

Implementing EU environmental law in the new member states: the Urban Waste Water Treatment Directive in the Czech Republic

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Abstract: *Implementing EU environmental legislation was viewed as a difficult task for new Central and Eastern European member states due to the technical complexity of EU environmental law and high financial costs of implementation. This article examines implementation of a particularly expensive piece of EU environmental legislation, the Urban Waste Water Treatment Directive (UWWTD), in the Czech Republic and the country's failure to meet the end of 2010 deadline for implementing the UWWTD. It concludes that while high financial costs were indeed an obstacle to implementation, the main reason for failure to meet the deadline was not the lack of financial resources — much of the needed money was available in the form of EU structural and cohesion funds — but the Czech Republic's failure to meet EU legal and administrative standards which led to problems accessing EU funds. Thus, the explanation for implementation problems in this case has to do with both financial costs and administrative (and political) incapacity.*

Keywords: *European Union (EU), new member states, Czech Republic, environmental law, Urban Waste Water Treatment Directive (UWWTD), structural and cohesion funds*

Introduction

A major question surrounding the 2004 enlargement of the European Union (EU) was how the new Central and Eastern European (CEE) member states would perform when it came to compliance with EU law. Before enlargement, it was widely expected by scholars that the new member states would have difficulty complying with EU law, in the absence of membership conditionality as an enforcement mechanism and because of weak administrative capacity and other specific features of post-communist societies (Schimmelfennig and Sedelmeier 2005, Epstein and Sedelmeier 2008).

Studies of post-accession compliance portray a highly mixed picture, however. One common trend is relatively good performance when it comes to the transposition of EU law, followed by poor application and enforcement (Falkner et al. 2008, Falkner and Treib 2008, Schimmelfennig and Trauner 2009a, 2009b). These studies also reveal considerable variation in compliance performance across the new member states and different policy sectors, explained by a variety of domestic (country-specific) and policy-specific factors (Dimitrova and Toshkov 2009, Knill and Tosun 2009, Schwellnus et al. 2009, Sedelmeier 2009). They also show that the absence of membership conditionality has been countered, to some extent, by the effectiveness of alternative external influences on new member state behaviour, including the European Commission's normal monitoring and sanctioning mechanisms, the provision of EU financial assistance to support compliance with particularly costly rules and regulations and transnational social learning (Schimmelfennig and Trauner 2009a, Krizsan 2009).

As a condition of membership, states seeking to join the European Union (EU) must adopt and implement the entire cumulative body of EU laws and regulations (the *acquis communautaire*). For the Central and Eastern European countries (CEECs) which joined the EU in 2004 and 2007, implementation of the EU's environmental legislation¹ was viewed as especially problematic. In part, this was because of poor environmental conditions in the former communist states and their weak starting positions when it came to environmental protection. It was also because of the technical complexity of EU environmental legislation and the burdens that implementation and enforcement of EU law would impose on fledgling administrative structures, leading to questions about the adequacy of administrative and institutional capacity. Yet another important factor was the high financial cost of implementing EU rules, many of which require substantial new investments in environmental infrastructure. A key question surrounding the implementation of the EU environmental *acquis*, therefore, was whether the new member states could afford the high financial cost of complying with EU law and where this money would come from?

This article examines the implementation of one important piece of EU environmental legislation, the Urban Waste Water Treatment Directive (UWWTD), in

one new member state, the Czech Republic. The UWWTD is notable because of the high financial cost that implementation imposes on member states, making it particularly burdensome for relatively poor CEECs. For this reason, all of the new member states joining the EU in 2004 and 2007 were granted transitional periods for meeting the directive's requirements, for the Czech Republic until the end of 2010. However, the Czech Republic failed to meet this deadline, and it now faces the possibility of European Commission (hereafter, the Commission) legal action and potential financial sanctions for failing to comply with EU law. In the article, we argue that high financial costs were indeed a major reason for the Czech Republic's failure to meet the 2010 deadline for implementing the UWWTD. However, it was not so much the lack of financial resources — much of the needed money was available in the form of EU structural and cohesion funds — but the failure of the Czech Republic to meet EU legal and administrative standards that led to problems accessing these funds. Thus, the explanation for implementation problems in this case has to do with both financial costs and administrative (and political) incapacity.

The Urban Waste Water Treatment Directive

The UWWTD (91/271/EEC) of 21 May 1991 (Council of the EC, 1991) is an important piece of EU environmental legislation that had to be adopted and implemented by the Czech Republic and other new member states. The main objective of this directive is to protect the environment from the effects of urban waste water discharges and discharges from certain industrial sectors. A key part of EU water policy, the UWWTD addresses the fact that untreated (or insufficiently treated) waste water discharges generated by people and industry represent a major source of pollution of European waters and can seriously threaten human health. Not only do such discharges bring bacteria and viruses into waters that are used for bathing and recreation, they may also contain nutrients, such as nitrogen and phosphorous, thus leading to over-fertilisation that accelerates the loss of biodiversity and negatively affects supplies of drinking water (CEC, 2009a: 3, 2009c).

