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FEES AS AN INSTRUMENT FOR THE REGULATION AND PROTECTION OF WATER RESOURCES IN A COMPARATIVE APPROACH ON THE EXAMPLE OF POLAND AND FRANCE

Abstract

This article analyses selected fees related to water resources, distinguishing between their regulatory and protective nature.

The analysis in question was carried out on the example of the regulations of Polish and French law, so that the comparative perspective applied would allow for presenting the analysed issues in a much broader context than just the national one.

The methodology used by the author is related to the functional approach of the comparative method, the historical-descriptive and dogmatic method. The comparative perspective provides an advantage over studies limited to the national scope only, as it allows for the formulation of an answer to the research question of whether, despite functioning within the framework of EU regulations, Polish and French law differ in the way they regulate the matter in question. Consequently, the authors of this article have indicated certain

specific French solutions that could also be taken into account by the Polish legislator in order to increase the efficiency of environmental fees collected and ensure water resources protection, which are both important elements of environmental law.

KEYWORDS

French law, Polish law, tax law, environmental law, water resources, fees

SŁOWA KLUCZOWE

prawo francuskie, prawo polskie, prawo podatkowe, prawo ochrony środowiska, zasoby wodne, opłaty

1. INTRODUCTION

Utilising a comparative approach, this study examines the various fees imposed by environmental authorities, focusing on France and Poland as case studies. The fees in question were selected based on two principal factors: that they apply to water resources and, at the same time, they follow a regulatory-protective paradigm. It may also be noted that French theory employs the terms *régulation* (regulation/control) and *réglementation* (regulation) interchangeably, whereby they are construed as actions of a normative nature undertaken to control a given process or economic practice.¹ The choice of countries for this comparative analysis stems from earlier research performed in the doctrine, which focused on the historical links between Polish and French law.²

The study not only highlights the differences between the Polish and French legal systems, but in addition, as it presents the translations of the wording or constructions from French law, this publication may be a valuable resource not only for practitioners and legal theorists but also for persons who use French daily, especially in specialised legal translations.

It may be noted that the comparative method is crucial for this work since it made it possible to examine environmental fees in an aspect broader than just the domestic one.³ However, this method does not rely on uniform principles or uni-

¹ Marie-Anne Frison-Roche, 'Définition du droit de la régulation économique' in Frison-Roche (ed), *Droit et économie de la régulation* (Presses de Sciences Po, 2004) 7.

² Elżbieta Zębek, Michał Mariański, 'Opłaty związane z zanieczyszczeniem wód we Francji i w Polsce. Analiza porównawcza' (2025) 3(56), *Prawo i Więź* 154.

³ Mariola Lemonnier, 'Prawo publiczne a prawo prywatne. Uwagi prawnoporównawcze na podstawie prawa francuskiego' (2016) 100 *Studia Prawno-Ekonomiczne* 77.

versal rules, being adapted each time to the specific requirements of a particular research area.⁴ This study does also assume an interdisciplinary scope since the regulation of water resource fees is explored by scholars both from the standpoint of tax law and environmental law.⁵ This is also reflected in the specialisation of these authors, who represent the science of financial law and environmental law simultaneously.

As regards the legislation concerning water protection fees, it is noteworthy that – by way of exception – they are regulated in French law in the Environmental Code (French: *Code de l'environnement*). This is unique because, in principle, most of the substantive tax law is governed in France under another piece of legislation, i.e., the General Tax Code (French: *Code Général des Impôts*).⁶ The Environmental Code – the most relevant from the standpoint of this study – consists of two parts: the legislative part (French: *partie législative*), spanning Article L110 to L713-9, and the regulatory part (French: *partie réglementaire*), with Article R121-1 to R714-2. The provisions of the legislative part are passed in the traditional legislative procedure, while the regulatory provisions are adopted by virtue of decrees of the Council of Ministers and the French Supreme Administrative Court (*Conseil d'Etat*).⁷ The aforementioned legislative part is further divided into seven books, of which Book II is the object of interest in this paper.⁸ Title I of that Book contains Chapter III, which covers the administrative and financial structures⁹ as well as provides for the so-called environmental water fees. Significantly, these fees – divided into as many as six types – are collected by a single specialised body, i.e., Water Agencies. This institution, originally called *Agence de l'Eau*, is a public administrative establishment which participates in the management of water in an administrative basin district, the limits of which correspond to a large hydrographic basin. As in France we have six basin districts,¹⁰ there are six Water Agencies corresponding to them.¹¹ The fees in question

⁴ Roman Tokarczyk, *Komparatystyka prawnicza* (1st edition Wolters Kluwer, 2008) 24.

⁵ Piotr Korzeniowski, 'Koncepcja Normatywna przeciwdziałania Zanieczyszczeniom' (2015) 1 Przegląd Prawa Ochrony Środowiska 23.

