

## BRIEF ANALYSIS OF THE EUROPEAN UNION'S DIRECTIVES IN THE AREA OF WATER PROTECTION AND THE LEVEL OF THEIR NATIONAL IMPLEMENTATION\*

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**Abstract:** *The present study starts from the fact that, at present, the water pollution is a real problem and the efforts unfolded for its prevention or for the removal of its negative effects when it occurred, must be supported, continuous requiring both a regional and an international cooperation. The action performed by the European Union in the area of water protection are reflected in different directives which have as main objectives the insurance of the drinking-water supply, the proper management of water resources, the battle against drought and floods, the battle against water pollution. The rational protection and management of water resources, as well as the insurance of their quality is an important part of the environmental policy of the European Union. Given these aspects, the current paper presents the main legislative interventions of the European Union in the area of water protection. It also aims to show to which extent Romania has managed to implement the EU legislation in this area. As a conclusion, given all efforts laid by the Member States, almost half of the European hydric systems have failed to reach the legislative objectives established by the Union. Starting from the reality that water is constantly under the threat of a wide variety of pressures exposing the sweet water ecosystems and the associated forms caused by humans and pollution, continuing with the fact that the use of fields, water intake, climatic changes represent changes modifying the natural debit of water systems, it is necessary that the fight against these factors be continuous and pointed in the same direction as a national, communitarian and international level, the divergences not being justified in this area.*

**Key words:** *Public law, environmental law, legal protection of waters, European Union directives, national legislation.*

### Introduction

The development of human societies, the emergence and diversification of industry, agriculture, transportation, sciences, technique, the incrementation of urbanization and the modernization of social life generates some negative effects of the most serious ones against the environment. The pollution is not specific to a certain state or a continent, but a generalized phenomenon.

The water – element on which all known forms of life depend on – is currently subjected to a high degree of pollution. Either they come from the sewage, from the chemical substances used in agriculture and industry, through controlled or accidental discharge, water pollution has become a worldwide reality.

This diversity and multiplication of the sources of water pollution<sup>1</sup> and their high degree of toxicity have imposed the necessity of identifying more and more complex legal means and methods for their combat. In this context, the struggle against improvidence, pollution and uneven distribution of water for daily use refers to a national effort, and especially to regional and international cooperation.

### **1. The communitarian policy in the area of water protection. General aspects**

Starting from 1987 with the entrance into force of the European Single Act which for the first time inserted within the area of communitarian preoccupations the environmental issues up to present times, the European Union, through its institutions, had and has among its main objectives of environmental policy the adoption of measures for the protection of water resources. Thus, the protection, rational management of water resources and the insurance of their quality represents an important part of the EU's environmental policy.

Undergrounding its interventions on Art 191-193 from the Treaty on the Functioning of the European Union (TFEU), the actions performed by the European Union in the area of water protection are reflected in the adoption of two main normative acts on the prevention and management of sweet waters and marine resources, namely: the Directive establishing a framework for Community action in the field of water policy and the Directive establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive).

For the optimization of the application of the current legislation in this area, as well as for the integration of the objectives of the policy regarding the water in all the other sectorial policies, in 2012 the Commission has published the "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A Blueprint to Safeguard Europe's Water Resources<sup>2</sup>. The plan was designed to

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<sup>1</sup> For a presentation of the sources of water pollution: D. Marinescu, *Treatise on the environmental law*, 4<sup>th</sup> Ed., Bucharest: Universul Juridic Publ.-house, 2010, p. 161-162; A. I. Duşcă, *Environmental Law*, Bucharest: Universul Juridic Publ.-house, 2014, p. 104-106 etc.

<sup>2</sup> *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A Blueprint to Safeguard Europe's Water Resources* /\* COM/2012/0673 final \*/ , available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52012DC0673&from=RO>

strengthen the policies regarding the water quantity and the efficiency of using water resources for a durable management within the EU Strategy 2020-2050.