The UWWTD responds to this challenge by defining standards for the collection, treatment and discharge of urban waste water. It regulates discharges of municipal waste water from larger villages and towns and specifies the type of treatment which must be adopted for about 500 million inhabitants of the EU (CEC, 2009a: 9; Farmer *et al.*, 2003: 4). More specifically, the UWWTD requires all municipalities with more than 2,000 inhabitants (or more precisely, generating a pollution load of more than 2,000 population-equivalent, or p. e.) to be equipped with sewer systems and waste water treatment plants (CEC, 2009a: 3; Council of the EC, 1991; World Bank, 1999: 24).

The level of required waste water treatment varies according to the sensitivity of receiving waters. The UWWTD requires member states to classify their national water bodies as 'sensitive,' 'normal' or 'less sensitive' in terms of their sensitivity to eutrophication due to nitrogen and/or phosphorus. In sensitive areas, more stringent and advanced treatment of waste water with supplementary phosphorus and/or nitrogen removal is demanded in order to eliminate nutrients and bacteriological pollution. In normal areas, less strict treatment than the general secondary treatment is allowed, while in less sensitive areas primary treatment constitutes the minimal requirement (CEC, 2009: 3, 9; Council of the EC, 1991; UNEP, 2001).

In sum, the UWWTD represents 'one of the legislative core elements of water protection in Europe' (CEC, 2009a: 9), being 'the most important guideline on the wastewater sector for the whole of Europe in the next decade and beyond' (UNEP, 2001). Its full implementation is 'a pre-requisite for meeting the objective set out in the EU Water Framework Directive — to ensure that all waters in the EU achieve good ecological status by 2015' (CEC, 2009a: 3).

In the Czech Republic, substantial progress in the treatment of urban waste water had been made since the end of the communist era, but at the time of accession in 2004 the country still fell below EU standards. In 1989, 878 million cubic metres of waste water was discharged into the public sewer system, with 71% being somehow treated. Ten years later, only 592 million cubic metres of waste water was discharged, of which 95% was treated. In the period 1990–99, 333 new municipal waste water treatment plants were built, making a total of 959 such plants in 1999 (OECD, 2000: 24).

In the 1990s, the percentage of the population connected to the sewerage network increased from 72.6 % in 1990 to 74.6 % in 1999 (i.e., 7.67 million people), while the population share connected to waste water treatment plants rose from 50.3 % in 1990 to 59.2 % in 1997 (OECD, 1999: 78, 2000: 24). However, while this connection rate equalled the OECD average of 59 % (in the middle of the 1990s), it was still considerably lower than the EU average (73 % in 1998) (OECD, 2000: 24). The percentage of waste water treated to secondary and higher standards in the Czech Republic also increased from 84 to 90% in the 1990s. By the end of 2001, the country managed to achieve full biological (secondary) treatment for all towns with more than 10,000 inhabitants (Wanner, 2006: 12). As a consequence, water quality in the Czech Republic improved considerably, particularly in terms of organic pollution (OECD, 1999: 78). Over the period 1989–2003, discharged pollution was reduced by more than 80 % when measured by the main parameters, including biological oxygen demand, chemical oxygen demand and the concentration of suspended substances. The diversity of species and numbers of fish populations in Czech rivers were also significantly improving (Novotný, 2003).

Yet, the state of water resources in the Czech Republic remained unsatisfactory. Especially in small waterways, water quality was poor with a wide range of pollutants including microbial contamination. Standards for groundwater quality were also not yet met, with organic pollution, petroleum products and nitrates exceeding permitted rates. Moreover, the connection rate for both drinking water and sewerage networks, as well as the state of drinking water monitoring, was insufficient, with approximately 5,000 small municipalities (between 100 and 2,000 inhabitants) entirely lacking any waste water treatment plants and sewerage systems (OECD, 1999: 78). The Organisation for Economic Cooperation and Development (OECD) reported in 2000 that 'many sewage systems are not yet connected to waste water treatment plants' and 'many major waste water treatment facilities are not yet equipped with nitrogen and phosphorus removal' (OECD, 2000: 24). It also predicted that contaminated sediments would continue releasing toxic substances into aquatic ecosystems for quite some time (OECD, 1999: 78).

