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Advocate General's Opinion in Case C-723/21 | Stadt Frankfurt (Oder) and FWA

Drinking water policy: according to Advocate General Medina, Member States are obliged not to authorise a project that may cause a deterioration in the quality of a body of water

Approval of a project is possible only where its implementation does not adversely affect the quality of the drinking water provided to the inhabitants in the affected area

The Regional Office for Mining, Geology and Raw Materials, Cottbus (Germany) approved an application submitted by Lausitz Energie Bergbau AG for the construction of an artificial lake. The lake, created by flooding a pit resulting from the extraction of lignite, would have an overflow that would flow into the River Spree. Upon creation of the lake, the water leaving the overflow will have a significantly higher sulphate concentration than the water already in the Spree.

The Spree is one of the sources Frankfurter Wasser- und Abwassergesellschaft (FWA) uses to produce drinking water and the river's water already has a high concentration of sulphate, originating from closed open-cast mines. The drinking water fed into the supply lines is subject to a certain sulphate value, a requirement which has so far been only narrowly complied with by FWA. The City of Frankfurt (Oder) and FWA fear that, due to the planned inflow into the water of the Spree, that river's sulphate concentration will exceed the limit and they will have to stop producing drinking water at that point or fundamentally overhaul production. The City of Frankfurt (Oder) and FWA therefore brought an action against the planning approval decision.

The Verwaltungsgericht Cottbus (Administrative Court, Cottbus, Germany) referred several questions to the Court of Justice for a preliminary ruling aimed at interpreting for the first time Article 7(3) of the Water Framework Directive¹. According to that provision, Member States are to ensure the necessary protection for the bodies of water identified with the aim of avoiding deterioration in their quality in order to reduce the level of purification treatment required in the production of drinking water, and they may establish safeguard zones for those bodies of water.

In today's Opinion, Advocate General Laila Medina delivers her observations recalling the importance that EU primary law attaches to environmental protection.

With regard to the issue of legal standing, the Advocate General posits that **the legal persons tasked, under national law, with the production and purification treatment of drinking water, or those persons who have been entrusted with such production and purification treatment, have a right to require that a competent authority, responsible for approving a project that is liable to have an adverse impact on the purification level of drinking water, observe the obligations laid down in the Water Framework Directive. If necessary, such legal persons may do so by bringing an action before a competent court.**

¹ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

Advocate General Medina then specifies the scope of the Member States' obligation to ensure the necessary protection of bodies of water used for the production of drinking water. In her view, that obligation has **binding character** and is relevant with regard to the approval of individual projects. **Member States must take the necessary measures in order to achieve the specific objectives of the Water Framework Directive.** Moreover, the use of the terms **'the necessary protection' in Article 7(3), in light of the prevention principle, indicates that, before the competent authority approves an individual project, it must first assess that that project will not have adverse effects on the quality of water bodies used for the production of drinking water.** Member States must take necessary protection measures with the aim of acting preventively and avoiding deterioration in water quality reducing the level of the purification treatment, thereby ensuring a sustainable use of water resources, and preventing the deployment of remedial actions. That duty is applicable irrespective of whether that water body is inside or outside safeguard zones within the meaning of the Water Framework Directive.

The Advocate General next considers that deterioration in water quality arises where a project is liable to exceed the established parameters for drinking water quality under the Drinking Water Directive.² However, in a case involving monitoring parameters (such as sulphate), a possible risk for human health should be established.

Finally, Advocate General Medina assesses the obligations of the competent authority in deciding whether to approve a project. Specifically, the authority is obliged not to approve a project when it is liable to deteriorate the quality of the water body used for the production of drinking water. **Article 7(2) of the Water Framework Directive adds an additional point to the balancing of interests under the Water Framework Directive: the approval of a project is possible only where its implementation does not affect adversely the water provided (through the tap) to the inhabitants in the affected area.** In the Advocate General's view, that means that a project may be approved only where it includes, where appropriate, a complete set of measures in order to ensure that compliance with the Drinking Water Directive is not adversely affected.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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² Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ L 330 5.12.1998, p. 32).