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27 October 2023

**EU Water law:
from *law in the books*
towards *law in action***
General report on questionnaires

EUFJE 2023 Annual Conference
Escuela Judicial del CGPJ
Carretera de Vallvidrera, 43-45, Barcelona



CENTRE FOR
WATER, OCEANS AND
SUSTAINABILITY LAW



LAW IN THE BOOKS

Objectives of EU environmental law

- Preserving, protecting and improving the quality of the environment
 - Protecting human health
 - Prudent and rational utilisation of natural resources
 - Promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change (Article 191(1) TFEU)
-
- **And for water: sufficient supply of good quality surface water and groundwater as needed for sustainable, balanced and equitable water use (art. 1 WFD): *first time equity introduced in EU environmental law?***

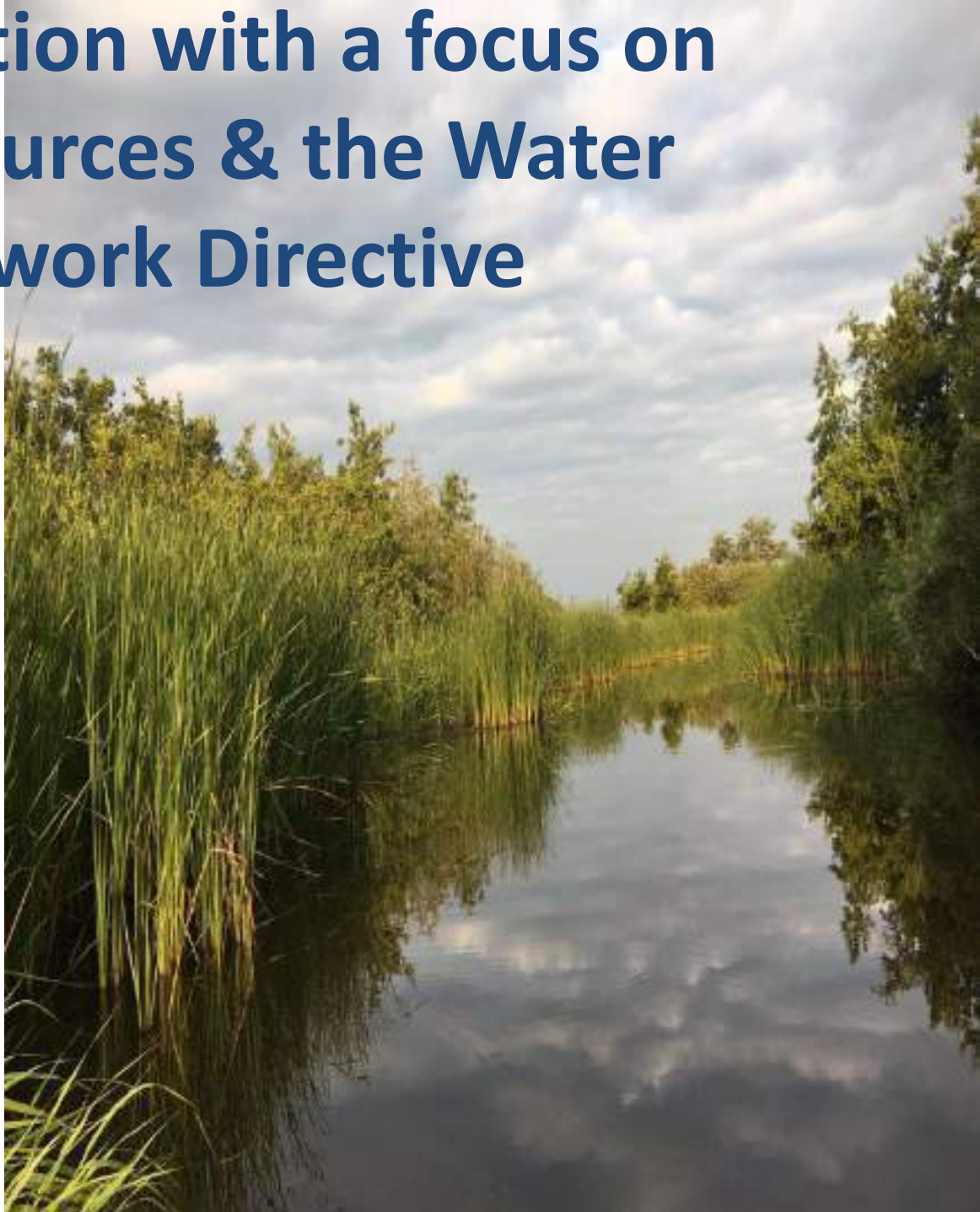


Different ideas on effectiveness:

Wuijts, S., Driessen, P.P.J.& van Rijswijk, H.F.M.W. (2018). Towards More Effective Water Quality Governance - A Review of Social-Economic, Legal and Ecological Perspectives and Their Interactions. *Sustainability*, 10 (4)

Transformation with a focus on water resources & the Water Framework Directive

- Sustainable water use (quality and quantity, pollution, salination)
- Sustainable use of natural resources
- Protection against the effects of climate change: floods, water scarcity



Societal functions of water and the role of law: Responsibilities, Power, and Policy instruments



Drinking water

Room for rivers



Space, energy

Shipping



Water storage

Fresh water supply



Waste water

Recreation





Utrecht University

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A (VERY) SHORT HISTORY OF EU WATER LAW

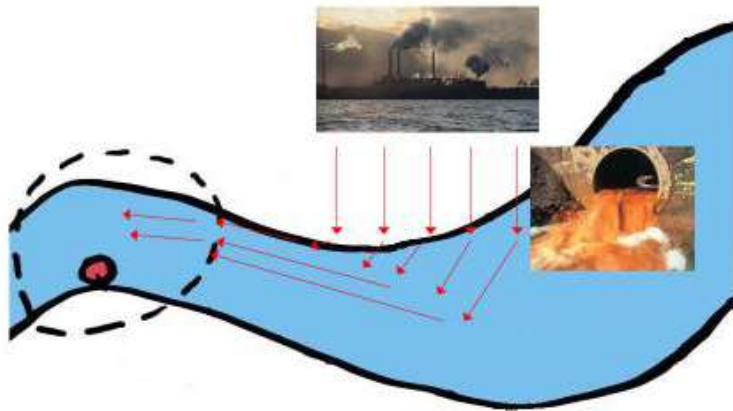
Combating point source pollution 1975-1980

Focus:

- prevention of pollution of fresh waters with dangerous substances
- protection based on an adequate protection level
- Legal basis: economic (internal market) & environmental

Directives:

- environmental quality standards (EQS) for specific types of water:
drinking water (75/440), bathing water (76/160), water as a habitat for fish (78/659) and shellfish (79/923)
- emission limit values (ELV) for specific water uses
(Dangerous Substances Directive (76/464- then until December 2013 nr. 2006/11) and Groundwater Directive (80/68)



Main instruments and Characteristics

Main instruments

- Environmental quality standards (EQS)
- Plans
- Designated areas

- Environmental licenses
- Emission limit standards

Characteristics

- Top-down regulation for specific sources of pollution, functional EQS set by the EU
- EU water law tried to offer clarity on the level of protection that is guaranteed to the citizens:

- Example: environmental quality standards are sufficiently precise and clear
 - > obligations of result
 - > rights to individuals

- Cf **C-381/07 TOS case**: individuals can claim rights before national courts; involvement ECJ through preliminary ruling procedure

History of EU freshwater law (III):