The costs of UWWTD implementation

Implementation of the EU environmental *acquis* imposes two types of costs on the public sectors of member states: the costs of adjusting the institutional and administrative framework of a country, and the financial investments that must be made by the state and municipalities (World Bank, 1999: 22). For the UWWTD specifically, the administrative requirements imposed on public authorities can be divided into two categories: 1) prior assessments, i.e. 'determining the necessary infrastructure requirements and analysis of receiving waters to determine sensitive and less sensitive areas'; and 2) the subsequent enforcement of operating standards for waste water treatment plants (Farmer *et al.*, 2003: 7). As of 2003, the first category of obligations had been fulfilled with the support of external projects and in negotiations with the Commission. As for the second, it

... comes into operation as UWWT plants are upgraded to meet Directive requirements and, therefore, obligations will come on stream up to the end of transition periods. While the Directive establishes requirements to, for example, reduce phosphorus discharges significantly, this is usually implemented by adopting specific technical tertiary treatment measures. Enforcement is relatively straightforward in such cases and studies have not suggested any real concerns over administrative capacity in these cases (Farmer *et al.*, 2003: 7).

Farmer *et al.* (2003: 7) also point out that enforcement of the UWWTD poses far fewer administrative problems than other EU environmental laws, such as the

more technically complex Integrated Prevention and Pollution Control (IPPC) Directive.

Implementation of the UWWTD also requires extensive financial investments to construct new waste water treatment plants and modernise existing ones, so that they are able to treat nitrogen and phosphorus to a very low residual value (Guitard, 2006). Indeed, the financial costs associated with UWWTD implementation are among the largest in terms of the EU environmental *acquis* (Farmer *et al.*, 2003: 5; World Bank, 1999: 24). In the Czech Republic, these costs are exacerbated by the pattern of urbanisation, with the majority of the country's population living in settlements of only a few thousand inhabitants (OECD, 2000: 24).

Precise costs of UWWTD implementation in the Czech Republic are difficult to come by, but various estimates provide a clue. In 1999, the Czech government estimated necessary investment costs of CZK 65 billion (€2.1 billion) in the private sector and about CZK 60 billion (€1.9 billion) from the state budget, while a World Bank study the same year estimated initial investments of €878–1,075 million would be needed, followed by annual operating and maintenance costs of €62–100 million (Farmer *et al.*, 2003: 9, 5). Another study in 2000 anticipated total necessary investments of CZK 98 billion (Dohnal, 2007: 64; *Věstník NKÚ*, 2009: 69). The variations² in cost estimates notwithstanding it was abundantly clear that implementing the UWWTD would be very expensive. According to one study, the Czech Republic and other CEECs would need to spend at least 5 per cent of their GNP for the construction of sewerage and waste water treatment facilities to reach a comparable level with more advanced EU countries (Wanner, 2006: 13).

To cover the costs of UWWTD implementation the Czech Republic planned to rely on a mix of finance sources, including bank loans (both with and without the state's participation) and private investors' own resources. Other potential sources included '[fees from] changes of permits, economic instruments, charges for pollution discharges, and programmes of support for sewerage systems and waste water treatment plants from national financial sources (National Environmental Fund, state budget)' (Farmer *et al.*, 2003: 9; *Zpravodaj MZe*, 2009; *Věstník NKÚ*, 2009: 169). However, a major source of funding was the EU itself. Before accession, support for waste water treatment and other environmental projects was provided by the Instrument for Pre-Accession Structural Assistance (ISPA), and after 2004 support would come from the structural and cohesion funds, money allocated to poorer member states and regions to help reduce economic disparities in the EU.³ Indeed, the promise of substantial EU funding was a key reason why the Czech Republic agreed in the accession negotiations to a shorter transition period for UWWTD implementation than most other candidate states (GWI, 2006). According to a World Bank study, EU funds represented 'a tremendous opportunity for the Czech Republic to meet [its] sectoral and environmental priorities and to relieve the burden of these

investments on households, particularly on lower income groups.’ However, it also stressed that the country needed ‘to plan carefully to make best use of these funds, as there is significant danger that they may be used in an ad hoc manner’ (World Bank, 1999: 22), and thus inefficiently. Illustrating the importance of EU funds, in 2009 the Supreme Audit Office (SAO) of the Czech Republic estimated the costs of UWWTD implementation in the period 2007–10 at CZK 49 billion, with over CZK 33 billion (67.5 %) to be covered by EU funds and CZK 10 billion to be shared by private investors’ capital and reserves (SAO, 2009).

Implementing the UWWTD in the Czech Republic

Accession negotiations and the transitional period

In accession negotiations, the UWWTD was one of three environmental directives for which the Czech Republic requested and was granted a transitional period and later compliance deadlines. A government-sponsored study in 1999, ‘Pre-Accession Planning to Meet the Requirements of EU Legislation in the Water Sector,’ had initially recommended a transitional period of until 2012–14, ‘taking into consideration future self-financing for the sewerage and wastewater treatment sector, and in light of the social aspects of increasing charges for sewerage and wastewater treatment’ (MŽP ČR, 2000). However, the promise of EU funds persuaded Czech authorities that it would be possible to meet the UWWTD’s requirements by the end of 2010.

