

Transposition art. 4.7 WFD to Slovak legislation

New experience in implementation of Article 4.7 of the
Water Framework Directive (WFD) in the Danube Region

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MINISTERSTVO
ŽIVOTNÉHO PROSTREDIA
SLOVENSKEJ REPUBLIKY

By Act No. 51/2018 Coll. was amended Act 364/2004 Coll. on water and amendment to the Slovak National Council Act 372/1990 Coll. on offences as amended (water act) and by which is amended act No. 442/2002 Coll. on public water distribution systems and public water sewerage systems and on amendment and supplement of the Act No. 276/2001 Coll. on Regulation of Network Industries as amended. (hereinafter „Water Act“)

Amended Act no. 51/2018 Coll. came into force on 15. March 2018

Member States will not be in breach of environmental objectives of WFD and Art. 4.7 when:

- The failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the groundwater level of bodies of groundwater, or
- The failure to prevent deterioration from high status to good status of a body of surface water is **the result of new sustainable human development activities**
- and all the following conditions are met:

Water act

§ 16 (6)(b)

- all practicable steps are taken to mitigate the adverse impact on the status of the body of water;
- the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan and the objectives are reviewed every six years;
- the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development,
and
- the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.

New sustainable human development activities

- **in general, such activities cannot be per se defined through a set of criteria or policies, but they are framed by the relevant decision making process requirements within an open procedure**
- **depend on aspects such as time, scale, involved stakeholders and information available**
- **sustainability includes economic, social and environmental aspects**

Overriding public interest

- **Overriding” practically means that the other interest overrides achieving the objectives of the WFD, public participation can contribute considerably in determining overriding public interest;**
- **The key elements of the overriding public interest should take into account the protection of fundamental values for citizens' lives and society within the framework of fundamental policies for the State and society (e.g. health, safety);**
- **The EU court has clarified that irrigation and the drinking water supply may constitute an overriding public interest and also noted that the construction of a hydropower plant may in fact be an overriding public interest.**
- **On the national level, additional issues related to the application of WFD Article 4(7) might also play a role such as military security**

Amendment

§ 16a Proposed activity

- **Before submitting a proposal for the initiation of the permission proceedings of proposed activity, natural or legal person ask the state water administration (district office at the address of regional authority) for issuing a decision, whether it is proposed activity under § 16(6)(b).**
- **The applicant shall attach the project documentation to the proposed activity for application to obtain a decision**

Amendment

- **State Water Administration in writing asks authorised body – Water Research Institute (WRI), within 7 days of receipt of the request to issue Expert Assessment and interrupts the proceedings.**
- **WRI issues Expert Assessment up to 30 days or in particularly complex cases up to 60 days since receiving the request from the state water administration.**
- **WRI develops the Expert Assessment on the applicant expenses**

Amendment

- **State Water Administration (SWA) immediately since the date of delivery, publish on the own web page and web page of the ministry:**
 - **information for public about initiation of administrative proceedings**
 - **project documentation to proposed activity**
 - **Expert Assessment**
- **SWA will ask in writing the municipality affected by the proposed activity to send comments on the project documentation to the proposed activity or to the Expert Assessment within 10 days from the date of the intervention**

Amendment

- The public will deliver a written opinion on the project documentation of the proposed activity or on the expert statement to the State Water Administration within 10 days of its publication on the web site of the State Water Administration and on the Ministry's web site. The public after delivery of the written opinion shall **become party to the proceedings**.
- Party of the proceedings is watercourse administrator
- The decision in substantiation contains also evaluation of the opinions received from the municipality and the parties of proceedings
- No appeal shall lie against the decision

Amendment

- If the State Water Administration (SWA) decides that **it is not** a proposed activity under § 16 (6)(b), the applicant is entitled to submit the application for the authorization of the proposed activity
- If **it is** the proposed activity under § 16 (6)(b), next step is secondary assessment (second stage assessment)
- If the State Water Administration decides that a proposed activity relates to § 16 (6)(b), the applicant asks SWA to issue a decision with information, whether realisation of the proposed activity is under conditions mention in § 16(6)(b)(1-4)