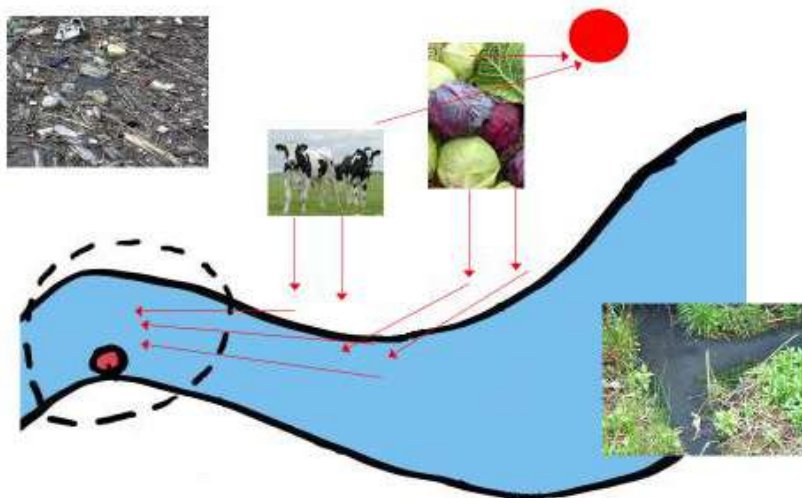
Combating diffuse source pollution 1980-2000

Focus:

- Regulation for specific sources of pollution
- Programmatic approach
- Environmental protection

Directives:

- Urban Wastewater Treatment Directive (91/271)
- Nitrates Directive (91/676)
- Directive for Integrated Prevention and Pollution Control (IPPC) addressing pollution from large industrial installations (96/91) (Now IED)



Problem: enforceability

What were the main problems?

- Little attention for trans-boundary effects
- Little attention for ecological protection and hydro-morphology
- Little attention for the protection of the marine environment
- No attention for fresh water supply
- No attention for flooding
- No attention for adaptation to climate change

A complex and fragmented legal framework which doesn't address all relevant problems

EU Treaties
Environmental goals and principles; subsidiarity principle

Water Framework Directive (2000/60/EC)

Pressures on water quality

Urban Waste Water
Directive (98/15/EC)

Sewage Sludge Directive
(86/278/EEC)

Integrated Pollution
Prevention Control (IPPC)
(96/61/EC)

Major Accidents Directive
(Seweso) (96/82/EC)

Industrial Emissions
Directive (2010/75/EC)

Regulation of Chemicals
(REACH) (2006/1907/EC)

Nitrates Directive
(91/676/EEC)

Pesticides Directive
(2009/128/EC)

Biocidal Products
Regulation
(528/2012/EC)

Restoration and
preservation of water
resources

Groundwater Directive
(2006/118/EC)

Priority Substances
Directive (2013/39/EU)

Marine Strategy
Framework Directive
(2008/56/EC)

Framework Directive
Maritime Spatial Planning
(2014/89/EU)

Directive on Flood Risk
Management
(2007/60/EC)

Water usages

Drinking Water Directive
(98/83/EC)

Habitat Directive
(92/43/EEC)

Birds Directive
(79/409/EEC)

Bathing Water Directive
(2006/7/EC)

Environmental Impact Directive (2014/52/EU) and
Strategic Environmental Impact Directive (2001/42/EC)

Directives to implement the Aarhus Convention:

Directive on public access to environmental information (2003/4/EC);
Directive on public participation in environmental planning (2003/35/EC)

Overview of today's EU water and environmental legislation

Figure by Susanne Wuijts

The Water Framework Directive: ecosystems and river basin districts



An ecosystem approach is a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way (UNEP/CBD/COP/5/23 (2000) annex A.1)

What is water?

“Water is not a commercial product like any other, but rather a heritage which must be protected, defended and treated as such”.

Question: What does this mean for the use of exemptions? Relationship between rules and exemptions: See European Commission, Common Implementation Strategy for the WFD 2009, p. 10. The ‘exception proves the rule’, (AG Jääskinen). WFD has legally binding norms. Case C-461/13, Bund v Germany [2015] ECR I-433, Opinion of AG Jääskinen



A new approach (I): the aim of the WFD

- **Integrated approach: Good water status**
 - Surface water: Good chemical status AND good ecological status
 - Ground water: Good chemical status AND good quantitative status
- EU Chemical EQS:
 - New Daughter Directives (EQS, Dangerous Substances, Groundwater),
New Bathing Water Directive.
- National chemical and ecological EQS: in national legislation

Question: how is the good status implemented in national law: as an environmental quality standard? Binding in both planning and permit procedures?

- Nitrates Directive and Urban Wastewater Directive remain in force but revision of the Urban Wastewater Directive



A new approach (II): integration

An internal integrated approach: striving for good status of all waters

For surface waters: good chemical status and good ecological status (possibly good ecological potential for artificial or heavily modified waters)

For groundwater: good chemical status and good quantitative status (balance between abstractions and recharge) (CJEU 24 June 2021, no C-559/19 Donana)

Chemical quality requirements: in 'daughter directives' for hazardous substances and groundwater, and in the Bathing Water Directive

National chemical and ecological quality requirements in national regulations due to subsidiarity principle so that local conditions can be taken into account

Nitrates Directive and Urban Wastewater Directive continue to exist alongside the WFD but are being updated. There is alignment and coordination between the water directives. This is why WFD is called *Framework* Directive. For example: The Nitrate Action Programme is an integral part of the WFD programme of measures

An external integral approach: mandatory alignment with other environmental directives (nature, plant protection products etc)

A new approach (III): varia

- Jurisdiction by **(sub)river basin**, with **shared responsibilities** in international river basins (CJEU C-32/05/Luxembourg): river basin district= *land and water*
- **Protection not only water**: aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly dependent on aquatic ecosystems,
- **Management of natural resources** and availability of sufficient surface water and groundwater of good quality for sustainable, balanced and equitable use of water (see Art. 1 with general objectives)
- **General programmatic approach** (no net-loss approach), test against objectives per project! See CJEU 1 July 2015 , no C-461/13 (Weser)
- Strong focus on **public participation**: Article 14
- **Paying for water services**: Article 9, ECJ C-525/12: Cie Germany. Polluter pays & user pays
- International conflicts: article 12

Dual objective

- 1) no degradation (2009)
- 2) protection and enhancement

(CJEU 24 June 2021, no C-559/19 Donana)

Questions (not clear from the questionnaires):

Have and if so, how have both these objectives been implemented in national law (limit values, target values, indicators, otherwise) and what are the legal effects? 'Taking into account' objectives mentioned in non legally binding planning or a binding effect on decision making such as permits? (Weser)

Room for balancing several interests?

