WATER LAW & SUSTAINABLE TRAJECTORIES

QUESTIONNAIRE

Dear Avosetta members

This year's Avosetta meeting in Rennes will look at the topic of Water Law & Sustainable Trajectories.
The choice of this topic resonates strongly with current events such as demonstrated by the UN Water Conference in 2023, 46 years after the first UN Water conference in Mar Del Plata (Argentina). As one of the outcomes of this conference, the Water Action Agenda brings together a collection of voluntary commitments from States, regional integration organisations such as the EU and other stakeholders. While the next UN Water Conference is scheduled for 2026, France and Kazakhstan will co-host a OneWater Summit in New York in September 2024 in parallel with a session of the United Nations General Assembly.
This blue diplomatic effervescence confirms that Water, source of Life but also of growing conflicts exacerbated by climate change, seems at last to have become a priority issue on the political agenda in the context of the UN Water Action Decade 2018-2028 and the 2030 Agenda for sustainable Development. In the name of ecological emergency, the discourses of the UN Secretary-General are clearly eloquent and Antonio Guterres strongly invites radical change to the rules of the game and ensure water security for everyone. "*Water is humanity's lifeblood, from the food we eat to the ecosystems and biodiversity that enrich our world to the prosperity that sustains nations (…) Water is a human right and a common development denominator to shape a better future. But Water is in deep trouble. We are draining humanity's lifeblood through vampiric overconsumption and unsustainable use and evaporating it through global heating. We've broken the water cycle, destroyed ecosystems and contaminated groundwater. Nearly three out of four natural disasters are linked to water. One in four people lives without safely managed water services of clean drinking water. And over 1.7 billion people lack basic sanitation*" (SG/SM/21737- 22/3/2023).
From among more than 750 Voluntary Commitments for the Water Action Agenda submitted by different nations and various stakeholders, the EU has presented its Water priorities broken down into 33 commitments and its 2050 vision for Water. This vision is based on five crucial targets: - Water security for all – Global resilience to Water stress – Human right to safe drinking water and sanitation without compromising the rights of future generations – Protected and restored aquatic ecosystems – A fair balance between water supply and demand.

This international momentum and awareness of the urgency of the situation is also reflected at the level of the EU and its Member States. Faced with multidimensional and cross-cutting issues, a critical analysis of water and environmental Law is essential. Calls for transformative action also require a strong contribution from all branches of Law for sustainable water trajectories.

Recent conflicts over the sharing of water resources in Europe, such as the protest marches against water storage projects "mega-basins" in France, illustrate the urgent need to go beyond the classic extractive business as usual. Similarly, given the lack of rainfall in recent months, in early February 2024, Catalonia's recent declaration of drought emergency for Barcelona and the surrounding areas raises questions about the current legal framework for the management and the governance of water resources & aquatic environments. The availability of water in sufficient quality and quantity is clearly at stake in several regions in Europe. It questions our uses of water resources and the prioritization of our water needs. This crucial issue impacts on many human activities but also on ecosystems and natural entities. Climate change exacerbates the situation significantly and the European Commission underlines that the "*challenge of water quantity management is becoming ever more urgent across Europe*"[1]. At the EU level, water stress affects 20% of the territory and 30% of the population every year[2]. Facing these socio-*ecological* emergencies requires major investment in sustainable management and use of water resources.

In its 2019 Fitness Check of the Water Framework Directive and the Flood Directive[3], the Commission recognized that various improvements are needed to ensure compliance with EU Water & environmental legislation and to reinforce the integration of water objectives in all EU policies. As highlighted by the Commission, "*with still a majority of EU water bodies not in good status, a further acceleration of action by Member States is urgently needed*"[4]. According to the EU report[5], among EU groundwater bodies, 75% achieved good chemical status and 90% achieved good quantitative status. The situation is clearly worrying for EU surface waters bodies for which only 44 % are in a good or high ecological status and only 31% are of good chemical status (with major disparities between and within Member States).
In addition to new challenges such as the increasing scarcity of water resources, water efficiency and water reuse, the water footprint and the emergence of new micropollutants, compliance with European and national water legislation faces a number of legal, financial and technical obstacles. Delays in the effective implementation of environmental obligations are seriously jeopardizing the chances of achieving the ambitious objectives of the WFD on time. Water litigation before the Court of Justice of the EU is the sector of EU environmental litigation in which the greatest number of financial penalties have been imposed on Member States that fail to comply with their EU Water obligations (the majority with regard to the Urban Waste Water Treatment Directive 91/271/EC[6] (currently being revised)).
The European Green Deal is also presented by the Commission as a "*unique opportunity that should be seized by Member States and stakeholders alike to secure a water-resilient future*"[7] for achieving Sustainable Development Goal 6 (access to water and sanitation) interlinked with the other 16 SGDs. In its last report on the implementation of the Water Framework Directive, the Commission advocated a "*multifaceted agenda for water resilience*" for 2030. Such agenda is presented as the trajectory of this policy at the crossroads of the complex challenges of climate, food and energy security, biodiversity and circular use of natural resources.

[1] COM (2021) 970 final. Report from the Commission on the implementation of the Water Framework Directive (2000/60/EC), the Environmental Quality Standards Directive (2008/105/EC amended by Directive 2013/39/EY) and the Flood Directive (2007/60/EC)
[2] EEA Briefing « Europe's groundwater – a key resource under pressure", 3/2022
[3] SWD (2019) 439, final. Fitness Check of the WFD, Groundwater Directive, Environmental Quality Standards Directive and Floods Directive. COM (2019) 95 final. Report on the implementation of the Water Framework Directive 2000/60/EC and the Floods Directive 2007/60/EC.
[4] COM (2021) 970 final.
[5] COM (2021) 970 final.
[6] C-298/19 (Hellenic Republic)– C-328/16 (Hellenic Republic) ; C-251/17 (Italian Republic); C-205/17 (Kingdom of Spain); C-167/14 (Hellenic Republic); C-533/11 (Kingdom of Belgium) ; C-576/11 (Grand-Duché du Luxembourg)
[7] COM (2021) 970 final.

In 2023 the European Economic and Social Committee adopted several own-initiative opinions on a number of key water issues[8] and is calling for a European Blue Pact in interaction with the European Green Deal. However, on the eve of the European elections in 2024, the setback to the environmental ambitions of the EU and its Member States is particularly worrying, going against the grain of scientific expertise[9]. Such political context makes it all the more necessary to reflect together on the legal [changes] [challenges] [?] and transformations in water policies and on the relevance of a future Blue Pact for Europe in synergy with the policies of Member States. In view of the importance of such an ambitious project, the questionnaire will select the most relevant topics for discussion.

As you may know, **the spirit of Avosetta meetings** is to promote stimulating discussion based on the responses to the questionnaire, not only on existing Law, but also on the necessary legal changes that are currently being debated in several forums and scientific programmes in Europe. For example, the recent Water4All Partnership-Water security for the Planet within the frame of the Horizon Europe programme brings together 90 partners from 33 countries. In synergy with this consortium, the National Water Research Programme OneWater- *"Eau bien commun"* is based on six main scientific challenges : Anticipation – Water footprint – Sentinel Water – Adaptation – Socio-ecological Transition – Data sharing. Similarly, Avosetta's discussions are not limited to analyzing the national implementation of EU Law or to a comparative analysis of national Law, but have to go beyond this analysis towards a wider European perspective. They aim to identify and analyze synergies and dynamics of influence or confrontation between national Laws and EU Law (both elaboration & implementation) and their influential forces at different scales. Discussions may also focus on the research fronts and scientific and social debates relating to the theme of the meeting and lead to possible recommendations from the group. The Avosetta group is clearly in a position to contribute to current legal debates on Water at the EU and national level.
As a result, constructing the questionnaire is always a complex exercise, while endeavoring to ensure that you don't spend an excessive amount of time answering the various questions, particularly if the subject of the meeting is far removed from your research and areas of expertise.
The questionnaire focuses on a limited number of questions, which are not too detailed so as not to take up too much of your time (we hope) and to make the discussion easier at the meeting. As the questions are open-ended, your answers will focus on illustrations that you consider are the most interesting to share with the members and that will contribute to the cross-cutting discussions during the meeting. Please feel free to write more in the form of a reflective chapter than simply a formal answer to every sub-question. Please also feel free to mention the most relevant legal doctrinal references. Avosetta Members from a State that is not a Member State of the EU but a party to the Helsinki Convention on the protection and use of transboundary Watercourses and International Lakes (1992)[10] or to other regional conventions (Convention on cooperation for the protection and sustainable use of the Danube river (1994)[11] (…), should answer the questionnaire accordingly.

[8] 12/7/2023 : Water-efficient consumption; 13/7/2023 : Opinion Water poverty; Opinion "Water-intensive industries and water-efficient technologies"; Opinion The economics of an EU Blue Deal; Opinion "Sustainable water management and climate emergency – blue deal", Opinion "Sustainable and resilient water infrastructure and distribution networks". 21/9/2023 : Opinion "Water politics – blue diplomacy"
[9] In 2022, A scientific publication estimates that the planetary boundary for freshwater has now been transgressed. L. Wang-Erlandsson, A. Tobian & al. A planetary boundary for green water, Earth & Environment, Nature Reviews, Vol. 3, June 2022, 380-392.
[10] Council Decision 95/308/EC on the conclusion, on behalf of the Community, of the Convention on the protection and use of transboundary watercourses and international lake, EUOJ 1995 L 185/44.
[11] Council Decision 97/825/EC concerning the conclusion of the Convention on cooperation for the protection and sustainable use of the river Danube, EUOJ 1997 L 342/18

QUESTIONNAIRE

The questionnaire is structured around three major themes that are currently the subject of discussions and proposals for legal change:

Session 1) Water as commons & Right to Water
Session 2) Integrated Water Management & Water Biodiversity
Session 3) Water conflicts & Adaptive Water Governance
For each session, we aim to present an overview of the context from the EU Law perspective with a series of references via hypertext link.

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Context

The Water Framework Directive (2000/60/EC) reflects the complexity of the legal status of Water which is "*fundamental to all aspects of life*"[12] and "*a key part of sustainable development*"[13].
The first recital to the WFD thus stipulates that Water "*is not a commercial product like another but rather a heritage which must be protected, defended and treated as such*". The WFD also underlines that the "*supply of water is a service of general interest*". Moreover, water is considered not only as a renewable natural resource but also as a natural and living environment for all.
These multiple qualifications can give rise to risks of conflicts of interest and have a real impact on the type of legal frameworks for the protection of water and the public/private management of water resources. The promoters of the European Citizen Initiative Right2Water (the first successful ECI 2013) insisted precisely on the importance of excluding water services from liberalisation and called "*to enshrine into Law that control over water and water must remain in public hands*". In response in 2014[14], if the European Commission pointed out that the Treaty "*shall in no way prejudice the rules in Member States governing the system of property ownership*" (article 345), it also underlined the "*clear recognition of the importance of water as a public good that is essential to the full enjoyment of life and all human rights*".
These decisive questions also arise at Member State level, as demonstrated by the Italian referendum in 2011, in which over 55% of Italians voted against the privatisation of water and local public services.
The notion of Common is once again being called into question and is challenging legal scholars. "*Common good* », « *common public good* », « *commons* », « *natural commons* » are all concepts used without necessarily having the same meaning or the same origins, particularly in relation to the theory of the commons by the economist E. Oström. How does it interact with the concept of common heritage? If the Birds & Habitats Directive state that the "*threatened Habitats and species form part of the Community's natural heritage*", the WFD considers that Water is "*a heritage*" (implicitly common heritage?). What changes in representations of Water (and values linked) underpin these debates and discourses on the commons and what legal operationalization should be promoted at EU and national level?

Questions

1- Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law?

2- Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

[12] European Economic and Social Committee 13/7/2023 : Opinion Water poverty
[13] Ibid.
[14] COM (2014) 177 final.

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

Context

The organisers of the ECI *Right2Water* urged the Commission to "*propose legislation implementing the human right to water and sanitation*" given the silence of EU law on this matter. They argued for a strengthened human rights approach to environmental issues following the UN dynamic for the widespread recognition of the Human right to safe drinking water and sanitation[15]. In response in 2014, the Commission recognizes the inextricable links between access to drinking water and sanitation and the right to life and human dignity as guaranteed by the EU Charter of Fundamental Rights but it concludes that such access is already an essential component of EU fundamental rights. For its part, the European Parliament (EP) advocated that universal access to safe drinking water and sanitation be recognised in the Charter of Fundamental Rights of the EU[16]. However, the Directive (EU) 2020/2184 Drinking Water Directive (recast Directive 98/83/EC Directive) considers that "*the right to water do not fall within the Union's environment policy or the Union's social policy which is limited and complementary in nature*" (whereas 34). Notwithstanding the criticism against such interpretation, this directive highlights the need of ensuring that MS adopt enhanced measures to ensure access of drinking water for all. In addition, the European Pillar of Social rights proclaimed in 2017 recognizes that "*Everyone has the right to access essential services of good quality, including*" water and sanitation. Finally, it's also important to stress that in the EU, around 23 million people (4.5%) are not connected to a public water supply[17], but this percentage masks great national disparities. In line with the guiding principle "*leave no one behind*", the MS "*shall take the necessary measures to improve or maintain access to water intended for human consumption for all, in particular for vulnerable and marginalised groups as defined by the Member states*" (art. 16 DWD).

More recently, the promoters of the "rights of Nature" theory are spending its ideas in many forms at different scales, including in Europe. A variety of experiences, such as the Loire Parliament in France and the adoption of symbolic declarations on the rights of rivers, have multiplied in several European countries. In Spain, the Law 19/2022 of 30/9/2022 recognises the legal personality of the Mar Menor lagoon and its basin. The theory of the rights of nature invites us to rethink the conceptual basis of legal protection of the environment. Of course, it raises a number of questions about its real added value and legal controversies. As EU law currently stands, the first objective of the Water Framework Directive focuses on the water needs of terrestrial ecosystems and wetlands that depend directly on them. It specifies that the first objective of this framework is to prevent "*further deterioration*", protect and enhance "*the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystem*".

Questions

3- **Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?**

4- **How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?**

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

The WFD promotes the implementation of the concept of Integrated Water Resources Management defined by the Global Water Partnership as "*a process which promotes the coordinated development and*

[15] Resolution adopted by the UN General Assembly on 28 July 2010 on the human right to Water and sanitation. See since : Resolution adopted by the Human Rights Council on 6 October 2020 on the Human rights to safe drinking water and sanitation.

[16] European Parliament (EP) resolution on the follow-up to the ECI Right2Water, September 2015, P8_TA (2015) 0294.

[17] SWD (2017) 449, Impact assessment related the proposal for Drinking Water Directive, Eurostat data.

management of water, land and related resources, in order to maximize the resultant economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems"[18]. The 8th EU Environment Action program to 2030 also promotes an ecosystem approach "*for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way in order to help reach a balance*"[19] between the objectives of conservation, sustainable use and benefit sharing of biological diversity. Therefore, the implementation of an integrated water management and ecosystem approach requires the contribution of several environmental EU legislations[20] such as Natura 2000 and others EU Policies, including at MS level.

♣ *INTEGRATED WATER MANAGEMENT*

Context

Water issues are not limited to water pollution issues, even if they constitute a substantial part of the problem. In addition, the assessment of the quantitative pressures on water resources cannot be disconnected from the assessment of human pressures and degradations of water quality and of aquatic ecosystems. In addition to the diversity of pollution sources (point source & diffuse source) and types of pollution (chemical, organic, physical), hydromorphological pressures[21] constitute one of the major pressures which counteract compliance with the objective of good ecological and chemical water status. The combined **consideration of water quality and quantity issues throughout the water cycle** greatly complicates the design and the implementation of integrated water management. Since 1975, EU' extensive body of Water Directives has contributed to a general improvement in water quality in the MS. The ultimate objective of the WFD is to achieve a good status for all EU surface waters (more than 100 000) and groundwater (more than 13 000) by 2015 (with possible exemptions to 2021 and 2027[22]). According to article 4 WFD, MS have the **obligation to prevent deterioration of the status of all bodies of water** but also the obligation to enhance the status of bodies of water in order to achieve a good status[23]. However, many gaps remain and new challenges are emerging such new pollutants, diffuse pollution (e.g. pesticides PFAS, microplastics), flooding, water scarcity (…) not to mention several MS difficulties in complying with EU Law. According to the EU Action Plan "*Towards zero Pollution for air, water and soil*" (2021) and the last watch list of substances for Union-wide monitoring in the field of water policy[24], the Commission has committed to launch a process of review of several pieces of EU Water Legislation (such as Urban Waste Water Treatment Directive 91/271/EC). Various reports from the European institutions stress the seriousness of the situation and the importance of strengthening and broadening the EU's framework for action. In their respective reports on floods, the European Court of Auditors (2018) and the Commission (2019) identify several recommendations for MS to follow for the design of their second Flood Risk Management Plan according the Floods Directive 2007/60/EC linked to the WFD objectives.

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[18] FAO, For sustainable use of water. 50 years of international experience with the concept of integrated water management, http://www.fao.org/ag/wfe2005/docs/IWRM_Background.pdf

[19] Decision (EU) 2022/591 of EP and of the Council of the 6/4/2022 on a General Union Environment Action, OJEU 2022 L 114/22.

[20] Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, Directive 2011/92 revised by Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment, Directive 2010/75/EU on industrial emissions (under review COM (2022) 156 final), Directive 2004/35/CE on environmental liability, Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (…).

[21] In 2021, the EEA highlights that the main pressures on surface water bodies are hydromorphological pressures (34%), diffuse source (33%) atmospheric deposition (31%), point sources (15%) and water abstraction (6%).

[22] According the 2019 Commission' report, the exemptions foreseen in Article 4 cover around half of Europe bodies.

[23] See the interesting Case-Law on the notion of non-deterioration which is not defined by the WFD : Case C-461/13, Bund für Umwelt und Naturschutz Deutschland v Bundesrepublik Deutschland, 1/7/2015; Case C-535/18, IL e.a. v Land Nordrhein-Westfalen, 28/5/2020; Case C-559/19 Commission v Kingdom of Spain, 24/6/2021; Case C-525/20, Association France Nature Environnement v Premier Ministre and Ministre de la transition écologique et solidaire, 5/5/2022.

