

Water management in states with a federal constitutional structure - The situation in Germany

Abstract

Despite favourable framework conditions for water management, the 2004 analysis performed under the EC Water Framework Directive shows that numerous surface waters and groundwater bodies in Germany will not arrive at the status defined in the environmental objectives by the year 2015. The federalism reform of 28 August 2006 in the Federal Republic of Germany changed the system and allocation of competences for water resources management in favour of the "Bund" (German federation). However, the said reform only refers to legislation. Administrative enforcement is still assigned to the "Länder" (individual German states). The EC Water Framework Directive requirement of water management in river basin districts has meant the German administration has been confronted with novel tasks and challenges to achieve coordination and efficiency.

Keywords: geographic structure of Germany, precipitation, water balance, availability and use of water, EC Water Framework Directive, constitutional structure of the Federal Republic of Germany, federal reform, water management within the river basin districts, appropriate administrative arrangements, legal practice

I. General introduction

1. Geographic structure

The territory of the Federal Republic of Germany extends over an area of 356,733 km². With more than 82 million inhabitants, the average population density is about 230 residents per km². However, large regions in the North and East of Germany show a low population density of less than 150 inhabitants per km². On the other hand, the western regions of Germany are characterised by high population density areas. In most of them, there are more than 300 residents per km² and, in congested urban areas, sometimes more than 4,000 residents living together within one km².

The geographic structure of Germany is divided into four zones running from North to South: the

central-European lowlands, the “Mittelgebirge” (low mountain range), the “Alpenvorland” (pre-Alps area) and the northern ridge of the Alps. These zones show different conditions for water management. There are immense gravel bodies to be found in the underground of the central-European lowlands and the pre-Alps area which serve as groundwater reservoirs. The major feeders for the surface waters come from the pre-Alps area and the high-precipitation areas of the low mountain range. Most of them flow in the northern (or north-western) direction. So the Rhine and the Elbe as well as the Ems and the Weser flow into the North Sea and the Oder into the Baltic Sea, whereas the Danube flows south-eastward into the Black Sea due to the European main water shed.

2. Precipitation

Germany is located in temperate climates where wet sea air can come in during all seasons, bringing precipitation. It is an area of transition from mostly dominant oceanic climate to continental climate influences. The average annual precipitation over the entire German territory is approximately 770 mm. However, there are substantial differences in annual precipitation for the individual regions: in Western Germany, it is 873 mm on average; in the regions east of the higher low mountain range, it is 612 mm on average, and in some parts less than 500 mm; in the high regions of the low mountain range the annual precipitation is, in some parts, 1,200 to 1,400 mm and, in some specific regions, even more than 1,800 mm; and in the Alps, annual precipitation is more than 2,000 mm in general.

3. Water balance, availability and use of water

The water balance for Germany is established by taking into account the precipitation quantity, the specific area-related flowing-in and flowing-off quantities and evaporation. Seen on the whole and in the long term, the water quantities flowing off the German territory are substantially higher than those flowing in (namely about 38% higher). From this data, the actual availability of water may be calculated, i.e. the available quantity of groundwater and surface water. With an available water quantity of 188 billion m³, Germany is a country abundant with water. The said quantity has been calculated as an average value over about 30 years. Despite such abundant water supply in general, there are some confined low-water areas in Germany too. This is particularly true for some of the congested urban areas. Water shortage and water abundance within the different regions are balanced there. To that end, there are natural groundwater reservoirs in some cases and regional dam systems in other cases.

The available water resources in Germany are utilised by exploitation on the part of industry (including thermal power plants and mining), private households and agriculture. The withdrawals of water totaled about 35.6 billion m³ in 2004 which is 10.7 billion m³ less than in 1991. Thus the available water quantities remained unutilised at about 81%. Utilisation of water by agricultural undertakings is of minor relevance in Germany; they were at about 0.14 billion m³ in 2004 which equals approximately 0.1% of the total available. The major part of utilisation with about 85% was attributable to industry. Included therein is a major share of cooling water for the thermal power plants of about 75% which amounts to 22.5 billion m³. The remaining 25% utilised by the industrial sector are withdrawals by the mining and processing industry, amounting to 7.7 billion m³. The water demand of private households in Germany accounts for about 15% of the overall utilisation; accordingly, the portion of public water supply amounted to 5.5 billion m³ in 2004.