Among the communitarian institutions, the main attributions and competences in this area belong to the European Commission, which performs them through the Directorate-General for Environment<sup>3</sup> (DG Environment) established in 1973 with the purpose of protecting, preservation and improvement of the environment in Europe for current and future generations.

The DG has competences regarding the proposals for policies and legislation designed to protect the water quality, to insure the proper disposal of waste, aims gathering information regarding the toxicity of chemicals and provides support for European companies so that through their actions they will tend towards a durable economy. In the same time, the DG insures the correct application by all Member States of the communitarian legislation regarding the environment which implies the support of their efforts to comply with the legislation, as well as the investigation of the complaints filed by the Union's citizens and by NGOs. The DG Environment represents the European Union internationally in the relations established regarding the environment and manages the general action plan in this area<sup>4</sup>.

An important role in the application and evaluation of the current and future policies of the EU on water is held by the European Environment Agency (EEA). For instance, the EEA has presented a series of reports evaluating the condition of the European waters<sup>5</sup>, emphasizing aspects referring to the use of water resources, the ecological and chemical state, hydro-morphology, vulnerability and biodiversity. In its activity, the Agency is supported by the European Topic Centre on Inland, Coastal and Marine waters (ETC/ICM)<sup>6</sup>. For collecting and storing the information regarding the water is responsible the Water Information System for Europe (WISE)<sup>7</sup> which acts as a partnership between the European Commission and EEA, being considered the most complex point of multi-institutional access in the area of information on waters.

Also, improving the implementation of the existing water policy and taking new measures to make water management more efficient in the European Union and preventing pollution are problems mentioned in the 7<sup>th</sup> Action Program for Environment adopted by the European Parliament and the Council of the

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<sup>3</sup> [https://ec.europa.eu/dgs/environment/index\\_en.htm](https://ec.europa.eu/dgs/environment/index_en.htm)

<sup>4</sup> R. Duminičă, *Introduction to environmental law*, Bucharest: Universitară Publ.-house, 2015, p. 70.

<sup>5</sup> The policy on water was a main issue in the working program of the European Commission in 2012, declared as the European Year of Water (<http://www.eea.europa.eu/themes/water/water-assessments-2012>). See also, R. Duminičă, *Brief presentation of the international and european actions in the area of water protection*, Journal of Law and Administrative Sciences (JOLAS), special Issue/2015, pp. 832-838.

<sup>6</sup> See also <http://icm.eionet.europa.eu/>.

<sup>7</sup> *Ibidem*.

European Union on November 2013 and entered into force on January 2014 aiming the period until 2020. This program has three key objectives: the protection, preservation and incrementation of the EU's natural capital, the transformation of the Union's economy into a green economy, efficient from the perspective of resources and competitive from the perspective of the low level of carbon and protection of the Union's citizens against the pressures related to pollution and the risks on health and welfare.

## **2. Directive establishing a framework for Community action in the field of water policy and related directives regarding the water. The stage of their implementation by Romania**

Inserted in 2000, the Framework-Directive on Water<sup>8</sup> was the first act which approached this objective in an integrated manner, establishing a framework for the protection of interior surface waters, underground waters, transitional and coastal waters. The current directive aims the prevention and reduction of pollution, the promotion of a durable use of water, the protection of environment, the improvement of aquatic ecosystems and the amelioration of the effects of floods and periods of drought. Its ultimate purpose is the insurance of a "good ecological and chemical state" for all European waters.

Therefore, the Member States have the obligation to draft plans for the management of the river basin based on the natural geographical river basins, as well as specific programs with measures for reaching the objectives. The Framework-Directive on Water has been transposed into the national legislation by the Law No 107/1996 on waters<sup>9</sup>.