- **State Water Administration (SWA) publish on the own web page and web page of the Ministry:**
- **a) information for public about initiation of administrative proceedings under § 16 (6)(b);**
- **b) project documentation to proposed activity;**
- **c) report**

- **SWA will ask the municipality affected by the proposed activity to send them comments on the report within 15 days of its publication at the SWA's web site and on the web site of the Ministry.**

- **The public will deliver its written opinion on the report to SWA within 15 days of its publication at the SWA's web site and on the web site of the Ministry. The public shall become party to the proceedings by delivering of the written opinion**

- **Party of the proceedings is watercourse administrator**
- **If during proceedings it is demonstrated that the applicant by realisation of proposed activity fulfil the conditions under § 16(6)(b)(1-4), the authority of the State Water Administration shall at the same time determine in the decision that the proposed activity may be carried out.**
- **The decision in substantiation contains also evaluation of the opinions received from the municipality, public and watercourse administrator.**
- **Authorized body may not issue permission authorizing the proposed activity without issuing a decision**

Authorised person under § 16(b)(1,2)

Authorized body is

- a) legal person who employs in an employment relationship or in a similar employment relationship a technically competent person whose ministry has granted a certificate and who is registered in the Ministry's register of technically competent persons , for the person – a businessman, whom ministry has granted a certificate
- To grant certification as a technically competent person, the next conditions have to be fulfilled in order to prepare a report :
 - a) eligibility to legal acts,
 - b) integrity
 - c) master's degree and at least five years of experience in the field of expertise; practice does not include years of practice during the study
 - d) completing the training provided by individuals with a master's degree in the field of water management and at least five years of experience in the field

Authorised person under § 16(b)(3,4,5)

- **Unimpeachable according to this Act is not considered a person which was lawfully sentenced for crime related to subject of activity that the permission is asked for or for crime against environment. Respectability is declared by extract from police records that cannot be older than 3 months.**
- **The application for granting the certificate includes the title, name, surname, residence address and documents providing information related to item 2, b), c), d)**
- **The applicant encloses to the application:**
 - a) Verified copy of the education document**
 - b) Document or declaration on oath on the professional practice duration**

Authorised person under § 16(b) (6,7,8)

- Applicant submits the application for certificate granting to the ministry

- Ministry collects and regularly updates the register of technically competent persons for report elaboration and the up-to-date list of technically competent persons for report elaboration publishes at its web page

- The register involves:
 - Technically competent persons for report elaboration
 - Data according to item 4 and their changes
 - Cancellation of granted certificates

Authorised person under § 16(b) (9,10,11)

- **Technically competent persons for report elaboration takes part in trainings organized by ministry in case of:**
 - A) change of strategic document or**
 - B) change of binding regulations in the field of water management**
- **Ministry provides the register data to Statistical Office of the Slovak Republic for the purpose to involve them to register of legal persons, entrepreneurs and local administration**
- **Technically competent persons for report elaboration cannot simultaneously elaborate the documentation according to special provision to the same proposed activity**

Temporary provisions § 80 (e) (1, 2 and 5)

- **§ 16 (a) does not relate to area proceedings for the proposed activity or other proceedings related to permission of proposed activity started and lawfully unfinished before 15 March 2018;**
- **Proceedings started or lawfully unfinished before 15 March 2018 would be finished in accordance with present provisions;**
- **Until the period of publishing the register of technically competent persons by ministry at its web page the applicant declares the fulfillment of the conditions according to § 16 item 6 (b) without certified person.**

Article 4 (7) WFD from transboundary viewpoint

- **Proposed project has to be assessed in accordance with art 4(7) in water bodies forming boundary between two states in case that:**
 - **water body crosses the state boundary**
 - **it could cause the transboundary impacts in more than one water body**
- **Practical examples: flood prevention measures, hydropower plants or water abstraction from transboundary groundwater body. In these cases the involved member states have to coordinate the assessment and the testing in accordance with Art. 4(7) WFD. The joint/coordinated procedure should be negotiated within commissions for transboundary waters.**

Thank you for your attention

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