Public water supply was ensured by 6,383 enterprises in Germany in 2004 (with 5,043 thereof performing exploitation/production on their own). Drinking water was for the most part produced from groundwater and spring water (73.5%). The remaining demand was covered by surface water and bank filtrate. In Germany, 99% of the population is connected to public water supply. The per capita consumption of drinking water per inhabitant and day decreased from 147 litres in 1990 to 126 litres in 2004. The cause for such decrease is, besides “water-saving” measures, to be found in investments for reduction of water losses made by water supply utilities (e.g. due to pipe bursts and leakages). Also in big industry (including the thermal power plants and in the mining and processing industry (manufacture), water consumption was substantially reduced in the period from 1991 to 2004 due to technical innovations.

4. Results of the 2004 analysis under the EC Water Framework Directive

The so-called “Bestandsaufnahme 2004” (2004 analysis) performed under Art. 5 of the EC Water Framework Directive (Directive 2000/60/EC) of 23 October 2000 (OJ EC, L 327/1) serves to investigate the current impact on waters and to assess whether the waters in Member States will arrive at the status defined by the environmental objectives under Art. 4 in conjunction with Annex V of the EC Water Framework Directive by the year 2015. According to the 2004 analysis of the surface water bodies in the Federal Republic of Germany:

- approximately 14% of these are likely to arrive at the status defined by the environmental objectives by 2015;

- approximately 60% of these are unlikely to arrive thereat without additional measures being taken; and
- for approximately 26% of the analysed water bodies, it is completely uncertain whether they will arrive at the so defined status.

Official statements confirm that the morphological impact on water structures and the existing transverse constructions preventing natural migration of fish and small organisms, are the most frequent cause for the finding that many surface waters in Germany will possibly fail to achieve the objectives under the EC Water Framework Directive. Apart from that, there is usually more than one cause for some waters failing to achieve good condition. There are, for instance, dammed rivers or other flowing waters which are, in addition, polluted by nutrients and show a dramatically increasing algae population. Where technical and constructional utilisation (in particular through navigation, water power utilisation or settlement of bank areas) has caused a substantial and permanent change of the morphology of the waters concerned, the latter may be definitely referred to as “heavily modified”.

The German authorities are right to emphasise that water protection has been successful in Germany in the past. There is only marginal pollution by hazardous substances to be found in many waters today. Most of them show a good oxygen balance. The key point is that the EC Water Framework Directive – due to its integral focusing on river basin areas and integrative environmental objectives (Art. 3, 4 EC Water Framework Directive) – stipulates more diverse and farther ranging requirements. It basically requires more natural water structures. For such purpose, the Directive requires the development of programs of measures and management plans (Art. 11, 13 EC Water Framework Directive) as well as due execution of such programs and plans. These are to focus likewise on both the ecological target state and the multitude of utilisation.

As to groundwater, the 2004 analysis showed that in Germany:

- approximately 47% of the analysed water bodies are likely to arrive at the status defined by the environmental objectives by 2015; and

- approximately 53% of the analysed water bodies are unlikely to arrive thereat without additional measures being taken.

The reports of the German “Länder” show that the quantity of the groundwater in Germany is seldom affected adversely. What is worse is its chemical quality. This may be concluded from the fact that it is uncertain or unlikely for about 53% of the groundwater bodies whether they will reach a good chemical status without additional measures being taken. These quality problems are, in most cases, due to nutrients from agriculture.

II. Constitutional structure of the Federal Republic of Germany

1. General principles of the German “Bundesstaat”

The German “Bundesstaat” is “a constitutional federation of individual states, based on the constitution of the over-all state”; the individual states are the German “Länder”. They remain states in the legal sense and act as constituent states. The “Bund” is an organized union and federal over-all state. The key issue in the federal constitution is the allocation of competences. Public responsibilities are assigned either to the constituent states or to the federal over-all state, i.e. to the “Bund” or the “Länder”, depending on the respective competence areas. Art. 79 para. 3 of the “Grundgesetz” (German Constitution – hereinafter “GG”) guarantees that the “Bund” is divided into the “Länder”. It further ensures general participation of the “Länder” in the legislation as well as the essential features of a “Bundesstaat” (as defined in Art. 20 para. 1 GG).

