

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 on Nitrates Directive & Water Framework Directive – possible ANSWERS

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?

On the basis of the case law (Cie v the Netherlands), Article 5(5) ND obliges the authorities to consider to take measures as soon as they become aware of the problem.

Article 5(5) ND leaves the authorities some leeway as to effectiveness and balance of potential measures against their costs. But they should at least investigate measures to address this problem and explain why they are not effective or too expensive.

Article 11 (5) WFD demands an investigation of the causes of the possible failure. Relevant permits and authorizations should be examined and reviewed as appropriate. Review the monitoring programmes, and additional measures as it may be necessary in order to achieve those objectives established, including, as appropriate, the establishment of stricter environmental standards following the procedures laid down in Annex V. The causes are not the result of circumstances of natural cause or force majeure, but of farming practices. So the authorities should take these steps and review the permit and the monitoring, and consider imposing additional measures.

- Can more stringent measures be required under the WFD? What role for Article 4(1) and Article 10(3) WFD would be here?

Under Article 4(1) WFD, Member States are obliged to take the necessary measures to prevent deterioration unless they can rely on the exemptions of Article 4(6) and (7) WFD. The authorities can neither rely on Article 4(6) WFD because this is not a result of circumstances of natural cause or force majeure, nor on Article 4(7) WFD because that applies only to deterioration from high to good status and here it is from good to moderate.

In line with Article 10(3) WFD, it is obvious that the farming practices causing the lowering in class of biota, lawful under the NAP, are not adequate to achieve compliance with the WFD quality objective for biota, but should be stricter. Therefore, more stringent emission controls should be set. And in case of diffuse pollution, this includes more stringent environmental practices. A broad interpretation of environmental practices makes it likely that this obliges the authorities as well to make the good farming practices more stringent.