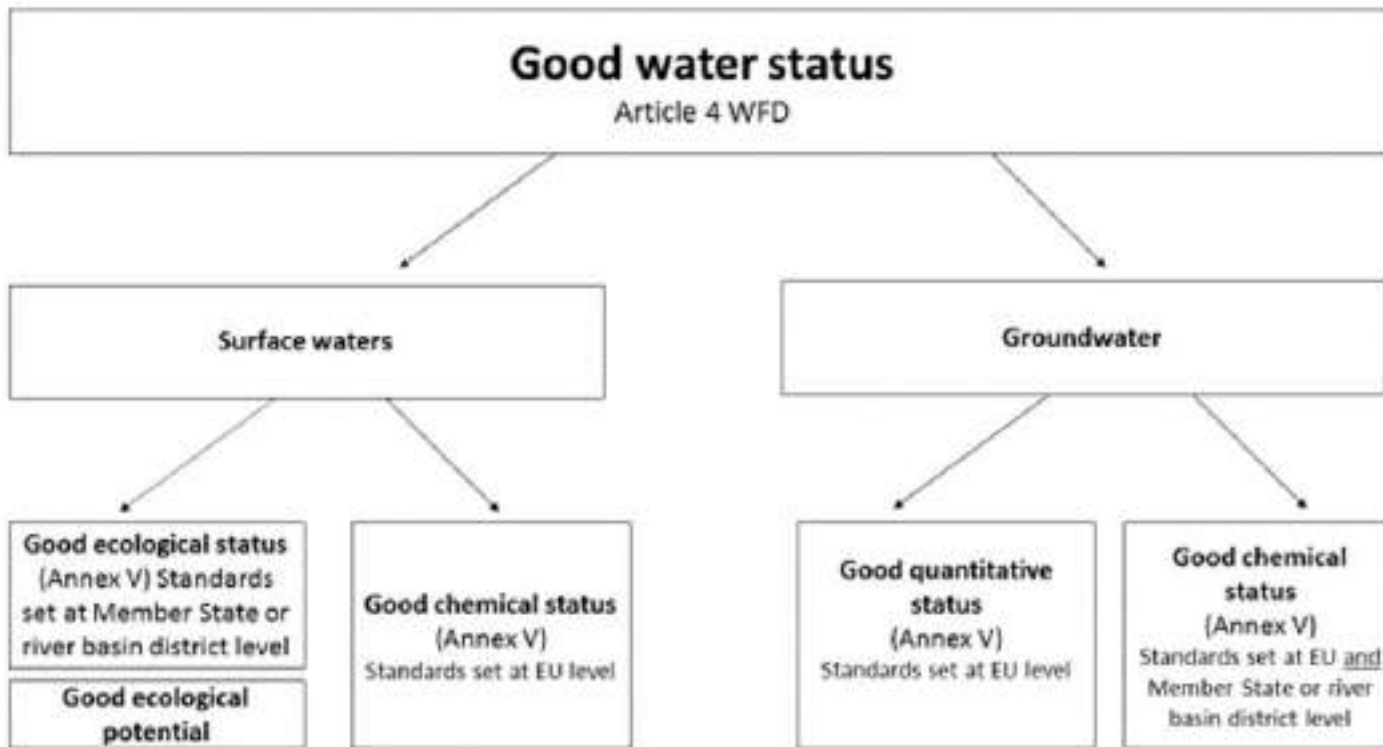
Also binding in other fields beyond water policies such as land use planning?

How do the courts deal with this legal status of objectives? (e.g. Sierilä and Finnulp ruling in Finland and implementation in the Netherlands).

Who can apply derogations? Laid down in RBMPs or used in individual projects?

Goal WFD: achieve a “Good Water Status” for *all EU waters*

Question: are small rivers, ponds and lakes assigned to a water body, do they need to comply with the objectives of the WFD?



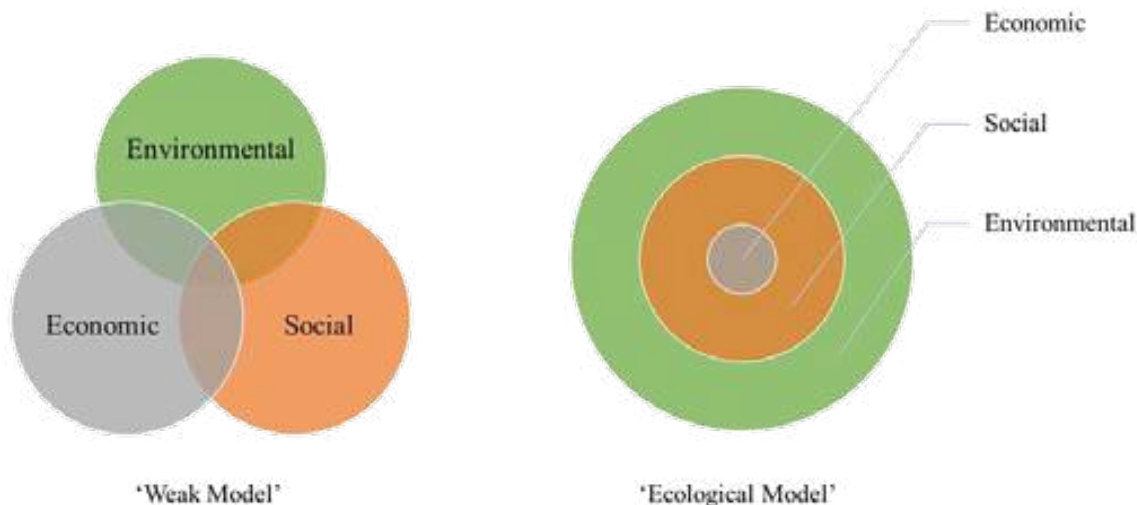
**Goal of the Marine Framework Directive:
Good *Environmental* Status**

Standard setting & the role of societal and economic values

The ecosystem approach of the WFD calls for sustainability to be interpreted according to the ecological model (right), with social and economic activities taking place within ecological boundaries. Economic and social aspects do not weigh in when setting standards but when using exception provisions!

(CJEU 4 May 2016 , no C-346/14, (Schwarze Sulm) and CJEU 5 May 2022, no C-525/20 (temporary deterioration France))

(Giddings, Hopwood and Brien, Sustain. Dev. 2002/10(4), pp. 187-196, Braaksma 2022).



Nature of the obligations & exceptions

- Obligations with tight deadlines and standards based on ecological criteria
- **Obligation of result: Are *meeting the WFD objectives/standards an obligation of result*, or is taking the measures the obligatory result?**

Question: What does this mean for the use of exemptions? Relationship between rules and exemptions: See European Commission, Common Implementation Strategy for the WFD 2009, p. 10. The 'exception proves the rule', (AG Jääskinen). WFD has legally binding norms. Case C-461/13, Bund v Germany [2015] ECR I-433, Opinion of AG Jääskinen

- If it looks as if the standards will not be met (= now), this forces to take additional measures (even if these are not considered desirable in the first instance, such as scaling up WWTP, more stringent manure policy) or to invoke exceptions under the WFD (e.g. target reduction, deadline extension)

Exemptions

- There are many exceptions member states can invoke: deadline extension, target reduction, new sustainable activities, force majeure, but: under strict conditions and they must be justified per water body. CJEU 4 May 2016 , No C-346/14, (Schwarze Sulm).

Question: will the courts judge if MS have provided comprehensive and well-argued justifications for the use of the exemptions in case for example NGOs refer to the use of exemptions in permitting procedures?

Question: Does hydropower as a carbon-neutral energy automatically constitute an overriding public interest or must the protection of water ecology be weighed equally?

- Extension of deadlines not possible in case of deterioration
- Exceptions allow inclusion of economic and social aspects

Exemptions: Article 4(4)

Article 4(4) of the WFD allows for temporary exemptions from achieving good ecological and chemical status for water bodies. The exemption can be applied if there is a failure to meet the deadline due to

- *technical infeasibility*
- *disproportionate costs*
- *natural conditions*

that do not allow for the timely improvement of the status of the water body.

The reasons for time extensions must be specifically identified and explained in the RBMPs. The exemption may be granted for a maximum of two monitoring cycles in cases of technical feasibility and disproportionate cost.

Exemptions: Article 4(5)

Article 4(5) of the WFD provides for the possibility of setting less stringent environmental objectives for certain heavily modified or artificial water bodies (water bodies that are so affected by human activity, or whose natural condition is such, that the achievement of the objectives of the WFD would be infeasible or disproportionately expensive).