The “Bundesverfassungsgericht” (German Federal Constitutional Court – hereinafter “BVerfG”) confirmed the Federal Republic of Germany to be a two-level federal state. Accordingly, the GG allocates the competences to the “Bund” on the one hand and to the “Länder” on the other. The “Bund”, as the superordinate over-all state is, in principle, superior to the “Länder”; “equality is only given in such fields for which specific regulation by the federal constitution is missing”, (BVerfGE – decisions of the BVerfG – 13, p. 54, 79). Such general superordinate position of the “Bund” is combined with the systematic principle of competences being assigned to the “Länder” (Art. 30, 70, 83 GG). The “Bund” may only act if and to the extent that certain competences are specifically assigned to it (principle of subsidiarity). Such balance has long since been disturbed

by the extension and exhaustion of competences being specifically assigned to the “Bund” and, in recent times, by the Europeanisation of legislation.

What is characteristic of the German “Bundesstaat” is that competences are allocated separately as regards the legislative power and the executive power (Art. 70 et seq., Art. 83 et seq. GG). The legislative competences of the “Bund” reach considerably farther than its administrative competences. Vice versa, the “Länder” are assigned far more extensive competences on the administrative level than on the legislative level. The laws of the “Länder” (“Landesgesetze”) are, in principle, enforced by the “Länder” within their own responsibility, whereas the “Bundesauftragsverwaltung” (administration by order of the “Bund”) is a rare and exceptional case (Art. 83 to 85 GG). Enforcement of the laws of the “Länder” falls imperatively within the exclusive competence of the “Länder” (Art. 30 GG). Their independence as states is thus essentially based on their executive power.

The “Bund” exercises towards the “Länder” the so-called “abhängige Bundesaufsicht” (Federal Government supervision) (Art. 84 para. 3 to 5, Art. 85 para. 3, 4 GG) which has gained only little importance up to now. In addition, the “Bund” may exercise the so-called “Bundeszwang” (Federal Government compulsion) (Art. 37 GG) which is deemed the ultima ratio and has not ever been used hitherto. It is characteristic for the practice of the German “Bundesstaat” that its constituent states prefer settling any arising conflicts by judicial proceedings rather than by a political approach. For such purpose, they either take recourse to the BVerfG (“Bund-Länder-Streit”/Bund-Länder dispute according to Art. 93 para. 1 no. 3 GG) or settlement is sought in administrative court proceedings (§ 40 para. 1, § 50 para. 1 no. 1 VwGO – German Law of the Administrative Courts, jurisdiction of the Bundesverwaltungsgericht (BVerwG) – German Federal Administrative Court; BVerwGE – decisions of the BVerwG – 87, p. 169; 102, p. 119).

The German “Exekutivföderalismus” (executive federalism) is supplemented by the guarantee of self-government of the local communities (“kommunale Selbstverwaltung”, Art. 28 para. 2 GG). In the German “Bundesstaat”, the Länder are, by virtue of the Constitution, divided into “Gemeinden” (communities) and “Gemeindeverbände” (public law corporate bodies on a higher level than the communities, responsible for self-government tasks) as local authorities. Such organisation entails the over-all state structure being subdivided into several territorial authorities which are the “Bund”, the “Länder” and the local authorities (vertical separation of powers).

Indeed, German federal state practice is familiar with numerous cooperations between the “Bund” and the “Länder” as well as among the individual “Länder” and between the state authorities on the one hand and the local authorities on the other hand. It is however deemed contrary to the Constitution to form “common bodies adopting binding majority decisions, because of the interference with the democratic responsibility of each individual *Land* (Art. 28 GG) related thereto...” or to arrange for “any fiduciary performance of the responsibilities of the *Länder* by a certain authorised *Land*” (Scheuner, DÖV 1962, p. 641, 648). The two-level German “Bundesstaat” “is not familiar with any common bodies of the “Länder” which would create a new common level of the Länder besides the “Bund” and which would occur in addition to the bodies of the federal over-all state which uniformly perform common responsibilities” (Scheuner, cf. above). Any responsibilities of the “Länder” are thus to be decided and performed by the democratic bodies of each individual “Land”; there is “no level of common institutions of the *Länder*” (Scheuner, cf. above). Mixed administration by both the “Bund” and the “Länder” is deemed a contravention of the democratic responsibility of the executive authorities of the individual “Länder”.

