

Til: [REDACTED]

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Fra: Kirsten Vielwerth (kirst@mim.dk)

Titel: DK questions on deterioration in the WFD (MIM Id nr.: 415448)

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Dear [REDACTED]

Enclosed please find the Danish questions on the concept of deterioration in the Water Framework Directive as well as the English translation of the ruling by the Environment and Food Board of Appeal.

We would appreciate it greatly if you could get back to us urgently, as all permitting is put on hold for now.

Kind regards,

Kirsten Vielwerth

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**Ministry of Environment
of Denmark**
Department

Water and Climate Adaptation
Case No 2023-4355
Ref. kirst, rurab, limni
May 16 2023

[REDACTED]
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Questions on the Water Framework Directive re. deterioration

Dear [REDACTED]

Thank you for taking the time to talk to Head of Division, Katrine Rafn and myself 10. May 2023 on the concept of deterioration in Article 4 of the Water Framework Directive.

As agreed upon in the meeting, we forward our questions in writing, and we would appreciate to get your view and interpretations back in writing. We would be grateful if you would send your reply shortly, as this will help inform our assessment of the way forward. We are aware that the statements will represent the views of the DG ENV of the Commission, and that the European Court of Justice is the sole authority on interpretation of the aquis.

./ We also forward ruling 22/02461 from the Danish Environment and Food Board of Appeal in English¹. The most relevant part is: *3.2.3 Ad 2) Effect on targeted surface water bodies*, pages 38 – 43, in particular the three sections on page 43 which we have highlighted.

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.

The questions:

- Does Article 4 of the Water Framework Directive, as interpreted by the ECJ, allow for an individual assessment of the significance of an addition of a substance to a specific water body in order to establish if such addition constitutes “deterioration of the status”, when the EQS for that substance has already been exceeded and the water body has thus been classified in the lowest class?
 - In other words; will it only constitute deterioration contrary to Article 4 if the discharge will lead to an increase in the

¹ Section 3.2.3 Ad 2) Effect on the targeted surface water body has been translated by a professional team of translators, whereas the rest of the ruling is google translated.

concentration of a given substance in the water body, i.e. because the discharge contains a higher concentration of the substance than the current concentration in the receiving water body, or will any addition of the substance – independent of amount/concentration – be contrary to Article 4 in this scenario (when the EQS is already exceeded)?

- In either case, in the light of the ECJ rulings, what is the reasoning behind the Commission's interpretation?
- In order to establish an increase in concentration – is it a requirement that it must be measurable? In most situations, it will be possible to calculate even negligible additions – does that constitute an increase and therefore a deterioration?
- If an assessment is allowed, will it be possible to take the significance of the impact or discharge on a quality element at water body level into account when the quality element is already in the lowest class?
- 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,

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