

The company *Biotiful Fish* has been granted permission to operate an intensive farm of 10,000 salmon per year. The site of the farm is located close to a Natura site with priority species and habitats. The regional territory is also classified as a zone vulnerable to eutrophication. According to the quality assessments of the water bodies of the river basin district, the status of surface water is poor and the quantitative status of groundwater is good. During the integrated environmental impact assessment procedure of the fish farm project (IPPC), no precise information was provided on the negative impact of this installation on the non-deterioration of the water bodies. In addition, the pressures related to the installation of large-scale intensive fish farms are not identified in the river basin management plan and it is difficult to determine *whether* the programme of measures of this river basin management plan take account the protected areas (Natura & eutrophication).



An environmental NGO brought an application to the administrative Court for the annulment of the operating permit decision; It claims non-compliance with Article 4, 5, 11, 14 of the WFD. Despite the absence of express provisions on access to justice in the WFD, the NGO also invokes Article 9§2 of the Aarhus Convention and Article 47 of the EU Charter of Fundamental Rights. Three individuals and one water company also brought an application to the administrative Court for the annulment of

the operating permit decision; the individuals consider that they have sufficient interest to act due to the significant negative impacts of the project on the availability and quality of the water they get from their wells. The water company invokes the risk of increasing water pollution (including drug residues) with significant financial impacts on its activities.

In its defence the competent public authority underlines that the consideration of the short-term temporary negative impacts on the state of water bodies, in particular on the non-deterioration of water bodies (Article 4 WFD) is not required by national legislation. Moreover, it explains that national legislation does not mention that the implementation of article 4 of the WFD concerns specific projects such as this fish farm project; It therefore considers that this article 4 only concerns management plans and programmes of measures. In any case, the authority concludes that despite potential negative impacts on good water status, the project could be justified under the derogation provided for in Article 4§7 of WFD.

Several questions of interpretation of WFD then arise for the judge to assess the conformity of national law with EU obligations.

1. Does compliance with Article 4 of the WFD also apply to specific projects such as this concerned aquaculture farm?
2. If so, the consideration of short-term temporary negative impacts on the state of water bodies, in particular on the non-deterioration of water bodies is mandatory or optional according to this article 4?
3. Can the applicants invoke the Aarhus Convention in the absence of specific provisions on access to justice in the WFD? Can an NGO challenge non-compliance with the obligation to prevent deterioration of water bodies and also with article 5 and 11 on the basis of article 14?
4. Can individuals and the water company also challenge non-compliance with the obligation to prevent deterioration of water bodies
5. In case of deterioration of water bodies generated by this fish farm project, would the conditions for derogations set out in Article 4§7 be met

*Please feel free to give your colleagues an input on your respective domestic laws and jurisprudence.
I am looking forward to our discussion!*

SOLUTION TO THE CASE STUDY – MAIN POINTS

1. Does compliance with Article 4 of the WFD also apply to specific projects such as this concerned aquaculture farm?

Article 4 of the EU Water Framework Directive requires Member States to identify and designate a list of bodies of water within their territories that are either "heavily modified" or "artificial," and to ensure that these bodies of water are managed in a way that takes into account the objectives of the Directive.

In the case of an aquaculture farm with an intensive farm of 10,000 salmon per year, compliance with Article 4 of the Directive would depend on several factors, including the location of the farm, the characteristics of the water body in which the farm is located, and the specific environmental impacts of the farm.

If the water body in question has been designated as heavily modified or artificial under the Directive, then the aquaculture farm would be subject to the requirements of Article 4. Even if the water body has not been designated as such, the farm may still be subject to other provisions of the Directive, such as those related to water quality and ecological status.

Ultimately, the question of whether compliance with Article 4 applies to a specific aquaculture farm would need to be evaluated on a case-by-case basis, taking into account the relevant legal and environmental factors.

2. If so, the consideration of short-term temporary negative impacts on the state of water bodies, in particular on the non-deterioration of water bodies is mandatory or optional according to this article 4?

Article 4 of the EU Water Framework Directive requires Member States to ensure that the bodies of water within their territories achieve good ecological and chemical status, and that they are managed in a way that takes into account the objectives of the Directive, including the principle of non-deterioration.

While Article 4 does not explicitly require the consideration of short-term temporary negative impacts on the state of water bodies, such impacts are not necessarily incompatible with the principle of non-deterioration. The Directive recognizes that some temporary negative impacts on water bodies may be unavoidable, particularly during certain activities such as hydromorphological modifications or dredging operations, but it also requires that such impacts be minimized and mitigated to the greatest extent possible.

Therefore, while the consideration of short-term temporary negative impacts on the state of water bodies is not explicitly mandated by Article 4, it is consistent with the broader objectives and principles of the Directive, including the principle of non-deterioration. Member States are expected to take all necessary measures to prevent and minimize such impacts and to ensure that they do not compromise the achievement of good ecological and chemical status of water bodies.

3. Can the applicants invoke the Aarhus Convention in the absence of specific provisions on access to justice in the WFD? Can an NGO challenge non-compliance with the obligation to prevent deterioration of water bodies and also with article 5 and 11 on the basis of article 14?

The access to justice can be invoked directly – see Case C-664/15.

4. Can individuals and the water company also challenge non-compliance with the obligation to prevent deterioration of water bodies?

Probably yes, as they could be affected – see Case C-664/15.

5. In case of deterioration of water bodies generated by this fish farm project, would the conditions for derogations set out in Article 4(7) be met?

Article 4(7) of the EU Water Framework Directive sets out certain conditions under which derogations from the Directive's objectives may be granted, including the objective of achieving good ecological and chemical status in bodies of water. These conditions are limited and must be interpreted strictly.

In the case of a fish farm project that causes a deterioration of water bodies, it would be difficult to meet the conditions for derogation set out in Article 4(7). One of the conditions for derogation is that there are "overriding reasons of public interest" that cannot be achieved by other means.

While fish farming may have economic and social benefits, it would be difficult to argue that these benefits constitute overriding reasons of public interest that justify derogation from the Directive's objectives. Moreover, there are other means to achieve the objectives of the Directive, such as ensuring that fish farms are sited and managed in a way that minimizes their environmental impact, and that any negative impacts on water quality are mitigated to the greatest extent possible.

In addition, the conditions for derogation require that any such derogation must not compromise the achievement of the objectives of the Directive in other bodies of water, and must be reviewed every six years.

Therefore, it would be unlikely that a fish farm project causing a deterioration of water bodies could meet the conditions for derogation set out in Article 4(7) of the Directive.