



Miljøministeren

Commissioner Virginijus Sinkevičius
Commissioner for Environment, Oceans and Fisheries
European Commission

J.nr. 2023-6277
Den 30. juni 2023

Dear Commissioner Virginijus Sinkevičius,

Thank you for taking the time to meet me on 27 June 2023 and many thanks for a very constructive dialogue. We highly appreciate your willingness to prioritize a quick response to our letter on the interpretation of the Water Framework Directive and assisting us on this very difficult issue.

As you are aware, a new ruling from the Danish Environment and Food Board of Appeal has major consequences for a number of activities leading to a discharge of hazardous substances to water bodies, e.g. Power-to-X, power plants and other projects regarding transition to green energy etc.

The ruling presents a different interpretation of deterioration in the Water Framework Directive than the interpretation presented in The Danish Environmental Protection Agency's guidance documents. Due to uncertainty of the legal interpretation, environmental authorities have put new permits and permit revisions on hold.

We would be grateful if you would share the Commission's view and interpretations of the concept of deterioration as this will help inform our assessment of the way forward. I kindly refer to the ministry's letter to DG ENVI dated 16 May 2023.

Since projects of crucial activities such as critical infrastructure and new sustainable developments are no longer possible as a consequence of the ruling by the above-mentioned Board of Appeal, a quick response will be highly appreciated.

We are aware that the statements will represent the views of the DG ENVI of the Commission, and that the European Court of Justice is the sole authority on interpretation of the aquis.

For your information, the Environment and Food Board of Appeal is an independent court-like institution within the field of nature, environment, agriculture, fisheries and food. The rulings are binding for state and local authorities' administration and authorization of plans and projects.

These are the questions that we have forwarded the Commission in May:

- When the EQS for a substance has already been exceeded and the water body has thus been classified in the lowest class
 - Does any addition of a given substance to a water body constitute deterioration (regardless of the amount/concentration) *or*
 - Will it only constitute deterioration contrary to Article 4 if the discharge will lead to an increase in the concentration of a given substance in the water body?

- In order to establish an increase in concentration – is it a requirement that it must be measurable/detectable? In most situations, it will be possible to calculate even negligible additions – does that constitute an increase and therefore a deterioration?

- At what scale shall the assessment be conducted at? (Water body level or other units?) Is there a distinction between surface water and bodies of ground water?

Should you have any questions, please do not hesitate to contact us, and thank you in advance.

Yours sincerely,



Magnus Heunicke