provision. This includes that polluters should pay for the impact of their pollution on the costs of water services, whether this pollution arises in their capacity as customers of water services or from their other water uses. Third, the policy makers are allowed to have regard to the economic and social effects of the recovery efforts. Conform the principle of subsidiarity, Article 9(1) of the WFD requires Member States to take account of the principle of the recovery of costs in the formulation of their water policies and hence provides many degrees of freedom in nationally designing such policies. Importantly, this article concerns the recovery of the costs of providing water services, not the costs of other water uses, and it does not require full cost recovery, neither overall nor at sectoral level. It explicitly allows all measures aimed at cost recovery, including tariffs, charges and taxes, to take account of local circumstances, both as regards water quality/availability and the socio-economic conditions. Also, Article 9(4) of the WFD provides that Member States shall not be in breach of the Directive if they decide, in accordance with established practices (hence, practices dating back from before the year 2000), not to apply the provisions of Article 9(1) second sentence (hence the “adequate incentive” and “adequate contribution clauses”), for a given water-use activity, where this does not compromise the purposes and the achievement of the objectives of this Directive. In its ruling in case C-525/12 (European Commission v Germany), the European Court of Justice based itself on the framework character of the directive to underline that the ‘cost recovery’ is one of various instruments available to the Member States for good water management to achieve rational water use. It also pointed out that the derogation possibility under Art 9(4) allows the Member State not to proceed with the recovery of costs where this does not compromise the purposes and achievement of the objectives of the WFD.

In a subsequent preliminary ruling in Joined Cases C-105/18 to C-113/18, the Court found that the principle of cost recovery for water services cannot be assessed by reference to individual national measures, but only based on a series of measures ‘taken as a whole’ in the context of a Member State’s general policy relating to water services. As in the German case, the Court based itself on the framework character of the directive, and the fact that cost recovery is [only] one of the instruments available to the MS for qualitative management of water to achieve rational water use.

The Court supports this line of argument also by the fact that the second subparagraph of Article 9(1), refers to the “different water uses” [suggesting to address these as a ‘whole’], as well as from the third sentence of Article 9(1) according to which MS may have regard to the social, environmental and economic effects of the cost recovery as well as the geographic and climatic conditions of the region or regions affected, thereby leaving discretion to the Member States as regards the implementation of the principle of cost recovery. In the light of the above, the fact that agriculture in the third River Basin Management Plans (3rd RBMP) of the Rhone-Mediterranean is covering ‘only’ 47,7% of its costs for the years 2013-2016 cannot be assessed in isolation, and hence cannot, on its own, constitute a breach of the WFD. However, Member States should be able to concretise that this does not prevent achieving the WFD objectives in 2027.

The Commission is currently in the process of assessing the 3rd RBMPs as reported by the

Member States and plans to present its report assessing by the 1st half of 2024. It will pay particular attention to the arrangements to implement the principle of cost recovery of water services, seen from the overall purpose of achieving the objectives of the WFD, as well as to the provided justifications, also as regards the application of the exemptions to these objectives. Where such exemptions would be implemented without due justification, or without demonstrating that all non-disproportionately costly measures have been taken to achieve good status, including measures related to cost recovery under Article 9(1) of the WFD, the Commission will consider taking further action as appropriate.

The quality of water intended for human consumption is regulated by the recast Drinking Water Directive (DWD)¹. Member States shall take the measures necessary to ensure that the water intended for human consumption is wholesome and clean, and that the drinking water meets the parametric values for the parameters listed in the annexes of this Directive, and among them pesticides and their relevant metabolites (Article 4(1) of the recast DWD). Where France considers the pesticide metabolite atrazine as relevant in accordance with Part B of Annex I to the Drinking Water Directive (DWD), it must include this metabolite in the calculation of the pesticide parameter, ensuring that the drinking water complies with the parametric values of the pesticide parameter (i.e. 0,10 µg/l). In case where there is an exceedance of this parametric value, the DWD stipulates that the Member States shall take remedial actions to restore the drinking water quality and impose any restriction/prohibition necessary to protect human health.

The use of a raw drinking water source of degraded quality could entail costs as additional treatment may be required to ensure compliance with the requirements of the DWD. The DWD, aligned with the requirements of the WFD, requires Member States to ensure that a risk assessment and risk management of the catchment area is carried out for the first time by July 2027 (Article 8 of the recast DWD). Where a risk is identified in the assessment, Member States must ensure that preventive measures are taken to limit pollution at source.

Conclusion

The responsibility for correctly implementing EU environmental legislation primarily lies with the Member States. Thus, it is for the French competent authorities to determine the measures needed to ensure that the environmental objectives are met and to fulfil the obligations of *inter alia* the WFD and the DWD. Nevertheless, the Commission will follow up some of the issues raised by the petitioner in the context of its assessment of the 3rd RBMPs. It will pay particular attention to the arrangements to implementation of the principle of cost recovery of water services, seen from for the overall purpose of achieving the objectives of the WFD, as well as to the provided justifications put forward by Member States to apply the exemptions to these objectives. The Commission will follow up the compliance with the recast DWD provisions in particular with regard to the reported Member States' data sets on the quality of drinking water supplied and on the results of the risk assessments carried out in the catchment areas for abstraction points.

¹ Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption (recast) (Text with EEA relevance), OJ L 435, 23.12.2020, p. 1–62