⁶ Michał Mariański, 'Formy innych fakultatywnych podatków gminnych w świetle regulacji francuskiego Generalnego kodeksu podatków' (2022) 55 Studia Prawnoustrojowe 225.

⁷ Anna Klimaszewska and others, 'Spółka z ograniczoną odpowiedzialnością (société à responsabilité limitée) we francuskim kodeksie handlowym' (1st edition Wydawnictwo UWM 2017) 32.

⁸ Fr. Livre II : Milieux physiques (Articles L210-1 à L241-2).

⁹ Fr. Chapitre III : Structures administratives et financières (Articles L213-1 à L213-22).

¹⁰ The six bassins districts are: Adour-Garonne, Artois-Picardie, Loire-Bretagne, Rhin-Meuse, Rhône Méditerranée Corse, Seine-Normandie.

¹¹ See more in Michał Mariański, Richard Bartes, 'Legal protection of surface waters in France', in Jarosław Dobkowski and others (eds), *Legal protection of inland waters in selected EU countries* (Routledge 2025).

that were collected by every Water Agency till 2025 included: a water pollution fee (French: *redevances pour pollution de l'eau*), a fee for modernization of water collection networks (French: *redevances pour modernisation des réseaux de collecte*), a fee for diffused pollution (French: *redevances pour pollutions diffuses*), a fee for abstraction from water resources (French: *redevances pour prélèvement sur la ressource en eau*), a fee for water storage during periods of low water (French: *redevance pour stockage d'eau en période d'étiage*) and a fee for the protection of the aquatic environment (French: *redevance pour protection du milieu aquatique*). What is important to emphasise, is that, as a result of the reform from February 2025,¹² two fees, one for domestic pollution and one for the modernization of collection networks, disappeared and were replaced by three new fees: one on water consumption, two on performance (of drinking water networks and collective sanitation systems) in order to reduce the contribution of the most efficient distribution networks.

In Polish law, the so-called environmental water fees¹³ are also regulated essentially in a single legal act and collected by one authority. The pertinent statute is the Water Law Act of 20 July 2017 (WLA), or more precisely, the Chapter entitled Economic Instruments in Water Management.¹⁴ In this study, fees for water-related services will be analysed. The agency that collects the fees is the State Water Holding Polish Waters (*PGW WP*). Polish law provides for a similar number of fees as in French law, with a total of seven levies, including: (a) a fee for the abstraction of ground- and surface water, (b) a fee for the sewage introduced into water or the soil, (c) a fee for the collection of rainwater or snowmelt, (d) a fee for the abstraction of ground- and surface water for the purposes of fishing farms, (e) a fee for the sewage from fishing farms introduced into water or the soil, (f) a fee for the extraction of materials from surface water and (g) a fee for the reduction of natural terrain retention.

Given the matter studied here, water pollution fees were excluded from the analysis as they were already presented in detail in a separate study, also in reference to the Polish and French system.¹⁵

¹² Fr. LOI n° 2025-127 du 14 février 2025 de finances pour 2025, JORF (Journal of Laws) n°0039 du 15 février 2025.

¹³ Michał Ptak, 'Opłaty i podatki ekologiczne w krajach Unii Europejskiej' (2010) 127 *Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu* 82.

¹⁴ *Journal of Laws* of 2024, items 1087, 1089, 1473.

¹⁵ Elżbieta Zębek, Michał Mariański, 'Opłaty związane z zanieczyszczeniem wód we Francji i w Polsce. Analiza porównawcza' (2025) 3 *Prawo i Wiąż* 153.

2. FEES COLLECTED UNDER THE WATER LAW IN POLAND

The institution of fees for water services in the EU was introduced in the Water Framework Directive No 2000/60/EC¹⁶ in Article 9, the provisions of which were implemented in Poland in the 2017 Water Law Act (Polish: *Prawo wodne*). At the outset, it is worth noting that Articles 35 and 267 of this act are fundamental as far as the regulation of fees and their regulatory-protective function is concerned since, as part of the economic instruments involved in water management, Articles 268(1) and 269(1) WLA detail water service fees (Polish: *opłaty za usługi wodne*). As observed in the previous section, water pollution fees are discussed in a separate study, which is why this publication examines four main fee types: (1) fees for ground- and surface water abstraction; (2) fees for abstraction of ground- and surface water for fish farms; (3) fees for extraction of materials from surface water and (4) fees for reduction of natural terrain retention.¹⁷ Hence, a detailed description of the other charges may be found in another study by the authors referred to above. The fee for water services, with the exception of the fee for the reduction of natural terrain retention, is set by the competent Catchment Board of the PGW WP (Polish: *Zarząd Zlewni Państwowe Gospodarstwo Wodne Wody Polskie*) (Articles 271(1), 272(17) and 272(22) WLA). Fees for water services are calculated according to the principles set out in the Water Law Act, taking into account the upper¹⁸ and unit rates. Unit fee rates are detailed in the Regulation of the Council of Ministers of 26 October 2023 on the unit fee rates for water services.¹⁹

The first of the regulatory-protective fees is the fee for the abstraction of ground- and surface water (Polish: *opłaty za pobór wód podziemnych i powierzchniowych*). This type of fee is a form of environmental tax included in the group of taxes on natural resources.²⁰ This fee can be charged in fixed and variable forms. The amount of the fixed fee for both ground- and surface water intake is determined based on the product of the unit fee rate, time and the maximum amount of water (m³/s) that may be abstracted under a water permit or integrated permit (Articles 271(2) and (3) WLA). On the other hand, the amount of the water abstraction fee

¹⁶ 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 December 2000, 1–73).