2. Federal allocation of competences for water resources management

The GG of the Federal Republic of Germany was recently amended by the so-called federalism reform, namely by amending law of 28 August 2006 (BGBl. – German Federal Law Gazette part I p. 2034), with effect as of 1 September 2006. Such reform is of relevance for the system and numerous areas of competence, in particular for legislative competence in the field of water resources management.

A) The former constitutional regulations

Under the former constitutional regulations (i.e. before the amending law of August 2006) which had been effective until September 1, 2006, the “Bund” was only assigned the competence for “Rahmengesetzgebung” (skeleton legislation) in the field of water resources management (Art. 75 para. 1 no. 4, former version of the GG). According to the BVerfG, the term “water resources management” comprises any legal regulations governing “the management of the water available in nature as regards its quantity and quality” (BVerfGE 15, p. 1, 15). Such competence of the Bund was limited to the fixing of a skeleton requiring the completion by detailed regulations of the Länder. This competence was further limited by the requirement of “necessity” of such legislation on the part of the “Bund”. The power to adopt detailed water law

regulations was thus assigned to the legislative authorities of the “Länder”. The “Wasserhaushaltsgesetz” (German Water Resources Act– hereinafter referred to as WHG – the current version is 19 August 2002, BGBl. I p. 3245, having been amended several times thereafter) as a skeleton law of the “Bund” and the water laws of the 16 “Länder” are based on the said allocation of competences.

The BVerfG declared the “Bundesgesetz zur Reinhaltung der Bundeswasserstraßen” (German Federal Act for clean federal waterways) of 17 August 1960, which was passed at an early point in time, to be contrary to the Constitution and thus void for lacking legislative competence of the “Bund” (BVerfGE 15, p. 1). In 1994, the competence of the “Bund” for skeleton legislation temporarily became even more restricted by an amendment to the GG (Art. 72 para. 2, Art. 75 para. 2, former version of the GG).

Under the former constitutional regulations (i.e. before the amending law of August 2006), the “Bund” was assigned full “konkurrierende Kompetenz” (concurrent legislative power) for the field of federal waterways but only as regards their function as traffic routes (i.e. for navigation purposes). Pursuant to the relevant court rulings, the administrative power of the “Bund” in the field of federal waterways under Art. 89 para. 2 GG is likewise limited to the function of such waterways as traffic routes, excluding any water management and drainage issues. Consequently, any administrative acts or decisions relating to water management which are taken by the federal authorities with regard to federal waterways constitute an infringement of the administrative competence of the “Länder” (Art. 30, 83 GG; BVerfGE 21, p. 312).

The limits of skeleton legislation, the restrictive interpretation by the BVerfG as regards the mere skeleton and the necessity of legislation on the part of the “Bund” (BVerfGE 106, p. 62, 144; 110, p. 141, 174 et seq.; BVerfG, NJW 2004, p. 2363 and 2803; BVerfG, NJW 2005, p. 493 et seq.) as well as the ever increasing Europeanisation of the administrative law and the increasingly stricter compulsions to implement EC law according to Art. 249 para. 3 EC Treaty discredited the mode of skeleton legislation in Germany. Two national stages of implementation have appeared to be too complicated, in particular because the skeleton legislation of the “Bund” was too constricted by its constitutional limits.

B) The new constitutional regulations

The federalism reform by amending law of 28 August 2006 strengthened and extended the

concurrent legislative competence of the “Bund”. It now also covers water resources management (Art. 74 para. 1 no. 32 GG). Skeleton legislation was completely abandoned (Art. 75 GG was abrogated). However, those skeleton laws which were passed by the “Bund” under the former constitutional regulations continue in force (Art. 125 b para. 1 sentence 1 GG), This is also true for the “Wasserhaushaltsgesetz” (German Water Resources Act).