Conditions:

- *There is no significantly better environmental option available to achieve the environmental and socioeconomic needs of the human activity in the water body.*
- *MS need to ensure that the highest possible ecological and chemical status is achieved*
- *no further deterioration of the water body occurs.*

The establishment and justification of less stringent objectives must be specifically mentioned in the RBMPs.

Exemptions: Article 4(7)

Article 4(7) provides for a derogation from the prohibition on deterioration set out in Article 4 of the Directive.

Conditions:

- *all available practicable steps have been taken to mitigate the adverse effects. the modifications must be of overriding public interest,*
- *the benefits of achieving the environmental objectives must outweigh the benefits to human health, human safety or sustainable development.*
- *these benefits cannot be achieved by any other substantially better environmental option because of technical infeasibility or disproportionate cost.*

A new cyclic and adaptive approach: Ten steps of integrated river basin management (in the WFD)



The WFD and integration with other directives

Internal integration: Nitrates Directive

Regulation of nutrients both part of WFD and Nitrates Directive

WFD: good ecological status surface water. No fixed standard, but numerical values between 0.59 and 4 mg N/litre. For groundwater, 50 mg nitrate/l i.e. 11.3 mg N/litre applies under the Groundwater Directive.

Nitrates directive: has no standards of its own! norm' 50 mg nitrate/litre in groundwater is for designation vulnerable zones + eutrophication objective surface water and coastal water

Programme of measures: measures under Nitrates Directive are part of programme of measures

CJEU, 3 October 2019, No C-197/18, Cie vs Austria: "Both natural persons and public and private legal persons must be able to request before the courts the adaptation of the Nitrates Action Programme if the standard of 50 mg/l nitrate is or may be exceeded. Article 5(4) and (5) has direct effect and exceeding the discretionary power should also be open to judicial review."

External integration: Habitats directive

Environmental objectives: if more objectives apply simultaneously, the most stringent objective applies (Art.4(1)(c))

Programme of measures: measures pursuant to Habitats Directive are part of programme of measures

For an example, see: **CJEU 24 June 2021, no C-559/19 Donana**

No deterioration and protection and improvement objective groundwater status.

Take into account illegal water abstraction, tourism and water abstraction for urban supply in groundwater use estimates. WFD programme of measures should include measures to avoid disturbance to protected habitat types due to groundwater abstraction. Failed to comply with Habitats Directive obligations by not taking appropriate measures against significant disturbances to protected habitat types caused by groundwater abstraction in the protected nature reserve

Organizational changes

- Competent authorities per (sub) river basin
- Shared responsibilities of several competent authorities within one river basin:

Transboundary cooperation obliged:

ECJ: Under Article 3(4) [WFD], Member States are to ensure that the requirements of the directive for the achievement of the environmental objectives established under Article 4 [WFD], and in particular all programmes of measures, are coordinated for the whole of a river basin district. (...) The obligations differ according to whether the river basin district in question is national or international (...). For international river basin districts, the Member States concerned are to ensure such coordination together and may, for that purpose, use existing structures stemming from international agreements (C-32/05)



Integrated river basin management

Van Rijswijk and Havekes, European and Dutch Water Law, Europa Law Publishing, 2012.

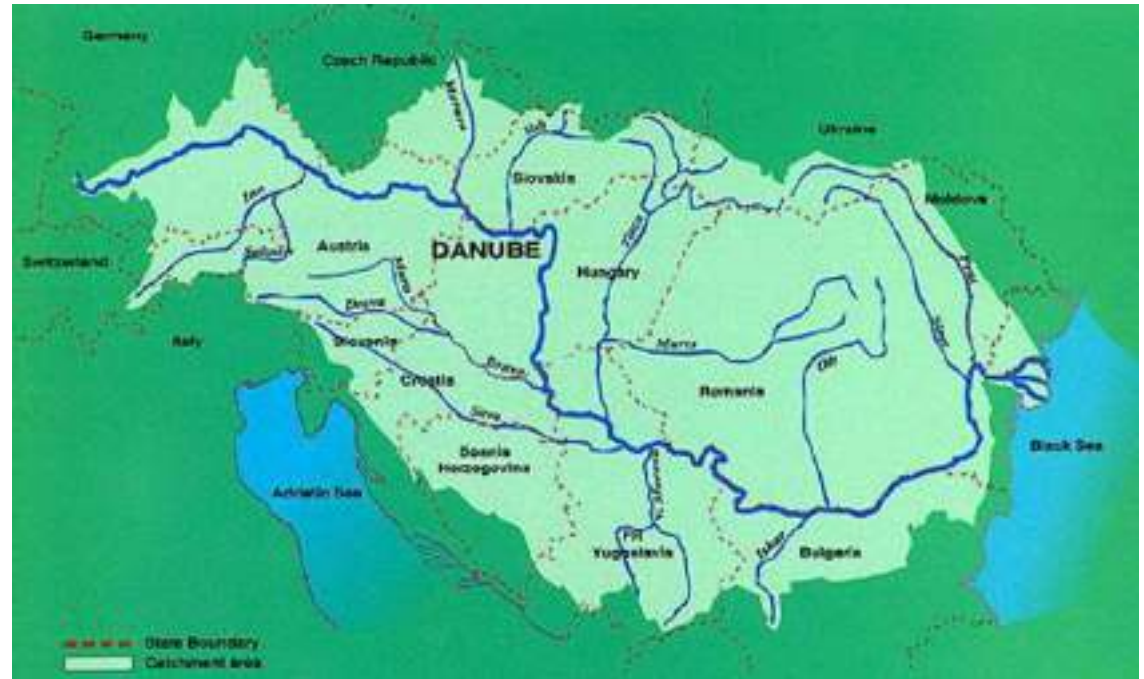
- River basin management according to the Helsinki Convention

Advantages of the RBM approach:

- Natural and relatively permanent boundaries
- Sources of pollution and causes of flooding are mostly in the catchment area
- Relationship between upstream and downstream land use can be considered in management
- RBM approach does justice to the relationship between land use and water use
- Easy to identify water use and water users



Meuse and Danube River Basins: within and outside the EU



Natural resource management

Purpose WFD: Article 1

- To establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:
- (a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;
- (b) **promotes sustainable water use based on a long-term protection of available water resources;**
- (c) aims at enhanced protection and improvement of the aquatic environment, inter alia, through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances;
- (d) ensures the progressive reduction of pollution of groundwater and prevents its further pollution, and
- **(e) contributes to mitigating the effects of floods and droughts**
- and thereby contributes to:
 - - the provision of the sufficient supply of good quality surface water and groundwater as needed for **sustainable, balanced and equitable water use,**
 - - a significant reduction in pollution of groundwater,
 - - the protection of territorial and marine waters, and
 - - achieving the objectives of relevant international agreements (...).



Focus on planning and procedures

Plans and programmes in the WFD

- River basin management plans (WFD)
- Programme of measures (WFD)

**European standards & national standards:
What does this mean for the European protection level for all citizens?**

- Subsidiarity principle
- Geographical and physical differences

Public participation

Public information and consultation (art. 14 WFD)

Two main reasons for public participation:

- Decisions on the most appropriate measures to achieve the objectives in the river basin management will involve *balancing the interests of various groups*. The rational basis is the economic analysis, but it is essential that the process is open to the scrutiny of those who will be affected.
- *Enforceability*. The greater the transparency in the establishment of objectives, the imposition of measures and the reporting of standards, the greater care Member States will take to implement the legislation in good faith, and the greater the power of citizens will be to influence the direction of environmental protection.