Regarding the stage of implementation by our country in this area, in the Country Report 2019 on the evaluation of the application of the EU's environmental policies, it is shown that Romania has adopted and reported the second generation of plans for the hydrographic basins based on the Framework-Directive on Water and that between the first and the second generation of plans have been drafted several evaluation methods, including methods for the evaluation of the qualitative physio-chemical elements, of the qualitative hydro-morphological elements and of the pollutants specific to water basins, and that the trust in the evaluations of the ecological state has been incremented. The ecological state varies between good and even better for most lakes and rivers (66,14%), without being the case of transitional and waters. There are very few bodies of water whose potential/state remains unknown. All bodies

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<sup>8</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, published in the O.J. L 327/22 December 2000 with subsequent modifications and completions.

<sup>9</sup> Published in the Official Gazette of Romania No 244/8 October 1996 and subjected to numerous modifications and amendments.

of underground waters have a good quantitative state, and between the first and second generation of plans for management of hydrographic basins has been registered a slight incrementation of the proportion of the bodies of water in a good chemical condition (from 93 to 98%)<sup>10</sup>.

The European Framework-Directive on Water is completed by different specific legislative acts, namely: the Nitrates Directive (91/676/EEC), the Directive concerning urban waste-water treatment (91/271/EEC), the Directive concerning the management of bathing water quality (2006/7/EC), the Directive on the quality of water intended for human consumption (98/83/EC) and the Directive on the assessment and management of flood risks (2007/60/EC).

The Nitrates Directive (91/676/EEC)<sup>11</sup> aims the reduction of water pollution caused or induced by nitrates originating from agricultural sources and the prevention of new pollutions of this type. It has been transposed into our national legislation by Government Decision No 964/2000 on the approval of the Action Plan for water protection against the pollution with nitrates from agricultural sources<sup>12</sup>.

According to the Country Report 2019 on the evaluation of the application of the EU's environmental policies, starting with 2013, Romania has a revised action plan for the application of the Nitrates Directive. This program applies throughout the national territory. Also, it is shown that the revised legislation has brought significant improvements in comparison with the previous action plan. Romanian authorities have decided to use an "approach throughout the territory"<sup>13</sup>.

The Directive concerning urban waste-water treatment<sup>14</sup> shall apply for the collection, treatment and evacuation of urban waste-waters, as well as for the treatment and evacuation of used waters originating from certain industrial areas. It has as main objective the environment protection against the deterioration caused by the evacuation of waste-waters and has been transposed in the national legislation by several normative acts, starting with the Law on Waters and continuing with different governmental decisions<sup>15</sup> and Minister's orders adopted in this area<sup>16</sup>.

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<sup>10</sup> European Commission, *Country Report 2019 – Environmental Implementation Review 2019 Romania*, Brussels, 4.4.2019, p. 22.

<sup>11</sup> Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, published in the OJ L 375, 31.12.1991.

<sup>12</sup> Published in the Official Gazette of Romania No 526/25 October 2000.

<sup>13</sup> European Commission, *Country Report 2019 – Environmental Implementation Review 2019 Romania*, Brussels, 4.4.2019, p. 23.

<sup>14</sup> Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment, published in the OJ L 135, 30.05.1991, p. 40.

<sup>15</sup> For example: *Decision for the approval of norms on the conditions of unloading in the aquatic environment of waste waters*, published in the Official Gazette of Romania No 187/20 March 2002 etc.

<sup>16</sup> For example: *Order of the Minister of Environment and Water Management and of the Minister of Agriculture, Forests and Rural Development for the approval of the Technical Norms concerning the environmental protection and especially of soil, when the sewage sludge is used in agriculture*, published in the

Though efforts for its application have been made, Romania remained behind other Member States. Only 2,5% of the Romania waste-waters have been collected (8 agglomerations) in accordance with the directive, and 6 agglomerations have fulfilled the conditions for a secondary treatment and only 1 agglomeration has fulfilled the conditions for a more rigorous treatment, as it is mentioned by the Country Report 2019. Given the low degree of implementation, the Commission has decided to initiate a procedure ascertaining the non-compliance against Romania.

