

Plans and Permits

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SYKE

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“and then...what really bothers me is that their (RBMPs) legal status is so vague...I mean to what extent these plans are binding. Its really vague, if I may say.”

Judge from the Administrative Court

Scope

- What are river basin management plans (RBMP) legally, and in particular:
- what is their role in the consideration of permits?
- theory & practice, past & future

River Basin Management Plan

1. RBMP documents include information about
 - the present quality status of water bodies (classification)
 - future status objectives of water bodies
 - programs of measures in order to achieve the objectives
2. Prescriptions (Finland)
 - RBMP “shall be taken into account” when considering permits
 - → indirect legal effect **in the interpretation** of law
 - The so-called “lens theory”: permit authorities are to consider permit thresholds through the “RBMP-lens” (Seppälä 2004)

Legal dimensions of RBMPs

1. Canoncity

- RBMPs confirmed by the Council of Ministers
- formal legal status of “take into account”
- the effect of EU law (WFD)

2. Specificity

- how quality objectives and measures are targeted spatially: “water bodies”

3. Scientific **relevance** of classification

- parameters (quality elements & metrics), quality and quantity of monitoring data
- method of classification

Context matters!

Peat production

- obligatory source of law
→ in most cases quality objective functions as an independent and unconditional permit threshold

Mining

- optional source of law
→ no effect on the permit threshold as such; but some effect through conditions on monitoring, etc.

Animal husbandry

- no source of law
→ no effect or hidden effect

What counts in the RBMP?

1. Quality objectives

- Quality objectives for designated water bodies matter
- undesignated waters are part of the standard discretion and the concept of “harm to the environment”

2. Programs of measures

- poorly designated, low level of ambition
- little or no effect on permit discretion

Conclusions from 2011-2014

Since the RBMP has no definitive (binding) legal status, its weight and function (effectiveness) in permit discretion depends on:

- precision and relevance of the information in the RBMP documents
- regulatory context in which the RBMP is placed

Summary: legal dimensions of RBMP

Dimension	RBMPs	Doubts/questions?
Canonicity - legal status in the hierarchy of norms/sources of law	Not binding, but an obligatory source of law → to be seriously taken into account	The interpretative effect of EU-law! → C-461/13?
Specificity - Level of precision	water body, status class and objective	Not all waters yet classified
Relevance - Scientific quality or usability	standardized facts make decisions easy; classification method may become challenged	classification method, quality of monitoring data

C-461/13

Article 4 of the WFD

“must be interpreted as meaning that the Member States are required — unless a derogation is granted — to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive.”

“The concept of ‘deterioration of the status’ of a body of surface water must be interpreted as meaning that there is deterioration as soon as the status of at least one of the quality elements....even if that fall does not result in a fall in classification of the body of surface water as a whole...”

→ is “taken into account” still good enough in terms of effective implementation of EU law or do we need binding quality standards?

Thank you!

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