¹⁷ See also: Lucyna Osuch-Chacińska, 'Wprowadzanie ścieków i wody do wód lub do ziemi oraz opłaty za te usługi wodne' (LEX 2018).

¹⁸ Upper unit fee rates for water services are set out in Arts 274 and 275 WLA.

¹⁹ Journal of Laws of 2023, item 2471.

²⁰ Jerzy Śleszyński, 'Podatki środowiskowe i podział na grupy podatków według metodyki Eurostatu' (2014) *Optimum. Studia Ekonomiczne* 69, 55–56.

for hydropower plants is calculated based on the amount of electricity produced at the hydropower facility using the abstracted water (with return flow),²¹ while in the case of heat pumps on the amount of thermal energy produced or taken up by the system using water that has been abstracted, used and then discharged into the waters or the same aquifer in the same volume and unimpaired quality.²² The unit rate of the fixed fee for groundwater abstraction is PLN 500 per day per 1 m³/s and, for surface water, PLN 250 per day per 1 m³/s for the maximum water intake specified in the water permit or integrated permit (§ 2 and 3 of the 2023 Regulation). This differentiation in the rate of the charge, which is double for groundwater abstraction, demonstrates the rationing function of the charge, especially for such valuable water resources, which are described as non-renewable. In this way, the legislator aims to limit the abstraction of these waters and to use them sparingly, thus protecting them in terms of quantity and quality.²³

On the other hand, the amount of the variable fee for water abstraction depends on the amount and type of water abstracted, as well as its purpose. This fee is determined as the product of the unit fee rate and the volume of ground- or surface water abstracted (m³), including water abstracted for the purpose of carrying out the municipality's tasks of collective water supply for human consumption (Article 272 (1) and (2) WLA). In the case of water abstraction for the purposes of hydropower plants, the variable fee is determined as the sum of the products of the unit fee rate and the amount of electricity produced at the hydropower facility (in MWh) and the fee rate and the volume of ground- or surface water which is withdrawn without return flow for technological purposes (m³) and does not directly serve to produce electricity (Article 272(3) WLA). In the case of the abstraction of water used for the cooling circuits of a power plant or thermal power station, the amount of the variable charge is determined by multiplying the unit charge rate (m³) by the difference between the amount of water abstracted for these purposes and the amount of water discharged (Article 272(4) WLA). The unit rates of the variable fee for water abstraction vary per water type and the purpose of water, and are listed in § 5(1) of the 2023 Regulation. However, in the case of water abstraction for the purposes of carrying out the municipality's tasks of collective water supply for human consumption, the upper unit rate of the variable fee varies based on the volume of withdrawn water, with PLN 0.068 per 1 m³ of groundwater

²¹ Non-returnable water means water that has been withdrawn, used, and subsequently discharged in the same quantity and of unimpaired quality, and for non-returnable withdrawal of process water not directly intended for the production of electricity (Art 270(4) WLA).

²² Exceptions include change of water temperature and technological water not directly intended for heating or cooling purposes (Art 270 (2) and (4a)).

²³ Elżbieta Zębek, *Instrumenty administracyjno-prawne i ekonomiczne w ochronie środowiska*, (1st edition Wydawnictwo UWM 2017) 153.

and PLN 0.040 per 1 m³ of surface water § 5(1)(41,42) of the 2023 Regulation. In addition, variable fees vary depending on the treatment method. In the case of commercial water abstraction, the fee is calculated based on the maximum water abstraction specified in the water permit or integrated permit. This is particularly important for the energy industry due to the amount of water consumed in energy processes, especially in electricity or heat generation. Therefore, the technology used is crucial, as it influences the amount of water lost in the heating cycle and optimises cooling processes. This can be a form of incentive for the sector to improve water-saving technologies.²⁴

