

Training module under project “Co-operation with national judges in the field of environmental law under the European Commission Framework Contract ENV.A.I/FRA/2012/0018” on

HOW TO HANDLE COURT PROCEEDINGS INVOKING NON-COMPLIANCE WITH EU WATER LAW

05 – 07 April 2017, Warsaw (Poland)

Case study Nitrates Directive and Water Framework Directive

An NGO claims that the establishment of a new farm with 2000 pigs kept in barns and the conversion of grass land in an adjacent field to maize to feed them will deteriorate the water quality of a specific water body (small lake) and requests the authorities to take action under the Nitrates Directive and the Water Framework Directive to prevent the fish from dying out because of too high levels of nitrogen. The authorities refuse. According to them, the farming practices are fully in line with the new national Nitrates Action Programme so nothing additional can or needs to be done.

The NGO takes the case to their national court. It agrees that the agricultural practices in the area comply with the NAP but claims that action by the authorities is needed under Article 4(1) WFD, 5(5) ND and 11 (5) WFD. According to the NGO it is the spreading of (pig) manure in early spring on the maize field that will damage the biota of the small lake because of the sudden increase in nutrients in the water which kills off a large part of the fish. It has been overlooked that the status of that water body will fall by one class (as regards biota) in spring and thus that the establishment of this farm will lead to deterioration. The NGO also claims – alternatively - that action is needed under Article 10(3) WFD especially because the existing provisions in the NAP allow for the deterioration. These provisions of the NAP must therefore be tightened up.

The authorities do not deny that the deterioration is caused by agriculture but repeat their claim that, given the new NAP, they do not need to ask additional efforts from farmers now and that Article 10(3) WFD doesn't require them going beyond the NAP either. By way of secondary defence they claim that Article 10(3) merely implies that the NAP must be reviewed in the future, following the normal cycle of review and/or updating.

We assume that there is deterioration as a consequence of the spreading of manure early spring and that the NAP has overlooked this. The status of the water body indeed deteriorates then during spring by one class (from moderate to poor).

What do you think of the arguments of the parties?

- Can the NGO claim that the authorities need to take immediate action or can they wait until the new NAP? What role for Article 5(5) ND and Article 11(5) WFD would be here?
- Can more stringent measures be required under the WFD? What role for Article 4(1) and Article 10(3) WFD would be here?