[24] See Directive 2008/105/EC on environmental quality standards in the field of water policy.

According to EEA 2021 report, over-abstraction and water scarcity affected currently 6% of surface water bodies and 17% of the groundwater. According to Member States in their second River Basin Management Plan (2016-2021)[25], around 8 000 surfaces water bodies (6%) are affected "*by significant pressures from abstraction with the highest shares in Hungary, Spain, Cyprus and Bulgaria*". Some studies cited by EEA show that 50% of the EU' rivers basins will face to water scarcity and stress in the current state of climate change[26]. The European Drought observatory also underlines that over a quarter of the EU is facing to drought warning conditions while 8% of the EU's territory is already in a state of drought[27]. In the proposal for a directive on soil monitoring and resilience, it is specified that "*in 2020, 24 MS considered droughts and water scarcity to be key emerging or climate related disaster risk compared to only 11 MS in 2015*".

The overall socio-economic and ecological impacts due to the drought are becoming very high, water reuse is one of the ways to safeguard the resource in a circular economy framework. Some Member States already support water reuse for agricultural irrigation. If water reuse is mentioned as one the possible supplementary measures (Annex VI, part B of the WFD), no specific conditions are provided. Following the new EU Action plan for a circular economy, the regulation (UE) 2020/741 on minimum requirements for water reuse provides that the production and supply of reclaimed water intended for agricultural irrigation are subject to a permit based on the water reuse risk management plan[28].

If one of the objectives of EU environmental policy aims to ensure a prudent and rational utilisation of natural resources (art. 191 TFEU), the measures affecting "q*uantitative management of water resources or affecting, directly or indirectly, the availability of those resources*" could only be adopted by the Council unanimously with a simple consultation of the European Parliament, the Economic and Social Committee and the Committee of the Regions. Focusing mainly on the protection and the improvement of Water quality, the WFD emphasizes that the *control of quantity is an ancillary element in securing good water quality and therefore measures on quantity, serving the objective of ensuring good quality should be establish*" (whereas 19). The list of supplementary measures that MS may choose in the programme of measures for each river basin district (annex VI) includes abstraction controls, demand management measures (promotion of adapted agricultural production such as low water requiring crops in areas affected by drought) and efficiency and reuse measures (such water saving irrigation techniques). In its communication on A blueprint to Safeguard Europe's Water Resources (2012), the Commission indicated that if the voluntary approach proved insufficient, certain optional measures in this action Plan could be transformed into legally binding obligations. In the current context, such an issue needs to be widely discussed again.

Finally, protecting and managing water resources also means assessing the economic benefits and costs of water services in line with the polluter pays principle. The WFD leaves a margin of discretion to the Member States by providing that they "*take account of the principle of recovery of the costs of water services*" (Art. 9[29]) In its report on the implementation of the WFD (2019) the Commission recalls MS to "*ensure the proper implementation of article 9 on cost recovery, including calculation and internationalization of environment and resources cost for all activities with a significant impact on water bodies".* More, in its special report 2021 the European Court of Auditors noted that "*the polluters do not bear the full cost for water pollution*". As it underlines "*in EU, households usually pay for most of the cost of water supply and sanitation services, even though they consume only 10% of water (…) and the cost recovery principle is difficult to apply to pollution originating from diffuse sources, for example from agriculture, where it is difficult to identify the polluters*".

[25] The first River Basin Management Plan (2010-2015); The second one (2016-2021), the third cycle (2022-2027).

[26] See also the Special report of the european Court of Auditors n°33/2018 : combating desertification in the EU a growing threat need of more action. See also data 2023 related to Water exploitation index plus.

[27] See also Copernicus data 2023 on this question. In its 2007 communication on "*Addressing the challenge of water scarcity and droughts in the EU*", the Commission stated that at least 11% of the European population and 17% of its territory have been affected by water scarcity. See also Communication *A blue to safeguard Europe's Water resources* COM (2012) 673 final.

[28] See also 2022 Commission Notice Guidelines to support the application of Regulation 2020/741.

[29] See the case-law : Case C-525/12 Commission v Germany, 11/9/2014, ; Case C-648/13 Commission v Republic of Poland, 30/6/2016; Case C-686/15 Vodoopskrba i odvodnja d.o.o. v Željka Klafurić, 7/12/2016; C-105/18 to C-112/18 Asociacion Espanola de la Industria Electrica, 7/11/2019

Questions

5- What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions? We invite you to focus on the most relevant topic in your country.

6- What are the main difficulties and/or the main success stories in your country related to quantitative water management? Please focus on the most illustrative example either in relation to the Floods Directive or the Water Reuse Regulation or national/local measures concerning water stress and/or droughts which could inspire a future EU Law framework.

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

♣ WATER BIODIVERSITY

Context

Surface water, transitional waters, coastal waters and groundwater provide a series of ecosystems services[30] in terms of supporting[31], regulating[32], provisioning[33] and cultural ones[34]. Numerous scientific studies show the ecological complexities of water cycle and of the functioning of aquatic ecosystems. They demonstrate the multiple interdependencies between terrestrial, aquatic and marine ecosystems. In its resolution on the implementation of the EU Water legislation (2020), the EP highlights the different functions of wetlands such as serving as a carbon sink, a climate stabilizer, a clean water provider, a coastlines protector and also in the mitigation of floods and droughts (…). In EU Law, as in the Law of certain MS, water law and nature conservation law are two different sectors of environmental Law, whose integration has not always seemed obvious. Yet many protected species and ecosystems are aquatic or directly dependent on freshwater ecosystems. The WFD includes provisions to ensure consistency with the objectives of Natura 2000. MS have to establish for each river basin district a register of protected areas "*which have been designed as requiring special protection under specific Community legislation*", in particular for the conservation of habitats and species directly depending on water (art. 6). However, particular vigilance is required when applying conservation regimes to aquatic biodiversity. In the 2020 report on the state of nature in EU, the Commission underlines for example that hydropower installations "*are the most important source of energy-related pressures for migratory and freshwater fish"* without forgetting the direct impact of the invasive alien species on certain bird, amphibian, fish and vascular plant species. Among the current EU list of 66 invasive alien species[35], several of which are aquatic plants (such as Water Hyacinth, Creeping Water Primrose (..) and animal species (Louisiana crayfish, Striped catfish, Bullfrog, Coypu (…)).

The EEA also underlines the importance of the restoration of disconnected wetlands and floodplains, in particular in the context of the implementation of the Floods Directive, the adaptation to climate change and the Natura 2000 Network. In the 2019 report on the implementation of the EU green infrastructure strategy, natural water retention measures are presented as nature-based solutions that "*can help to slow down the*

[30] *Ecosystems and human well-being: wetlands and water*, synthesis, Report of the Millennium Ecosystem Assessment, 2005.

[31] Soil formation (sediment retention and accumulation of organic matter), nutrient cycling (storage, recycling, processing & acquisition of nutrients).

[32] Climate regulation, Water regulation (hydrological flows), water purification and waste treatment, erosion regulation, natural hazard regulation, pollination.

[33] Food, Fresh water, Fiber and fuel, Biochemical, Genetic materials.

[34] Spiritual and inspirational, recreational, aesthetic, educational (…).

[35] See also Regulation (EU) 1143/2014 of the EP and of the Council of 22/10/2014 on the prevention and management of the introduction and spread of invasive alien species, OJEU 2014 L 317/35.

flow of storm water, increase infiltration and reduce pollution through natural processes". The Commission underlines that such measures are "*cost-effective approaches to reach the objectives of the WFD and the Floods Directive while also contributing to biodiversity protection and adaptation to climate change*". Similarly, the proposal for a directive on soils monitoring and resilience states that "*healthy soils*" with functional water retention capacity and filtering capacity contributes to the objectives of WFD.
According to the 2020 EU Biodiversity Strategy, the Commission therefore emphasizes the need to restore freshwater ecosystems and the natural functions of rivers, by removing barriers which block the passage of migratory fish and "improving the flow of water and sediments". Finally, the proposal for a regulation on nature restoration requires MS to "*put in place*" restoration measures (including for freshwater ecosystems) "*that are necessary to improve to good condition areas of habitats types listed in Annex 1 which are not in good condition*" (art.4). It targets the restoration of "*at least 25 000 km of rivers into free-flowing rivers in the UE by 2030 without prejudice*" to WFD. This future regulation, whose ambition has been greatly reduced by the EP and the Council, also specified that MS "*shall ensure that natural connectivity of rivers and natural functions of the related flood plains restored (…) are maintained*" (Art 7)[36].

Questions

8- Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country? Please provide examples of success / failure of integration in particular cases if relevant.

9- **Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?**

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn? Please feel free to answer this question only if you have a concrete example (successful or not) to share.

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

Context

Pressure on water resources is increasing. On the one hand, water abstraction volumes are increasing in line with the development of economic activities, population growth and rising living standards. On the other hand, the quantity of water available and actually usable is decreasing with the consequences of climate change (droughts, increase in extreme events, unpredictability of rainfall...) and the increase in pollutants of many kinds. This situation can trigger or exacerbate water use conflicts between different interests/sectors of activity (drinking water, agriculture, energy, tourism, urban expansion) without forgetting the ecosystems' water needs. Among the human activities causing pressures on freshwater, agriculture is identified by Member States "*as one of the main drivers for failure to achieve good status in EU Water bodies*" both through diffuse pollution and water abstraction. In 2017, agriculture was the first water user (58%) in Europe after the sector of energy production (18%), mining, construction and manufacturing industries (11%), households (10%) (EEA 2021 report). The EEA underlines that "*despite improvements, pressures remain at unsustainable level with high nitrogen surplus and over-abstraction in large parts of Europe and few signs of further improvement over the past 10 years"* and concludes that "*incremental efficiency gains in the use of nutrients, pesticides or water will be not sufficient*". In the same way, the European Court of Auditors (2021) states that "*agricultural policies at both EU and MS level were not consistently aligned with EU water policy*"[37]. It notes for example that systems for authorizing water abstraction contain several exemptions for agriculture and highlights the need for recent data on illegal water abstraction in the EU. In Europe, various conflicts over water access and sharing show that it is urgent to challenge the hierarchy of interest in practice and to radically change the way we use this

[36] See provisional political agreement in November 2023.
[37] Special report on sustainable water use in agriculture n°2021/20

so vital resource for all. Moreover, conflicts and tensions between competing uses of water do not only occur with european States and many of them have a cross-border dimension (Spain/Portugal; Switzerland, France and Italy, *etc.*). This calls into question the water governance set up to deal with these conflicts, and the place of participatory democracy within it. The WFD promotes a certain model of governance of river basins districts (including international river basin district); but is it sufficient to respond to these various water conflicts ?. Similarly, the obligation on MS to "*encourage the active involvement of all interested parties in the implementation of this directive*" (art. 14)[38] does not respond to calls from citizens for greater democratization of water governance, particularly at local level. Despite all this, two interesting case brought before the Court of Justice of EU offers the opportunity to clarify the interactions between WFD, Directive 2011/92/EU, Article 9 of Aarhus Convention and Article 47 of Charter of fundamental Rights of EU[39].

Questions

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake?

Depending on your national context, you may illustrate these conflicts with Agriculture (agricultural irrigation - the controversial case of metabasins for agriculture) or Energy (hydroelectricity - cooling nuclear power stations) or Tourism (increased tourist numbers - development of new tourism infrastructures) or extension of urban areas.

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

14- Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation?

15- Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

[38] As stated by the Court of Justice of EU in 2017 (C-664/15 Protec Natur-Arten und Landschaftsschutz Umweltorganisation), the word "encourage" is "*somewhat aspirational in nature" so that the binding nature of that provision is limited;* however, the Court highlights that Member States are "*required to respect the substance of Article 14 (1) (…) which consists of an obligation to encourage".*

[39] See : Case C-535/18, *IL e.a. v Land Nordrhein-Westfalen*, 28/5/2020 and Case C-664/15 Protec Natur-Arten und Landschaftsschutz Umweltorganisation, 20/12/2017

CONTRIBUTION OF LUDWIG KRÄMER

Water and the EU

As the questionnaire for the Avosetta-meeting in May 2024 in Rennes addresses more or less exclusively the situation at national level, the following lines are just some comments on the questions raised from an EU perspective. This Avosetta discussion does not cover questions of marine waters and marine conventions, rivers and river conventions, sanitation questions, discharges into waters by large installations (directive 2010/75) and other industries, implementation and enforcement questions.

EU law did not recognise yet a right of access to water. Decision 2022/591, Article 3(p) on the 8th EU environmental action programme states that the Commission and Member States shall „advancing toward the recognition of a right to a clean, healthy and sustainable environment internationally". In view of the establishment of an individual right of access to environmental information (directive 90/313) and, more recently, a consumer right of repair, the argument that „the right to water does not fall within the Union's environmental policy or the Union's social policy which is limited and complementary in nature"(directive 2020/2184, recital 34) is simply wrong.

Recommendation 2021 C93/1 no.10 (on Roma protection) recommends Member States to provide for „access to tap water, safe and clean drinking water and sanitation". If there is competence to adopt a recommendation, there is also competence to adopt a directive. It is true that the CJEU jurisdiction on human rights is poor and of no help to a discussion on rights to water

There are no legal debates at EU level on water as a common good. Environmental lawyers in the EU look at environmental law from their national perspective, but do not discuss EU environmental law as such. The Commission's answer of 2014 (10 years ago) to the citizen's initiative on the right to water, stating that such a right is „inextricably linked" to the rights of the EU Charter on Fundamental Rights, ended the discussion at EU level.

The Mar Menor legislation of Spain of 2022 did not lead to any discussion on rights of nature at EU level, also because it is in itself vague and does not solve the conflicts, for example between fish and algae or between fish and marinas (tourists). The same applies to discussions in France, Belgium and Switzerland on rights of nature. Until now, the global and national discussions did not manage to make the right of nature operational.

New forms of water governance are not discussed at EU level.

Participation problems are not either discussed at EU level. The EU does not, in practice, differentiate between participation and consultation (though the Aarhus Convention does), and consequently does not interfere, when Member States limit participation to consultation. Directive 2003/35 on participation in plans and programmes only applies to very few EU legislative acts and to one water directive (directive 91/676). Participation in EU plans and programmes – on water or others - is

required (Regulation 1367/2006, Article 9), but in practice completely ignored and not discussed by environmental lawyers or associations.

As far as can be seen, rights of water defenders are a problem of very few Member States only (France, ?). There are no water defenders at EU level.

Water quality problems in the EU stem mainly from agricultural , industrial and urban activities, which lead to polluting discharges. Directive 2010/75 on industrial discharges only applies to large installations. It introduced the BAT principle, which should be the basis of the individual permits. However, there is practically no compliance monitoring, neither by the Commission nor by Member States. Agricultural spilloffs are only very loosely regulated (directive 91/676; directive 86/278), because nobody dares imposing restrictions on farmers. Urban waste water spilloff is regulated since 1991 (directive 91/271), but implementation is still a problem and monitoring is also capable of being improved. More than 40 decisions by the CJEU exist.

Overall, the biggest legal problem is compliance and enforcement of existing provisions. The lack of monitoring by the Commission is demonstrated by the silence on the unilateral national prolongation of application of directive 2000/60 from 2015 to 2027 (Article 4(4)), the unilateral classification of waters as heavily polluted (Article 4(5)) and the non-compliance with Article 16 , which requested the fixing of emission limit values and a phase-out of some pollutants within 20 years.

Water quantitative problems are, to a small part, regulated by the EU by means of directive 2007/60 on floods. That directive provides for mapping and data collection, but leaves the individual measures to be decided by Member States. Precise data on the directive's effects during the last 17 years (quantity of floods, impact, cause of inundations, Seveso-type flood prevention measures) do not exist, also as climate change might have an impact on the frequency and severeness of floods.

Droughts are, until now, not addressed by EU legislation. The EU concluded the Convention on desertification, but did not adopt implementation acts. The regulation 2020/741 on the reuse of water for agricultural purposes is not binding (recital 7). The target of having 25.000 km of free-flowing rivers by 2030 is a political target, with no legislative backing. River digression is left to Member States, as is desalination of waters; it seems that the EU avoided to intervene in digression cases, even when directive 92/43 was affected (Acheloos/Greece; Tajo/Spain).

Costs of water services are not discussed at EU level. The CJEU stated in case C-525/12 that Member States were not obliged to include all elements which influence the price of water, into their national price policy (directive 2000/60, Article 9); this ended the discussion.

Ludwig Krämer

National Reports

Austria

Verena MADNER, research assistance by Klaus Wolfsgruber

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law?

Austria adapted its water law to implement the Water Framework Directive by amending the Water Rights Act (WRG 1959), the Water Structures Promotion Act (WBFG 1985), as well as by issuing subsequent regulations. This did not lead to a significant change in the legal definition of water, the implementation of EU water law resulted in a modification of significant elements of water law. These modifications and changes include inter alia:

- Establishment of environmental objectives (good ecological and chemical status in surface waters; good chemical and quantitative status for groundwater)
- Deadlines for achieving objectives and conditions for deviations
- Incorporation of the non-deterioration principle
- Creation of a unified water management database
- Water management plans and action Programs
- Public participation in the planning process

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

As far as can be seen, there are currently no legal debates on Water as Common(s) in Austria. However, the negative impacts of climate change, such as changes in precipitation, temperature rise, or higher rates of evaporation, may increase shortages in the future and therefore trigger such debates.[40]

A debate regarding water resources was launched on the occasion of Austria joining the EU. In the political debate concern over Austria´s water resources being under threat of a exploitation by water poor EU member states were raised and fired up by, esp by the eurosceptic freedom party (FPÖ). The debate resulted in a – primarily symbolic – provision in the Austrian State Objective of environmental protection[41], a constitutional law that highlights the commitment to environmental protection. The law was amended in 2019 and against the background of the discussion about the liberalisation of services in the EU a provision was included highlighting the commitment to safeguard the public

[40] BML, Wasserschatz Österreichs Grundlagen für nachhaltige Nutzungen des Grundwassers (2021), 7 <https://info.bml.gv.at/dam/jcr:75a703dd-9c25-452a-ac06-5240abbd118a/Bericht_Wasserschatz.pdf>.

