

# Interaction between the Protocol on Water and Health and EU Law

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Memorandum for the Compliance Committee of the Protocol on Water and Health

# I. Introduction

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- White & Case's mandate
- The team
- Overview of White & Case's analysis

# II. EU Directives on Water and Sanitation

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- Water management and sanitation in the EU is regulated by several directives
  - Drinking Water Directive (98/83/EC)
  - Water Framework Directive (2000/60/EC)
  - Waste Water Directive (91/271/EEC)
  - EQS Directive (2008/105/EC)
  - Nitrates Directive (91/676/EEC)
  - Bathing Water Directive (76/160/EEC)
  - Groundwater Directive (2006/118/EC)
  - Floods Directive (2007/60/EC)
  - Access to Information Directive (2003/4/EC)
  - Public Participation Directive (2003/35/EC)
  - Sewage Sludge Directive (86/278/EEC)

# III. Comparative assessment: Overlaps

- Most of the Protocol's obligations can be found scattered across the EU directives
- The obligations under the directives are more detailed and set common standards
  - Examples:
    - Targets on the quality of drinking water (Drinking Water Directive)
    - Obligations regarding the identification and remediation of particularly contaminated sites that adversely affect waters (Drinking Water Directive, Groundwater Directive, Floods Directive)

# IV. Comparative assessment: Gaps

- ❑ Equitable access to drinking water (Arts. 4(2)(a), 6(2)(c) and 5(l) of the Protocol)
- ❑ Good practices for management of water supply (Art. 6(2)(f) of the Protocol)
- ❑ Small scale water supply
- ❑ Response systems for outbreaks or incidents of water-related disease (Art. 8 of the Protocol)
- ❑ Quality of wastewater used for irrigation (Arts. 6(2)(i) and 4(2)(d) of the Protocol)
- ❑ Inter-State cooperation (Arts. 11, 12 and 14 of the Protocol)
- ❑ Obligation to reduce water-related outbreaks (Art. 6(2)(b) of the Protocol)

# V. Comparative assessment: Divergences

## □ Reporting

- Under the Protocol, reporting is required every three years and is provided to the Protocol's institutions
- Under EU law, reporting is required yearly, every three or every four years depending on the directive and is provided to the European Commission
- Both sets of reporting obligations serve a different purpose

# VI. Operation of the Protocol under EU law

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## □ EU is not party

- Environmental matters are a shared competence between the EU and Member States (Arts. 4 and 193 TFUE)
- Member States can become parties to the Protocol and undertake its obligations
- EU is not bound by the Protocol

## □ The EU could become a party to the Protocol

- Requirements of the Protocol could be largely implemented by means of existing EU water law
- Would mitigate concerns regarding the link between the protocol and EU instruments relating to water
- Would allow the EU to rely on the Protocol to ensure certain minimum standard of water and health protection

## VII. Filling the gaps in EU directives domestically

- The EU Water directives allow Member States to impose additional and stricter standards and fill the gaps in the EU directives on water and sanitation
- The implementation of the Protocol's obligations would not be tantamount to gold-plating
- Consistent interpretation would resolve conflicts, if any

## VIII. Practice of EU courts on the admissibility of the Interpretation of EU law by international bodies

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- EU courts and EU institutions do not refer to the rulings of international bodies that interpret EU law given its position on the autonomy of EU law
- EU courts may refer to the rulings or decisions of international bodies that interpret international law and treaties, but they rarely do so

# IX. Conclusions

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- EU Members States that are parties to the Protocol are subject to both the Protocol's obligations and EU directives on water and sanitation
- Most obligations of the Protocol are included in the EU directives, but there are some gaps
- Under EU law, member States may fill the gaps as the directives set out minimum standards
- The recommendations of the Committee that interpret the Protocol's obligations are not binding on EU courts

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# Thank you!



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