As a result, the Czech Republic accepted a transitional period of until 31 December 2010 to comply with UWWTD standards and modernise sewer systems and waste water treatment facilities in all communities with a population over 2,000 p. e., or about 630 municipalities altogether (Ministry of Agriculture and Ministry of Environment, 2002: 2; ČT24, 2010a; Finanční noviny, 2011; Ihned, 2011a; Odpady, 2011: 1). The deadline was legally binding and generally considered non-extendable, as it was part of the Accession Treaty between the EU and the Czech Republic (CEC, 2009a: 9; SAO, 2009). Any attempt to change the deadline was thus regarded as very difficult from both a legal and political point of view (Dohnal, 2009: 30; Věstník NKÚ, 2009: 168). If the Czech Republic was not able to comply with the directive’s legal requirements by the end of 2010, it could face sanctions for non-compliance with EU law.

The substantial financial cost of implementing the UWWTD was the main reason the Czech Republic sought a transitional period for this directive. The transitional period would spread the financial burden of compliance over a longer period and provide more time to secure financial resources for the construction of required facilities. It also provided additional time ‘to clarify any specific requirements of the directive, such as the extent of sensitive area designations’ (Farmer *et al.*, 2003: 4–5).

The Czech Republic was not the only new member state that was granted a transitional period for UWWTD implementation. In fact, transitional periods were negotiated by all 12 countries that joined the EU in 2004 and 2007, with deadlines generally not exceeding the year 2015. The only exception to this rule was Romania, where smaller communities (with less than 10,000 p. e.) have until the end of 2018 to meet the directive's standards (CEC, 2009a: 3, 9). These differences in the length of transitional periods later became a subject of criticism in the Czech Republic as it became clear that the country would not meet the 2010 deadline, with many Czechs, such as Dagmar Haltmarová, spokesperson for the Severočeská Vodárenská Company, criticising the government while noting that 'neighbouring states have negotiated less strict conditions and longer transitional periods' (ČT24, 2011b).

Transposition of the UWWTD

The UWWTD was transposed into Czech law in 2001-03 through two legislative acts and a government decree.⁴ Under the Czech legislation, the supreme authority responsible for UWWTD implementation is the Ministry of Agriculture (Farmer *et al.*, 2003: 9; Věstník NKÚ, 2009: 168). Together with the Ministry of Environment it has responsibility for the water sector as a whole, with the Ministry of Agriculture having competence in the area of water supply networks and sewerages and the Ministry of Environment being responsible for environmental aspects, including such issues as sensitive areas, establishing requirements for the quality of discharged waste water, the disposal of sludge, discharges of waste water from industrial pollution sources, water quality monitoring and reporting to the Commission. Regional authorities, municipalities and the Czech Environmental Inspectorate also have specific responsibilities when it comes to UWWTD implementation (Farmer *et al.*, 2003: 9).

A key early implementation measure, carried out before accession, was the Czech Republic's decision to classify its entire territory as a sensitive area in terms of pollution from urban waste water discharges (CEC, 2009a: 11, 2010: 79; EEA, 2004: 19; Farmer *et al.*, 2003: 8; Ministry of Agriculture and Ministry of Environment, 2002: 2; Nesměrák, 2005: 82; Novotný, 2003).⁵ According to Nesměrák (2005: 82-3), 'The decision was based on the fact that Germany has declared the river basin of rivers falling into the North Sea and the Baltic Sea sensitive areas and Article 5(5) of Council Directive 91/271/EEC stipulates that the river basin above the sensitive areas is to be considered a sensitive area as well. Because the river basin of the Elbe River and Odra River represent 72.5 % of the Czech Republic's territory, the entire territory of the country was declared a sensitive area'. Under UWWTD standards, this imposes more stringent requirements for waste water treatment, meaning that all municipal waste water treatment plants must have secondary and tertiary treatment systems that will ensure efficient control of nutrient discharges (Wyszynska, 2006).

Implementation problems

The prospects for UWWTD implementation initially looked rather promising for the Czech Republic. A 2004 European Environmental Agency study, for instance, stated that the Czech Republic, Estonia and Poland had the most efficient waste water treatment systems of all the new member states (EEA, 2004: 11). Very soon after accession, however, implementation of the directive began to encounter numerous complications.