The second of the regulatory-protective fees is charged for the abstraction of ground- and surface water for the purposes of breeding and rearing fish and other aquatic organisms (Polish: *opłaty za pobór wód podziemnych i wód powierzchniowych na potrzeby chowu i hodowli ryb oraz innych organizmów wodnych*), as set out in Article 275 WLA. In the case of non-consumptive abstraction of groundwater for such purposes, the fee depends on the maximum amount of water that may be abstracted in line with the water permit. The amount of such fee is calculated as the product of the unit fee rate, time and the maximum volume of groundwater that may be abstracted under the water permit or integrated permit. In a situation where the maximum volume of groundwater that may be withdrawn exceeds 0.05 m³/s, the rate of such fee is calculated as the sum of the above product, the product of the unit fee rate and the volume of abstracted groundwater (Articles 275(8)(1) and 275(9) WLA). The unit rates of this fee are specified in § 12(1) of the 2023 Regulation, being contingent on the maximum volume of abstracted groundwater water, calculated quarterly, i.e., PLN 100 at 0.02 m³/s, PLN 125 for volumes between 0.02 and 0.05 m³/s, and PLN 125 for volumes above 0.05 m³/s, as well as PLN 50 for each additional 0.01 m³/s of abstracted water. In the case of surface water abstraction, these rates are PLN 100 for a volume of 0.2 m³/s; PLN 125 for 0.2 to 0.5 m³/s; PLN 125 for a maximum possible volume of 0.5 m³/s and PLN 50 for each subsequent 0.1 m³/s of abstracted water (§12(2)).

Yet another regulatory-protective fee is levied for extracting stone, gravel, sand and other materials from surface waters – including internal maritime waters, together with the internal waters of the Gulf of Gdańsk as well as the waters of the territorial sea – as well as for harvesting plants from waters or the shore (Polish: *opłata za wydobywanie z wód powierzchniowych, w tym z morskich wód wewnętrznych wraz z wodami wewnętrznymi Zatoki Gdańskiej oraz wód morza terytorialnego, kamienia, żwiru, piasku oraz innych materiałów, a także za wycinanie roślin z wód lub brzegu*). The fee is determined based on the product of the

²⁴ Monika Bogdał, Nina Kuśnierkiewicz, ‘Zmiany w prawie wodnym. Nowe opłaty za pobór wód dla branży energetycznej’ (2017) *Energetyka Ciepła i Zawodowa* 6, 8–10.

unit fee rate and the quantity of extracted raw material, i.e., stone, gravel or sand and other materials (Mg), as well as harvested reed or wicker (m³) (Article 272(9) WLA). The unit fee rate is specified in § 11 of the 2023 Regulation, and depends on the type of extracted material, i.e., PLN 0.40 for 1 Mg of extracted stone, PLN 0.25 for gravel or sand, PLN 0.30 for other materials, and PLN 5.35 for 1 m³ of harvested reed or wicker.

Finally, the fourth fee is charged for the reduction of natural terrain retention, which applies to a property with an area of more than 3,500 m² where one carries out works or construction that permanently involve the soil and decreases retention by making more than 70% of the area of such property biologically inactive (Polish: *opłata za zmniejszenie naturalnej retencji terenowej na skutek wykonywania na nieruchomości o powierzchni powyżej 3500 m² robót lub obiektów budowlanych trwale związanych z gruntem, mających wpływ na zmniejszenie tej retencji przez wyłączenie więcej niż 70% powierzchni nieruchomości z powierzchni biologicznie czynnej*).²⁵ Thus, the amount of the fee is calculated as the product of the unit fee rate for the size of the biologically active area thus lost (m²) and time (years) (Article 272(8) WLA). The unit rate of such a fee is specified in § 9 of the 2023 Regulation and varies in view of the capacity of water retention facilities or lack thereof. In the case of water retention from sealed surfaces that permanently involve the soil without any facilities, the fee rate is PLN 0.50 per 1 m² per year, while where such facilities exist and have a capacity of up to 10% of the annual runoff from sealed surfaces permanently involving the soil, it amounts to PLN 0.30, PLN 0.15 at a capacity of 10% – 30%, and PLN 0.05 at a capacity exceeding 30%. Thus, this fee may be compensation for maintaining a state of permanently reduced retention potential in a property with a large area, which is definitely detrimental to water management.²⁶

3. FEES COLLECTED BY THE WATER AGENCIES IN FRANCE

As already mentioned in the Introduction, this analysis omits the water pollution fee (French: *redevances pour pollution de l'eau*) provided for in Article L213-10-1

²⁵ In areas which are not covered by open or closed sewer systems, the fee depends on the size of the sealed area (built-up area excluded from the biologically active area) and the use of retention compensation (Art 270(7) WLA).

²⁶ Anna Ostrowska, 'Opłata za zmniejszenie naturalnej retencji terenowej nieruchomości (opłata retencyjna) jako instrument zarządzania zasobami wodnymi' (2024) *Studia Prawnoustrojowe* 66, 371.

to L213-10-4 of the French Environmental Code, as it has been discussed in detail in a separate study.²⁷ In this case, as a result of the reform from February 2025²⁸ this fee was modified by the French legislator as part of a greater reform of public and local finances.