Conflict management

- The river basin approach leads to shared responsibilities for the status of waters within transboundary river basins.
- The regular system in European law is that each Member State is responsible for compliance with European law on its own territory

How can this be combined?

Article 12 WFD

1. Where a Member State identifies an issue which has an impact on the management of its water but cannot be resolved by that Member State, it may report the issue to the Commission and any other Member State concerned and may make recommendations for the resolution of it.
2. The Commission shall respond to any report or recommendations from Member States within a period of six months.



Cost recovery: a fair price for water (services)

- Economic analysis of water use within the river basin
 - > rational discussion on the cost-effectiveness of the various possible measures & recovery of costs
- Recovery of costs for water services (art. 9 WFD)
C-525/12: Cie vs Germany
- Member States shall take account of the principle of recovery of the *costs of water services, including environmental and resource costs (...)* in accordance (...) with the *polluter pays principle*.
- Member States shall ensure that water-pricing policies provide *adequate incentives for users to use water resources efficiently (...)*
- and shall ensure that an *adequate contribution of the different water uses, disaggregated into at least industry, households and agriculture (...)* will be paid
- Social, environmental and economic effects of the recovery as well as the geographic and climatic conditions of the region or regions may be taken into account

LAW IN ACTION:

**REPORT ON THE QUESTIONNAIRES
AND STATE OF PLAY OF
TRANSPOSITION, IMPLEMENTATION
AND WATER STATUS**

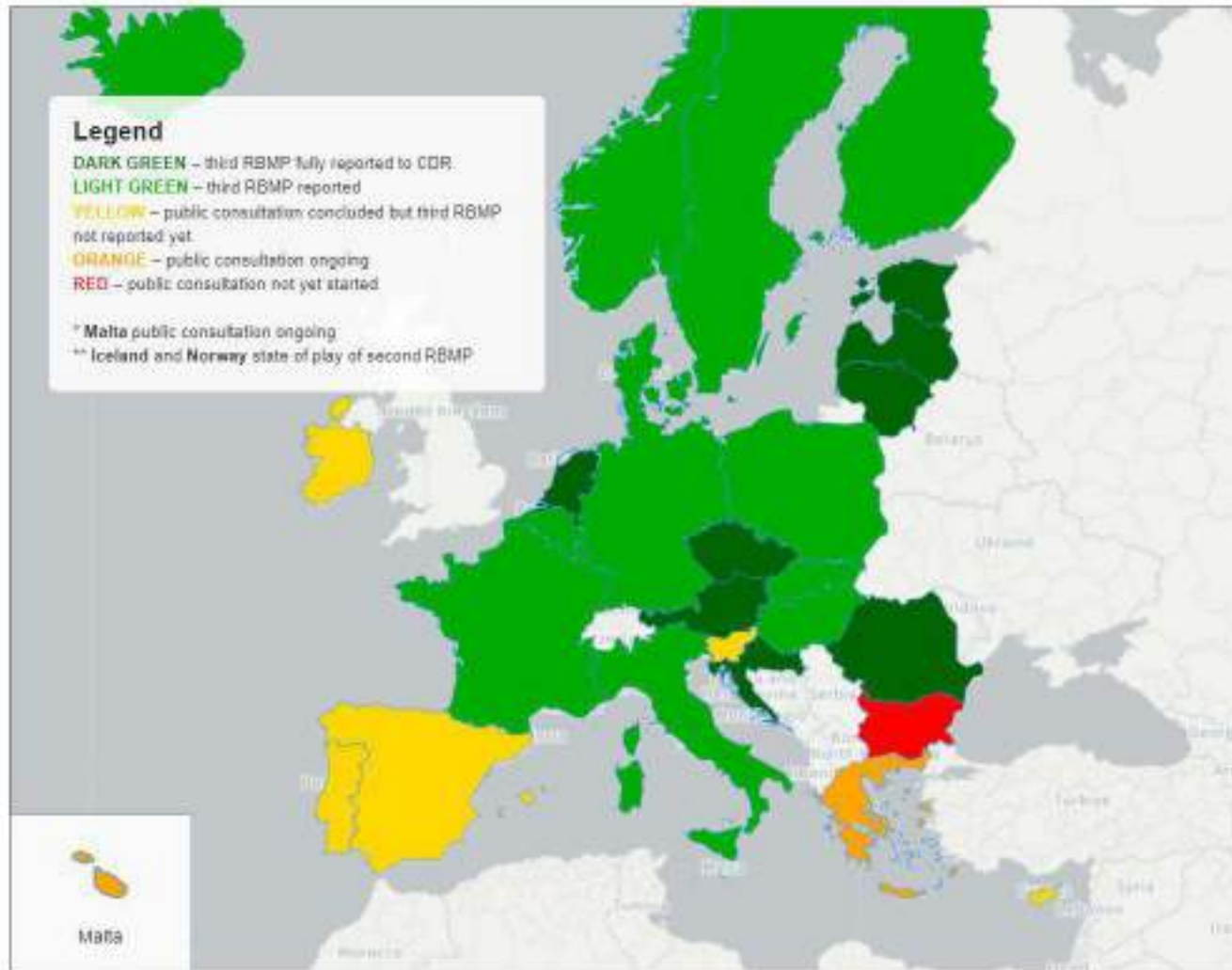
Water Framework Directive 1/2

Question Land	1.1 Transposed into domestic law	1.2 River Basin Management Plans	1.3a Programme of Measures	1.3b Deadline environmental objectives	1.4 Domestic case law
 Belgium		According to EC third RBMP reported			
 Bulgaria		According to EC public consultation not yet started	No (clear) answer	No (clear) answer	
 Denmark		According to EC third RBMP reported			A judgment is expected on the validity of the statutes on environmental objectives and the programmes of measures for the period 2015-2021.
 Estonia		According to EC third RBMP fully reported to CDR		No explicit answer but from previous answer it follows that not for all waterbodies the deadline has been met.	
 Finland		According to EC third RBMP reported			
 France		According to EC third RBMP reported			
 Germany		According to EC third RBMP reported			
 Greece		According to EC public consultation third RBMP ongoing			
 Hungary		According to EC third RBMP reported			

Water Framework Directive 2/2

	Italy	According to EC third RBMP reported			
	Netherlands	According to EC third RBMP fully reported to CDR			
	Norway	According to EC RBMP reported (state of play of second RBMP)			But complaints have been brought to the EFTA Surveillance Authority (ESA)
	Poland	According to EC third RBMP reported		No (clear) answer:	Such case law is available to everyone
	Portugal	According to EC public consultation concluded but third RBMP not reported yet			
	Romania	According to EC third RBMP fully reported to CDR			
	Spain	According to EC public consultation concluded but third RBMP not reported yet			
	Sweden	According to EC third RBMP reported			
	United Kingdom				










State of play of 3rd RBMP



Webtools | © EC-GISCO + Leaflet | © OpenStreetMap © EuroGeographics © UN-FAO for the administrative boundaries | Disclaimer

Source: European Commission, State of play of 3rd RBMP adoption in EU 27, last updated 4 October 2023, [Water Framework Directive \(europea.eu\)](https://europea.eu)