As regards the key areas of environmental protection, including water resources management, the exercise of concurrent legislative power by the “Bund” is no longer subject to the requirement of necessity vice versa conclusion from cf Art. 72 para. 2 GG). However, the “Länder” may – according to Art. 72 para. 3 GG – pass regulations notwithstanding the existing legislation of the “Bund”. This competence includes the field of water resources management; however, any regulations under federal law regarding specific substances or facilities are not subject to such deviating competence of the “Länder”. In addition, the “Länder” may only pass regulations notwithstanding the federal laws if, and to the extent that, the “Bund” exercised its legislative power after 1 September 2006, and no later than from January 1, 2010 (Art. 125 b para. 1 sentence 3 GG). The constitutional situation enables the “Bund” to adopt – in an “untroubled” manner – a “Umweltgesetzbuch” (Environmental Code – hereinafter referred to as UGB). It is thus referred to as the “UGB moratorium”. However, as a whole, the new constitutional situation regarding the legislative powers in the field of environmental law is complicated and prone to conflicts.

The “Bundesumweltministerium” (German Federal Environment Ministry) is currently preparing a draft bill for a UGB. This draft bill includes, inter alia, a “book II (water management)”. The draft has not been adopted by the “Bundesregierung” (German Federal Government) yet and thus has not yet been introduced into the Parliament either. The draft is subject to controversial political judgment. The political dispute primarily pertains to the general part of the draft bill (UGB I, the problem of integrated project approval). On the other hand, the intended code on water management (UGB II) seems to be more likely to gain consensus. One key aspect in connection therewith again is the compulsion to implement European law, most recently the Flood Directive 2007/60/EC of 23 October 2007 (OJ EU, L 288/27). The new constitutional situation has caused the “Bund” to make an effort to exercise its new concurrent legislative competence in the field of water resources management and to so create a uniform German water law.

Ultimately, the German federalism reform did not change the general rule of administrative competences in the field of water resources management lying with the “Länder”. If and to the extent that the “Bund” actually exercises its concurrent legislative power according to Art. 74 para. 1 no. 32 GG, the administrative competence of the “Länder” follows from Art. 83 and Art. 84 GG. The “Länder” may at their discretion assign water management tasks to the local authorities within the framework of local self-government of the communities or to the so-called “Wasserverbände” (bodies responsible for water issues) under public law, also acting as self-governing authorities. In particular, North-Rhine Westphalia extensively assigned such responsibilities to some large “Wasserverbände (for example Ruhrverband, Lippeverband and Erftverband)”.

III. Water management within the river basin districts in Germany

1. Starting situation and problems to be resolved

The starting situation of water management is characterised by two features in Germany.

First of all, the entire water circulating in nature is subject to strict utilisation rules under public law and to public management. As a rule, any kind of utilisation of water (i.e. surface waters, groundwater and coastal waters) requires an official permit or license by the competent water authorities (§ 2 et seq. WHG). These may decide to grant or refuse to grant such permit or license at their management discretion. The BVerfG has held that it is in line with the GG that the “Wasserhaushaltsgesetz” also subjects subsurface waters to public law rules of utilisation, independent and regardless of specific land ownership, for ensuring the functioning of water management and, in particular, public water supply (BVerfGE 58, p. 300 et seq.). Such provision defining the contents, scope and limits of private property is deemed in line with the Constitution (Art. 14 para. 1 sentence 2 and para. 2 GG). Accordingly, private property ownership does not authorise any water utilisation which requires a permit or license under the “Wasserhaushaltsgesetz” or the water laws of the individual “Länder”, nor does it grant the right to develop any such water body (§ 1 a para. 4 WHG).

Secondly, the starting situation is characterised by the fact that the territories of the individual German “Länder” do not correspond to the natural river basins or catchment areas. The territorial boundaries of the individual “Länder” were determined by the “haphazards” of political

history. They thus often run and cut through river basins and catchment areas. The federal structure and allocation of competences have meant that each German “Land” performs its own administrative water management on the basis of its former legislative powers and in particular its administrative powers.

This causes problems in the implementation of the EC Water Framework Directive and in the administration of river basins which the said Directive imposes on the Member States for achievement of the environmental objectives (according to Art. 4 in conjunction with Annex V EC Water Framework Directive).

Neither the internal territorial structure of the German “Bundesstaat” nor the tradition of autonomous water management by the German “Länder” is tailored to an administration which is in line with the natural territories of the river basins.