In 2006, auditors from the SAO carried out the first study of UWWTD implementation while auditing the use of financial resources allocated for the construction and renovation of urban waste water treatment facilities within the competence of the Ministry of Agriculture (SAO, 2009). It found that in 2006 the number of waste water treatment plants increased by 25 to 2,017 (compared to 2005), with a further 35 plants being newly renovated, which equalled a coverage of 2.7 million inhabitants. Yet, this was 27 % less than was originally planned for the end of 2006 (Baroch, 2007a). The report concluded that there was a significant risk that the Czech Republic would not be able to meet EU legal obligations by the target date (Dohnal, 2007: 64). In the same year, the Minister for Regional Development, Petr Gandalovič, declared that 'It is now an open and big question whether we can meet the 2010 deadline,' adding that it was too early to say whether the Czech Republic would try to seek a deadline extension (GWI, 2006). In 2007, it became increasingly clear that the country would not manage to comply with the UWWTD in time (Baroch, 2007a, 2007b). Jan Kříž, from the Ministry of Environment, declared that 'It will be difficult to meet this deadline now — the situation is critical.' He also indicated that the government might attempt to extend the 2010 compliance date (GWI, 2007).

From June 2008 to February 2009, the SAO performed a second audit of investment ventures in the field of waste water treatment, mainly in the period 2004–08, focusing on the administration of EU funds as well as the implementation of corrective measures which had been taken on the basis of the previous audit (SAO, 2009; Věstník NKÚ, 2009: 167–8). It concluded that there were 314 communities that had not yet met the required conditions, with 50 (including Prague) having failed even to prepare the necessary documents for waste water projects. The report declared that it was clear that UWWTD implementation would not be accomplished by the end of 2010, as the project preparation and realisation stages take some time (Dohnal, 2009: 30; SAO, 2009; Věstník NKÚ, 2009: 169, 176). The SAO also warned that it was unrealistic to expect that the transitional period could be extended, since the deadlines were embedded in the Accession Treaty (Dohnal, 2009: 30; Věstník NKÚ, 2009: 176).

In 2009, 205 communities had yet to build or upgrade waste water treatment plants and 209 were experiencing problems with the construction of sewerage facili-

ties. Of these communities, both waste water treatment plants and sewerage networks were missing in 85 cases, and no investment preparations whatsoever had been made in 35 (Finanční noviny, 2010a; Zpravodaj MZe, 2009). The insufficient attention paid to this issue by the Czech authorities was illustrated by the vague statements of the spokesman of the Ministry of Environment in late December 2009: 'Yes, the problem is really here, but we do not have the latest numbers. There are about 700 such towns in the Czech Republic and the data from summer 2008 show that the situation with sewage disposal plants was roughly fifty-fifty [...] Of course, by the end of 2010, when the European directive is to be implemented, these numbers will be updated' (Nachtmann, 2009).

As expected, the Czech Republic was not able to comply with the UWWTD by the deadline date. According to a January 2011 statement by the Ministry of Agriculture, 137 communities still lacked their own waste water treatment plants, with the Ministry expecting plants to be finished by the end of 2011 in a majority of these cases. Only in exceptional cases would this date be postponed (Baroch, 2011a; Machálková, 2011). In March 2011, waste water treatment plants were not yet in place in 157 communities, with 14 municipalities, including Prague, experiencing fundamental problems (Ihned, 2011b). As of May 2011, 10 % of all communities still did not meet UWWTD requirements (Finanční noviny, 2011; Odpady 2011: 1).⁶

The consequences of non-compliance

Sanctions for non-compliance with the UWWTD could be quite costly for the Czech Republic (GWI, 2006). According to the Ministry of Environment, the Czech Republic might have to pay as much as CZK 17 million per month as a penalty (Baroch, 2011b). Some officials did not seem overly worried about this possibility. For example, in December 2009 the spokesman for the Ministry of Environment opined that EU sanctions in this case were improbable, because the EU sanctions systems was so complicated and lengthy that it provided adequate time to fix the problem (Nachtmann, 2009). The Ministry has repeatedly drawn attention to the fact that France also failed to comply with UWWTD standards in time, yet the European Court of Justice (ECJ) has not imposed any penalties on that country (Odpady, 2011: 1). However, most political actors have expressed concern over the threat of potential sanctions. Many are afraid that the Czech Republic might follow the fate of the United Kingdom (UK), which has been taken twice to the ECJ over non-compliance with the UWWTD. The first case related to the designation of sensitive areas and was won by the UK due to 'a lack of evidence that elevated nutrient and algae levels in the areas in question caused eutrophication and consistent disturbances to the balance of organisms' (Ockenden, 2010). In the latter case, the Commission initiated legal action against the UK as it found its urban waste water

collecting systems and treatment facilities in London and Whitburn in North East England inadequate and threatening to human health (CEC, 2009c).

To prevent this scenario, the Czech government began negotiating a compromise with the Commission as early as 2008. The Commission showed a willingness to discuss the situation, and the government believed that if Brussels saw serious efforts to resolve the problem it would not initiate legal action (Baroch, 2008; Vláda ČR, 2008a). In February 2010, the Czech Republic declared that it was still trying to avoid potential sanctions, hoping that the Commission would take into account that many waste water treatment projects had at least commenced (ČT24, 2010b). In March 2011, the Minister of Environment, Tomáš Chalupa, claiming in March 2011 that 'I can say at this moment that there is a danger of sanctions, but it is neither possible to identify how high they will be, nor to specify when they will be imposed' (Ihned, 2011b). It thus remains to be seen whether or not the Czech Republic will face sanctions for non-compliance with the UWWTD.