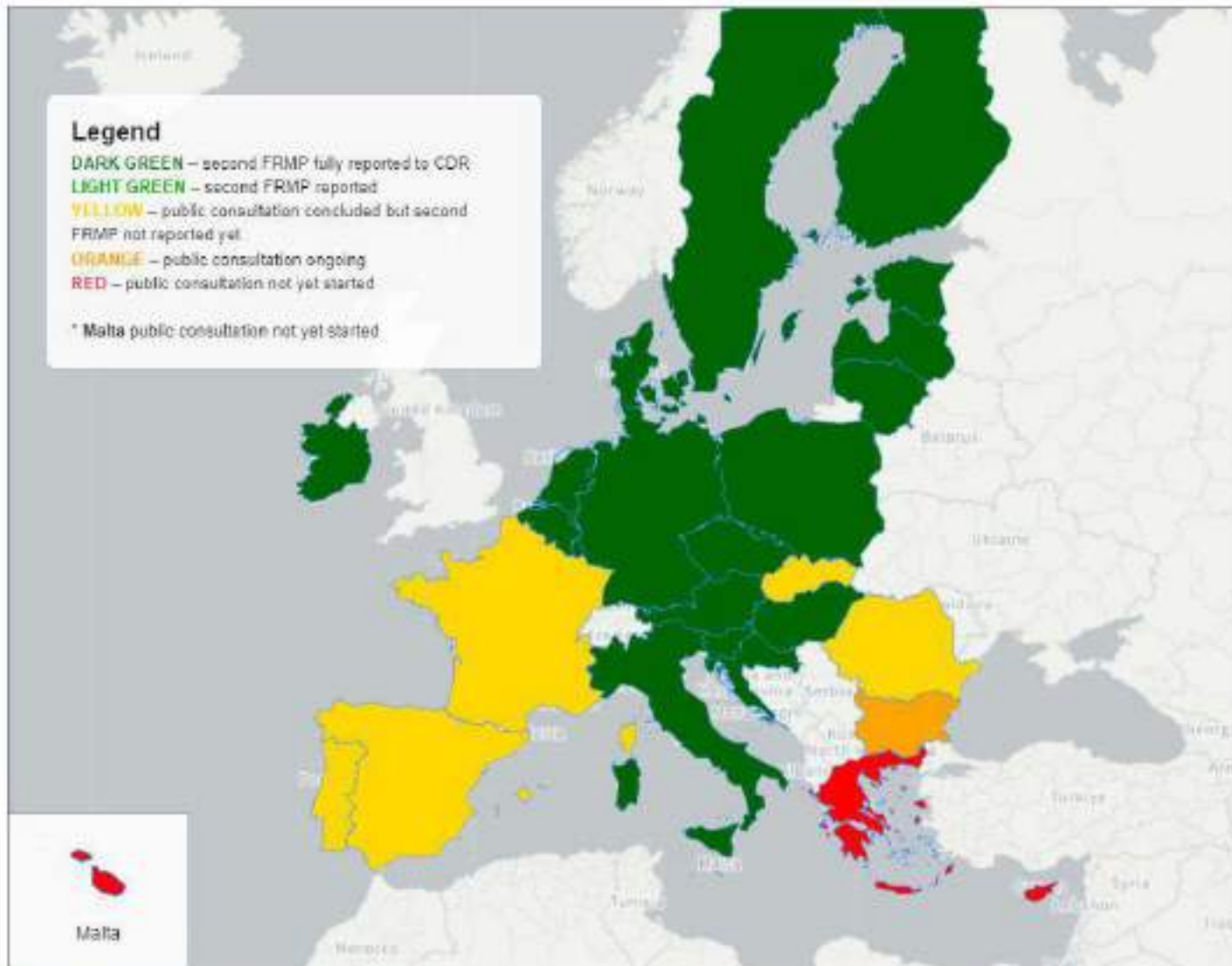
Floods Directive 1/2

Question Land	2.1 Transposed into domestic law	2.2a Flood hazard maps and flood risk maps	2.2b Flood Risk Management Plans	2.3 Domestic case law
 Belgium			According to EC second FRMP fully reported to CDR	No national legislation transposing the Directive into national law. The Directive is transposed into national law through the Royal Decree of 19 June 2007 on the basis of the legislative powers conferred on the King by the Constitution of the Kingdom of Belgium.
 Bulgaria			According to EC public consultation ongoing	
 Denmark		No (clear) answer	According to EC second FRMP fully reported to CDR	No (clear) answer
 Estonia			According to EC second FRMP fully reported to CDR	
 Finland			According to EC second FRMP fully reported to CDR	No. There are some cases concerning building permits in areas where the risk for flood is high/variable. The courts have already discussed the building permits.
 France			According to EC public consultation concluded, but second FRMP not reported yet	No (clear) answer
 Germany		No (clear) answer	According to EC second FRMP fully reported to CDR	No (clear) answer
 Greece			According to EC public consultation not yet started	
 Hungary			According to EC second FRMP fully reported to CDR	

Floods Directive 2/2

 Italy			According to EC second FRMP fully reported to CDG	
 Netherlands			According to EC second FRMP fully reported to CDG	
 Norway	This Directive is not part of the EEA Agreement, thus Norway is not obligated to transpose it in domestic law			
 Poland			According to EC second FRMP fully reported to CDG	'Such case law is available to everyone'
 Portugal			According to EC public consultation concluded but second FRMP not reported yet	
 Romania			According to EC public consultation concluded but second FRMP not reported yet	'See case law on WFD'
 Spain			According to EC public consultation concluded but second FRMP not reported yet	
 Sweden			According to EC second FRMP fully reported to CDG	
 United Kingdom				