It is also worth noting that, according to Article L213-8-1 of the French Environmental Code (*Code de l'environnement*; hereafter CDL), the authority that collects those fees in France, which was already mentioned in the introduction of this paper, i.e., the Water Agency, operates in each river basin or group of river basins. In order to carry out its tasks, the agency gathers the financial resources, particularly through fees collected under Articles L213-10-1 to L213-10-12.

The first of the regulatory-protective fees to be examined here is a levy that till 2025, was related to the modernisation of water collection networks (French: *redevances pour modernisation des réseaux de collecte*). But after the already mentioned reform, from February 2025, the way of regulating this fee was changed in order to divide it into two sub-fees related to the performance of drinking water networks and for the performance of collective sanitation systems (French: *Redevances pour la performance des réseaux d'eau potable et pour la performance des systèmes d'assainissement collectif*). As in the version in force before the reform, this type of fees is regulated in detail by the provisions of Articles L213-10-5 to L213-10-7 CDL. The presented reform is a result of the discussion in the French doctrine related to the need to adapt the social and financial contributions to the current economic changes.²⁹

Thus, in line with Articles L213-10-5, municipalities or their public institutions responsible for the distribution of drinking water, as referred to in Article L2224-7-1 of the General Code of Local Authorities, are subject to the drinking water network performance fee. The chargeable event occurs at the end of the calendar year in which the water distributed was billed to persons subscribing to the drinking water service. The basis for the fee is the volume of water billed during the calendar year referred to persons subscribing to the drinking water service,

²⁷ Elżbieta Zębek, Michał Mariański, 'Opłaty związane z zanieczyszczeniem wód we Francji i w Polsce. Analiza porównawcza' (2025) 1 *Prawo i Więź* (in print).

²⁸ Fr. LOI n° 2025-127 du 14 février 2025 de finances pour 2025, JORF (Journal of Laws) n°0039 du 15 février 2025.

²⁹ Marie Tsanga Tabi, 'La tarification sociale de l'eau au regard des droits humains : vers une stratégie de service essentiel ?' (2024) 41(2), *Politiques & management public*, 189; Monica Cardillo, Frantz Mynard, L'eau et l'impôt sur l'eau : regards croisés entre droit français et histoire du droit colonial in Éric De Mari and Dominique Taurisson-Mouret (eds), *Fiscalité contre nature : L'impact environnemental de la norme en milieu contraint IV Exemples de droit colonial et analogies contemporaines* (ediSens 2020) 131.

pursuant to Article L 2224-12-1 of the General Code of Local Authorities. When this billing does not include a term proportional to the volume of water distributed and in the absence of metering of the water distributed, the basis is calculated according to a fixed amount per inhabitant, that is, between 50 and 70 cubic meters per inhabitant, which is determined by order of the Minister responsible for the environment.

According to point IV of Article L213-10-5, the amount of the fee is composed of three different factors. First is the assessment base related to the volume of water billed during the calendar year. Second is the rate determined by the water agency, under the conditions set out in Article L 213-9-1, up to a limit of one euro per cubic meter. Third is the overall modulation coefficient that is defined by the French legislator and composed of the performance coefficient and the asset management coefficient. What is important is that for each taxpayer, the value of these coefficients is set by the relevant water agency. In point V of the present article, it is also specified that amounts relating to post-meter leaks for drinking water service subscribers are subject to a tax reduction.³⁰

The actual version of Article L213-10-6 regulated the second type of fee that replaced the fee modernisation of water collection networks (French: *redevances pour modernisation des réseaux de collecte*). Namely, municipalities or their public institutions responsible for wastewater treatment are subject to the performance fee for collective sanitation systems. This fee does not apply to collective sanitation systems whose gross organic pollution load is less than 20 population equivalents, within the meaning of Article 2(6) of Council Directive 91/271/EEC of 21 May 1991 concerning urban wastewater treatment. According to point II of Article L213-10-6, this chargeable event occurs at the end of the calendar year during which the water discharged into the public wastewater collection systems was billed. Moreover, the basis for the fee is the volume of water taken into account for calculating the sanitation fee referred to in Article L2224-12-2 of the General Code of Local Authorities, when billed to users of the collective sanitation service during the calendar year. When collective sanitation fees are not calculated on the basis of volume, the basis for the fee for the performance of collective sanitation systems is calculated according to a fixed rate per capita, that is also between 50 and 70 cubic meters per inhabitant per year.

Like the previous one, the amount of the fee is composed of three different factors. It is worth noting that the difference in the fee related to the performance of drinking water networks is related to the fact that the overall modulation

³⁰ The conditions for the application of the aforementioned articles are set out in the decrees of the French Supreme Administrative Court (French: *Conseil d'Etat*).

coefficient has different components. The parts are: self-monitoring coefficient, regulatory compliance coefficient, and efficiency coefficient. What is more, for each taxpayer, the value of these coefficients is determined by the relevant water agency based on the declared data, self-monitoring validation, and regulatory compliance.³¹

Finally, Article L213-10-7, which is common for the two above-mentioned sub-fees related to the performance of drinking water networks and for the performance of collective sanitation systems, states that the conditions for the application of the aforementioned articles are set out in the decrees of the French Supreme Administrative Court (French: *Conseil d'Etat*). Also, in this article, it is stated that water agencies set the rates for the drinking water network performance fee and the collective sanitation system performance fee so that their projected revenue does not exceed 50% of the projected revenue from the drinking water consumption fee provided for in Article L 213-10-4. When the revenue generated by these fees exceeds this threshold, the water agency adjusts the rates for the drinking water network performance fee, the collective sanitation system performance fee, or the drinking water consumption fee accordingly.

