



Tel.: 0032 2 549 07 00  
E-Mail: info@ebbk.de



Tel.: 0032 2 513 64 08  
E-Mail: sekretariat@europabuero-bw.de



**Europabüro**  
der sächsischen  
Kommunen  
Tel.: 0032 2 513 64 08  
E-Mail: sekretariat@europabuero-sn.de

Twitter: @eu\_local

March 15th, 2023

## **Urban Waste Water Treatment Directive**

### Position paper of the Bavarian, Baden-Württemberg and Saxon municipalities

The umbrella and regional associations of the Bavarian, Baden-Württemberg and Saxon municipalities welcome in principle the EU Commission's proposal for a revision of the Urban Waste Water Treatment Directive. The municipal level is aware of its responsibility to achieve climate and environmental goals, also in the context of municipal wastewater, and continuously invests in the modernisation of municipal wastewater plants. In addition, the Directive provides a basis for improving the quality status and protecting water bodies and the environment from the harmful effects of discharges of urban waste water and waste water from certain industrial sectors.

The current proposal contains positive aspects such as the introduction of extended producer responsibility (Art. 9) as an implementation of the polluter-pays principle. However, it also lists several objectives that are not feasible and contradictory. This is particularly evident in the commitment to energy neutrality of wastewater treatment plants by 2040 and at the same time the obligation to expand to the fourth treatment stage. In the further legislative process, the objectives of the Directive must be brought into line with financial, human and local realities at local level. Various delegated acts are foreseen with the revision of the Directive. These are to be viewed very critically, as they endanger the investment and legal certainty for the plant operators, e.g. in the elimination of trace substances or phosphorus recovery, these must be rejected.

*We are therefore critical of some of the planned new commitments. The recast of the Urban Waste Water Directive strikes a balance between ambitious and new environmental targets, affordability for citizens and feasibility at municipal level.*

It is and remains central that the essential decisions can be made locally in the sense of local self-government and that sufficient and, in particular, financial flexibility remains in the municipalities. We would like to thank you in advance for taking municipal concerns into account. The European offices of the Bavarian, Baden-Württemberg and Saxon municipalities are at your disposal for a professional exchange. In particular, we can show you the necessity of the required adjustments to municipal practical examples. The office community represents a total of 3400 cities and municipalities, 116 counties and 7 districts in Germany.

In this sense, from a municipal point of view, the following is decisive:

- **Protection of the status quo for mixed systems (Art. 5 incl. Annex V):** It is necessary to specify the 1% of the annual municipal waste water load to be calculated under dry weather conditions (Annex V, para. 2a). The wording of Annex V, paragraph 2 b) will entail an obligation to convert all existing mixing systems that do not have efficient receiving waters with regard to possible discounts. This is neither technically feasible nor financially feasible, which is why this requirement must not be applied to existing plants.
- **Nitrogen reduction not affordable (Art. 7):** The required reduction of total nitrogen by 80% by 2035 and by 85% by 2040 can only be achieved with high financial, technical and construction costs. In view of the expected benefits, the general rule does not appear to be proportionate to the very high investment needs. Instead, the strict limit values should only apply if, in individual cases, an equally significant reduction in the extent of eutrophication can be expected as a result of the significant costs.
- **Deadline problem with fourth purification stage (Art. 8):** The introduction of a fourth purification stage is in principle to be welcomed on a voluntary basis, provided that sufficient financial resources are made available for this purpose; however, we reject this as an obligation due to the clearly too ambitious deadlines. A levy solely on the fee payers or through municipal financing is also unacceptable. In order to finance the expansion, the apportionment of the compensation payments of the manufacturers must be ensured. A differentiation of the plants is necessary, an increase in the threshold value for upgrading would be set at 50,000 PE or 100,000 PE.
- **Energy neutrality of wastewater treatment plants not feasible by 2040 (Art. 11):** The simultaneous demand for energy neutrality in a fourth purification stage involves a conflict of objectives that can hardly be resolved, since energy can only be used once and thus the potential for energy generation on the plants is limited. In order not to hinder the practical implementation of the Directive in the Member States, it must be possible to transport electricity from the generation site to the point of consumption without further bureaucratic hurdles. To this end, the simplifications of Art. 22 of the EU Directive 2018/2001 should be expressly laid down in the Waste Water Directive.
- **Clear commitment to producer responsibility (Art. 9):** For extended producer responsibility to succeed in practice, a "producer responsibility organisation" organised under private law is not enough. Rather, there is a need for a public authority standing between the producers within the meaning of the Directive and the operators of sewage treatment plants. The State has a responsibility for achieving the objectives of the Directive and, consequently, for monitoring producer responsibility. The process of EPR (Extended Producer Responsibility) must be legally secure and binding and, ideally, uniformly regulated throughout the EU in order to avoid accusations of distortions of competition within the EU.
- **New claim for damages not necessary (Art. 25, 26):** Legal recourse to claims for damages or claims arising from official liability is already possible to a reasonable extent

via the relevant known civil law claims. In particular, the proposed reversal of the burden of proof to the detriment of the authorities must be strictly rejected.