[41] Federal Constitutional Act on sustainability, animal protection, comprehensive environmental protection, on water and food security as well as research, BGBl I 111/2013.

drinking water supply. The following provision was included into the Federal Constitutional Law on sustainability, animal welfare, comprehensive environmental protection, water and food security as well as research: "§ 4. The Republic of Austria (federal government, federal provinces and municipalities) is committed to the supply of water as an integral part of all services of general interest and to its responsibility to ensure their provision and quality, particularly to maintain public ownership and control of the drinking water supply in the interest of the population's well-being and health in public sector." [42]
Further, water-related state objectives can be found in several state constitutions, such as in Article 9 of the State Constitution of Salzburg[43], which makes the 'sustainable safeguarding of water as a natural basis of life, the protection of strategically important water resources for the benefit of future generations, and the securing of supply, especially for the population, with high-quality drinking water under socially acceptable conditions' tasks and objectives of state action in the state of Salzburg.

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

Questions

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

Regarding the challenge of water poverty and insecurity, it should be noted initially that Austria is a water-rich country, and dry periods have – so far - only led to regional and seasonal shortages. As stated earlier in question 2 the negative impacts of climate change may increase these shortages in the future.[44] Water abstraction for drinking water purposes from surface waters plays practically no role in Austria, as almost 100% of the water supply comes from groundwater and spring water.[45]
Regarding the legal recognition there is currently no explicit constitutional right to water in Austria. However, the Austrian government acknowledges water supply as part of essential public services and emphasizes its responsibility for ensuring water provision and quality, particularly in the public interest. This is reflected, for example, in the constitutional safeguarding of public drinking water supply as mentioned in the answer to question 2 and the emphasis on public control over drinking water supply. Moreover, in the Austrian jurisdiction the commitment to water supply as part of essential public services and the responsibility for its provision is not regarded an enforceable right to water like a fundamental right to water and sanitation.[46]
In terms of drinking water safety for example, a drinking water security plan was established in the summer of 2023. This plan aims to ensure sufficient drinking water supply for the population in the coming decades.[47] The drinking water security plan contains a 5-point Programs for securing the drinking water supply. These points are:

- Improvement of data foundations and forecasts for planning and preparation of measures

[42] Federal Constitutional Act on sustainability, animal protection, comprehensive environmental protection, on water and food security as well as research, BGBl I 111/2013 last amended by BGBl 82/2019.
[43] Landes-Verfassungsgesetz 1999 (L-VG), LGBl 35/1999 as amended by LGBl 97/2022.
[44] BML, Wasserschatz Österreichs, 7.
[45] BML, Nationaler Gewässerbewirtschaftungsplan 2021 (2022), 42 <https://info.bml.gv.at/dam/jcr:33fd41a6-2eab-4a17-8551-ce32d131bb68/NGP%202021_Endversion_gbs.pdf>.
[46] VwGH 30.7.2019, Ra 2019/05/0114.
[47] BML, Trinkwassersicherungsplan (2023), 7 <https://info.bml.gv.at/dam/jcr:39e88c4e-d3ee-45bd-8ede-2919d9327a76/Trinkwassersicherungsplan_Sept%202023_A4_barrierefrei%20(002).pdf>.

- Advancing research on efficient water usage
- Intensification of awareness-raising for careful handling of drinking water
- Long-term securing of financing for drinking water supply
- Regular evaluation of drinking water supply concepts with federal states and water suppliers.[48]

Ensuring the provision of drinking water within the framework of public welfare for each individual and for society is considered one of the fundamental tasks of state and other public institutions. According to the Austrian Constitution, competences in this regard are divided among the federal government (Republic of Austria), federal states, and municipalities. To secure public water supply, the obligation to connect to a public water supply system is often specified in state laws referred to as water supply and municipal water pipeline laws, based on § 36 WRG 1959.

In the context of drinking water supply the drinking water plan refers to the protection of water supply systems. Based on §§ 34, 35 WRG 1959 individual drinking water supply facilities as well as the general water supply can be protected in terms of quality and quantity by official decree with instructions – including also the possibility of securing future water supply. These legal acts may involve management orders, prohibitions, requirements for notification or approval for measures that may endanger the quality, yield, or level of the water resource.[49]

4- How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?

The prohibition of deterioration contained in the Water Act (§ 30 (1) WRG Act 1959) stipulates the purification and protection of all bodies of water, including groundwater. Concerning the water needs of ecosystems, The law (§ 30 (1) item 4 WRG 1959) states that deterioration must be avoided, and the condition of aquatic ecosystems as well as the directly dependent terrestrial ecosystems and wetlands regarding their water balance must be protected and improved. This objective must be considered in all water-related measures subject to authorization, notification, and reporting obligations, as well as in behaviors (operation of facilities), but it is not "absolute", allowing for a balancing of interests.[50]

An essential provision related to water resources management, specifically concerning the consideration of applications for projects that could impact water bodies and ecosystems, is § 105 WRG 1959. In conjunction with § 30 WRG 1959, an application for approval of a project may be considered inadmissible or may only be approved subject to appropriate conditions and additional provisions, particularly if a significant impairment of the ecological condition of the waters is to be expected (lit m).

In Austria, rivers and aquatic ecosystems currently have no rights of their own. The protection of rivers and aquatic systems is mostly based on administrative law and on the exercise of fundamental rights (such as property rights) and flanked by state objectives. In public administrative law public interest in environmental protection standards are provided for in the substantive laws, in public procedures this can be relied upon by the relevant parties including NGOs, viand by environmental

[48] BML, Trinkwassersicherungsplan, 38 ff.
[49] BML, Trinkwassersicherungsplan, 20.
[50] *Bumberger/Hinterwirth*, Wasserrechtsgesetz[3] (2020) §30 WRG, K2 f.

ombudsmen (Umweltanwälte) established in the states. The issue of Rights of Rivers & aquatic ecosystems is currently not subject to a political discussion but it is a current research topic..[51]

The WFD promotes the implementation of the concept of Integrated Water Resources Management defined by the Global Water Partnership as "a process which promotes the coordinated development and management of water, land and related resources, in order to maximize the resultant economic and social welfare in an equitable manner without compromising the sustainability of vital ecosystems"[52]. The 8th EU Environment Action program to 2030 also promotes an ecosystem approach "for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way in order to help reach a balance"[53] between the objectives of conservation, sustainable use and benefit sharing of biological diversity. Therefore, the implementation of an integrated water management and ecosystem approach requires the contribution of several environmental EU legislations[54] such as Natura 2000 and others EU Policies, including at MS level.

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

♣ *INTEGRATED WATER MANAGEMENT*

Questions

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions? We invite you to focus on the most relevant topic in your country.

Regarding water quality issues in Austria, two relevant topics are to be addressed: on the one hand the **increasing fertilizer pollution of water bodies** and on the other the construction and the operation of **hydropower plants**. The increasing pollution with fertilizers is the main source for the contamination of the groundwater quality in Austria. Thus, the limit of 50 milligrams of nitrate per liter in groundwater is already exceeded in 10% of the groundwater reserves.[55] It is also noticeable that the eastern federal states - Vienna, Lower Austria, and Burgenland - are particularly affected areas. Although hydropower plants are generally considered sustainable, they may come with a negative influence on water quality. By reducing the flow velocity of water and thereby causing stagnant bodies of water to warm up more quickly, the growth of toxic algae is promoted. Thus, dams

[51] *Wagner ea*, Eigenrechtsfähigkeit der Natur (2022), 73 ff; *Bertel*, Erhaltung der natürlichen Lebensgrundlagen als Herausforderung – Von der synchronen zur diachronen Verfassung, JRP 2022, 232 (238). Rametsteiner, *„Rechte der Natur". Eine rechtsvergleichende Untersuchung unter besonderer Berücksichtigung der „Rechte von Flüssen"* (Diss, submitted at WU 2023)

[52] FAO, For sustainable use of water. 50 years of international experience with the concept of integrated water management, http://www.fao.org/ag/wfe2005/docs/IWRM_Background.pdf

[53] Decision (EU) 2022/591 of EP and of the Council of the 6/4/2022 on a General Union Environment Action, OJEU 2022 L 114/22.

[54] Directive 2001/42/EC on the assessment of the effects of certain plans and Programs on the environment, Directive 2011/92 revised by Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment, Directive 2010/75/EU on industrial emissions (under review COM (2022) 156 final), Directive 2004/35/CE on environmental liability, Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (…).

[55] WWF Österreich, Unser Wasser ist in Gefahr (13.05.2024) <https://www.wwf.at/artikel/unser-wasser-ist-in-gefahr/>.

contribute to the deterioration of water quality. So far the WFD exemptions have been heavily relied upon.

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management? Please focus on the most illustrative example either in relation to the Floods Directive or the Water Reuse Regulation or national/local measures concerning water stress and/or droughts which could inspire a future EU Law framework.

Austria is generally rich in water, but precipitation and water resources are distributed regionally differently. The protruding difficulties regarding quantitative water management are attributed to anthropogenic climate change. This has led, on one hand, to exceptionally long summer heatwaves with a high number of hot days and, on the other hand, to extreme precipitation events accompanied by associated flood risks.[56] Another difficulty arises from the high water demand of the industry. Wherever a lot of industry settles (e.g., the southern Vienna Basin), water consumption increases. In case of shortages, priority is given to drinking water supply, which may entail restrictions on existing water rights, leading to increased emphasis on water conservation in permits. In the energy generation sector, there is also a decrease in the amount of electricity produced by hydroelectric power plants observable, which has already led to some energy imports.
Not yet a designated success story, but in response to increasingly prolonged periods of drought and heat, along with the discussions surrounding drinking water safety, a drinking water security plan was established in the summer of 2023. This plan aims to ensure sufficient drinking water supply for the population in the coming decades.[57]

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

The principles of Art 9 WFD regarding the recovery of the costs of water services were implemented in the WRG 1959: § 55e (1) subpara 1 WRG 1959 contains a correspondent provision regarding the principle. Specifically, it addresses requirements for the action Programs, including the principle of recovery of the costs. However, the following difficulties need to be addressed:

Only public water supply and wastewater disposal are considered as water services subject to the principle of recovery of the costs, which limits the material scope.[58] An alternative view exists, considering all water-polluting withdrawals and wastewater discharges as water services.[59]
Furthermore, subpara 1 does not provide a closer determination of how, given the many indefinite criteria in § 55e (1) subpara 1 WRG 1959, the balancing provided for therein can be lawfully exercised.[60] It is therefore considered unclear how resource costs are to be assessed or whether cost recovery also implies a linkage of prices to the level of costs.[61] Due to these uncertainties, public participation in relation to the action Programs gains particular importance.

[56] BML, Nationaler Gewässerbewirtschaftungsplan 2021, 280.
[57] BML, Trinkwassersicherungsplan, 7.
[58] § 55e Abs 1 Z 1 WRG 1959; Stangl, Juristischer Teil, in *Umweltdachverband (Hg)*, Ökonomische Instrumente im Wasserschutz (2012), 1 (142).
[59] *Lindner* in Oberleitner/Berger (Hg), WRG-ON[4.00] (2018) § 55e, Rz 3.
[60] *Lindner* in Oberleitner/Berger, WRG-ON § 55e Rz 3.
[61] Ibid.

In contrast, the topic of social water pricing is hardly discussed in Austria due to the availability of the resource water: Figures show that 58% of residents find that the price for drinking water is adequate and 21% even consider it rather low.[62] However, regarding social pricing, it can be inferred from § 55e (1) subpara 1 lit b WRG 1959 that the requirements of the action Programs, while taking into account the principle of recovery of the cots, can include adequate contributions from water-using sectors, including households, but at the same time, social effects of cost recovery can also be considered in the balancing.

♣ WATER BIODIVERSITY

Questions

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country ? Please provide examples of success / failure of integration in particular cases if relevant.

The EU legal acts stated above have led to a stronger integration only to a limited extent. This is due to a sectoral treatment linked to the federalist distribution of competences in Austria. While, for example, water law falls under both legislation and execution of federal authority due to Article 10 (1) item 10 of the Federal Constitutional Law (B-VG), nature conservation is the responsibility of the federal states in legislation and execution.
To overcome the issue of the fragmentation of competences Article 15a of the Federal Constitutional Law provides for the possibility of concluding agreements between the federal government and the federal states, which can be used for joint regulations and coordinated actions in the federal state, thus contributing to a stronger integration. Such an agreement has been concluded, for example, for flood protection in the Austrian Danube region.[63] There is also an example for a so-called "15a-Vereinbarung" (translates to "15a-agreement") concerning the establishment and maintenance of a Danube Floodplains National Park while preserving the function of the Danube as an international waterway and securing groundwater reserves for drinking water supply.[64]
The "concentration of procedural and decision-making" within the framework of the Environmental Impact Assessment Act (EIAA; in German: Umweltverträglichkeitsprüfungsgesetz 2000 – UVP-G 2000[65]) procedure deserves to be highlighted in particular. Within the scope of the EIA Actinstead of sector-specific individual permits, a holistic consideration of a project within a single procedure is aimed for.[66]

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[62] ÖVGW, Die österreichische Trinkwasserwirtschaft Branchendaten und Fakten (2018) 36 <https://www.trinkwasseroesterreich.at/wp-content/uploads/2021/04/OEVGW_Branchenbild_Trinkwasserwirtschaft_2018.pdf>.
[63] Kundmachung des Landeshauptmannes von Wien, betreffend die Vereinbarung gemäß Art. 15a B-VG zwischen dem Bund und den Ländern Niederösterreich, Oberösterreich und Wien über Vorhaben des Hochwasserschutzes im Bereich der österreichischen Donau.
[64] Kundmachung des Landeshauptmannes von Wien betreffend die Vereinbarung gemäß Art. 15 a B-VG zwischen dem Bund und den Ländern Niederösterreich und Wien zur Errichtung und Erhaltung eines Nationalparks Donau-Auen.
[65] Bundesgesetz über die Prüfung der Umweltverträglichkeit (Umweltverträglichkeitsprüfungsgesetz 2000 – UVP-G 2000), BGBl 697/1993 last amended by BGBl I 26/2023.
[66] Ökobüro, Informationstext zum Umweltverträglichkeitsprüfungsverfahren <https://www.oekobuero.at/files/96/informationstext_uvp.pdf>.

9-Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration

A National Water Management Plan (NGP) published in accordance with § 55c (1) WRG 1959 exists nationally, which serves as a planning instrument alongside goals for the preservation and improvement of water bodies, also specifying measures necessary to achieve these goals.[67] To maintain and achieve a good ecological status as well as a good ecological potential, the plan identifies a range of stressors, including discharges of pollutants, particularly organic pollution and nutrients from point sources, hydromorphological pressures such as water abstractions or alterations to the solid matter balance, and formulates measures to combat these stressors, such as permits for water abstractions.[68]
additional requirements (measures) can be provided in the action Program: § 55e (2) WRG 1959 opens the possibility in this case to implement the creation and restoration of wetlands through legal-administrative instruments, such as regulations or permits, or negotiated environmental agreements. The EU funding instrument LIFE (L'Instrument Financier pour l'Environnement) is primarily used in Austria in the field of water, with projects mostly aiming to restore natural appearances to rivers and streams.[69] LIFE projects assist in implementing the aquatic ecological model and the goals of the WFD.

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn ? Please feel free to answer this question only if you have a concrete example (successful or not) to share.

To create and utilize areas for settlement activities, infrastructure, and agricultural purposes, rivers have been straightened and their spatial extent restricted, leading, among other things, to a reduction in morpho-dynamic processes and the interruption of the connectivity of tributary water bodies.[70] Approximately 9700 kilometers of river kilometers are therefore designated as structurally altered. The central counteractive measure to limit activities is in the form of prior authorization, which may be granted with conditions to comply with the state of the art (§12a WRG). Supplementary measures fall under the scope of subsidy law, such as the Water Structures Promotion Act of 1985, the Environmental Promotion Act, or the Environmental Financial Instrument LIFE. Significant improvements in ecological conditions have been achieved in the implemented measures, particularly evident in partial components of the ecological state.[71]

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

Questions

[67] Umweltbundesamt, Nationaler Gewässerbewirtschaftungsplan <https://www.umweltbundesamt.at/umweltthemen/wasser/wrrl/ngp>.
[68] BML, Nationaler Gewässerbewirtschaftungsplan 2021, 29.
[69] BML, 30 Jahre Förderprogramm LIFE Eine Erfolgsgeschichte für den Natur- und Gewässerschutz in Österreich, 10 f <https://info.bml.gv.at/dam/jcr:48d7ed57-0031-4d86-ac79-68494ae1ecf8/BML_Publikation_A4_30J-LIFE_V08_2.Auflage_WEB-barrierefrei.pdf>
[70] BML, Nationaler Gewässerbewirtschaftungsplan 2021, 211 ff.
[71] Ibid.

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake ?

Depending on your national context, you may illustrate these conflicts with Agriculture (agricultural irrigation - the controversial case of metabasins for agriculture) or Energy (hydroelectricity - cooling nuclear power stations) or Tourism (increased tourist numbers - development of new tourism infrastructures) or extension of urban areas.

Generally, in an approval process concerning the permissibility of projects often depends on balancing of (public) interest by authorities. Regarding the underlying value-based decisions, there is constant jurisprudence from the Administrative Court (VwGH)[72] which emphasizes that the competing interests are not quantifiable and thus cannot be compared based on numerical measures. Consequently, it is necessary to present the arguments for or against a project as precisely and as opposite to each other as possible in order to make the value-based decision transparent and comprehensible. Consequently, the legality of the decision relies on whether the material used for the balancing was presented in the justification of the decision in a manner consistent with these principles, and whether the balancing was conducted in accordance with principles of logic, empirical rules, and, if applicable, findings of scientific research. Since the considerations must be well justified, this may necessitate resorting to experts if necessary.