Another regulatory-protective instrument is the fee for diffuse pollution (French: *redevances pour pollutions diffuses*), regulated under Article L213-10-8 CDL. Following the 2020 amendment,³² the fee applies to persons – except those engaged in professional activities exempted under Article L254-1 or L254-6 of the Rural and Marine Fisheries Code – who purchase a plant protection product within the meaning of Articles 1 and 2 of Regulation (EC) No 1107/2009 or seeds coated with such products, or have seed treated using these products. The fee is based on the weight of the substances contained in the products listed above, which is further enumerated in six points. Point one refers to substances in the hazard class provided for in Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006. Point two invokes the substances classified, due to their acute toxicity, into categories 1, 2 or 3 or, due to their specific toxicity to certain target organs, into category 1, as a result of a single or repeated exposure, or due to their effects on breastfeeding or through breastfeeding, into the hazard classes provided for in the aforementioned Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16

³¹ Amounts relating to post-meter leaks for drinking water service subscribers are subject to a tax reduction.

³² Fr. loi n° 2020-1721 du 29 décembre 2020 de finances pour 2021, JORF (Journal of Laws) n°0315 du 30 décembre 2020.

December 2008. Point three concerns the substances classified into category 1 due to acute aquatic toxicity or, due to chronic aquatic toxicity, into category 1 or 2, in the hazard classes provided for in the Regulation of the European Parliament and of the Council (EC) No 1272/2008 of 16 December 2008. Point four applies to substances which, due to their chronic aquatic toxicity, belong to category 3 or 4 in the hazard class provided for in Regulation No 1272/2008. Point five covers the substances which do not meet the criteria of Sections 3.6 and 3.7 of Annex II to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC but are still marketed. Finally, point six refers to the substances whose substitution is approached within the meaning of Article 24 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009. Depending on which of the above groups a given substance is classified into, the rate of the fee expressed in EUR/kg is determined in accordance with the table indicated by the legislator. The rate ranges from EUR 0.9 per kilogram for the fourth group up to EUR 9 per kilogram for the first group of substances.³³ According to Section IV, Article L213-10-8 CDL, the event that gives rise to the fee is either the purchase of products or treated seeds for a fee or free of charge, or ordering seed treatment from a service provider and the purchase of products or treated seeds, whether for a fee or free of charge. Furthermore, in their invoices, the distributors of plant protection products are required to show the amount of the fee that they have paid for the distributed product, with the exception of the products distributed with the label 'authorised use in gardens'. The registers provided for in Article L 254-3-1 and Article L 254-6 of the Rural and Marine Fisheries Code also list the elements required to calculate the base of the fee and, where applicable, the invoice recipients and the corresponding amounts of the license fees. Such registers are made available to water agencies and administrative authorities. In this case as well, the decrees of the French Supreme Administrative Court determine the conditions in which the aforementioned articles are to be applied.

The third form of levy is the water resource abstraction fee (French: *redevances pour prélèvement sur la ressource en eau*), provided for in Article L213-10-9 CDL. In Section I, the Article states that any person whose activities result in the abstraction of water resources is subject to this fee. Subsequently, Section II cites a catalogue of exemptions consisting of seven items, including: samples taken at sea; dewatering of mines that have ceased to operate, and samples necessary

³³ At the same time, if a substance belongs to several categories listed in Sections 1–4, the applicable fee rate is the one charged for the highest of the aforementioned categories to which the substance belongs. Likewise, if a substance belongs to several categories listed in Sections 5 and 6, the applicable fee rate is the one charged for the highest of the above categories.

