

Editorial

Water and its availability to us seem so normal. An average Northern European consumer probably turns the water tap to drink water or sprinkle the garden without realising that water is a ‘special’ product. And although the media frequently report droughts and flooding around the world, one actually realises that water is special when availability is under pressure walking in the mountains concluding that you ran out of water still having a four hours walk to go—or when your cellar is flooded during extensive rainfall.

Water is the fuel for existence. Availability of good quality water and the right quantity of water is essential for Europe to stay prosperous. Water is so priceless that the question needs to be addressed whether we, as societies, should get used to paying for our water use. We already do so for tap water and waste water services. In the countries in Northern Europe, where water is available in abundance, the water prices mostly do not provide for problems. But that may be different in countries that have to deal with water shortages. To what price should water be available?

In European legislation, more precisely the Water Framework Directive, water pricing takes a special position. By recovering the costs for water services, European Member States are to contribute to sound and sustainable water management. The true costs of water services should be reflected in their price. Not only financial costs, but also environmental and resource costs as it is stated. Above, water pricing policies are required to provide incentives for efficient water usage.

This progressive water pricing approach has induced a lively debate in Europe about the question for what services the costs need to be recovered, from whom and how? Part of this debate takes place in the European Court of Justice (ECJ). The European Commission started several infringement procedures against different European Member States about the interpretation of ‘water services’ as formulated in Article 9 of the Water Framework Directive (2000/60/EC) as costs need to be recovered for those water activities that constitute a water service. Germany has the honour of being first in line at the ECJ. The European Commission interprets ‘water services’ broadly, which

would result in water pricing for numerous water activities like water abstraction for the cooling of industrial installations and for irrigation in agriculture, the restriction of surface waters for navigation purposes, flood protection or hydro power production, wells drilled for agricultural, industrial or private consumption et cetera. In many European countries, water pricing currently is limited to waste water management activities and (drinking) water supply. Should the Commission's view be confirmed by the European Court of Justice, the scope of application of water pricing will extend to numerous water activities. That may have a large economic and social impact for Member States.

Cost recovery in the WFD is based on a user and polluter pays principle. Questions arise however if water activities always should be based on those principles? One can imagine that - for instance in the Netherlands being largely situated below sea level - cost recovery for flood protection may be partly based on solidarity as charging only part of society for this protection would result in disproportionate burdens for specific groups.

In essence, putting the price where it belongs, i.e. at the user and/or polluter of water, is a generally accepted point of view. But what exemptions are allowed to address the societal impact of cost recovery? Should social policy be effectuated by means of water pricing or is that not the route to take? Many countries, mostly situated in the south of Europe, have numerous exemptions and deductions on the water bill, resulting in a non-realistic price or burden.

On the other hand, by putting a price on such essential product as water, by instrumentalising the value of water in hard currency, one may neglect the speciality of water. Should we not, from an ethical point of view, defend the fact that our basic needs of water should be affordable to all? Basic human water needs cannot be traded. Should you not indeed value that basic need on the value of the subject needing it for existence? Just a principle thing that is set aside in European water law, as no exemption is provided for a minimum of water as human right.

As cost recovery in water management raises many questions, the 2012 conference of the *Réseau européen du droit de l'eau* (European Network for Water Law¹⁾ - held in welcoming Zaragoza (Spain) - focussed on the subject of the principle of cost recovery for water services in Europe as laid down in the WFD. Country reports on the implementation of the cost recovery principle have been made for most European countries and will be available on the

¹⁾ <http://cidce.org/> - This network, of scholars of most European countries, addresses questions of implementation difficulties, legislative text interpretation and the function legislation may have in resolving or adapting to current and future environmental problems.

website of the Network. This JEEPL issue includes three papers that resulted from this conference:

Alexandra Aragão provides an overview of the enormous change in water policy in Portugal in the last few years. She reflects that Portugal has undergone a small revolution in the water sector where it comes to policy development and water pricing.

Moritz Reese examines the German approach to cost recovery for water services. Contradictory to Portugal Germany is a country rich in water resources and the main challenge in Germany sees to ecological water quality protection. Reese examines whether the German implementation and effectuation of cost recovery for water services constitutes a breach of Article 9 WFD.

Petra Lindhout analyses the cost recovery system for water services in the Netherlands, identifying outstanding questions regarding the scope of application of cost recovery (interpretation of water services), lack of clearance on water user groups and viewpoints on coherence of the water financing system with the polluter pays principle.

The contributions reflect the broad range of issues raised under Art. 9 WFD, display different implementation approaches and take – in part – quite controversial positions on the interpretation of this crucial norm of EU water law. We hope to thereby contribute to and further stimulate the cross-border legal debate on water pricing.

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