A specific mechanism to resolve conflicts and balance interests regarding the use of water for various purposes is laid down in the WRG 1959: The central instrument for resolving competing applications for the granting of water use is the conflicting procedure according to §§ 17 and 109 Water Rights Act 1959. It is designed as an application procedure in which it is initially decided which application is preferred. From a temporal perspective, if it takes place, it precedes the authorisation procedure.

With regard to hydropower, the case law of the Austrian Administrative Court, for example, demonstrates that when considering which of two hydroelectric power plant projects better serves the public interest, not only economic aspects in terms of the amount of electrical energy are to be taken into account, but also consideration must be given to the impact on the habitat of a part of the population.[73] The case law also recognises that nature conservation law aspects must be considered in the balancing of interests.[74]

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

A noteworthy, albeit unimplemented pilot project can be found in the Favorite, the 10th district of Vienna.[75] It envisages a district where the irrigation of the parks, trees, green roofs, and facades using potable water is converted to treated wastewater from showers, toilet flushes, dishwashers, etc. The project highlights the need for an adjustment of building regulations, as such solutions require an additional pipeline for greywater.

[72] VwGH 2.10.2007, 2004/10/0174; 28.1.2010 2008/07/0033; 22.12.2011, 2008/07/0123.

[73] VwGH 28.3.1963, 1667/62, 146/63.

[74] VwGH 10.4.1990, 86/97/0038

[75] *Prenner ea*, Nutzungsorientierte Verwendung urbaner Wasserressourcen – Visionen, Potenziale und Herausforderungen, (2023) 178 ff.

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation?

In water-related projects that require an Environmental Impact Assessment approval procedure, according to § 19 Environmental Impact Assessment Act (UVP-G), citizen initiatives and recognised environmental organisations (eg NGOs) are granted party status.According to the law, a citizen initiative exists if a statement within the scope of the public disclosure (§ 9 (2) UVP-G) is supported by at least 200 persons through entry into a signature list. The Austrian Constitutional Court sets high requirements for the constitution of a citizens' initiative: among other things, there must be a specifically formulated statement for its formation, this statement must be directly related to the signature list, and there must be a "coordinated structure of interests."[76]
The “Protect” case law of the CJEU, which stems from the refusal to allow the environmental organization Protect standing in a water law procedure concerning a snowmaking facility in Lower Austria, resulted in the involvement of environmental organizations beyond EIA procedures, IPPC plant procedures, and environmental liability procedures. Regarding the lack of party status for environmental organizations in the Water Rights Act 1959, the Administrative Court noted that party status arises directly from Union law.[77]

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

In the past there have indeed been attempts of strategic litigation in Austria against water defenders. A prominent example is the case of environmental activist Markus Wilhelm against the TIWAG-Tiroler Wasserkraft AG, an electricity generation and distribution company in Tyrol, Austria. In his Blog, Mr Wilhelm posted, for example, about TIWAG's entry into cross-border leasing transactions with investors for the purpose of generating tax benefits for the contracting parties. The blogpost triggered a political scandal and a multitude of lawsuits by publishing the contracts, against which TIWAG pursued the critic. TIWAG attempted to shut down Wilhelm's website claiming infringement of name rights, and lawsuits for injunction against the publication of trade secrets and damages were initiated.[78] However, TIWAG was not successful before the courts.
Another relevant, albeit decades-old, case is the occupation of the Hainburg Au against the construction of a large Danube hydroelectric power plant, which can be classified as the birth of the green political movement. At the turn of the year 1982/1983, WWF Austria launched its "Rettet die Auen" campaign and began, with the help of some media outlets, to draw public attention to the impending destruction of part of the Danube floodplains due to the planned hydroelectric power plant there.[79] In 1983, the Austrian Danube Power Plants Corporation obtained a declaration from the highest water rights authority designating the Hainburg Power Plant as the preferred water construction project. The necessary deforestation works were carried out against protests by environmental activists under heavy police protection, leading to an escalation in response to an

[76] VfSlg 18.225/2007, 18.228/2007, 18.046/2006.
[77] VwGH 28.3.2018, Ra 2015/07/0152.
[78] WWF Österreich, Tatort Kaunertal #6 – TIWAG – Eine Skandalgeschichte (13.05.2024) <https://www.wwf.at/artikel/tatort-kaunertal-6-tiwag-eine-skandalgeschichte/>.
[79] Parlament Österreich, 1984/85: Hainburg - ein Kraftwerksbau erschüttert die Republik (13.05.2024) <https://www.parlament.gv.at/aktuelles/pk/jahr_2007/pk0175>.

eviction order in which 19 people were injured.[80] When the administrative court prohibited further deforestation until the conclusion of the ongoing appeal process in early January 1985, the occupation was ended. Two months later, a referendum was held in which approximately 350,000 people spoke out against the construction, which led to the stop of the project.

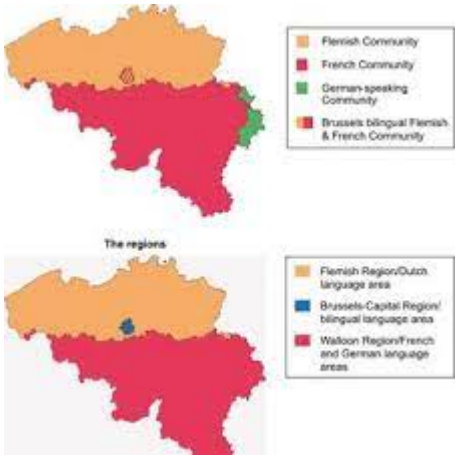
[80] *Schwarzwald-Sailer*, 1984: Au-Besetzung verhindert Kraftwerk (13.05.2024)<https://noe.orf.at/magazin/stories/3168089/>.

Belgium (Flanders)

Hendrik Schoukens & Luc Lavrysen

INTRODUCTION

Belgium is bounded by Germany, Luxembourg, France, the North Sea and the Netherlands. It has an area of 30,688 km^2 and a population of 11,7 million. Belgium is divided into three regions: the Flanders region, the Brussels region and the Walloon region.
Belgium is primarily drained by two large river systems, the river Meuse and the river Scheldt that drain approx. 44 and 33 per cent of the total land area, respectively. Both rivers arise in France and run North, the Scheldt draining the western part of Belgium and discharging into the Scheldt Estuary, while the Meuse with tributaries in Germany drains the eastern part of Belgium and runs north into the Netherlands where it discharges near Rotterdam. The Albert canal connects the city of Antwerp and the river Meuse. There are only few natural lakes in Belgium. Belgium has a 60 km long coastal zone (North Sea).
Flanders is situated in Belgium, a federal state, in which decision-making power is shared between a federal government, three regions (Flanders, Wallonia and the Brussels-Capital Region) and three communities (the Flemish, the French and the German-speaking communities). Pursuant to Article 6 of the Special Law on Institutional Reforms of 8 Augustus 1980 environmental policy as well as water management constitutes mainly a regional competence. On the territory of Flanders, the Flemish Region is thus fully competent to legislate this matter. And it has done so, during the past decades.[81]



SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law ?

[81] For an overview, see: Frank Maes & Luc Lavrysen (eds), *Integraal Waterbeleid in Vlaanderen en Nederland* (die Keure 2003).

No, not to my understanding. The legal qualification of 'water' depends on the factual situation. In general, 'streaming water', in the context of rivers and streams, was generally qualified as a res communis pursuant to well-entrenched principles of private law (see also Belgian Constitutional Court, case no. 7/2016). One derived this from Article 714 of the Old Belgian Civil Code, which stated that there are 'goods' that belong to no-one and are used by the whole of society. It was assumed that the sea and streaming surface water (e.g. river or streams) thus qualify as 'res communes'. However, further distinctions can be made, since also 'res communes' can be partially appropriated. For instance, it can be assumed that rainwater qualifies as a res communes or res nullius ('nobody's property') pursuant to private law, whereas rivers and streams belong the public domain ('openbaar domein'), as far as the 'riverbed' is concerned. The water itself, can be qualified as a res nullius (nobody's property), pursuant to private law, or, alternatively, a res communis. Surface water which is streaming, can be qualified as, respectively, a res communes or a part of the public domain (and, in some instances, even as a private property). The same rationale applies to aquifers.

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

With the entry into force of the new civil code, a new provision was introduced that explicitly provided a legal regime for 'commons', which also applies to goods without an owner (res nullius). In the new Article 3.43 of the Belgian Civil Code, which is to be approached as the follow-up to (old) Article 714 of the Civil Code, it is stipulated that 'commons' cannot fully be appropriated. The article clarifies that 'they belong to no-one and are to be used in light of the public interest, taking into account the interests of the future generations'. The usage of these res communes will be open to everyone and regulated by specific legislation. The reference to 'future generations' can be seen as a clear hint towards the sustainability principle and the emergence of the public trust-principle in common law jurisdictions. Whereas it might be presumed that streaming water (both surface and groundwater) can be approached as a 'common', it still remains unclear from the parliamentary preparatory works whether this novel provision will usher in a new era for the utilisation of surface and groundwater bodies in Belgium, especially since the latter competence has been transferred to the Regions. In other words, it remains to be seen whether the (federal) provision on the usage of commons, can affect the (regional) permitting policies with respect to, amongst others, surface and groundwater abstraction.

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

Questions

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

In Belgium, there is no explicitly provision that recognizes the fundamental right to water. However, Article 23 of the Belgian Constitution, which explicitly recognizes everyone's 'right to lead a life in keeping with human dignity', encompasses a diverse array of socio-economic rights (third generations human rights).
Article 23 of the Constitution holds that:

> 'Everyone has the right to lead a life in keeping with human dignity. To this end, the laws, federate laws and rules referred to in Article 134 guarantee economic, social

and cultural rights, taking into account corresponding obligations, and determine the conditions for exercising them. These rights include among others:
1° the right to employment and to the free choice of an occupation within the context of a general employment policy, aimed among others at ensuring a level of employment that is as stable and high as possible, the right to fair terms of employment and to fair remuneration, as well as the right to information, consultation and collective negotiation;
2° the right to social security, to health care and to social, medical and legal aid;
3° the right to decent accommodation;
4° the right to the protection of a healthy environment;
5° the right to cultural and social fulfilment;
6° the right to family allowances.'

From the case-law of the Belgian Constitutional Court we can infer that Article 23 of the Belgian Constitution also includes the 'right to (access) to water'. This was explicitly underscored in a case concerning the duty of the Flemish Region to provide to every citizen a minimum quantity of 15 cubic meter of tap water (case no. 26/98). The case-law of the Belgian Constitutional Court has granted a standstill-effect (non-regression) to Article 23 of the Belgian Constitution, amongst others in the context of environmental protection and water management.
In the Flemish Region, specific legislation exist in order to implement the EU Drinkwater Directive. It contains very strict conditions with respect to the possibility to cut-off access to tap water for consumers.[82]

4- How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?

No explicit reference to the 'needs of water' is explicitly included in the Constitution, nor in the applicable regional legislation. However, Article 1.2.1 of the Flemish Water Code (Vlaams Waterwetboek) holds that the '(i)ntegrated water policy is the policy aimed at the coordinated and integrated development, management and restoration of water systems with a view to achieving the preconditions necessary for the maintenance of this water system as such, and with a view to multifunctional use, whereby the needs of current and future generations are taken into account.' Whereas no explicit reference is made there to the 'needs of water', it at least is aligned with the rationale of placing the 'interests' of the waterbodies more at the forefront of the decision-making procedures.
In this respect, also reference needs to be made to an obligatory and all-encompassing 'water-test' (watertoets), which lays down procedures to be followed when approving spatial plans and environmental permits that might have a significant impact on the water-system. It is up to the competent planning or permit issuing authority to make sure, through mitigating and compensation measures, that no significant impact on both the qualitative and quantitative status of the water system is allowed. If such measures are not available, than the spatial planning or permit application cannot be approved.[83]

[82] Besluit van de Vlaamse Regering van 5 maart 2023 over de kwaliteit, kwantiteit en levering van water bestemd voor menselijke consumptie.
[83] Article 1.3.1.1 Decree on Integrated Water Policy.

As far as river of ecosystems are concerned, no explicit recognition in the available legislation has taken place so far. A couple of years ago, however, an NGO wanted to see the legal rights of trees recognized through a strategic court case. The claim was dismissed, since the Brussels Court of First Instance held that, trees could not be represented in court since existing laws did not explicitly grant Nature legal personality.[84] The Court did not address the extent to which the existing protection schemes attached to those trees implicitly amounted to the recognition of certain legal rights for nature. Some NGOs and activists are nevertheless very interested in the idea. A group of artists has been organising hikes along the Senne River, with the aim of finally seeing the legal personality of the river being politically and even legally speaking recognised during the coming years.[85] Also in the legal literature, the topic of rights of nature is discussed.[86]

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

♣ *INTEGRATED WATER MANAGEMENT*

Questions

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions? We invite you to focus on the most relevant topic in your country.

Generally speaking, the quality of surface water in Flanders is improving, but slowly. The ecological status of almost two-thirds of the rivers, streams and ponds is still poor or inadequate. Only one out of the 195 Flemish "water bodies" (rivers, streams and ponds), receives a "good" score in terms of ecological status in 2021. This concerns Eisden Mine, a gravel lake in the Maas basin in Limburg. Of the other water bodies, almost 36 percent scored moderately and still 64 percent scored poorly or inadequately. To determine the ecological status, the presence of animals, plants and micro-organisms is examined.[87]

The assessment of pressures and impact shows that the different sectors have a clear impact on both groundwater and surface water. The main causes are the high population density, the intensive urbanisation, the dense network of transport routes, the high degree of industrialisation, and the intensive agriculture in Flanders. The pollution of surface water by a wide range of substances (organic substances, nutrients, dangerous substances, metals and pesticides) has significantly decreased over the last few decades, but great efforts remain to be made to reach good water status. Households whose wastewater is not treated at a wastewater treatment plant (WWTP) still account for a major share of surface water pollution through the discharge of organic substances and nutrients. WWTPs that mainly treat household wastewater account for an equally large share. Surface water pollution due to industrial emissions shows a downward trend thanks to increased treatment efforts by companies.[88]

[84] Brussels Court of Instance, 17 May 2021.
[85] www.voiceofnaturekinstitute.org
[86] Hendrik Schoukens, 'Het toekennen van rechten aan de natuur: had Darwin dan toch gelijk?' Tijdschrift voor Milieurecht (2020) 124.
[87] https://www.demorgen.be/nieuws/maar-een-watergebied-in-vlaanderen-scoort-ecologisch-goed~b1951e9c/
[88] Agriculture and water policies: main characteristics and evolution from 2009 to 2019 (Belgium), OECD (2020).

Water quality on the country side in Flanders is still further deteriorating instead of improving: fertilization remains a problem, also in light of the Nitrates Directive. The water quality in Flanders deteriorated in the winter of 2024 instead of improving.[89] The standard for nitrate was exceeded in a quarter of the watercourses examined. And the amount of nitrate in the groundwater has also risen again, to the highest level since 2010. The main culprit remains the fertilization of Flemish fields.[90]

In Flanders, more generally, the most significant pressure on rivers and on groundwater bodies comes from diffuse agricultural sources for nitrogen and from diffuse agriculture sources and also household sources for phosphorus. The nitrogen balance decreased between 2000 and 2015 from 190 to 132 kg/ha, and the phosphorus balance went down from 20 kg/ha to 5 kg/ha during the same period. Even so, both the norms of the Water Framework Directive as well as the Nitrates Directive are not met. This is partly linked to the high livestock density in our region.

Also the presence of pesticides is still giving rise to additional concern.[91]

In recent years, the presence of PFAS has also sparked concern. Recent studies revealed that Belgium, and in particular Flanders, is home to the highest levels of pollution, where PFAS was found in groundwater at concentrations up to 73m ng/l around 3M's PFAS manufacturing site in Zwijndrecht, Flanders.[92]

In terms of nitrates pollution, Flanders has been granted a derogation in 2019 under the Nitrates Directive decided to apply the measures of the EU Nitrates Action Programme to its whole territory, adding targeted measures for areas where the water quality is particularly low. Flanders benefitted from a derogation from the Nitrates Directive relating to the maximum amount of nitrogen from livestock manure that can be applied on land until December 2018. This derogation has expired in 2022. Recently, the Commission has opened an infringement case against Belgium for poor water quality due to nitrates pollution in Flanders.[93] Also at the Brussels Court of First Instance has condemned the Flemish government for its failure to take effective measures to ensure the achievement of the limit values under the Nitrates Directive.[94] We are still waiting for a new nitrate action programme for Flanders.

Both the Water Framework Directive and the Flemish Water Code provide for a number of exemptions for achieving the environmental objectives, under certain conditions and subject to motivation:

- the deadline for achieving the environmental objectives can be extended by six years, provided the status of the impaired water body does not deteriorate;
- less stringent environmental objectives can be set under specific conditions;
- a temporary deterioration of the status is not in breach of the directive if natural causes or force majeure are involved;

[89] https://www.vmm.be/water/grondwater/nitraat-in-grondwater
[90] Ibid.
[91] https://www.brusselstimes.com/839626/too-many-pesticides-in-flemish-drinking-water-investigation-launched
[92] https://www.euractiv.com/section/chemicals/news/belgium-has-highest-levels-of-pfas-chemical-pollution-in-europe-study-reveals/
[93] https://ec.europa.eu/commission/presscorner/detail/en/IP_23_503
[94] Brussels Court of First Instance 21 June 2023.

- nor is there any breach if failure to achieve the objectives is the result of new changes and new sustainable activities of human development.

The first and second rounds of river management plans in Flanders have seen a widespread application of the exemption grounds present in Article 4 of the Water Framework Directive. This was, at the time, criticized by the European Commission. For now, the recent round of river management plans (2023-2027), has been criticized for its limited ambition level[95] and it remains to be seen what policy approach will be put forward in 2027, when the time-limit for applying the exemptions has expired.