in the performance of underground works;³⁴ abstraction relating to aquaculture; sampling associated with geothermal energy; sampling outside the low season for works aimed at replenishing the natural environment; withdrawal related to frost protection of perennial crops; and up to a maximum of 5,000 m³ per fountain, where such consumption is intended solely for the water supply of historic fountains located in mountainous areas.³⁵ This fee, in accordance with Section II of Article L213-10-9, is calculated based on the volume of water withdrawn during the year, whereby if a person has a well used for water supply, they are obligated to install a water metering device.³⁶ In addition, the water agency establishes the volume thresholds below which the fee is not due. These volumes may not exceed 10,000 cubic meters per year for withdrawals from category 1 resources and 7,000 cubic meters per year for withdrawals from category 2 resources. In order to determine the rate of the fee, water resources in each river basin are classified as category 1 if they are located outside the water distribution zones defined under Article L211-2 CDL, or as category 2 for other resources. The rate of the fee is set by the water agency in euro cents per cubic meter, within the statutory ceilings, depending on the different purposes of intake.³⁷ In addition to the extent of double the maximum price stipulated in that article, public territorial bodies referred to in Article L213-12 may request the water agency to develop a plan for the management of the water resources in which they are involved. An interesting provision is also formulated in Section VI of the Article in question, as it sanctions certain special methods for calculating the fee. Such special arrangements may be applied, in particular, to abstraction intended for several uses, where the fee may be calculated proportionately to the volumes withdrawn for each use. Another example is when an intake is intended to feed a canal, and the fee may be calculated on the volume of water from that intake minus the volumes taken from the canal. The final special case is abstraction for the purpose of operating a hydroelectric system.³⁸ Here as well, detailed conditions for the application of the regulations cited above are decreed by the *Conseil d'Etat*.

³⁴ Including samples taken during dewatering, which is carried out to keep buildings or structures dry or to lower the water table in accordance with an administrative ordinance.

³⁵ Such fountains are considered historic when their construction dates before 1950.

³⁶ If the taxpayer does not meter the samples, the fee is determined on a fixed volume, calculated taking into account the proven nature or impossibility of measurement and the volumes characteristic of the activity, established on the basis of general measurement campaigns or tests based on representative samples.

³⁷ Thus, the rates for irrigation are 3.6 (Cat.1) and 7.2, respectively; for gravity irrigation, 0.5 and 1; for potable water supply, 7.2 and 14.4; for industrial cooling, 0.5 and 1; for canal supply, 0.03 and 0.06; and for other economic use, 5.4 and 10.8, respectively.

³⁸ In this case, the fee may be determined by comparing the annual volume of turbine water in cubic meters and the total gross discharge from the system, expressed in meters.

The fourth regulatory-protective instrument is the fee for the storage of water during periods of low water (French: *redevance pour stockage d'eau en période d'étiage*), regulated in Article L213-10-10 CDL. This fee applies to any person who owns a storage tank with a capacity of more than 1,000,000 cubic meters, which holds the entirety or part of the volume flowing into a watercourse during periods of low water. The fee is based on the volume of water stored during the low period. This volume is equal to the difference between the volume stored at the end of the period and the volume stored at the beginning of the period. The base of the fee does not include the volume stored during floods at intervals exceeding five years and removed from storage within thirty days from the date when the maximum flood level is reached. The water agency determines the low period for each basin in accordance with the flow regime of watercourses. The rate of this licence fee is set by the water agency at EUR 0.01 per cubic meter, while the decrees of the French Supreme Administrative Court (*Conseil d'Etat*) detail the conditions for the application of Article L213-10-10 CDL.

Finally, the fifth regulatory-protective fee is charged to protect the aquatic environment (French: *redevance pour protection du milieu aquatique*), and is regulated in Article L213-10-12 CDL. This levy, after the reform from February 2025, was renamed to hunting fee and fee for the protection of the aquatic environment (French: *Redevances cynégétique et pour protection du milieu aquatique*). This contribution is collected by structures designated by the French lawmaker, such as departmental or interdepartmental federations of approved fishing and aquatic conservation associations, approved associations of amateur fishermen using gear and nets, the Grande Brière Mottière union committee, and approved professional freshwater fishing associations. The fee is set annually by the water agency, within the following limits: 10 EUR per adult fishing for a year; 4 EUR per person fishing for seven consecutive days; 1 EUR per person per day of fishing; an annual additional fee of EUR 20 per person fishing for eel, salmon and sea trout fry. All the activities to which the fees apply should be carried out within the framework of the structures listed in the first paragraph of said Article.

4. CONCLUSIONS

The above comparative analysis of fees introduced in France and Poland as a means of regulating and protecting water resources has demonstrated many similarities and innovative solutions that legislators may take into consideration with prospective applications in mind.

It is important to note that both quantitative and qualitative analyses reveal many similarities. Polish law provides for four types of fees, while French law has previously introduced five, and finally, after the 2025 reform, six contributions. The scope of these fees largely overlaps and pertains to similar activities, despite the fact that some charges were excluded from the scope of this article. But it is worth noting that in France, water abstraction relating to aquaculture is exempted from the water resource abstraction fee, while in Poland, there is a charge for the abstraction of water for fishing farms. In Poland, fees are charged for the abstraction of ground- and surface water, including for the needs of fish farms, the extraction of materials from surface waters and the reduction of natural terrain retention. In France, on the other hand, fees are exacted for the modernisation of water collection networks, intake from water resources, water storage during periods of low water or the protection of the aquatic environment. Thus, in both legal systems, the fees have both a regulatory and protective function since their amounts are determined by the quantities used, which undoubtedly also affects the quality of such waters, and they also directly involve the protection of aquatic ecosystems. Thus, a user of the environment has a choice between implementing conservation and protection measures or paying higher charges. In order for charges to fulfil their function of encouraging companies to invest in water protection, their rates should be set at such a level that the reduction in the amount of charges paid by the company in connection with the implementation of projects that reduce the use of resources, in this case water and its pollution, is equal to or greater than the cost of operating such a project. Therefore, only a sufficiently high level of charges will ensure the fulfilment of their incentive function.³⁹ The water abstraction charge should, therefore, be seen as a tax on the natural resource used rather than an environmental charge for the service received. This is not obvious because this type of charge is counted as a charge for water services. However, this is in line with the environmental strategy of economical and rational use of water resources (especially water of the highest quality), even if some water resources may be considered as renewable.⁴⁰