State of play of 2nd FRMP

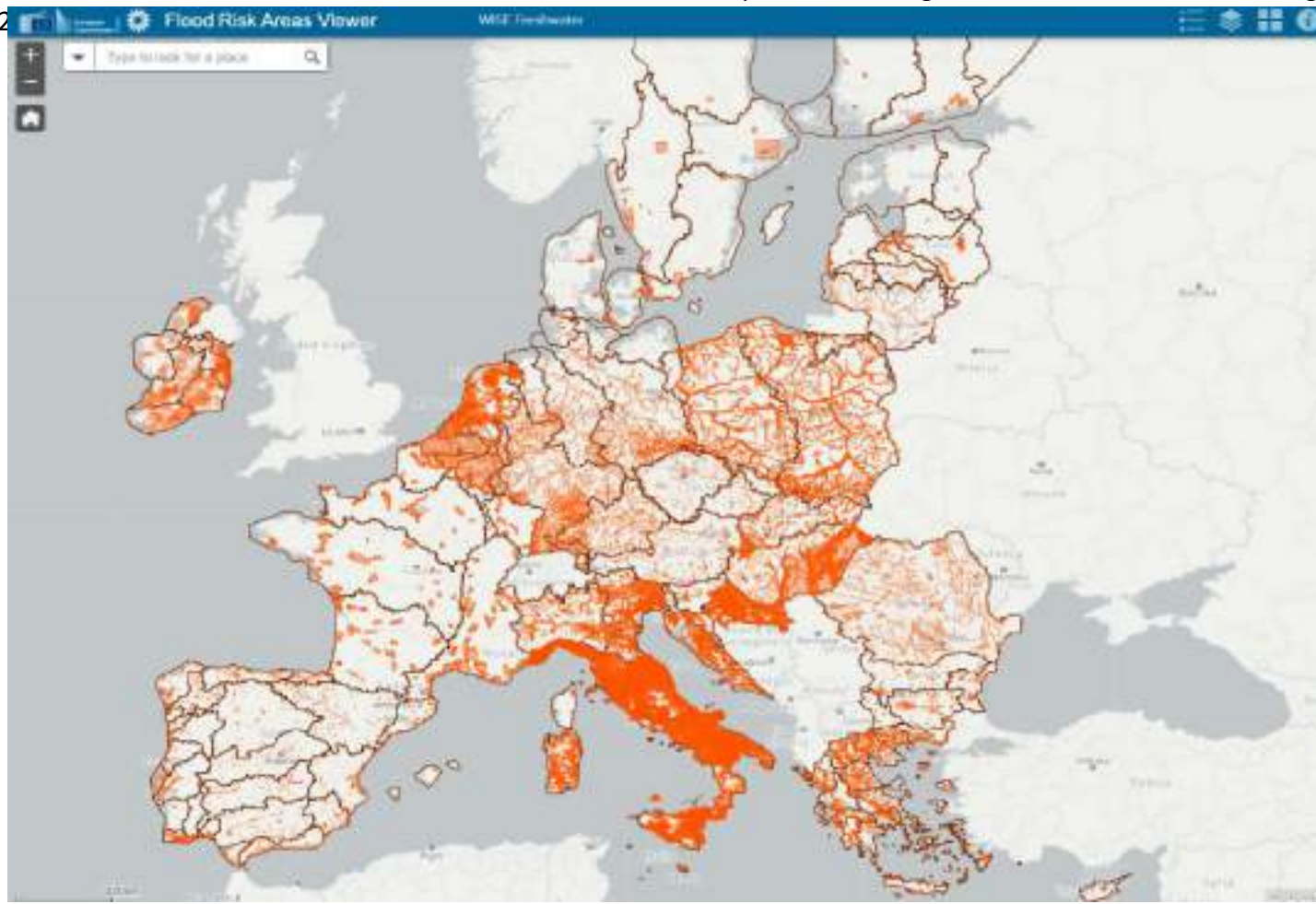


Floods Directive

- Commission publishes new flood risk areas viewer to raise awareness about significant flood risks (europa.eu):

https://environment.ec.europa.eu/news/commission-publishes-new-flood-risk-areas-viewer-raise-awareness-about-significant-flood-risks-2023-10-13_en#:~:text=The%20viewer%20shows%20the%20areas%20of%20potential%20significant,flood%20risk%20management%20plans%20in%2

13_en#:~:text=The%20viewer%20shows%20the%20areas%20of%20potential%20significant,flood%20risk%20management%20plans%20in%20in%2



Directive on environmental quality standards in the field of water policy 1/2

Question Land	3.1a Transposed into domestic law	3.1b Additional EQS	3.2 Deadline EQS	3.3 Domestic case law
 Belgium		No (clear) answer		
 Bulgaria		No (clear) answer	No (clear) answer	No (clear) answer
 Denmark		Additional EQS are set in the executive order defining environmental objectives for water bodies made and relevant nationally		No (clear) answer
 Estonia				
 Finland				Dispute about mixing zones (art. 4)
 France		No (clear) answer	No (clear) answer	No (clear) answer
 Germany	No (clear) answer	No (clear) answer	No (clear) answer	No (clear) answer
 Greece				
 Hungary			No data is available in this regard	

Directive on environmental quality standards in the field of water policy 2/2

 Italy			No (clear) answer.	
 Netherlands				
 Norway		No (clear) answer.	Overall, open waterbodies indicate that the chemical quality is "good" in 96,7 % of bodies of surface water. Beyond that, we do not have more detailed knowledge of compliance with the DQEs.	
 Poland		No (clear) answer.	There is no knowledge about it.	'Such case law is available to everyone'.
 Portugal		There are hydrographic plans and other environmental data, but some with more precision than others.		
 Romania			A study can determine a base environmental quality standard according to whether water bodies are categorised as the river, estuary, or Marine Environment, river and lagoon.	
 Spain				
 Sweden		No (clear) answer.		No (clear) answer.
 United Kingdom				

General observations

from the questionnaires 1/2

- Colors in the table provide a rough overview, nuances are to be included
- Transposition in national legislation is in general okay - at least on paper - although detailed information is lacking Federal States seem to have more problems
- Some Member States have integrated water legislation, in some MS the Directives have been transposed in many Decrees
- Not yet many national cases, but how does this relate to ECJ cases? Are ECJ cases familiar for Env law judges?
- Hardly cases on the Directive on environmental quality standards in the field of water policy, but probably answered/dealt with under the questions related to the WFD

General observations

from the questionnaires 2/2

- Some MS (e.g. Romania) uses the adaptive approach of the WFD: programme of measures adapted because of feasibility, technical, effectiveness of measures (for good and bad) or investment costs reasons (last one not being a good reason).
- Some MS point at the role of district basin authorities, cost recovery or the precautionary principle
- Relations with e.g measures of the Nitrates Directive are mentioned, but not relations with the Habitats Directive (Donana case)
- Floods Directive seems a trigger for better application of a water test

**WHERE DO WE STAND,
WHAT CAN BE EXPECTED
IN THE NEAR FUTURE?**

The European Environment

State and outlook report (SOER) 2020

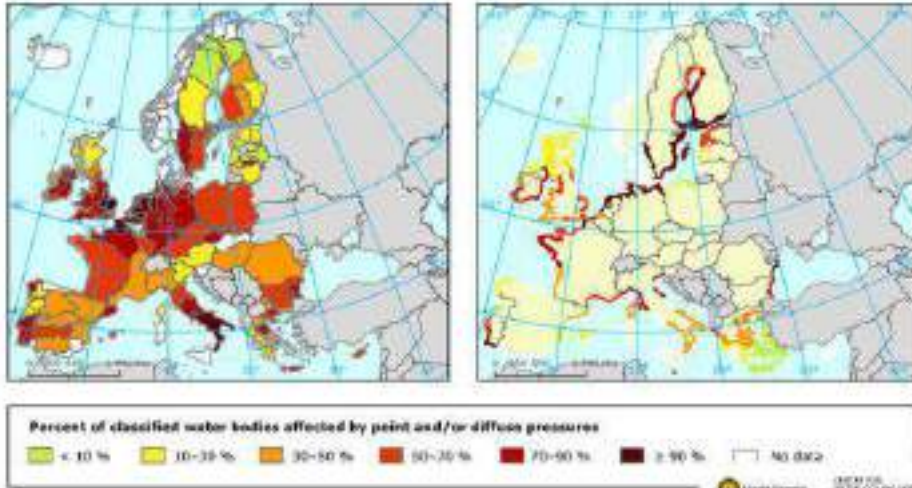
Europe's waters are cleaner than 40 years ago due to treatment plants and sewage systems.

In 2020, Europe faces environmental challenges of unprecedented scale and urgency.

- Although EU environment and climate policies have delivered substantial benefits over recent decades, Europe faces persistent problems in areas such as
 - biodiversity loss,
 - resource use,
 - climate change impacts and
 - environmental risks to health and well-being.
- Global megatrends such as demographic change are intensifying many environmental challenges, while rapid technological change brings new risks and uncertainties.