It remains unclear whether the available exemption grounds are also used in the permitting procedures. Only in 2021, a tool was created to ensure that the so-called 'Weser-test', flowing from the case-law of the CJEU on Article 4 of the WFD, is implemented when granting permits for the discharge of pollutants from industrial facilities.[96] In recent case-law, it becomes clear the Flemish permitting policy might have been to lenient, when measured up against the backdrop of the non-deterioration obligation from Article 4 of the Water Framework Directive.[97]

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management? Please focus on the most illustrative example either in relation to the Floods Directive or the Water Reuse Regulation or national/local measures concerning water stress and/or droughts which could inspire a future EU Law framework.

Until the turn of the 20th century, Flanders, a region of 13.522 km² bordering the North Sea and the Netherlands, was mainly characterized by the presence of a network of many rivers and smaller watercourses, wetlands, marshy grasslands and forests. However, during the previous century, the intensification of agricultural practices, the increased urbanization and industrial activities have changed that outlook dramatically.[98] While in the 1950s 244.000 ha (19% of Flanders) still qualified as wetlands in the Flemish Region, currently only 68.000 ha remain (5%of Flanders). Flanders is by no means an exception in the world, seeing that the world lost at least 50% of its wetland during the 20th century[99], whereas wetland loss in six European countries for the period 1950-1985 was estimated to lie somewhere in between 55% and 67%.[100] However, future recovery-options for wetlands are severely hampered by a combination of unsustainable lock-ins.

For instance, Flanders has one of the largest built-up areas relative to its total area of the European continent, with on average 6 hectares (some 15 acres) of open space which are being lost on a daily basis, for the construction of houses, roads and businesses.[101] The past decades, the impact of

[95] https://www.vlaanderen.be/publicaties/ontwerp-stroomgebiedbeheerplannen-2022-2027-gezamenlijk-advies-minaraad-serv-en-salv

[96] https://emis.vito.be/nl/artikel/impactbeoordeling-bedrijfsafvalwater-vanaf-1-januari-2021

[97] See amongst others a recent ruling of the Flemish Council for Dispute Settlements (Raad voor Vergunningsbetwistingen) on February 8 2024 on the granting of an environmental permit for a landfill in the context of PFAS pollution: https://dbrc.be/persbericht-stortplaats-kortemark-vernietiging

[98] Kris Decleer et al., 'Mapping Wetland Loss and Restoration Potential in Flanders (Belgium): an ecosystem service perspective' (2016) 21(4) Ecology and Society 46, 50.

[99] Nick Davidson, 'How much wetland the world lost? Long-term and recent trends in global wetland area' (2014) Marine and Freshwater Research 934.

[100] European Commission, 'LIFE and Europe's wetlands: restoring a vital ecosystem' 2007.

[101] European Environment Agency, *Urban Sprawl in Europe* (2006).

climate change has slowly turned the Flemish Region in one of the driest regions of Europe, on par with Southern Spain.[102] A sequence of intensive and consecutive droughts have put additional pressure on the existing aquifers, which led, amongst others, to a ban on farmers pumping water out of water courses to irrigate their fields.[103] In the spring of 2020, some consumers could barely get running water out of their taps in 14 communes of Flemish Brabant, despite a plea from the provincial governor for people to use water sparingly.[104] In 2017-2020 groundwater levels decreased in 57% of shallow measuring points.[105] Usually, reserves are replenished during the winter as a result of more continued rainfall, but this did not happen during recent years. Average annual temperatures have also been rising considerably, meaning more water evaporates. The presence of water-intensive farming and industry makes the situation even more dire, since it compromises pathways to improvement. In 2019 259 billion liter of groundwater were used. 65% went towards drinking water production. 20% was employed in farming and 12% in industry. Groundwater used by industry has fallen by half over the past two decades, partly because water is being reused. But in the agricultural sector, no significant improvements have been made.[106]
So far, the fall and winter of 2023-2024 has been a good year for groundwater levels with exceptional amounts of rainfall during the first six months of the year. However, during the past years, periods for prolonged drought were no longer exceptional. The spring of 2022 was again exceptionally dry, with March 2022 being the driest March since records began in 1833.[107]

Against this worrisome backdrop, several scientists have advocated for a more concerted and proactive approach to groundwater management in Flanders.[108] This has given rise to new policy measures, focused on a more comprehensive restoration of wetlands (Blue Deal) and better water retention (Hemelwaterverordening).[109]

In recent case-law, more attention is going to the negative impacts of water abstraction on the environment. A noteworthy case of the beginning of 2024, related to the application of the existing permitting rules and cumulative effects to cases of groundwater-abstraction that have merely been made subject to a prior notification. For notifications (meldingen), no EIA is mandatory. The Council for Permit Dispute Settlements (Raad voor Vergunningsbetwistingen) has ruled that the notifications for the requested abstraction were not legal since no account had been taken of the cumulative environmental impacts.[110]

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[102] Ine Renson, 'Het land is droog, en daar kunnen we maar beter aan wennen', De Standaard (14 May 2022), https://www.standaard.be/cnt/dmf20220513_97452775.
[103] Michaël Torfs, 'Restrictions imposed on farmers as water levels are low', *VRT NWS* (21 May 2020) Restrictions imposed on farmers as water levels are low | VRT NWS: news
[104] Alan Hope, 'Drought fears spread as tap water dries up in Flemish Brabant', *The Brussels Times* (22 May 2020) https://www.brusselstimes.com/news/belgium-all-news/112951/drought-fears-spread-as-tap-water-dries-up-in-flemish-brabant
[105] Wim Schepens et al., 'Vlaanderen verliest groot deel watervoorraad; grondwaterstanden in 20 jaar tijd op 70% van de meetpunten gedaald', *VRT NWS* (8 July 2021) Vlaanderen verliest groot deel watervoorraad: grondwaterstanden in 20 jaar tijd op 70 procent van de meetpunten gedaald | VRT NWS: nieuws
[106] Grondwaterverbruik (2000-2019) Grondwaterverbruik — Vlaamse Milieumaatschappij (vmm.be)
[107] Collin Clapson, 'Rainwater shortage already at 1976 levels', VRT NWS (18 May 2022), https://www.vrt.be/vrtnws/en/2022/05/18/rainwater-shortage-already-at-1976-levels/.
[108] Pieter-Jan Huyghebaert 'Verontrustend droog zo vroeg op het jaar: 'Als we nu niets doen, zitten we straks met grote problemen', *VRT NWS* (23 May 2020), Verontrustend droog zo vroeg op het jaar: "Als we nu niets doen, zitten we straks met grote problemen" | VRT NWS: nieuws
[109] See infra.
[110] Decision of 11 January 2024, to be consulted at: https://dbrc.be/persbericht-waterwinning-pelt-vernietiging

In terms of legislative evolutions, reference is to be made to three developments:

1. New legislation in the field of water management in polders, focused on a more coordinated and science-proof approach to the decision-making procedure for water level decisions (Peilbesluit).[111]
2. Future legislation aims to issue stricter rules for ground water abstraction in the surroundings of protected sites. Less exemptions should apply (Grondwatertrein).[112] Yet, this legislation has not been approved as of yet.
3. New instruments have been approved to promote water retention in buildup-areas and in the context of building projects (Gewestelijke Hemelwaterverordening 2023)[113].

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

I am unaware of major difficulties in this context. However, in 2020, Belgium has received an Reasoned Opinion from the European Commission in which was held that it must recover all costs associated with the use of water. It appeared that 'water services' was merely approached as drinking water supply and wastewater disposal or processing. But the Commission views the concept more broadly and also includes agricultural irrigation and the drilling of water wells for agricultural use. I am unaware of the recent developments in this pending case.[114]

♣ WATER BIODIVERSITY

Questions

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country? Please provide examples of success / failure of integration in particular cases if relevant.

Yes, in the Nature Conservation Decree explicit attention is paid to the protection of water-dependent ecosystems and water management in the context of protected sites (e.g. Article 25 regarding water management in the Flemish Ecological Network). Yet their operationalisation left much to be desired. Also explicit protection schemes exist for the conservation of wetland-related habitats, such as swamps. In the recent case-law examples can be found of their application. For instance, in a noteworthy ruling of June 24, 2002, the Antwerp Court of Appeal held that the closure of a artificial construction which allowed the flooding of a marshland, constituted a violation of the said production.[115] In a landmark ruling of January 22, 2022 the Belgian Council of State held that even reopening old drainage systems in an area which has shifted into a swamp throughout the past decades, is outlawed.[116] However, the enforcement of these protection duties still lags behind.

[111] Legislation adopted at 5 May 2023. To be consulted at: https://www.vmm.be/nieuwsbrief/februari-2023/nieuw-instrument-peilbesluit201d-helpt-water-beter-vast houden
[112] https://omgeving.vlaanderen.be/nl/grondwatertrein
[113] To be consulted at https://omgeving.vlaanderen.be/nl/verordeningen/de-gewestelijke-hemelwaterverordening-2023
[114] See: https://vilt.be/nl/nieuws/belgie-op-het-matje-voor-kostenterugwinning-water
[115] Antwerp Court of Appeal, Decision of 24 June 2002.
[116] Nv Debail v Vlaamse Gewest, Belgian Council of State, Decision of 20 January 2022, nos. 252.697 and 252.698.

Next to that, the existing protection duties for 'ordinary nature' and protected nature (Natura 2000), are increasingly being applied to water-related challenges. This was partially reflected in the case-law regarding the application of Article 6(3) of the EU Habitats Directive in the context of permitting procedures. With the exception of a 2011 decision of the Belgian Council of State in which an environmental permit for extraction activities was annulled because of the absence of a appropriate assessment of its impacts on the aquifers of a nearby marshland that was included in a Natura 2000-site[117], this novel litigations strategy remained relatively unexplored in the Flemish Region.
A concrete illustration of the importance of science-based decision-making was offered by a decision of 9 December 2021 of the Belgian Council of State, in which the administrative court was asked by an environmental NGO to annul an environmental permit for groundwater abstraction nearby a Natura 2000-site with water-dependent natural habitats, such as freshwater swamp forests and bogs.[118] Ultimately, the Belgian Council of State sided with the NGO. One of the primary reasons for the annulment of the contested permit was an earlier negative advice of the Research Institute for Nature and Forest (INBO). The latter is the independent research institute of the Flemish government that underpins and evaluates biodiversity policy and management by means of applied scientific research, data and knowledge sharing. In its previous expert opinion, INBO pointed to the already unfavorable status of many of the habitats, which might be exacerbated by the continued groundwater abstraction which was applied for in the latter case. The Council underlined the seminal value of this opinion in the permitting procedure. Merely offering the operators of the groundwater-abstraction the opportunity to refute the expert opinion, without subsequently offering INBO an opportunity to reply to possible exceptions, was not acceptable in light of Article 6(3) of the Habitats Directive. In doing so, the Council of State reinvigorated the importance of the Research Institute, as a primary provider of the best available science in the context of permitting procedures where significant doubts remain as to the significance of the proposed activities. The decision stands out as an interesting precedent, which highlights the role of independent scientific assessment in the context of the authorization of groundwater abstraction activities.

A similar rationale emerged from another recent landmark decision of the Belgian Council of State, which was handed down on March 9, 2021. This strategic environmental lawsuit related to a new groundwater abstraction that was allowed in the context of an existing livestock farm, nearby a Natura 2000-sites harboring several marshland and marshland habitats. Indirectly, the permit had been granted with the application of a so-called quantitative threshold: pursuant to the applicable administrative practice at the time, a lowering of the groundwater table with 5 centimeter or less was presumed to produce no significant effects on Natura 2000-sites. Although the Council of State did not explicitly sanction the usage of this quantitative approach, it nevertheless underlined the importance of science-based criteria when assessing the impact of groundwater abstraction activities on protected nature.[119] Again, the Council pointed to previous negative opinions of specialized agencies regarding the acceptability of the project in light of its impacts on degraded nature. After having being able to take notice of the outcome of the case, the current Flemish minister for the environment concluded that the threshold had to be updated in light of the best available science.[120]

[117] *Vzw Natuurpunt v Vlaams Gewest*, Belgian Council of State, Decision of 16 June 2011, no. 213.916.
[118] *Vzw Aktiegroep Leefmilieu Kempen v Vlaamse Gewest*, Belgian Council of State, Decision of 9 December 2021, no. 252.371.
[119] *Vzw Natuurpunt v Vlaams Gewest*, Belgian Council of State, Decision of 9 March 2021, no. 250.025.
[120] 'Nieuw arrest Raad van State bedreigt grondwaterwinning door landbouw', VILT (2 April 2021) Nieuw arrest Raad van State bedreigt grondwaterwinning door landbouw | VILT vzw

It needs little explanation to understand that this jurisprudential shift will give rise to a better protection of aquifers, at least those who are located inside or close to protected sites.

9- Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?

Yes, this is explicitly provided for in Article 25 of the Nature Conservation Decree regarding the conservation and restoration of water-related ecosystems in the context of protected sites that are included in the Flemish Ecological Network. Indirectly, this is also the case for Natura 2000-sites, through the implementation of Article 6(1) and 6(2) of the EU Habitats Directive. This is also partially reflected in the applicable conservation objectives and Natura 2000 Management-plans.[121] In the recently approved 'Programmatic Approach Nitrogen', the restoration of water-related ecosystems in Natura 2000-sites that have been overburdened by nitrogen deposition.[122] Of course, the restoration of water-related ecosystems is also included in the applicable RBMP and programmes of measures.[123]

Next to that, reference can be made to the Blue Deal, launched in the summer of 2020 by the Flemish Government. The Blue Deal is an ambitious programme that tackles water scarcity and drought in the field through a multitude of campaigns. Rather than focusing on the causes, the Blue Deal aims to develop structural solutions. This is done by collaborating on several fronts. The Government of Flanders aims to invest in smart projects and actions in the field with the Blue Deal. Its approach is one based on collaboration. It encourages and supports governments, companies, associations, farmers, knowledge institutions and citizens to work together to infiltrate more water, to retain water longer upstream or to use water more economically, so that more water remains available. The Blue Deal's initiatives will receive additional support through the European Recovery Plan of the Facility for Recovery and Resilience and the Flemish Recovery Plan 'Flemish Resilience'. Thirteen Blue Deal investment projects form part of the Flemish Resilience recovery plan, for a total budget of 343 million euros. The funds are directed to investments by the Government of Flanders and to supporting local initiatives.[124] As of today, more than 400 projects have been launched under the umbrella of the Blue Deal.

In terms of river restoration, also reference can be made to the so-called Sigmaplan, which was created in order to protect Flanders from the floods in the wake of the terrible floodings in the 1970s. The Sigma Plan aims to protect Flanders from floods. In storm weather conditions, the tidal river Scheldt and its tributaries can reach dangerously high water levels and can even overflow their banks. Hence, the plan invests in sturdier and higher levees and in a chain of natural flood control areas in the river valleys. Areas like these can catch excess river water and this gives the rivers room to flow and to overflow in a controlled manner. In this context, also nature restoration actions have been implemented, with as much as 14 000 ha of newly created wetlands and flood plains. Along the river, tidal nature is subject to the full range from sea water to fresh water, resulting in a broad variety of habitats. After decades of absence, otter and beaver have returned to the river valley. Because of the

[121] To be consulted at https://natura2000.vlaanderen.be/natura-2000-gebieden
[122] See https://www.vlaanderen.be/stikstof-in-vlaanderen
[123] https://www.integraalwaterbeleid.be/nl/stroomgebiedbeheerplannen
[124] https://www.vmm.be/water/blue-deal

investments in a better water quality, removal of physical barriers and creating better habitats, fish such as eel and twaite shad migrate freely now.[125]

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn ? Please feel free to answer this question only if you have a concrete example (successful or not) to share.

Yes and no, in the recent decades many promising restoration actions have been implemented in the context of river and wetland restoration. The above-presented Sigmaplan and the Blue Deal can serve as a potent illustration of this trend. Even so, a more comprehensive restoration effort is lacking. So, yes, there exist many interesting and promising ad hoc-restoration projects, yet with the exception perhaps of the Sigmaplan a landscape-wide and overarching restoration approach is lacking. In other words, if the future EU Restoration Law is adopted, the existing river restoration efforts can be accounted for, yet they will have to be supplemented by additional recovery programmes, at landscape level. This could indeed be a game-changer, yet, as of today, the Flemish government opted for a rather negative approach towards the adoption of the Proposal for a EU restoration law. The Flemish Government has pushed the Belgian (federal) government to abstain in the voting procedure for the future law at the level of the European Council because it feared the future restoration law would lead to many more court cases and administrative burdens.[126]

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

Questions

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake ?

Depending on your national context, you may illustrate these conflicts with Agriculture (agricultural irrigation - the controversial case of metabasins for agriculture) or Energy (hydroelectricity - cooling nuclear power stations) or Tourism (increased tourist numbers - development of new tourism infrastructures) or extension of urban areas.

As of today, we notice a lot of tension at the policy-level in light of the fast-approaching deadline of 2027. The case-law of the CJEU, amongst others the relatively strict Weser-rationale (application of the non-deterioration obligation at the level of the granting of individual permits and the one out, all out-approach), is slowly trickling down in the national jurisprudence. As mentioned, the Flemish administration has recently tried to implement this Weser-rationale in (non-binding) guidelines, such as the so-called Weser-tool.[127] It is hoped that, by applying this tools, no permit freeze will have to be implemented in the context of future discharge through environmental permits in water bodies that are currently in an unfavourable status. However, the thresholds applied in the Weser-instrument/tool, is subject to continued criticism, amongst others in the context of the recent revelations regarding PFAS-pollution in Flemish water bodies. It is expected that the future case-law developments will push the permitting authorities to more stringency and a more tailor-made approach to the application of the derogation clauses.