2. Requirements of the EC Water Framework Directive as to “appropriate administrative arrangements” within the river basin districts

The requirements of the EC Water Framework Directive refer – in factual respect – to the abovementioned environmental objectives and – in territorial respect – to the individual river basin districts. The Directive defines such a district as an “area of land and sea, made up of one or more neighbouring river basins together with their associated groundwaters and coastal waters which is identified under Art. 3 (1) as the main unit for management of river basins” (Art. 2 no. 15). Member States must identify the individual river basins lying within their respective national territory and assign them to a specific river basin district for the purposes of the Directive (Art. 3 para. 1 sentence 1). The German version of the Directive furthermore says that the Member States have to ensure “geeignete Verwaltungsvereinbarungen” (appropriate administrative arrangements), “including the identification of the appropriate competent authority, for the application of the rules of this Directive within each river basin district lying within their territory” (Art. 3 para. 2). The obligatory river basin districts are reference parameters for administrative organisation. They are neither bound to the existing administrative districts of the state or local authorities nor to the boundaries of the German “Länder”. They are rather to be determined in accordance with the natural territory features defined by the Directive.

The Directive does not require specific river basin authorities to be created. Thus the Member

States do not need to have special authorities which are assigned water management competences according to the British model of River Basin Authorities. A federal state such as the Federal Republic of Germany may maintain its decentralised constitutional structure but has to ensure appropriate river basin administration by targeted coordination among the existing authorities. This requires cooperative organisational and procedural approaches.

Art. 3 para. 3 and 4 EC Water Framework Directive requires international river basin districts to be identified. The Member States have to ensure that a river basin covering the territory of more than one Member State is assigned to an international river basin district. The German version of the Directive insofar again requires the Member States to ensure “geeignete Verwaltungsvereinbarungen” (appropriate administrative arrangements), “including the identification of the appropriate competent authority” for application of the Directive within their respective national territories. According to Art. 3 para. 4 of the Directive, the Member States have to ensure that the requirements of this Directive for the achievement of the environmental objectives established under Art. 4, and in particular all program of measures, are coordinated for the whole of the river basin district. For international river basin districts, special coordination duties are to be observed.

Transboundary coordination between the individual “Länder” is in line with the German Constitution, provided that such coordination is a mere consensual and consultative one, e.g. by way of arrangements or unanimous decisions taken by and among the authorities involved. However, such coordination would constitute an unlawful mixed administration if it was performed by way of binding majority decisions taken by the authorities of several different “Länder”. Pursuant to the principles of “Bundesstaat and Demokratie” (federalism and democracy), each individual body and each individual administrator within the territorial authorities (“Bund”, “Land” or “Kommune”) must be specifically legitimated. The same is required as regards their specific democratic responsibility. Any participation of external bodies or persons would breach and infringe the democratic connection ensuring legitimation and responsibility.

3. The river basin districts under German law

German law (§ 1 b para. 1 WHG) defines the following 10 river basin districts (see map shown in **Annex 1**):

- (1) Danube
- (2) Rhine
- (3) Maas
- (4) Ems
- (5) Weser
- (6) Elbe
- (7) Eider
- (8) Oder
- (9) Schlei/Trave
- (10) Warnow/Peene

Most of these river basin districts extend over several German “Länder”. Except for the river basin districts Weser and Warnow/Peene, they are also international river basin districts (see table shown in **Annex 2**). Pursuant to § 1 b para. 2 WHG, the skeleton regulation of the “Bund”, coordination of the management of the river basin districts is regulated by the laws of the “Länder” for achievement of the statutory management objectives defined by European law. The competent authorities of the “Länder” assign the individual basin or catchment areas lying within their state boundaries to a specific river basin district (§ 1 b para. 3 WHG).

The water laws of the individual German “Länder” do not contain any organisational or procedural regulations for a formal association of administrative bodies for coordination of water management in the river basin districts. There are only administrative arrangements and working committees for informal coordination of the actions of the authorities relating to the transboundary and international river basin districts. These working committees do not make any binding decisions. They are limited to mere informal and preparatory coordination. Such procedure is based on a corresponding consensus between the German “Länder”. However, genuine associations of administrative bodies and mixed administrations are not acceptable for the objections under constitutional law set forth above.

From the viewpoint of European law, it is sufficient if the Member States create appropriate administrative structures and especially appropriate competent authorities for water management to ensure application of the EC Water Framework Directive within each individual river basin district lying within their respective territories (Art. 3 para. 2 EC Water Framework Directive). Informal coordination by administrative arrangements and working committees may

principally satisfy this requirement. However, the EC Commission will supervise the appropriateness of such a coordination approach. In the case of controversies, the European Court of Justice will have to decide.