- **Designing information obligations with a sense of proportion (Art. 24 incl. Annex VI):** New information obligations are always associated with additional personnel and financial expenditure and should be assessed on the basis of a cost-benefit analysis, especially with regard to the shortage of skilled workers and the classification of the plants as critical infrastructure.
- **National surveillance system is the responsibility of the Member States (Art. 17):** Health law obligations are no longer part of the original remit of the corporations and companies subject to waste water disposal. These costs may not be passed on to the general fee payer. It is a health task to be financed by the Member State. In doing so, the competences within the Member States must be respected.
- **Voluntary access to sanitary facilities (Art. 19):** According to the proposal, marginalised and vulnerable population groups in particular should have better access to sanitation. This applies above all to municipalities with at least 10,000 PE, which are to provide them in public space. We very much welcome the fact that, according to the wording of the proposal, this is not intended to be an obligation. This must also be maintained by the national legislator when transposing the Directive.
- **EU guidelines for "sensitive areas" are needed (Art. 7 & Annex 2):** In order to achieve the necessary Europe-wide harmonisation in this area, it would be useful to provide guidelines at EU level. In the case of transboundary bodies of water, it is not expedient to have the criteria determined by the Member States alone.

## **Background and local reality**

### **Nitrogen reduction not affordable (Art. 7)**

The required reduction represents a significant tightening of the monitoring values. The requirements are very demanding and the engineering solution is associated with very high investments and effort. In many cases, the required reduction would require a dosage of an external carbon source into the wastewater treatment plant, which can also represent a greenhouse gas potential and thus have a negative impact on climate protection. At the same time, nitrate often plays a subordinate role in the local situation and is often not taken into account in water ecology studies. Measures to reduce nutrients should follow a water-related approach and therefore only be effective where they are necessary on the emission side. Then it must be checked on a case-by-case basis whether the source of any nutrient input measured is actually the effluent of the sewage treatment plant, or whether an external source is responsible, for example from agriculture. This can be done by a second sample directly above the introduction. The municipalities and their sewage disposal plants cannot be guarantors for agriculture. As long as the inputs from agriculture do not decrease significantly, the cleaning obligation of sewage treatment plants will be increasingly changed. This does not make economic or ecological sense. Measures to improve urban wastewater must therefore always go hand in hand with corresponding reduction targets for agriculture.

### **Problem of deadlines with fourth purification stage (Art. 8)**

According to the EU Commission's proposal, the plants for over 100.000 PE must be upgraded by 31 December 2035 at the latest (50% by 2030). Until 31 December 2040, this applies to all installations for between 10,000 and 100,000 PE (50 % by 2035) if affected regions show additional micropollutants. Member States will be obliged to identify these affected regions. The fourth purification stage has hardly been implemented in Saxony and Bavaria, for example. The investment costs for retrofitting are generally classified as enormous, as are the ongoing operating costs due to a considerable additional demand for energy. At the same time, national and now also European law is oriented towards energy-neutral sewage treatment plants in the future. Cost calculations show that such measures will lead to significant fee increases without sustainable state support. In addition, there is a lack of detailed scientific treatment of the entire wastewater cycle so that the "by-products" can also be identified. For example, experts are currently not entirely convinced of the introduction of a fourth purification stage, as ozonation and activated carbon can cause problematic by-products. For the further increase of the requirements for sewage treatment plants with regard to the reduction of nutrient and trace material inputs proposed by the Commission, it must be carefully examined which plants are specifically suitable for an effective reduction of trace substances in terms of economic efficiency and sustainability. This requires clear criteria, taking into account the local situation, in order to ensure the necessary planning security and investment security for the operators.