In order to comply with these measures, Romania shall have to adopt measures for the improvement of the methodology establishing the priorities regarding the projects for water proposed for financing from the EU and to speed up their preparation and application.

Regarding the Directive on the quality of water intended for human consumption<sup>17</sup>, it requires the Member States to constantly monitor the quality of water intended for human consumption by using the "sampling point" and has been transposed in our national legislation by the Law on the quality of drinking water<sup>18</sup>.

In this area, in our country according to the Report of the Commission on the quality of drinking water within the Union<sup>19</sup>, 99,44% of all analysis for drinking water (2013) have been in accordance with the Directive. On the other hand, a significant part of the population, namely 57% is currently not connected to public systems of water distribution<sup>20</sup>.

The Directive concerning the management of bathing water quality<sup>21</sup> has as purpose the improvement of public health and the environmental protection by establishing provisions on the monitorization and classification (into 4 categories) of the bathing water and informing the public in this meaning. This directive has

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Official Gazette of Romania, No 959/19 October 2004; *Order on the approval of the Procedure and Competences to issue notices and authorizations for water management*, published in the Official Gazette of Romania No 661/1 August 2006.

<sup>17</sup> Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption, published in the OJ L 330 5.12.1998, p.32 with subsequent modifications.

<sup>18</sup> Published in the Official Gazette of Romania No 552/29 July 2002.

<sup>19</sup> *Report from the Commission Synthesis Report on the Quality of Drinking Water in the Union examining Member States' reports for the 2011-2013 period, foreseen under Article 13(5) of Directive 98/83/EC; COM (2016) 666 final.*

<sup>20</sup> European Commission, *Impact Assessment SWD (2017) 449 final of 1.2.2018 accompanying the document Proposal for a Directive of the European Parliament and of the Council on the quality of water intended for human consumption (recast) COM (2017) 753 final.*

<sup>21</sup> *Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC*, published in the OJ L 64, 4.3.2006, p. 37 with latest amendments.

been transposed into the national legislation<sup>22</sup> and a report drafted by the Environmental European Agency<sup>23</sup> stated that in 2017 from a total of 50 bathing waters in Romania only 5% had an excellent quality, 48% had a good quality and 2% had a sufficient quality.

Another normative act adopted by the European Union in the area of water protection is the Directive on the assessment and management of flood risks<sup>24</sup>. Its purpose is to reduce and manage the risks of floods against the human health, environment, infrastructure and property. The Directive imposes for Member States the obligation to perform preliminary evaluations to identify the hydrographic basins and the coastal areas exposed to such risks and to subsequently draft maps presenting the risk of flood and management plans focused on prevention, protection and preparation. This directive has been transposed into the national legislation<sup>25</sup> and according to the Country Report 2019, our state has adopted and reported the first generation of plans for the flood risk management based on this Directive. As effect of the evaluation performed by the European Commission it has been ascertained that Romania laid great efforts with positive results in establishing the objectives and drafting measures focused on prevention, protection and preparation<sup>26</sup>.

### 3. Marine Strategy Framework-Directive

The Marine Strategy Framework-Directive<sup>27</sup> is considered as the main act adopted in the area of the EU's integrated maritime policy (IMP). The Directive states a framework in which the Member States adopt the necessary measures for obtaining or maintaining a good ecological state of the marine environment until 2020. For this purpose, as it is mentioned by Art 1 Para 2, marine strategies shall be developed and implemented in order to: protect and preserve the marine environment, prevent its deterioration or, where practicable, restore marine

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<sup>22</sup> *Decision on bathing water quality* published in the Official Gazette of Romania No 404/29 May 2008; *Government Decision on the modification and amendment of the Government Decision No 546/2008 on bathing water management*, published in the Official Gazette of Romania No 290/26 April 2011.

<sup>23</sup> European Environment Agency, *European Bathing Water Quality in 2017*, Luxembourg: Publications Office of the European Union, 2018, pp. 20-23.

