

COMMON MARKET LAW REVIEW

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The Common Market Law Review is designed to function as a medium for the understanding and implementation of European Union Law within the Member States and elsewhere, and for the dissemination of legal thinking on European Union Law matters. It thus aims to meet the needs of both the academic and the practitioner. For practical reasons, English is used as the language of communication.

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Managing Editor: Alison McDonnell

Common Market Law Review

Europa Instituut

Steenschuur 25

2311 ES Leiden

The Netherlands

e-mail: a.m.mcdonnell@law.leidenuniv.nl

tel. + 31 71 5277549

fax: + 31 71 5277600

Establishment and Aims

The Common Market Law Review was established in 1963 in cooperation with the British Institute of International and Comparative Law and the Europa Instituut of the University of Leyden. The Common Market Law Review is designed to function as a medium for the understanding and analysis of European Union Law, and for the dissemination of legal thinking on all matters of European Union Law. It aims to meet the needs of both the academic and the practitioner. For practical reasons, English is used as the language of communication.

Editorial policy

The editors will consider for publication manuscripts by contributors from any country. Articles will be subjected to a review procedure. The author should ensure that the significance of the contribution will be apparent also to readers outside the specific expertise. Special terms and abbreviations should be clearly defined in the text or notes. Accepted manuscripts will be edited, if necessary, to improve the general effectiveness of communication. If editing should be extensive, with a consequent danger of altering the meaning, the manuscript will be returned to the author for approval before type is set.

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Manuscripts should be submitted together with a covering letter to the Managing Editor. They must be accompanied by written assurance that the article has not been published, submitted or accepted elsewhere. The author will be notified of acceptance, rejection or need for revision within three to nine weeks. Digital submissions are welcomed. Articles should preferably be no longer than 28 pages (approx. 9,000 words). Annotations should be no longer than 10 pages (approx. 3,000 words). Details concerning submission and the review process can be found on the journal's website <http://www.kluwerlawonline.com/toc.php?pubcode=COLA>

Ekkehard Hofmann (Ed.), *Wasserrecht in Europa*. Baden-Baden: Nomos, 2015. 264 pages. ISBN: 978-3-8487-1494-0. EUR 69.

Water law is an ever-changing part of EU law, often offering little guidance to Member States and practice. That is also the recurring theme of this edited collection, which contains written elaborations of presentations held during the Würzburger Europarechtstagen in 2013. The title may lead people to think that this book takes a comparative approach, covering multiple European countries, but that is not the case. It focuses on EU water law, especially the Water Framework Directive (WFD), and its implementation in Germany. The book offers insights in often-discussed aspects of the WFD, such as the no deterioration principle, surface water status

and cost recovery for water services. It is a highly analytical and thorough book, though it fails to take account of discussions on the same topic by scholars from other Member States.

The book starts with a very critical chapter by Reinhardt. He argues that the WFD has set unrealistic targets for Member States by requiring all surface water bodies to reach good ecological status by 2015, and that the ultimate deadline of 2027 will be too early. Some of the norms – e.g. the obligation to reach good water status – are too vague to be enforceable, and do not give enough guidance to national governments. Such criticism is common, and reflects the majority opinion on this subject. One of his arguments is heard less often, and it is very clever: the WFD is “anthropophobic” because it perceives humans as merely a potential threat to water quality. This could even be a breach of fundamental rights, though Reinhardt does not mention which.

What is often forgotten in these discussions is that the WFD integrates previous EU water directives, the objectives of which had to be reached years or even decades ago. The extra obligations in the WFD are new ecological standards that Member States should meet within 15 years (with the option of postponing this deadline to 2017). These may indeed be hard to achieve on time, so multiple exemptions are provided (see Case C-346/14, *Commission v. Austria*). Furthermore, the WFD should guarantee at least the same level of protection as the previous directives; this requirement also gives direction to the kind and scope of obligations that follow from the WFD. Finally, the WFD is complex and should therefore be studied as a whole, as this is the only way to fully understand the system of EU water legislation and its relationship to other directives that affect the status of waters. That is the main point of critique with regard to the book: it lacks a general introduction to the WFD and its place within the system of EU environmental law.