The reasons for implementation problems

It is possible to identify a number of reasons why the Czech Republic has had difficulty implementing the UWWTD. Perhaps the main reason is a dispute between the Czech Republic and the Commission over EU funding for certain urban waste water treatment projects (Baroch, 2007a, 2008; GWI, 2006). As mentioned previously, UWWTD implementation entails substantial financial costs, with EU funds playing a vital role as a source of finance. In 2007–13, for example, out of the Environment Operational Programme's (EOP) budget of about €5.2 billion, accounting for a fifth of all EU funds allocated to the Czech Republic in this programming period, approximately €2 billion (or more than a third) is designated for Czech water and waste water sectors, with 75 % earmarked for waste water treatment plants and sewerage networks (Baroch, 2007b; GWI, 2009; Finanční noviny, 2010a).

Since 2004, however, the Commission has repeatedly criticised non-transparent practices in the Czech water sector. More specifically, the Commission has objected to contracts signed between Czech municipalities and private water operators, as they were made under suspicious and non-transparent conditions, thus violating best practice principles.⁷ The Commission maintained that the length of water infrastructure operating contracts signed in the past was too long (up to 25 or 30 years) and anti-competitive. It also did not agree with the non-transparent tenders and lack of instruments to ensure effectiveness, as well as the way in which the tariff structure for customers has been calculated by private water companies. The Commission was also afraid that EU funds would be beneficial mainly for international companies that are usually the partners in contracts with municipalities. Moreover, it did not approve

of the fact that private water operators did not further invest in water and sewerage infrastructure. In older member states, by contrast, such lengthy contracts are routinely associated with the requirement that operators make infrastructure investments (Baroch, 2007a, 2007b, 2008; Dohnal, 2009: 30; GWI, 2007; Ihned, 2011c; Věstník NKÚ, 2009: 170, 176). Put differently, the Commission believed that existing agreements with private operators were ‘unbalanced in terms of duration, tariff setting and performance criteria’ and ‘an undue profit could thus be generated for private operators’ (GWI, 2006, 2007). The Commission also determined that some 12 water infrastructure projects slated to receive EU funding did not meet the best practice principle (Dohnal, 2009: 30; SAO, 2009; Věstník NKÚ, 2009: 171, 177). As a consequence, it decided to withhold funds worth €2 billion that had been allocated for urban waste water treatment projects in the 2007–13 programming period.

The stalemate over EU funding lasted three years. During this time, Czech officials repeatedly denied the existence of any fraud. For example, the former Minister for Regional Development, Gandalovič, stated in 2006 that

It is absolute nonsense to suggest that these contracts do not meet European legislation standards. The European Commission has not spelled out how these contracts supposedly breach regulations and unless they do it is wrong to withhold funding. Meanwhile we are losing valuable time in preparing for these much-needed projects (GWI, 2006).

He also stressed that it was ‘completely unrealistic and unreasonable to presume that Czech water companies could revise existing contracts with private companies who ran their operations’ (GWI, 2006). In a similar manner, Miroslav Nováček, vice-president of the Water Supply and Sewerage Association of the Czech Republic, declared that ‘The Commission’s objections don’t make sense. If anything, there is too much regulation of the Czech water sector and [it is] most certainly not the case that legislation covering contracts is somehow lacking.’ He also stressed that the Czech Republic agreed to a stricter target date than other new member states in exchange for a promise of EU financial help, and since the EU was withholding these financial resources, ‘The least they could do is agree to extending the 2010 deadline’ (GWI, 2006).

Even though both sides promised efforts to find a solution, the government was heavily criticised for its insufficient effort in negotiations with Brussels (for example by the Union of Towns and Municipalities of the Czech Republic) (ČT24, 2010a; Finanční noviny, 2010a). Eventually, the government realised it was vital to reach an agreement and solve the stalemate, since the funds would be lost if they were not approved by the end of 2007. To illustrate the urgency of the matter, the SAO declared that the country’s allotment of EU funds could be reduced by CZK 13.2 billion due to contracts violating the best practice principle (Věstník NKÚ, 2009: 170).

A 2007 analysis by the Ministry of Environment presented a somewhat lower figure, predicting a loss of CZK 8.5 billion (Dohnal, 2009: 30; SAO, 2009; Věstník NKÚ, 2009: 176).