<sup>24</sup> *Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks*, published in the OJ L 288, 6.11.2007, pp. 27-34.

<sup>25</sup> *Emergency Ordinance for the modification and amendment of the Water Law No 107/1996*, published in the Official Gazette of Romania, No 114/19/02/2010.

<sup>26</sup> European Commission, *Country Report 2019 – Environmental Implementation Review 2019 Romania*, Brussels, 4.4.2019, p. 24

<sup>27</sup> Transposed into the national legislation by the *Emergency Ordinance on the stability of the strategy for marine environment*, with subsequent modifications and amendments, published in the Official Gazette of Romania no. 452/2 July 2010.

ecosystems in areas where they have been adversely affected; prevent and reduce inputs in the marine environment, with a view to phasing out pollution.

Also, the act states the European marine regions (the Baltic Sea, the North-east Atlantic, the Mediterranean Sea and the Black Sea) with their subregions within the geographical borders established by the conventions existing on the regional seas.

As effect of the leaks of hydrocarbons caused by the accident in 1999<sup>28</sup> of the oil tanker Erika in order to consolidate the role in the area of maritime safety and marine pollution has been established the European Maritime Safety Agency (EMSA).

As it is mentioned by Art 1 of the Regulation (EC) No 1406/2002, the European Maritime Safety Agency (EMSA) has been established for the purpose of ensuring a high, uniform and effective level of maritime safety and prevention of pollution by ships, as well as for intervention in case of marine pollution caused by oil and gas installations<sup>29</sup>. EMSA provides information for Governments and authorities about what happens on the sea, supporting them for a more efficient implementation of their maritime policies. Also, it provides maritime services answering the constantly evolving needs of European users.

Regarding the implementation by our country, we need to mention that the Convention on the Protection of the Black Sea Against Pollution (the Bucharest Convention) contributes in the achievement of the strategic objectives for marine environment imposed for Romania by the Marine Strategy Framework-Directive. The marine environment strategies mention different phases which need to be taken in cycles of 6 years.

## Conclusions

The Report of the European Commission in 2019<sup>30</sup> regarding the means in which the Member States have applied the EU legislation on waters states that in the past 6 years there is a clear positive tendency, but rapid improvements are still needed to meet the agreed quality standards in time. Thus, among the actions with priority for our country in 2019, according to the Report of the European Commission<sup>31</sup>, we need to mention the actions supporting the qualitative monitorization of surface waters, the quantitative and chemical monitorization of

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<sup>28</sup> See also Andrada Mihaela Truşcă, *The particularities of legal responsibility in environmental law*, Bucharest: Universul Juridic Publ.-house, 2012, p. 34.

<sup>29</sup> *Regulation (EC) 1406/2002 No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency*, published in the OJ L 208, 5.8.2002, p. 1.

<sup>30</sup> *Report from the Commission to the European Parliament and the Council on the implementation of the Water Framework Directive (2000/60/EC) and the Floods Directive (2007/60/EC)*, Brussels, 26.2.2019 COM (2019) 95 final, p. 10.

<sup>31</sup> *European Commission, Country Report 2019 – Environmental Implementation Review 2019 Romania*, Brussels, 4.4.2019, p. 24.

underground waters, insuring evaluations and justifications for projects which may affect the bodies of water state, as well as the intensification of the efforts to insure the application of the Directive concerning urban waste-water treatment.

As a conclusion, given all efforts laid by the Member States, almost half of the European hydric systems have failed to reach the legislative objectives established by the Union. Starting from the reality that water is constantly under the threat of a wide variety of pressures exposing the sweet water ecosystems and the associated forms caused by humans and pollution, continuing with the fact that the use of fields, water intake, climatic changes represent changes modifying the natural debit of water systems, it is necessary that the fight against these factors be continuous and pointed in the same direction as a national, communitarian and international level, the divergencies not being justified in this area.