[125] https://www.sigmaplan.be/nl
[126] https://vilt.be/nl/nieuws/geen-groen-licht-voor-natuurherstelwet-vanuit-vlaamse-regering
[127] https://www.vmm.be/water/afvalwater/impactbeoordeling-bedrijfsafvalwater

In the context of water quantity management, a recently approved executive regulation of the Flemish government regarding water management in polders is noteworthy, which aims to implement the 'better water retention' objective, upon which the Blue Deal is grounded.[128] New instrument 'water level decision' (peilbesluit) will help with this in flat areas and polders. This will underpin the water level objectives and make them legally binding. With good and more sustainable water level management, dehydration is better tackled and as much water as possible is retained, taking into account the needs in an area. In the Netherlands, 'peilbesluit' (water level decision) has been a well-known concept for years in the context of water management in the context of polders, but in Flanders the legal basis was lacking. Level management is the responsibility of the competent water manager. It is responsible for the level settings at the pumping stations and weirs. In a number of areas, agreements were made between the water managers and the partners involved in the area. With the new legislation, decisions regarding the water management in polders and flat areas will have to be subject to a prior EIA and appropriate assessment. It is hoped that with these new piece of legislation, much more attention will be paid to the alignment of the water level management and nature conservation objectives. The procedure will include the consultation of all stakeholders, amongst others, farmers and environmental NGOs. It is expected that the first round of 'peilbesluiten' will be adopted in 2027.

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

See the above-shared example of the 'peilbesluit' (water leven management decision in polders).
In 2022, an expert report 'Weerbaar Waterland' has been published, which prioritizes on the protection against floods in Flanders and puts further emphasis on giving more space to water and river restoration.

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation?

Yes. In Flanders, most of the environmental legislation is focused on the no gold-plating rule, pursuant to which the regional environmental legislation will not go beyond the basic environmental requirements. In recent years, we notice a incremental pushback regarding public participation in the context of planning law.

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

No, however, recently the Flemish Minister competent for the Environment, recently decided not to grant a start subsidy for an environmental NGO (Dryade) because it deemed that it focused to much upon strategic litigation, amongst others in the context of water management.[129]

[128] Besluit 5 mei 2023 van de Vlaamse Regering over het peilbeheer op onbevaarbare waterlopen en grachten.
[129] https://www.standaard.be/cnt/dmf20240201_97625940

Croatia

Professor Lana Ofak, University of Zagreb, Faculty of Law

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law?

Croatian Water Act[130] does not contain the legal definition of water. Water is common good and has special protection of the Republic of Croatia. The water in bodies of surface water and groundwater cannot be the object of ownership rights and other property rights. Such water shall be used and the rights on it may be acquired in a manner and under conditions established by the Water Act and other regulations (Article 8 of the Water Act). Everyone is allowed to use water for personal use, in a manner and in quantity that does not exclude others from the same use (general water use). General water use includes especially: (1) abstraction of surface water and groundwater in the first aquifer in the alluvial area, and in the karst area in accordance with water right conditions and for the following: drinking, cooking, heating, cleaning, sanitation and other household needs; and (2) use of surface water for swimming, sports and recreation and other similar purposes. General water use does not include the use of water for irrigation, regardless of the size of the area to be irrigated (Article 88 of the Water Act).
In order to comply with the Water Framework Directive, a new clause was added to the Water Act, stating that its provisions are applicable to all bodies of water. This includes both groundwater and surface water, coastal waters and waters of the territorial sea in terms of their chemical composition, and mineral and geothermal water in terms of achieving water protection goals.
It is possible for special laws to deviate from the provisions of the Water Act (e.g. in relation to mineral waters by the Mining Act or in relation to geothermal waters by the Act on exploration and exploitation of hydrocarbons).

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

In 2019, 34 members of the Croatian Parliament submitted a proposal for to amend the Constitution of the Republic of Croatia. They proposed adding the following provision to the Constitution:
"Every individual has the right to clean and safe drinking water.
Water resources are a common good managed by the state.
The supply of household drinking water and water for households is a non-profit utility activity provided by public suppliers.
The municipal activity of water supply is regulated by law."
The initiative was rejected due to the following reasons. The majority in the Parliament was of the opinion that the Constitution of the Republic of Croatia and current laws were sufficient in

[130] Official Gazette, no. 66/2019, 84/2021, 47/2023.

safeguarding the right to water. The Government, along with the majority in the Parliament, was concerned that if access to water for human consumption was constitutionalized as an independent right, it may be misinterpreted as a right to receive water services free of charge. The Croatian Government claimed that the existing model of providing water services, based on complex and expensive infrastructure, for which the users must pay an economic price, would collapse and lead to chaos in the water sector. It also argued that interpreting the constitutional right to water too liberally could lead to people not paying for water services and that the rights of individuals who do not pay for water services could take precedence over the rights of those who fulfil their obligations.[131]

It is important to mention that the Republic of Croatia abstained from voting in the UN General Assembly on the proposed Resolution on the human right to water and sanitation in 2010. The constitutional recognition of the right to water in the Republic of Croatia does not appear to be a top priority in current political discussions, despite the support from the Croatian Ombudsman[132] and the Croatian academic community.[133]

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

Questions

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

While the human right to water is not expressly defined in Croatian Constitution, it is implied by other human rights guaranteed in the Constitution:

- the right to life (Article 21)
- the right to a healthy life and environment (Article 69)
- the right to assistance for weak, infirm, or other persons unable to meet their basic subsistence needs as a result of their unemployment or incapacity for work (Article 57)
- special protection of maternity, children and young people and promoting the exercise of the right to a decent life (Article 62).[134]

The Constitutional Court addressed matters related to water services in several recent cases,[135] focusing on the use of water as a "good of interest to the Republic of Croatia" that enjoys its special protection,[136] rather than examining the cases through the lens of the human right to water.

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[131] Government of the Republic of Croatia, Providing an opinion to the Croatian Parliament, 29 August 2019.

[132] For a number of years, The Croatian Ombudsman has been advocating for the inclusion of the right to water as a separate right into the Croatian Constitution. See: https://www.ombudsman.hr/en/right-to-water-crucial-for-protection-of-health-and-decent-life-quality/.

[133] In 2016, Desanka Sarvan successfully defended her doctoral dissertation at the Faculty of Law in Zagreb and also authored a book on the human right to water.

[134] Croatian Constitution (in English): https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf.

[135] U-II-627/2022 (7 February 2023), U-I-7217/2021 (20 December 2022) and U-I-3379/2019 (8 June 2021).

[136] Article 52 of the Constituon states:

The sea, seashore, islands, waters, air space, mineral resources, and other natural resources, as well as land, forests, flora and fauna, other components of the natural environment, real estate and items of particular cultural, historical, economic or ecological significance which are specified by law to be of interest to the Republic of Croatia shall enjoy its special protection.

Drinking water quality in Croatia has not raised any significant issues. The Republic of Croatia has ample reserves of drinking water and the current usage levels are not a cause for concern regarding water availability. 23.4% of the Republic of Croatia's water resources come from within its borders, while the remaining 76.6% originate from neighboring countries and are influenced by cross-border factors. During the summer months, there is heightened demand for water resources in coastal areas and on islands. This demand is further exacerbated by ongoing climate changes and more frequent dry spells, which negatively affect the availability of water. Most groundwater bodies are in good quantitative and chemical condition, with a few exceptions in the Adriatic water area. It is essential to maintain the quality and quantity of groundwater, as 86% of water for public water supply is obtained from underground sources.[137]

The main challenges facing the Croatian water utility sector include excessively high losses in water supply systems, estimated at around 50%, as well as inadequate progress in expanding public drainage and wastewater treatment infrastructure, with only around 55% of the population currently connected.

4- How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?

One of the goals of water management is to achieve and maintain good status of water for the purpose of protecting human life and health, protecting their property, and protecting water and water-dependent ecosystems (Article 5 of the Water Act).

For the past 4 years, the main competent authority for water policy in the Republic of Croatia was the Ministry of Economy and Sustainable Development. However, following the April 2024 elections, the newly formed government decided to split the Economy and Environmental Protection sectors into two distinct ministries.

Hrvatske vode ('Croatian Waters') is an important entity in the water management sector, serving as an institution with public powers.

Planning documents for water management include the Water Management Strategy approved by Parliament, Water Area Management Plan approved by the Government, and multi-year construction programs approved by the Government for communal water facilities, regulatory and protective water structures, and land reclamation structures. Other planning documents include Water Management Plan and the financial plan of Croatian Waters, along with detailed plans.

The issue of rights of rivers is not a subject of debate in Croatia, but rather falls under the individual projects of environmental organizations (examples: Dam Removal Europe project[138] and Project Free Korana River[139] with the goal to map and categorize all obstacles along the river's course from its source to its mouth).

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

The manner in which any resources of interest to the Republic of Croatia may be used and exploited by holders of rights thereto and by their owners, as well as compensation for any restrictions as may be imposed thereon, shall be regulated by law.

[137] Data according to: Ministry of Economy and Sustainable Development, Report on the state of the environment in the Republic of Croatia for the period from 2017 to 2020, Zagreb, 2022, p. 116.

[138] World Fish Migration Foundation together with several partners: Fauna & Flora, MedINA Greece, Wetlands International (WI), ERN (European Rivers Network), WWF Netherlands, Slovakia, and Adria, https://worldfishmigrationfoundation.com/portfolio-item/scaling-up-dr-se-europe/

[139] Zelena akcija / Friends of the Earth Croatia, Eko Pan and BIOTA.

♣ INTEGRATED WATER MANAGEMENT

Questions

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions? We invite you to focus on the most relevant topic in your country.

Around 28 percent of rivers and lakes in Croatia have good status. The Adriatic water area generally has better water quality compared to the Danube water area, although there has been a decline in water quality in both regions. The decline in condition is not due to an actual deterioration, but rather to the implementation of a new classification system and expanded scope of monitoring.[140] Good ecological status is not achieved at over 80 percent of river monitoring stations in Croatia. At 76 percent of monitoring stations in the Danube River Water Area, the rivers were found to be in good chemical status. In the Adriatic Water Area, this percentage was slightly higher, with 82 percent of stations reporting good chemical status.

Water pollution can stem from various sources including industry, energy production, agriculture, forestry practices, aquaculture and fishing activities, households, tourism, transport, and other sources of contamination.[141]

Approximately 55 percent of the total population is connected to the public sewage system. For instance, in 2018, a total of 105 municipal wastewater treatment devices were installed, which was half of the planned 260. The deadlines for meeting the requirements of the Municipal Wastewater Treatment Directive have been extended until the end of 2027, as there is a lack of funds for implementing the necessary measures and limited capacity for implementation.

Key legal responses for reducing the need for WFD exemptions include implementing measures to regulate pollution from both point sources (such as industrial and municipal wastewater) and dispersed sources of pollution.

Measures to regulate pollution from point sources are:[142]

1. Granting water right permits or environmental permits, which determine the conditions for waste water discharge, including permitted quantities, limit values, monitoring obligations, data submission requirements, and potential exemptions. All discharges of municipal, industrial, or other wastewater that are subject to emission limit values are required to obtain a water right permit or an environmental permit. These limits are set for specific pollutants or categories of pollutants.[143] Individuals who have received approval to release wastewater are required to regularly monitor both the quantity and quality of the discharged water, and provide this information to Croatian Waters. Additionally, there is a fee for water protection that must be paid based on both the volume and properties of any waste water being discharged. Funds from the water protection fee are the income

[140] Report on the state of the environment in the Republic of Croatia for the period from 2017 to 2020, p. 116.
[141] Ibid., p. 120.
[142] Water Areas Management Plan until 2027, Official Gazette no. 84/2022, p. 433-456.
[143] Ordinance on limit values for waste water emissions, Official Gazette no. 26/2020.

of Croatian Waters. They are used for the purpose of recovering investment and administrative costs for protecting water from pollution.

2. Water right permits are reviewed once during the validity period of the Water Area Management Plan to ensure compliance. Water right permits are also examined for possible updates if there are significant advancements in the best available techniques for environmental protection that could lead to a significant decrease in emissions into water and the aquatic environment, without resulting in increased costs. Water right permits are also subject to review to ensure compliance with the national or EU law. In these cases, the water right permits may be revoked or changed ex officio.

3. The ministry responsible for environmental protection is in charge of ensuring that IED facilities comply with the prescribed emission limit values for industrial (technological) waste water.

4. There is a detailed implementation plan of the multi-year program for the construction of municipal water structures for the period up to 2030 (prioritization of drainage and municipal wastewater treatment projects).

5. The disposal of sludge from municipal treatment facilities is determined by the Waste Management Plan of the Republic of Croatia.

Measures to regulate pollution from dispersed sources of pollution:[144]

1. Basic measures to control and reduce pollution from agricultural production aimed at pollution with nutrients, especially nitrates and
2. Control and reduction of dispersed pollution from landfills.

Major issue is the absence of a comprehensive legislative framework that governs individual drainage systems, making it difficult to determine the efficacy of their purification processes.[145]

Karst terrains in Croatia encompass nearly 50 percent of the land. The unique structure and porous rocks of the karst allow pollution to easily spread, leading to long-lasting impacts on the quality of karst waters.[146] The CroSpeleo information system[147] was developed to centralize and present information on speleological sites in Croatia. More than 9,000 speleological objects have been mentioned in the literature, with 4,122 of them processed so far. At least 10 percent of all known speleological objects have been found to be contaminated with different types of waste, including municipal, construction, industrial, animal remains, and mine explosives, as reported by the Clean Underground initiative.[148]

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management? Please focus on the most illustrative example either in relation to

[144] Water Areas Management Plan until 2027, p. 456-464.
[145] Ibid., p. 460.
[146] Report on the state of the environment in the Republic of Croatia for the period from 2017 to 2020, p. 129.
[147] Information in English: https://www.fzoeu.hr/en/better-protection-of-speleological-objects-through-data-collection-and-analysis/9000
[148] Information in English: https://www.npkrka.hr/en_US/2023/01/31/speleolozi-i-planinari-iz-svetog-mihovila-hrvatska-gorska-sluzba-spasavanja-i-djelatnici-nacionalnog-parka-krka-u-pet-dana-iz-spilja-i-jama-izvukli-dvadeset-dva-kubicna-metra-smeca/

the Floods Directive or the Water Reuse Regulation or national/local measures concerning water stress and/or droughts which could inspire a future EU Law framework.

When it comes to underground water, there are two types of aquifers in Croatia. In northern Croatia, the aquifers are made of gravel and sand, and are alluvial in nature. In contrast, those located south of Karlovac are karst aquifers found in the Dinaric region.[149]

The majority of Croatia's population, about 80%, relies on drinking water sourced from underground aquifers that are replenished by underground inflow, precipitation infiltration, and to some extent, surface water. Precipitation events occurring over extended periods of several months, years, or more are crucial for the state of groundwater.[150]

The primary issue with karst aquifer systems is their susceptibility to quantitative instability, particularly during prolonged dry periods in the summer when the aquifers have a limited capacity to retain water. During the summer, springs typically experience a decrease in water flow, and may even dry up completely. A shortage of rain in Istria, the islands, and the Dubrovnik region could impact water supply and river levels in the summer months. Karst aquifers lack the capacity to store water, making them more vulnerable to drought conditions. The years to come, according to the results of climate modeling, will bring longer periods of drought. Croatia is among the top three European countries with the highest overall impact from extreme weather and climate events in terms of their gross national product. It is situated in the Mediterranean Sea region, where temperatures are rising at a faster pace than the global average. Currently, Croatia does not have a formal policy in place to address drought and water scarcity. The Climate Change Adaptation Strategy for the period until 2040 with a look at 2070, contains only a few general measures related to the protection of water resources. Even though it has been several years since the Strategy's adoption, an Action Plan has yet to be adopted that would outline specific measures, those responsible for carrying them out, and the financial resources allocated for their execution.[151]

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

In Croatia, there is a significant issue with the discrepancy between the amount of water extracted and the amount that is actually distributed. Approximately 50% of the water is unaccounted for, with the majority of this loss attributed to leaks and inefficiencies in the distribution network.

The activities of public water supply and public sewerage are separated from the Water Act, and are regulated by the Water Services Act.[152] In the current extremely fragmented system (around 190 suppliers) it was not possible to achieve efficiency of public water service providers. The system needed to be integrated at the institutional level. There is a significant investment cycle to comply with the Directive regarding urban waste-water treatment and the Directive on the quality of water

[149] Source (in Croatian): https://faktograf.hr/2023/05/26/susa-je-najopasniji-vremenski-ekstrem-a-hrvatska-se-za-nju-ne-priprema/
[150] Ibid.
[151] Ibid.
[152] Official Gazette, no. 66/2019.

for human consumption. The investment cycle refers to the construction of a public sewerage system and wastewater treatment plant (because the coverage of the population with this service is only 55%) and the construction of a public water supply system (because it generates large losses of about 50%). The current fragmented water services sector lacks the resources to carry out these investments due to a lack of staff and the financial burden of necessary improvements in water service areas.[153] The Water Services Act and its implementing Regulation on Service Areas entail the abolition of approximately 160 local water supply lines and their merger to 41 larger water supply lines within designated service areas. The objective is to standardize water pricing, streamline the process for accessing EU funding for projects, and support the financial stability.

The initial version of the Regulation on Service Areas was repealed by the Constitutional Court in March 2023 following a proposal from over 20 local water utilities who were against the merger. The Constitutional Court determined that the Water Services Act is constitutional[154] but repealed the implementing Regulation on Service Areas. The Constitutional Court determined that there is no indication in the Regulation that it will effectively accomplish the intended goal of the Water Services Act. The Constitutional Court has set a deadline of 15 July 2023 for the Government to enact new Regulation on Service Areas. The Constitutional Court, namely, concluded that the Government was required to provide a justification in the process of passing the Regulation, detailing the reasons for the formation of service areas and demonstrating that the criteria of the Water Services Act were met in each of these areas.[155]

Four months following the Constitutional Court's ruling, the Ministry released an updated Regulation for e-consultation, with only one provision being altered while everything else remained unchanged. In addition to the new Regulation being proposed, the Ministry also released a comprehensive document detailing the process by which the boundaries of the 41 service areas were determined, along with the specific criteria that were used. Key criteria included: the volume of water distribution, extent of service coverage, avoidance of border conflicts, protection of property, recovery of the costs of water services, accessibility of affordable water prices, capacity for investments, achievement of self-sustainability, financial stability and efficiency. The new Regulation on Service Areas came into effect on 15 July 2023.[156]

Some local units continue to argue that the Government has encroached upon the power of local self-government units and confiscated their property. It was announced that new proceedings for assessing compliance with the Constitution and the law will once again be initiated before the Constitutional Court.