Water bodies affected by point and/or diffuse pressures



A tale of two Europes

One threatened by droughts

One threatened by floods

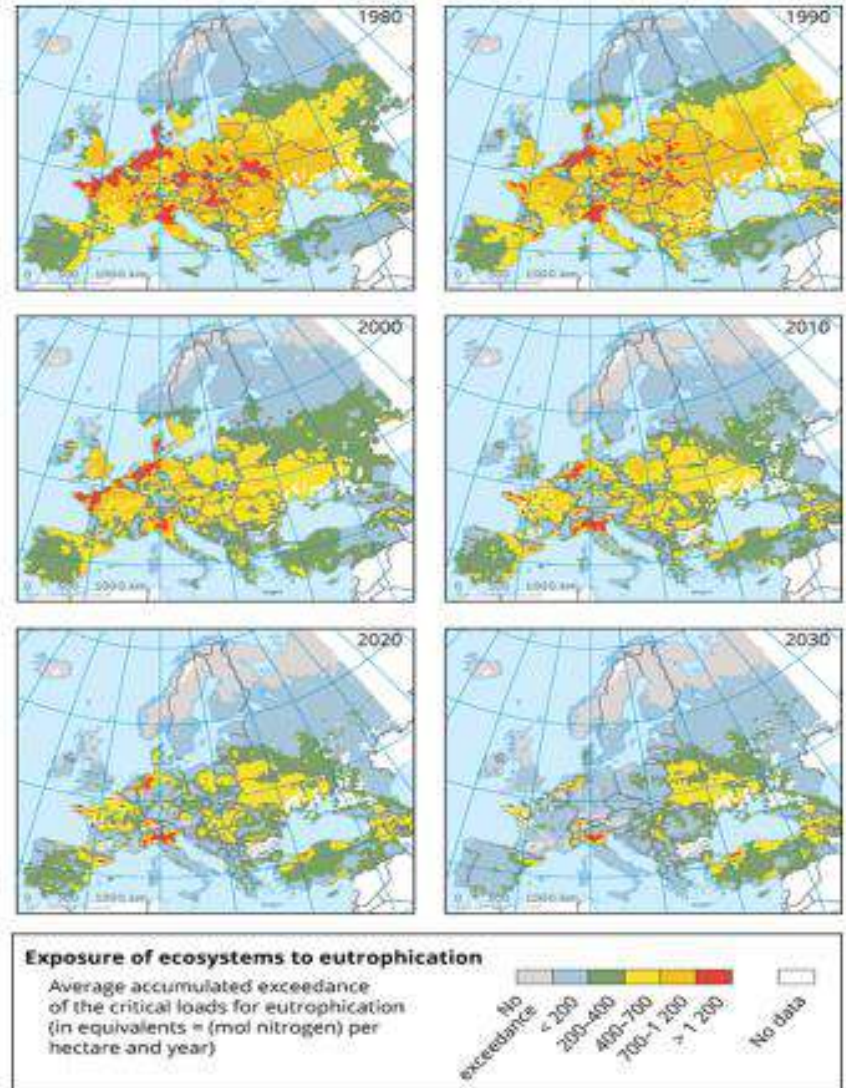
Figure 1.4 Water stress in Europe: from basin-scale to a basinless indicator by 2015



Figure 1.3 Assessment of Europe's water stress 1990 and 2000



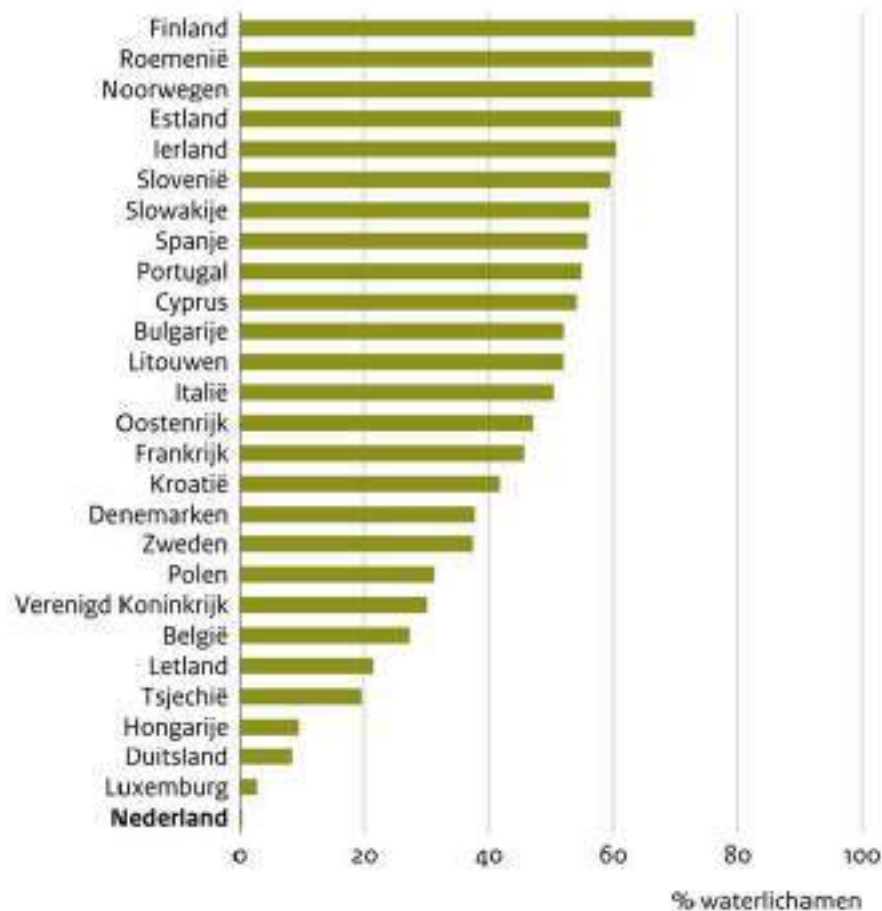
Main problems



Ranking the stars....

Water quality in the EU/conformity with the WFD

Europese waterkwaliteit met status goed volgens Kaderrichtlijn Water



Bron: EEA

Where do Member States stand?

Is it time for art. 11.5 WFD?

Do you realize what this means?

11.5 WFD:

Where monitoring or other data indicate that the objectives set under Article 4 for the body of water are unlikely to be achieved, the Member State shall ensure that:

- the causes of the possible failure are investigated,
- relevant permits and authorisations are examined and reviewed as appropriate,
- the monitoring programmes are reviewed and adjusted as appropriate, and
- additional measures as may be necessary in order to achieve those objectives are established, including, as appropriate, the establishment of stricter environmental quality standards following the procedures laid down in Annex V.

Where those causes are the result of circumstances of natural cause or force majeure which are exceptional and could not reasonably have been foreseen, in particular extreme floods and prolonged droughts, the Member State may determine that additional measures are not practicable, subject to Article 4(6).

Law in action?

- From the questionnaire it's not clear if the national laws are in accordance with ECJ case law on EU water legislation
- It requires specific knowledge of the national legal system to know if many national cases can be expected and what the possibilities of citizens and NGOs to bring a case before the courts are in practice, but see:
ECJ 3 oktober 2019, nr. C-197/18, Cie vs Austria, "Both natural persons and public and private legal entities should be able to ask in court for adjustment of the nitrate action program if the standard of 50 mg/l nitrate is or may be exceeded. Article 5(4) and (5) has direct effect and exceeding the discretionary power should also be subject to judicial review."
- From the questionnaires it isn't clear if article 11.5 has been implemented correct, in the way it guarantees compliance with the WFD
- **Question: are the measures in the programme of measures obligatory or mainly voluntary measures and would that be enough to comply with the WFD?**

And what happens if Member States fail to comply in time?

The EU does not care how Member States organise their water management. It is the Member State which is responsible.

Relevance for the national courts TODAY:

- No deterioration ban already applies.
National procedures can start tomorrow, e.g. following a permit application, or request for revising existing permits, request for enforcement
- Courts/Judges can ask preliminary questions

And what happens if Member States fail to comply in time?

Relevance for the national courts in 2027:

- No deterioration and targets must be met
- Then it becomes easy to bring a case before national courts to show that a Member State is not meeting its obligations.

Relevance for the Member States:

European Commission can start infringement proceedings with possibly:

- A conviction
- A fine: 50 M Euros (depending on severity of the breach)
- A penalty for every day the Member State fails to comply (maximum of EU 212.949 per day (about 78 M€ jaar)
- ECJ cases are relevant for all Member States

THANK YOU