In addition, water resource-related fees are governed under a single legal act in both countries, i.e., by the French Environmental Code and the Polish Water Law, respectively. The analysed fees remain in line with the superior principle of rectifying environmental damage, according to which it is the polluter who pays for the damage caused. Moreover, such fees act as an incentive, encouraging the use of technologies that have the least possible negative impact on the environment.

³⁹ Rafał Miłaszewski, Ewa Rauba, 'Określanie opłat za usługi wodne zgodnie z wymaganiami Ramowej Dyrektywy Wodnej Unii Europejskiej' (2010) *Ekonomia i Środowisko* No 2, 68.

⁴⁰ Jerzy Śleszyński, 'Podatki środowiskowe i podział na grupy podatków według metodyki Eurostatu', 63.

Another feature that Polish and French law share is that the collection of the fees is entrusted to a single body, i.e., the State Water Holding Polish Waters and the Water Agency, respectively.⁴¹

The above similarities notwithstanding, French law demonstrates much greater flexibility in the adopted regulations, which manifests in two main aspects. Thus, despite functioning within the framework of EU regulations, Polish and French law have some differences in the way they regulate the matter in question. The first is that the Water Agencies are statutorily given fairly significant discretion when setting the final rates of fees, which, in certain cases, allows this body to deviate from the general rules laid down by the legislator, for instance, with regard to charging fees for the extraction from water resources. Second, in contrast to Polish law, French legislation makes it possible for numerous details relating to the collection of fees to be specified in the course of the practical application of the law. Namely, should the need arise to clarify the regulations concerning any of the fees, statutory competence to issue pertinent decrees has been granted to the French Supreme Administrative Court (French: *Conseil d'Etat*). This solution is particularly compelling because it highlights the significance of case law within a legal system while also drawing parallels to the principles found in precedent and common law. In this respect, the French judiciary, which witnesses constant change, notably in the financial branch,⁴² exemplifies the paradigm of support and cooperation between the executive and the judiciary.⁴³ The primary goal of such cooperation is to make regulations more practical.⁴⁴ The example of this action in the French system may be the reform from February 2025, where some previous fees (for domestic pollution and one for the modernisation of collection networks) were replaced by three new fees: on water consumption, related to the performance of drinking water networks and a third related to the performance of collective sanitation systems. This reform was one of the elements of broader changes in French law, related to the constant need to adapt the existing regulations to current social and technological progress.⁴⁵

⁴¹ Mariusz Rogulski, 'System opłat za korzystanie ze środowiska w Polsce' (2014) 39 *Ekonomia* 125.

⁴² Michał Mariański, 'Institutional changes in the French financial judiciary' (2024) 103 *Studia Iuridica*, 102.

⁴³ Stanisław Bożyk, 'Wspomaganie parlamentu przez Trybunał Obrachunkowy we Francji. Aktualne problemy reform konstytucyjnych', (1st edition Temida 2, 2013), 337.

⁴⁴ Michał Mariański, 'Wybrane problemy jednostek samorządu terytorialnego związane ze stosowaniem prawa finansowego w realizowanej polityce finansowej we Francji', (2024) 6 *Finanse Komunalne* 24.

⁴⁵ Émilie Moysan, 'La tarification sociale de l'eau. Dans L'eau dans tous ses états : Enjeux politiques, juridiques et économiques' (2024). 110 Presses universitaires de Grenoble 100; Franck Blettery,

Moreover, thanks to translations of phrases, institutions and constructions of French law, this publication may be used not only by practitioners and legal theorists but also by persons who use French daily. Here, special attention should be drawn to the role of the French *Conseil d'Etat*,⁴⁶ also in the domain of financial law and tax law, as its prerogatives differ significantly from its Polish counterpart, the Supreme Administrative Court.⁴⁷

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⁴⁶ Bernard Beignier, Roger Perrot, Yves Strickler, *Institutions juridictionnelles*, (LGDJ 2024) 202.

⁴⁷ Marcin Kamiński, 'The Administrative Judiciary Reforms in Poland' (2022) 98 *Acta Universitatis Lodziensis. Folia Iuridica*, 171.

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