♣ WATER BIODIVERSITY

Questions

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country? Please provide examples of success / failure of integration in particular cases if relevant.

[153] Government of the Republic of Croatia, Proposal of the Water Services Act, Zagreb, 2019, 2.
[154] Decision of the Constitutional Court of the Republic of Croatia, U-I-7217-2021, 20 December 2022.
[155] Decision of the Constitutional Court of the Republic of Croatia, U-II-627/2022, 7 February 2023.
[156] Official Gazette, no. 70/2023.

After environmental NGOs submitted a complaint to the European Bank for Reconstruction and Development, EBRD ultimately decided to cancel the loan for the construction of the Ombla hydroelectric power plant, marking a successful outcome for the NGOs.[157] Subsequently, the Ministry of Environmental and Nature Protection accepted the opinion of the of the Croatian State Institute for Nature Protection that significant negative impacts are possible on the population of bats and the endemic fish species. Therefore, the Ministry decided that it is not possible to exclude a significant negative impact on the conservation objectives and integrity of the ecological network, and the project was dismissed. Such decisions that determine significant negative impact are almost never passed, as was the case with this being only the second in the Ministry's history.
Environmental NGOs have successfully utilized the Habitats Directive in a number of other cases to oppose the construction of small hydropower plants within Natura 2000 sites.
On the other hand, there are also stories of failure. The weakest link is the ineffectiveness of inspection procedure. For instance, see the report from Bankwatch for more information.[158]
Public participation in granting of water rights decisions is not possible according to Water Act, rendering the use of the Water Framework Directive by the public concerned ineffective. Water rights decisions[159] are issued with the aim of achieving the specified goals for water management as mandated by the law, including the Water Framework Directive (WFD).

9-Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?

According to data from the Report on the state of the environment, the activities related to implementing remedial measures at water wells, as outlined in the adopted decisions on water source protection and prepared protection programs, are not being carried out as planned.[160]

As far as I know, there are no specific laws governing restoration efforts, but rather on preventing and addressing environmental damage and potential threats. In addition to the provisions of the Environmental Protection Act, two implementing regulations are relevant for the issues related to environmental damage i.e., Regulation on liability for environmental damage and Ordinance on measures for remediation of environmental damage and restoration programmes.

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn? Please feel free to answer this question only if you have a concrete example (successful or not) to share.

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

[157] https://bankwatch.org/publication/open-letter-requesting-ebrd-to-withdraw-from-the-ombla-hydroelectric-plant-project; https://www.ebrd.com/work-with-us/projects/psd/ombla-hpp.html.
[158] https://bankwatch.org/dabrova-dolina-croatia-why-not-build-small-hydropower. There is also a documentary regarding small hydropower plants in Croatia, Bosnia, Serbia and Montenegro, with English subtitles, available at this link: https://www.youtube.com/watch?v=aawC8alX200.
[159] Water rights decisions are: 1. water rights conditions; 2. opinion on the conditions of the environmental permit; 3. water rights confirmation; 4. water rights permit; 5. special conditions of connection; and 6. confirmation of compliance with special conditions of connection.
[160] Report on the state of the environment in the Republic of Croatia for the period from 2017 to 2020, p. 158.

Questions

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake ?

Depending on your national context, you may illustrate these conflicts with Agriculture (agricultural irrigation - the controversial case of metabasins for agriculture) or Energy (hydroelectricity - cooling nuclear power stations) or Tourism (increased tourist numbers - development of new tourism infrastructures) or extension of urban areas.

To my understanding, the current conflict pertaining to water issues revolves around the consolidation of water services areas as discussed in question 7. Two constitutional judges declined to endorse the majority opinion i.e. they believed that the Water Service Act was unconstitutional.[161] The Water Services Act enabled the concrete expropriation of water infrastructure which, in their opinion, presented an unconstitutional infringement on the competences of local self-government units as protected by the Constitution. The contribution of local self-government units in funding the development of communal water structures (using budget funds derived from residents' tax payments) was, from their standpoint, ignored. Local authorities in large cities such as Zagreb or Split have the power to set the price of water supply for all residents in the area, based on the interests of their own constituents to whom they are accountable politically. The price of water for residents of other local government units will be determined by the interests of citizens in larger local government units. They believe that the legislator allowed for a form of political manipulation by reducing the boundaries of water service areas. From their perspective, this case demonstrated that the central state's executive power has the authority to adjust and redefine the boundaries of water service areas in a manner that maintains the advantageous management position of local self-government units that are aligned with the same political interests.

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

I am not aware of any such occurrence.

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation ?

The public is only allowed to participate in the adoption of water management planning documents as provided in the Water Act. Public participation is not possible in procedures related to issuing individual water rights decisions. Water right decisions are not published.

In my opinion, the Croatian legal regulation does not conform with the judgement in case C-664/15 Protect. Environmental NGOs cannot legally challenge water rights decisions if they believe that the regulations related to environmental protection are being infringed upon. The implementation of

[161] U-I-7217-2021, 20 December 2022, A dissenting opinion, p. 71-73.

Article 9, paragraph 3 in Croatian legislation creates conditions that are unattainable for individuals and restricts environmental NGOs from initiating procedures before the courts.

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

I am not aware of any such occurrence.

Czechia

Jiri Vodicka

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law?

The Czech Republic joined the European Community (EC) in 2004. Prior to accession, Czechia had to comply with the *Acquis Communautaire*, which included creating new legal acts or amending existing ones. Specifically, regarding this questionnaire, it also necessitated the creation of an entirely new Water Act.

The previous Water Act (Act No. 138/1973 Coll.) contained only a rudimentary definition of ground and surface water in Section 2(1):

"Surface waters are waters naturally occurring on the earth's surface; ground waters are waters in the earth's cavities and aquifers. The rights to these waters are regulated by this Act."

This 1973 Water Act was subsequently superseded by Act No. 254/2001 Coll., known as the Water Act. This act was drafted with Directive 2000/60/EC (Water Framework Directive, WFD) in mind and continues to serve as the transposition of the WFD to this day. The current Water Act defines surface waters and ground waters separately.

Section 2(1): *"Surface waters are waters naturally occurring on the earth's surface; they do not lose this character when they flow through temporarily covered sections, through natural cavities below the earth's surface or in overhead conduits."*

Section 2(2): *"Groundwater is water naturally occurring below the earth's surface in the zone of saturation in direct contact with rocks; water flowing through underground drainage systems and water in wells are also considered groundwater."*

The definitions in the 2001 Water Act are more robust compared to those in the 1973 Water Act. Furthermore, these new definitions comply with and expand upon the definitions of surface and ground water found in the WFD.

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

Since the adoption of the Water Act in 2001, water in Czechia has been viewed as *res nullius* and, simultaneously, water unseparated from its source (for example, a river, lake, or groundwater reservoir) is considered *res extra commercium*. Ownership of water comes into existence when it is separated from its source.

Section 3(1): "*Surface water and groundwater are not subject to ownership and are not part of or appurtenant to the land on or under which they occur; the rights to such waters shall be governed by this Act.*"

Section 3(2): "*Surface waters and groundwaters shall not be deemed to be waters which have been abstracted from such waters."*

This paradigm has been in place since 2001. However, recent droughts and ecological damage, such as the cyanide contamination over a 40-km stretch of the Bečva River[162], have prompted some policymakers to propose several amendments to the Czech Constitution (Constitutional Act No. 1/1993 Coll.), which currently states in Article 7 *The state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth*.

One proposal, which precisely defines water as a natural resource, is the most likely to be adopted. Proposed Article 7: *The state shall concern itself with the prudent use of its natural resources, especially water and soil and the protection of environment.*

Deliberations on the rest of the proposals ended due to the conclusion of the election period for parliament.

It is worth mentioning a few of these proposals due to their significance. The first aimed to shift the ownership of water to the state's sphere.[163] This proposal was problematic for several reasons: firstly, its intended goal to strengthen water protection would likely fall short because the same level of protection is already enforced; secondly, it failed to specify which waters it covered, raising questions about the legal status of surface and ground water, as well as natural mineral waters and mining waters; thirdly, from a liability perspective, this solution would burden the state with liability issues since state ownership of water could lead to liability for damages caused by the water.

The second proposal targeted Article 31 of the Charter of Fundamental Rights and Freedoms (Constitutional Act No. 2/1993 Coll.), which currently includes a simple right to health protection[164] aiming to include the right to water as a human right[165].

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[162] Lazarova, D. *Illegally dumped waste leaves 40-km stretch of Bečva River effectively "dead*", Radio Prague International [online]. https://english.radio.cz/illegally-dumped-waste-leaves-40-km-stretch-becva-river-effectively-dead-8693203

[163] Bill No. 508.

(1) Water, as well as other natural resources and natural wealth, is the property of the Czech Republic. The Czech Republic protects and enhances this wealth and is obliged to ensure the protection and careful use of water as a basic necessity of life and other natural resources and natural wealth for the benefit of its citizens and future generations.

(2) The manner of use and protection shall be determined by law.

[164] *Everyone has the right to the protection of her health. Citizens shall have the right, on the basis of public insurance, to free medical care and to medical aids under conditions provided for by law.*

[165] Bill No. 549

(1) Everyone has the right to the protection of his or her health. Citizens shall have the right to free health care and medical aids on the basis of public insurance under the conditions laid down by law.

(2) Everyone has the right to drinking water.

(3) Water resources are a public utility and are administered by the State.

(4) Drinking water resources are to be used as a matter of priority and in a sustainable manner to supply drinking water for consumption.

(5) Drinking water supply shall be provided by municipalities on a non-profit basis.

The last proposal introduced a completely new constitutional act on the protection of water and water resources.[166]

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

The Czech legal system does not explicitly recognise the right to water/sanitation or the right to access water. However, such a human right could be inferred from Articles 31 and 35 [Right to a Favourable Environment[167] of the Charter of Fundamental Rights and Freedoms (Constitutional Act No. 2/1993 Coll.)]. Despite this, since the formation of the Czech Republic, the Czech Constitutional Court has not dealt with this issue in any case.

While the 'right to water' is referenced in the case law of administrative and civil courts, these cases primarily relate to the use of wells, ownership disputes over sewer/water connections, or water management issues. None of these cases address existential issues related to the lack of access to drinking water or sanitation.

The reasons why policymakers have not yet included a right to water in the Czech legal system can only be speculated upon. One reason could be that this right is encompassed within other human rights, as mentioned above. Another reason could be the lack of an urgent need to do so. According to the Czech Statistical Office, 95.6% of residents were connected to public drinking water infrastructure, and 87.3% to public sewer infrastructure in 2022.[168] Furthermore, a press release from the Ministry of Agriculture, relayed by the Ministry of Health, reports that the quality of drinking water in Czechia is slowly but gradually improving.[169]

Additionally, Section 5(3) of the 2001 Water Act obliges builders to provide buildings, depending on their type and need, with water supply and sewage disposal through a sewerage system. If no sewerage system is available, sewage water must be treated and discharged into surface/ground water or accumulated in a cesspit.

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[166] Bill No. 1018.

[167] *(1) Everyone has the right to a favorable environment.*
(2) Everyone has the right to timely and complete information about the state of the environment and natural resources.
(3) No one may, in exercising her rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by a law.

[168] Czech Statistical Office, Water Supply Systems, Sewerage and Watercourses – 2022. https://www.czso.cz/csu/czso/water-supply-systems-sewerage-and-watercourses-2022

[169] The Ministry of Agriculture, Drinking water quality in the Czech Republic continues to improve, the number of people connected to water supply and sewerage systems is increasing. https://eagri.cz/public/portal/mze/tiskovy-servis/tiskove-zpravy/jakost-pitne-vody-v-cr-se-stale-zlepsuje

It could be argued that the human right to water may be introduced into the Czech legal code in the coming years, given the first indications mentioned above. This is likely in light of the Czech Republic facing droughts and extreme weather patterns. Some municipalities are currently experiencing droughts and water shortages. Given the country's extreme vulnerability to climate change and related droughts, the government has published a Policy of Drought Protection for the territory of the Czech Republic for the period 2023-2027.[170] However, this policy does not yet include the right to water.

4- **How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?**

Protection of Ecosystems

Water needs of ecosystems are protected in Czechia from two perspectives within the water law framework: policy and specific activities.

From a policy perspective, water ecosystems are safeguarded through National River Basin Management Plans (NRBMPs) as stipulated by Section 24(4)(a) of the 2001 Water Act. These plans are further detailed in Decree No. 50/2023 Coll., on River Basin Management Plans and Flood Risk Management Plans.[171] Three national RBMPs have been established for the Elbe, Danube, and Odra rivers. These plans specify areas that impact ecosystems directly and are subject to close monitoring. Each plan includes a dedicated chapter outlining ecosystem protection goals and strategies for 2021-2027[172]:

- to set international, national and regional priorities for the gradual two-way crossing including a timetable for the implementation of the sub-basin plans, taking into account the capacity and financial resources required for such a process,
- ensure downstream protection of fish at hydropower installations,
- establish principles for protecting existing stream migration passage,
- establish principles for improving the living conditions of flowing water organisms.

The 2001 Water Act also conditions specific activities to ensure ecosystem protection during their operation. For instance, Section 7(5) allows the use of surface waters for navigation provided that aquatic ecosystems are not endangered. Navigation is restricted to vessels and water courses that meet criteria set by the Ministry of Transport, in agreement with the Ministry of the Environment and in cooperation with the Ministry of Agriculture, as determined by Decree No. 46/2015 Coll.

Another protective measure is the establishment of minimum groundwater levels under Section 37, applicable when water authorities permit groundwater management. Section 38(10)(a) mandates

[170] The Ministry of Agriculture, Policy Concept of Drought Protection for the Czech Republic for the period 2023-2027. https://eagri.cz/public/portal/mze/ministerstvo-zemedelstvi/koncepce-a-strategie/koncepce-ochrany-pred-nasledkem-sucha-pro-uzemi-ceske-republiky-na-obdobi-2023-2027

[171] The Ministry of Agriculture, National River Basin Management Plan https://eagri.cz/public/portal/mze/voda/planovani-v-oblasti-vod/ramcova-smernice-o-vodach/x3-planovaci-obdobi/zverejnene-informace/narodni-plan-povodi

[172] These goals are the same for all national RBMP.

that water authorities consider ecosystem protection when authorising wastewater discharges into surface/ground waters. Additionally, watercourse administrators must conduct their activities in ways that minimise potential negative impacts on ecosystems, as required by Section 47(5).

Finally, under Section 55a(2) of the 2001 Water Act, the protection of aquatic and related ecosystems must be considered when permitting water works. Water works should not create barriers to the free movement of fish and other aquatic life forms, although several exemptions exist, such as for ponds, water reservoirs, other public interests, technical infeasibility, or excessive costs

Rights of Rivers & Aquatic Ecosystems

I am not aware of any political or public discussion/debate on this topic.

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

♣ INTEGRATED WATER MANAGEMENT

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions? We invite you to focus on the most relevant topic in your country.

Water Quality problems

Despite efforts, almost no surface water and groundwater bodies in Czechia have reached the ecological objectives set by the Water Framework Directive. Consequently, an extension until 2027 has been requested to meet these objectives. Section 23a(2) of the 2001 Water Act establishes a binding deadline of 22 December 2015 for meeting the environmental objectives within the river basin district. Nonetheless, Section 23a(4) provides a legal basis for extending this deadline, which must be detailed in the national River Basin Management Plans (RBMPs). The specific conditions for these extensions are outlined in Section 23a(5) of the Water Act and align with the conditions defined in Article 4(4)(a)-(c) of the WFD.

In practice, an extended deadline has been applied to all three national RBMPs. Both the Danube and Odra RBMPs cite identical exemptions and reasons for these exemptions. The Elbe River RBMP indicates that the majority of its surface water bodies do not meet the WFD's ecological objectives[173], a situation mirrored by the Odra[174] and Elbe[175] river basins. Similarly, most groundwater bodies also fail to meet ecological objectives, necessitating exemptions from qualitative requirements due to the disproportionate costs of pollutant removal (primarily from anthropogenic sources) and technical

[173] The Ministry of Agriculture, Elbe National RBMP – Chapter III: Monitoring and Status Assessment, p. 37 https://eagri.cz/public/portal/-q364017---_1A-cDok/kapitola-iii-monitoring-a-hodnoceni?_linka=a283551

[174] The Ministry of Agriculture, Odra National RBMP – Chapter III: Monitoring and Status Assessment, p. 31 https://eagri.cz/public/portal/-q364061---cCvFTqHz/kapitola-iii-monitoring-a-hodnoceni?_linka=a283591

[175] The Ministry of Agriculture, Danube National RBMP – Chapter III: Monitoring and Status Assessment, p. 34 https://eagri.cz/public/portal/-q364039---Mi7O9WpM/kapitola-iii-monitoring-a-hodnoceni?_linka=a283571

infeasibility. However, some ecological objectives for deep hydrogeological structures may be achieved post-2027 due to delays in implementing measures.

The national RBMPs specify reasons why water quality has not yet achieved 'good status.' They suggest that the ecological standards set are higher than the measures proposed. Additional hindrances include legislative factors, such as laws on integrated pollution prevention and control, and the Best Available Techniques (BAT) requirements. Despite compliance with BAT standards, ecological objectives for water frequently remain unmet due to inadequately defined BAT parameters.

According to the national RBMPs, the most prevalent issues include chemical pollution—specifically from substances like Phenanthrene, EDTA, Pyrene, BPA, Hydrocarbons C10-C40, and Phosphorus—and nutrients pollution.

Legal responses

The national RBMPs propose several measures designed to improve the ecological status of water bodies.