One of the most important recent developments in EU water law is the ECJ’s judgment in *Weser* (C-461/13), on the application of the no-deterioration principle of Article 4 WFD. This judgment answered some common questions about the principle’s binding nature, its scope of application, and whether a deterioration is a change of water status or simply a worsening of the water condition. Rehlinger’s chapter discusses these questions, and elaborately describes the conflict leading up to *Weser*. Most questions addressed by Rehlinger have now been answered by the ECJ, which means the chapter has lost part of its relevance (but see his later publication on *Weser*: “The non-regression principle under EU and German water law ‘on the ground’” (ELNI review 1/2016, pp. 18–25), also engaging with international literature). Munk’s chapter, which focuses on the no-deterioration principle is also still relevant for future discussions. It refers to repeal of the Freshwater Fish Directive (2006/44) though, and the fact that the WFD builds on earlier water directives and explicitly states that the level of protection may not be lower than previously (Art. 4(9)). In a coherent analysis, he argues that the WFD lacks the Freshwater Fish Directive’s strict and unambiguous standards on temperature and oxygen in water, and therefore offers less protection. Hofman’s chapter on recent infringement procedures pending against Germany has become obsolete, as the most important case discussed has now been decided by the ECJ.

Most of this book will be rewarding for readers looking for analytical and thoughtful views on often-discussed concepts, but will find a mainly German approach. In the past years many scholars have researched these topics and published their results in theses and academic papers, but many chapters pay little attention to broader debates. Readers looking for a comprehensive introduction to European water law should therefore look elsewhere. Most chapters are written in precise, but difficult, academic German, so the texts are rather inaccessible for those not advanced German readers. An example is Gromitsaris’ chapter on the implementation of the Floods Directive (2007/60). It does not give a clear introduction to its subject, and extends to 60 pages on the interplay of various legal fields such as spatial planning, water law, nature protection law, on flood protection. The chapter focuses mainly on the German legal system, in particular the Bundesland Sachsen, rather than EU law.

Wasserrecht in Europa features interpretations and analyses of legal definitions and frameworks, mostly from a strictly legal perspective. The most notable exception is Koch’s brief chapter on public participation on expansion of the Danube waterway. He describes how

the German federal government and Bavaria did exploratory research on different methods. A monitoring group of environmental and trade associations, moderated by Koch himself, was intensively involved in the process, providing information. Koch argues effectively that this method of public participation can overcome some obstacles such as limited influence on the final decision. It is a good example of the importance of governance and public participation.

Two chapters address the chemical aspects of the WFD. The first, by Führ, focuses on the goals of reduction of priority substances, and the elimination of priority hazardous substances in water bodies. He analyses the legal instruments to reach this goal in water law and under the REACH rules, and concludes that the combination of these instruments can be a valuable means to achieve the goal of having good ecological status. The chapter by Heiss explains how priority substances are chosen, and how environmental quality norms are established. She also presents an appeal to the Commission to elaborate these rules further, to give them their proper effect. Heiss does a good job introducing her subject, making it comprehensible, even for people with little knowledge on this particular subject.

The last, highly analytical, chapter by Gawel, discusses the WFD's obligation to recover costs for water services, and focuses on environmental and resource costs. Gawel argues that this is no easy task. The concept of these costs is still controversial in economic theory, and calculating them is even more difficult in practice, let alone in legal proceedings. Because of these difficulties, it is a reasonable option to internalize these costs in a tax for water services, so that there is no need to determine them on a case-by-case basis. Gawel thus supports the current German practice, arguing that it is labour- and cost-efficient. It is a very insightful article, which rightfully problematizes environmental and resource costs, and gives a well thought-out account of the structure and bindingness of cost recovery.

This collection features some revealing discussions on problematic provisions in EU water law from a German perspective, and aims to provide clarity on ambiguous legal concepts. The analysis is of a high level, but most authors remain very legal. Due to the fairly abstract topics, the language is sometimes hard to grasp; it can be overwhelming to readers not familiar with legal German. The book's accessibility is limited by the general supposition that its readers are familiar with the subjects discussed. This is not a book for people looking for a general and comprehensive introduction to European water law, but is definitely worth reading for those looking for an in-depth analysis of, and more insight into, specific aspects.

Bram Schmidt and Marleen van Rijswick
Utrecht

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