In the event that informal administrative arrangements and working committees should be ineffective, they will no longer satisfy the requirements under European law in which case they will not bear up under supervision by the Commission and the European Court of Justice. In connection therewith, it has to be pointed out that the English version of the EC Water Framework Directive refers to “appropriate administrative arrangements”. The French version likewise requires “dispositions administratives appropriées”. The formulation used in the German version of the Directive “geeignete Verwaltungsvereinbarungen” is comparatively a more restrictive term, because it is limited to treaties and agreements. The English and the French versions using broader terms which include orders, settlements, measures and precautions. These extensive terms will have to be considered decisive for the European practice.

Already the program of measures for respective river basin district (or, respectively, for such part of an international river basin district as lies within the national territory of the respective Member State, Art. 11 EC Water Framework Directive) and the management plans for the river basins (Art. 13 EC Water Framework Directive) have to meet the said requirements. Both planning acts must have been drawn up by 22 December 2009. We will have to wait to see whether this will be done in time and in a transparent and sufficiently conclusive manner. The same is the case with the subsequent execution of the programs of measures and management plans. In this respect, the first execution period from 2009 to 2015 will be the essential one. It will constitute the key practical test for the national administrations in the respective river basin districts. This will also and in particular be true for Germany where informal coordination between and among the authorities of the “Länder” and the local self-government authorities in the transboundary and international river basin districts will have to stand the test.

4. Topical aspects and legal practice issues

From the point of view of legal practice, it has to be pointed out that for international river basin districts, namely those of the Rhine, Elbe and Danube, international committees for the protection of these rivers were formed on the basis of international treaties. These committees stand out due to their generally acknowledged and successful cooperation for several decades.

They have collaborated, in particular, common surveys, remediation concepts and programs of measures. Their potential regarding international cooperation may and must be used for the benefit of the European and national water management requirements in the respective river basin districts. So the chances of effective administration in the river basin districts and targeted and successful preparation and execution of programs of measures and management plans under Art. 11 and 13 EC Water Framework Directive will increase. Due to the forcing requirement of international cooperation, deficiencies in informal national coordination (including malfunctions the relationship between and among the authorities of the “Länder” and the local self-government authorities in Germany) can be overcome.

Nevertheless, water management within the river basin districts in Germany is not an unproblematic field. Deficiencies are expected to occur where there is no motivation and requirement of international cooperation. This will be the case with the mere national river basin districts, for example, the Weser river basin district. There, the spring river Werra is highly polluted due to extreme discharge of salts from a certain industry (potash production). The bad water condition in the Werra-Weser river system is completely contrary to the environmental objectives defined by Art. 4 and Annex V of the EC Water Framework Directive. The German “Länder” involved, in particular Hesse, Thuringia, Lower Saxony and North-Rhine Westphalia, took controversial positions on how to actually handle the situation with respect to both legal assessment and water management issues. Such controversy refers to both the assessment of the current situation and the future development of the rivers Werra and Weser. Amazingly, there is no institutionalised coordination among the concerned “Länder” yet. There are not even informal administrative arrangements and working committees to ensure the necessary coordination, which these “Länder” could use as a forum of administrative coordination and river basin district management. These issues require legal clarification. They are the subject matter of currently pending legal proceedings.

IV. Conclusion

Finally, the situation may be summed up as follows: water management in river basin districts has caused the Federal Republic of Germany to be confronted with novel tasks and requirements, which is in particular due to the federal constitutional structure of the German “Bundesstaat”. The EC Water Framework Directive requires the “departure for pioneer tasks”. Nonetheless, the prevailing opinion in Germany is that the decentralised powers of the administrative authorities of the “Länder” and the self-government of local authorities and of

regional bodies are favourable to the realisation of effective water management. Federal and decentralized structures are regarded as the best guarantee for democratic legitimation and control of decisions and measures, for the participation of all interested parties and for a well-balanced settlement of interests in the field of water policy. This prospect is worth the coordination efforts related thereto because such approach is most likely to bring about reasonable reconciliation of different interests.

Professor Dr. Rüdiger Breuer, lawyer

Prof. Dr. R. Breuer

Köhler & Klett Rechtsanwälte Partnerschaft

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