In November 2007 the stalemate was finally resolved. According to the compromise agreement, the EU will co-finance the normal 85 % of costs for projects whose water infrastructure contracts expire by 2015. Municipalities whose water infrastructure contracts run until 2015–20 are entitled to 60 % of the co-financing rate, whereas for projects with contracts expiring by 2022 the EU will cover only one-third of the implementation costs. Water companies with existing contracts expiring after 2022 will not be entitled to any EU funding unless they modify and shorten their contracts (Baroch, 2007b, 2008; GWI, 2007; Věstník NKÚ, 2009: 170). The missing EU financial resources would then have to be secured by means of commercial loans or public resources (Finanční noviny, 2010a). Moreover, the agreement requires municipalities that would like to apply for EU funding to change the regulation of water and sewerage charges. Price ceilings are to be newly imposed for water tariffs in order to make water operators reduce costs and increase efficiency (Baroch, 2007b; GWI, 2007).

The agreement was termed ‘a huge breakthrough,’ by the Minister of Environment, Martin Bursík, because ‘it means we can finally access [the EU] funds, and it will also bring more competition on the Czech market’ (Baroch, 2007b; GWI, 2007). He added that ‘The set conditions are not some necessary evil that we have to endure in order to get the Brussels money. It is a way how to help support water infrastructure and at the same time not to support a lucrative and profitable business by tax means’ (Baroch, 2007b). Yet, many private water operators — for example Veolia, the largest player on the Czech water market — initially refused to shorten their contracts, while others expressed concerns over the difficulty of altering existing contracts (GWI, 2007). Nonetheless, in some cases operators did agree to shorter contracts; for example in the city of Plzeň, which signed a new contract with Veolia Voda in April 2010, thus gaining access to co-financing from EU funds. The new contract has been shortened by two years (up to 2015) and includes a new article under which the city will redeem 98.3 % of the shares from Veolia Voda after 2015. The new contract also meets other EU requirements in terms of performance indicators, contractual sanctions, monitoring and pricing (Finanční noviny, 2010b).

In 2008, the Czech government published an analysis which identified 13 communities, including big cities such as Prague, Ostrava or Hradec Králové, where there was no will on the part of municipalities or water operators to shorten existing contracts designed to expire after 2022. If these contracts were not modified, the financial loss would amount to CZK 1.2 billion (Baroch, 2008; Vláda ČR, 2008b).⁸ In October 2009, yet another problem arose regarding water infrastructure contracts and EU funding, when the Ministry of Environment published a new version of

the Guide for Applicants (for EU structural funds) that introduced the principle of 'separability and exclusion' of water management infrastructure which was not in line with EU standards (ČT24, 2011a; MŽP, 2011).

Due to the above-mentioned problems, rumours appeared in 2011 that the Commission would not allocate CZK 10 billion from the EOP to 44 questionable water and sewerage projects. In response the Minister of Environment, Tomáš Chalupa, appointed a crisis team, called WATER, which divided the projects into three categories based on the seriousness of their problems, the most problematic cases being the 29 applicants whose contracts with water operators were too long (České noviny, 2011; MŽP, 2011). The Ministry claimed that it was 'striving for these funds,' but 'the position of the European Commission on the entire matter is still very negative.' It nevertheless planned 'to discuss each project individually [with the Commission] and to explain what the municipalities can do and what they cannot do for objective reasons' (MŽP, 2011).

However, the Commission's firm stance was confirmed by its decision in January 2012 not to support work on Prague's Central Waste Water Treatment plant. The city had hoped to receive about CZK 6 billion (€240 million) in EU funds for renovating the plant, the largest and most demanding UWWT project in the country, but it was unable to shorten the contract with its water operator (Veolia) which is valid until 2028 (Ihned, 2012). Because of the Commission's unyielding position, the Environment Ministry began preparing a list of projects that would not be eligible for EU funding. It is expected that only 10–15 of the 44 projects in question have a chance of winning Commission support. The Ministry, therefore, would like to be able to substitute for these rejected projects others that were originally not selected due to the limited volume of funding (Baroch, 2012).

The problems accessing EU funds have devastated the Czech government's 'Financial Strategies for Construction of Waste Water Treatment Plants and Sewage Systems for Public Purposes.' Even though the Strategies have been updated every year (with the exception of 2004), they have never been fulfilled. For example, in 2005 only 47 % of the anticipated financial resources were allocated for waste water treatment projects (Dohnal, 2007: 64).