### **Energy neutrality of wastewater treatment plants not feasible by 2040 (Art. 11)**

The proposal of the EU Commission contains an obligation for energy neutrality of wastewater treatment plants by 2040 (Art. 11), which is why municipal wastewater treatment plants in large cities must carry out mandatory energy audits by 2025 and in small towns by 2030. By 31 December 2040, Member States must ensure that the annual national final energy consumption of all municipal wastewater treatment plants is covered by renewable energy production (50% by 2030). Especially with the simultaneous obligation to expand to the fourth purification stage, this is a very ambitious and contradictory target. It is unclear where the energy to be compensated is to be generated, as this is only possible to a limited extent in the plants themselves.

### **Clear commitment to producer responsibility (Art. 9)**

In future, industry will contribute to the costs of pollution through a fund approach system, with the contribution based on the quantity and hazardousness of the products placed on the market. We expressly welcome this implementation of the polluter-pays principle without exceptions from certain sectors as a long-standing municipal demand. For extended producer responsibility to succeed in practice, a "producer responsibility organisation" organised under private law is not enough. Rather, there is a need for a public authority standing between the producers within the meaning of the Directive and the operators of sewage treatment plants. The State has a responsibility for achieving the objectives of the Directive and, consequently, for monitoring producer responsibility. The process of EPR (Extended Producer Responsibility) must be legally secure and binding and, ideally, uniformly regulated throughout the EU in order to avoid accusations of distortions of competition within the EU.

### **New claim for damages not necessary (Art. 25, 26).**

Legal recourse to claims for damages or claims arising from official liability is already possible to a reasonable extent via the relevant known civil law claims. We strictly reject the proposal for a new claim for damages and point out that a reversal of the burden of proof to the detriment of the authorities would lead to a flood of class actions. At the same time, elementary principles of state liability law would be changed. Here, the municipal urban drainage systems are overwhelmed, as these topics are not part of the core business of wastewater treatment. This would require its own technical capacities, which would then have to be rebuilt. There is e.g. already in the Federal Liability Act the basis for claims for strict liability (strict liability) of public authorities. So far, however, it has always been undisputed that a plaintiff must present the facts giving rise to liability and prove the so-called liability-establishing and liability-fulfilling causality.

### **Designing information obligations with a sense of proportion (Art. 24 incl. Annex VI)**

In the field of public documentation and access to information, Member States are obliged, in accordance with Art. 24 incl. Annex VI to inform the public much more extensively than before, which includes the provision and transmission of data by sewage treatment plants. On the basis of the "Directive 2003/4/EC on Public Access to Environmental Information", the environmental information laws of the Federation and the Länder already regulate the provision of corresponding information. In

this respect, it stands to reason that this topic should also be dealt with in the relevant specialist directive. Due to the environmental information laws, the procurement of information for interested parties is already possible anyway, whereby some technical content is likely to be usable only for a limited circle. With regard to the usability of data, the increasing cyber threat situation must also be taken into account. This also raises the question of the meaningfulness of an expanding information obligation of sewage treatment plants as a critical infrastructure for the public. Extended information requirements would also tie up additional specialist staff. In view of the structural shortage of skilled workers, it should be reconsidered to what extent the extension of information requirements beyond the already existing possibilities is necessary. The scope of information required by Annex VI appears to be too broad. It should be checked to determine which information has a clear added value for the consumer. In addition, the principle of proportionality should apply and there should always be sufficient time for obtaining and processing information.

### **National surveillance system is the responsibility of the Member States (Art. 17)**

Member States are to be obliged to set up a national system for the monitoring of urban waste water as a contribution to public health (Article 17). It is up to the Member States how this is organised and what data is to be collected for this purpose. Specifically, however, it stipulates that at least 70% of national budgets must be monitored for evidence of coronaviruses (Covid) until they no longer pose a threat to the population. Plants over 100,000 PE would also have to be checked for antibiotic resistance in municipal wastewater treatment plants (Art. 17 para. 4). Wastewater monitoring is basically an important task, e.g., in order to be able to prove polluter areas (agriculture – urban drainage). However, the limitation of 70% of households is no more scientifically justified than the criterion for assessing the Covid risk situation. In this context, it must also be made clear directly in EU law that these health obligations are no longer part of the remit of water services and thus no longer part of the original remit of the corporations and companies subject to waste water disposal. In this respect, the principle of cost recovery under § 6a WHG, which has transformed mandatory EU law into national law, cannot be applied to this. It is a health task to be financed by the Member State and not by the fee payer. For this purpose, adequate subsidies should be provided for the authorities and undertakings.