Another reason for delayed implementation concerns the difficulties experienced by many municipalities in raising their required share of investments in EU co-funded projects (GWI, 2009). Many also postponed the implementation of projects until the latest possible date, i.e. until 2008–10 (Baroch, 2007a; Dohnal, 2009: 30; GWI, 2009; SAO, 2009; Věstník NKÚ, 2009: 168). As a result, when complications arose, they were unable to finish the projects by the compliance deadline. Some mayors even admitted that they delayed water infrastructure projects as long as possible, hoping that the UWWTD would be changed and its requirements moderated or that the Czech government would send them less strict instructions (ČT24,

2010b). In addition, some municipalities have encountered problems drawing upon EU funds due to the complex and demanding nature of preparations for water infrastructure projects (ČT24, 2010a). Thus, as of 2011 the Czech Republic had received only about 11 % of the total available sum for urban waste water treatment projects available in 2007–13. However, numerous projects were about to start, and many others had not yet been paid out (Ihned, 2011b). Some observers, including Miroslav Nováček, consider complicated administration in both the Czech Republic and Brussels to be a major reason why the country failed to meet the UWWTD deadline (Finanční noviny, 2011).

Conclusion

In the first instance, the Czech Republic's difficulty implementing the UWWTD, and its failure to meet the end of 2010 deadline for compliance, appears to be due to the high financial costs of implementation and problems accessing EU funds. EU structural and cohesion funds provide a major source of finance for necessary investments in water treatment and sewerage infrastructure to meet the directive's requirements. However, a dispute between the Czech Republic and the Commission lasting more than three years delayed approval of EU funding for water infrastructure projects in the 2007–13 programming period until late 2007. This dispute cast uncertainty over the availability of EU funds and was a factor contributing to the delayed planning and implementation of water infrastructure projects in many Czech communities. Some in the Czech Republic have thus blamed the EU for the country's failure to meet the strict (in comparison to those for other new member states) 2010 deadline, claiming that it was agreed to in accession negotiations based on the assumption that sufficient EU funds would be available to help cover the high financial costs of UWWTD implementation.

Looking further, however, the problem is not so much the non-availability of EU funds, but administrative and political problems in the Czech Republic that led to the dispute with the Commission and delayed approval of the funds. At bottom, the Commission's reluctance to approve the funds for 2007–13 was due to problems with contracts between Czech municipalities and private water operators that did not adhere to EU best-practice standards concerning such issues as transparency, competitive bidding, duration and pricing. While most of these contracts had been signed before the dispute erupted, Czech municipal authorities were reluctant to change their terms to conform to EU standards. At the national level, Czech government officials often appeared complacent or unwilling to act to address the Commission's concerns until late in the day, as the deadline approached for final approval of EU funds. Questionable practices in the government's application process for

structural funds, as well as in the planning of certain water infrastructure projects, also threatened EU funding. It is also apparent that many municipal authorities failed to plan in a timely manner for necessary water projects, or that they intentionally delayed such preparations in the hope that the UWWTD deadline would be extended or that the directive's requirements would be relaxed. In other cases they did not possess the ability to prepare complex water infrastructure projects or to successfully access available EU funds. In the final analysis, therefore, the failure to meet the 2010 deadline for UWWTD implementation in the Czech Republic was the result of domestic administrative and political problems that were ultimately the cause of the dispute with the Commission over EU funds.

Notes

- ¹ In 2004, the EU environmental acquis contained about 300 legal acts, most of them taking the form of directives – laws that ‘shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods’ (CEC, 2004; Official Journal of the European Union, 2007).
- ² Farmer et al. (2003: 5) explain that these ‘variations depend upon a number of practical assumptions (e.g. size of collection systems in relation to treatment plant facilities), which are still being determined.’
- ³ Acknowledging that ‘implementation of [the UWWTD] represents a major financial challenge for the Member States,’ the Commission has emphasised that ‘Cohesion Policy funds provide a significant support to co-finance waste water treatment plants in the EU’ (CEC, 2009a: 3).
- ⁴ Act 254/2001 Coll., on Waters and on Changes of Certain Acts (Water Act); Act 274/2001 Coll., on Water Supply and Sewerage Systems and on Changes of Certain Acts (Act on Water Supply and Sewerage Systems) and Government Decree No. 61/2003 Coll. on Standards and Values of Admissible Pollution of Surface and Waste Waters, Requirements for the Content of Applications for Waste Water Discharges to Surface Waters and to Sewerage Systems and on Sensitive Areas (Farmer et al., 2003: 8; Nesměrák, 2005: 79).
- ⁵ Of the EU27, 14 member states identified their entire territory as a sensitive area, while 13 classified only certain water bodies in their territory as sensitive (CEC, 2009a: 11).
- ⁶ In this context, Miroslav Nováček pointed out that the important thing was that the projects were already being undertaken: ‘The fact that the construction does not physically exist does not mean that the commitment has not been fulfilled’ (Odpady, 2011: 1).
- ⁷ In the Czech Republic, the majority of the water sector was privatised after 1989, with many municipalities contracting out their waste water treatment functions to the private sector; unlike, for example, Poland, where the sector is still mainly in public hands (Wyszynska, 2006).
- ⁸ Although the Association of Regions of the Czech Republic has indicated this sum would fifty times higher (Vláda ČR, 2008b).

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