1. Proper Implementation of Basic Measures: The RBMPs emphasize the importance of implementing basic measures as required by EU directives. These foundational measures are crucial for ensuring that water bodies meet the EU's minimum standards, thereby reducing the need for exemptions. They include compliance with EU Directives related to water quality, such as those governing urban wastewater treatment, nitrates, bathing water, drinking water, and industrial emissions.[176]

2. Investment in Infrastructure: Significant investments are highlighted in water infrastructure, including sewage treatment plants and stormwater management systems. Upgrading these facilities is essential for treating water more effectively, reducing pollutants entering water bodies, and thus maintaining water quality and minimizing the need for exemptions.[177]

3. Adoption of the Polluter Pays Principle: The RBMPs incorporate the 'polluter pays' principle, which involves imposing charges on entities that discharge pollutants into water bodies. This approach uses financial penalties or charges to incentivise businesses and municipalities to reduce pollution, aligning with WFD goals and reducing the reliance on exemptions.[178]

4. Sector-Specific Regulations: The RBMPs call for the implementation of sector-specific measures for agriculture, industry, and urban areas to control and reduce pollution. This includes tighter regulations on the use of fertilisers and pesticides, management of livestock waste, and control of

[176] The Ministry of Agriculture, Elbe National RBMP – Chapter V: a Summary of the Programme of Measures to Achieve the Objectives, p. 5 https://eagri.cz/public/portal/-q364021---GC6Md8Df/kapitola-v-souhrn-programu-opatreni-k?_linka=a283555

[177] Ibid.

[178] Ibid, p .11.

industrial discharges, which help in pre-emptively managing pollution sources and reducing the need for WFD exemptions.[179]

5. Enhanced Monitoring and Reporting: The plans underline the importance of regular monitoring of water bodies to ensure the timely detection of pollution and non-compliance. Regular reporting mechanisms, as mandated by EU directives, are also emphasized to maintain transparency and accountability in water management practices.[180]

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management? Please focus on the most illustrative example either in relation to the Floods Directive or the Water Reuse Regulation or national/local measures concerning water stress and/or droughts which could inspire a future EU Law framework.

The Czech Republic contends with several key water-related challenges, including droughts, floods, and over-abstraction of groundwater. Each issue has significant implications for water management practices:

Over-Abstraction of Groundwater:

The over-abstraction of underground water presents a significant challenge, primarily due to water authorities' misinterpretation of the 2001 Water Act. Section 29(1) states that *Groundwater sources are preferably reserved for the supply of drinking water to the population* and *the water authority may authorise the use of groundwater for other purposes only if this is not to the detriment of meeting those needs.* This provision requires the authorities to conduct at least a basic balancing test to determine the appropriateness of allowing groundwater abstraction. However, neither the water authorities nor the chief water authority (the Ministry of Agriculture) routinely consider this balancing test during the approval process. Consequently, any applicant who meets the legal conditions and includes specific water-related reports and documents is generally granted a permit.

Report on the State of Water Management in the Czech Republic (2022):[181]

Challenges:

Droughts and Water Scarcity.

Czechia is particularly prone to droughts, exacerbated by mild winters and changes in vegetation seasons that extend the period during which nature draws water. Additionally, torrential rains tend to be rapidly drained away, worsening the scarcity.

Flood Risks and Hydrological Extremes.[182]

Discussions on flood risks highlight the problem of flash floods and the urgent need for infrastructure upgrades to manage these risks effectively

Conflicts in Water Usage.

[179] Ibid, p. 20.
[180] Ibid, p. 4.
[181] The Ministry of Agriculture, Report on the State of Water Management in the Czech Republic (2022). https://eagri.cz/public/portal/-a30658---eg0-7RRg/modra-zprava-2022?_linka=a540704
[182] Ibid, p. 27.

There is ongoing debate over the competing demands for water from agricultural activities and ecological conservation, particularly affecting surface water quality.[183]

Aging Infrastructure.

Much of the water and sewer infrastructure, built during the communist era, is now aging and inefficient. This results in significant water and economic losses due to leakage.[184]

Success Stories:

Infrastructure Development and Modernization.

Notable improvements include enhancements in wastewater treatment and the expansion of water supply networks.[185]

Flood Management Innovations and Drought Resilience Measures

Flood risk management plans are continually being updated to address current challenges.[186] Furthermore, the implementation of the "drought amendment" to the 2001 Water Act has led to the updating of regional drought and water scarcity management plans and the development of new policies for managing these issues.[187].

Future Plans:

In 2020, the Ministry of Agriculture initiated a plan to construct 31 water dams (or reservoirs). This project aims to retain as much water as possible within Czechia. However, the planning and construction of these waterworks are still in the preliminary stages, involving discussions with regions and municipalities and are expected to take 15 to 20 years to complete.[188]

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

Social water pricing is a critical issue covered in all three national RBMPs, each with its unique particularities. However, the main difficulties and discussions generally revolve around several key challenges:

Economic and Infrastructure Challenges[189]:

- Aging Infrastructure: The deterioration of older water systems contributes to technical losses and inefficiencies, complicating cost recovery efforts

[183] Ibid, p. 35.
[184] Ibid, p. 91
[185] Ibid.
[186] Ibid, p. 27.
[187] Ibid, p. 129.
[188] The Ministry of Agriculture, Minister of Agriculture: current water resources will not suffice in the future, it is necessary to expand the list of areas for possible construction of water reservoirs https://eagri.cz/public/portal/mze/tiskovy-servis/tiskove-zpravy/x2020_ministr-zemedelstvi-soucasne-vodni
[189] Odra River RBMP, pp. 16-21.

- Economic Tensions: There is a significant tension between the need for full cost recovery and maintaining affordability for consumers. This issue is exacerbated by the technical inefficiencies and the aging nature of the infrastructure.
- Fragmented Service Providers: The regulatory landscape is complicated by the presence of multiple, often fragmented service providers, which can lead to inconsistencies in service quality and pricing.

Cost Recovery Issues:

- Discrepancies in Cost vs. Revenue: There are notable discrepancies between the actual costs of providing water services and the revenues derived from water charges, often highlighted by the challenges related to infrastructure costs.[190]
- Under-Recovery Sectors: Certain sectors are identified as under-recovery sectors, where environmental and infrastructural costs are high. Achieving full cost recovery in these sectors is challenging without raising prices to levels potentially unaffordable for many consumers.
- Depreciation of Infrastructure: The depreciation of water infrastructure is often calculated based on accounting values rather than actual replacement costs, leading to a systematic underestimation of the true cost recovery needs. This discrepancy makes it difficult to set tariffs that accurately reflect the true cost of water services.[191]

Social Tariffs and Equity:

- Discussion on Social Tariffs: There are ongoing discussions about implementing social tariffs and cross-subsidisation methods. These discussions include suggestions for differentiating tariffs based on the water source and ensuring basic access to water for all.[192]
- Legal Frameworks and Social Equity: The discussions also critically evaluate social equity in water pricing, exploring potential legal frameworks that could support subsidised rates for vulnerable populations. Proposals include setting social tariffs based on average household incomes and typical water usage, aiming to keep water expenses within a reasonable percentage of household income.[193]

♣ WATER BIODIVERSITY

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country? Please provide examples of success / failure of integration in particular cases if relevant.

The 2001 Water Act, as an implementation of the EU Water Framework Directive (WFD), has significantly strengthened ecosystem protection. According to question no. 1, the Act includes general provisions on ecosystem protection. From a policy-making perspective, it mandates the establishment of specific targets for ecosystem protection within the River Basin Management Plans

[190] Elbe River RBMP, p. 23.
[191] Danube River RBMP, pp. 19-20.
[192] Odra River RBMP, pp. 22-23.
[193] Danube River RBMP, p. 22.

(RBMPs). Additionally, there is an obligation to consider ecosystem protection during the construction procedures of water works.

Ecosystem protection is further regulated under Act No. 114/1992 Coll., on Nature and Landscape Protection (NLP Act), which encompasses the Natura 2000 network and invasive alien species. The Natura 2000 initiative has introduced a new legal instrument for area protection and new obligation to conduct an assessment of impacts of projects and strategies if they affect Natura sites[194]. Besides areas identified as zones for bird and habitat protection, the Czech legal system recognises other protective instruments such as National Parks, Protected Landscape Areas, national natural monuments/landmarks, and national nature reserves. These areas are not mutually exclusive, meaning they can overlap or be declared within one another, including within the Natura 2000 sites.

The NLP Act differentiates between special protection (targeting selected species and areas) and general protection (covering nature and birds). Notably, under Section 5(2) of the NLP Act, invasive alien species are not protected, allowing for their management without requiring special administrative permits. Additionally, the Act includes provisions that align with the EU Invasive Alien Species Regulation.[195]

Furthermore, the regulation on Invasive Alien Species is reflected in Act No. 449/2001 Coll., on Hunting. According to the act the regional authority (as a nature protection authority) can issue a measure of general nature to regulate invasive alien species[196], i.e., to introduce specific measures to reduce their population.

9-**Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favour of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?**

Restoration efforts in the Czech Republic are primarily addressed at the policy level through several key documents. These include *the Biodiversity Strategy of the Czech Republic 2016-2025*[197] (Strategy) and *the State Programme for the Protection of Nature and Landscape of the Czech Republic for the period 2020-2025*[198] (the State Programme). These documents set out general measures to be implemented over several years. For example, the Biodiversity Strategy requires the Ministry of the Environment to develop a national strategy for the revitalisation and renovation of watercourses, including defining significant watercourses from a nature protection perspective and providing methodological guidance for conceptual water management solutions.[199] Additionally, the strategy

[194] Section 45h et seq. of Act No. 114/1992 Coll.
[195] Use of alien and non-native species in aquaculture and protection of nature and landscape from invasive non-native species. Section 13a et seq. of Act No. 114/1992 Coll.
[196] Section 59(3)(c) of Act No. 449/2001 Coll.
[197] The Ministry of the Environment, the Biodiversity Strategy of the Czech Republic 2016-2025, p. 69. https://www.mzp.cz/cz/ochrana_biologicke_rozmanitosti_strategie
[198] The Ministry of the Environment, the State Programme for the Protection of Nature and Landscape of the Czech Republic for the period 2020-2025. https://www.mzp.cz/cz/program_ochrana_prirody_2020_2025
[199] Strategy, p. 73.

highlights a specific goal related to water ecosystems: to support the non-productive, eco-stabilising functions of ponds, promoting nature-based restoration for aquatic ecosystems.[200]

The State Programme further expands on nature-based restoration, addressing topics such as the restoration of forests, natural water flows in forests, and forest soils.[201] It also focuses on the restoration of water alcoves and watercourses. The policy outlines nine measures, predominantly centred on monitoring, updating, and providing methodological guidance. Notably, only two measures specifically target the actual improvement of ecosystems: the revitalisation of watercourses/alcoves and improving the accessibility of migratory passages in watercourses.[202]

The 2001 Water Act does not prescribe specific methods for restoration; however, water authorities have the discretion to require applicants to adopt a nature-based approach in certain situations. The NLP Act contains specific provisions related to specially protected areas (Section 15 et seq.—National Parks) and mandates that areas previously used for mining purposes be recultivated using a nature-based approach.[203]

It is important to note that while policies and specific legal provisions do not establish a comprehensive legal framework for nature-based restoration, such restoration is often seen and used as a voluntary instrument. This approach allows investors to adopt more effective and potentially costly nature-based measures that go beyond minimum legal requirements.

Nature Restoration Law

Predicting the exact scope of changes required by the proposed regulation is challenging. Notably, Czechia may face significant hurdles with several articles of this regulation:

Article 6 – Urban Green Spaces: The lack of urban greenery is a pronounced issue in Czech cities, where many areas traditionally suitable for parks and recreational spaces are increasingly being converted into parking spaces. This trend poses a direct challenge to the regulation's requirements for enhancing urban green spaces.

Article 8 – Pollinators: The protection and support of pollinators present a broader challenge that extends beyond regional concerns to a global scale. Nonetheless, the implementation of this article could be particularly complex in Czechia, where specific habitats may be declining.

Article 9 – Agricultural Ecosystems: Restoration efforts in agricultural ecosystems are likely to face obstacles due to the prevailing use of over-intensive agricultural practices and land exhaustion. Adjusting these practices to meet the regulation's requirements will require significant shifts in farming techniques and land management strategies.

Article 10 – Forest Ecosystems: The restoration of forest ecosystems will be particularly demanding. Czech forests are currently suffering from severe bark beetle infestations and the consequences of over-harvesting. Addressing these issues to comply with the restoration goals of the regulation will necessitate comprehensive management strategies and possibly extensive reforestation efforts.

[200] Strategy, p. 74.
[201] The State Programme, pp. 78-79.
[202] Ibid., pp. 80-84.
[203] Section 4(6) of Act No. 114/1992 Coll.

As of now, there appears to be a lack of specific studies or analyses evaluating how well the Czech legal system aligns with the proposed regulation. This gap in research highlights a need for thorough investigation to understand the legal adjustments and policy measures required to ensure compliance.

Furthermore, the Ministry of Agriculture's plan to construct 31 water works may be subject to revision.

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn ? Please feel free to answer this question only if you have a concrete example (successful or not) to share.

There have been several notable initiatives in the Czech Republic that exemplify effective land and water management strategies. One such initiative is based on Act No. 139/2002 Coll., concerning Land Consolidations and Land Offices. The land consolidation serves multiple purposes: it facilitates rational land management for owners, organises land parcels both spatially and functionally by uniting or dividing them, ensures access to and use of land, and adjusts land boundaries. Additionally, it enhances the quality of life in rural areas by improving environmental conditions, supporting the protection and reclamation of the Land Fund. It also plays a crucial role in water management by mitigating the adverse effects of floods and increasing the landscape's ecological stability.

Annually, the State Land Office organises a competition in several categories, including landscape formation and protection, green and traffic infrastructure, along with a public award and a State Land Office award. Details of successful and registered projects can be found here.

While these projects are generally well-received by the public, contributing to local environmental improvement and nature restoration, they are often time-consuming and costly.

Another successful initiative is the restoration of watercourses, with several entities investing in this effort across Czechia. Notably, the Forest of the Czech Republic, a state enterprise, is actively involved in revitalising small watercourses within forested areas. Examples of these revitalization projects are available here.

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake?

*Depending on your national context, you may illustrate these conflicts with Agriculture (agricultural irrigation - the controversial case of metabasins for agriculture) **or** Energy (hydroelectricity - cooling nuclear power stations) **or** Tourism (increased tourist numbers - development of new tourism infrastructures) **or** extension of urban areas.*

In the Czech Republic, the approach to managing environmental and spatial conflicts primarily leverages tools and techniques mandated by EU law.

Key instruments include:

Spatial Planning

Conflicts are typically addressed during the spatial planning process. This involves concerned authorities issuing opinions with binding content[204] to resolve potential conflicts before spatial plans are enacted.

Public participation

This is a crucial instrument that enables public involvement in the planning process. Members of the public can comment on proposed spatial documentation, enhancing transparency and community involvement.[205] Additionally, environmental organisations have a formal role in various proceedings under Czech law. For example, these organisations are permitted to participate in construction proceedings[206] if there is a Unified Environmental Opinion that includes specific provisions for nature protection[207]. They are also involved in water-related proceedings, subject to meeting conditions set out in the 2001 Water Act.[208] Public participation is further supported under other acts, such as the Environmental Impact Assessment (EIA) Act[209] and the Integrated Pollution Prevention and Control (IPPC) Act[210].

Balancing of interests

Authorities are required to balance various interests during their decision-making processes. This often involves weighing protected interests against specific economic or developmental interests or reconciling multiple interests as expressed through the opinions of concerned authorities. Moreover, some statutes mandate a general obligation to protect certain interests, which can be overridden only if there is a compelling public interest. For instance, Act No. 334/1992 Coll., concerning the protection of the agricultural land fund, stipulates that the most valuable agricultural land can only be repurposed for non-agricultural uses if there is an overriding public interest.[211] In such cases, the responsible authority must provide a justification for overriding basic protection imperatives. Importantly, decisions and their justifications are subject to judicial review, and failure to adequately justify decisions can lead to their annulment by the courts.

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

Currently, the primary debate in the Czech Republic centres on whether municipalities should own and operate their water infrastructure. Studies highlight several benefits, particularly related to water pricing, of municipalities managing their own water systems. However, I am not aware of any additional discussions or controversies related to this topic.

[204] Section 54 of Act No. 283/2021 Coll., Building Act.
[205] Ibid., Section 97.
[206] Section 182(e) of Building Act.
[207] Section 70(3) of Act No. 114/1992 Coll.
[208] Section 115(6) of Water Act.
[209] Section 3 of Act No. 100/2001 Coll.
[210] Section 7(1)(g) of Act No. 76/2002 Coll.
[211] Section 4(3) of Act No. 334/1992 Coll.

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation?

The Czech legal system has transposed the relevant provisions of the EU WFD into national law without significant substantive modifications, though adaptations were made to align with Czech legal norms. Under Czech law, the National River Basin Management Plan (RBMP) is classified as an administrative act—a measure of general nature.[212] This classification allows the public to comment on the proposed administrative act. Additionally, there is an option for judicial review of the act under Sections 101a *et seq*. of Act No. 150/2002 Coll, the Code of Administrative Justice.

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

Regarding access to justice and participation in administrative proceedings concerning water management, there has not been a significant case involving water defenders in recent years. Generally, water defenders, like other environmental organisations, can participate in these proceedings provided they meet the legal requirements. The most recent notable involvement of water defenders concerns a case related to the improper assessment of impacts on water status. In this instance, the role of the water defenders was crucial in highlighting and challenging the incorrect application of provisions from the 2001 Water Act concerning water status.

In its judgement of 2 March 2023, No. 9 As 23/2021-38, the Supreme Administrative Court referred to the principles associated with the assessment of the project's impact on water status and the requirements for the justification of the assessment carried out, including the related case law of the Court of Justice (e.g., in C-346/14, C-346/14 and C-529/15). Finally, it annulled the judgment of the regional court and the decision of the administrative authority because the decision did not contain a proper assessment of the impact on the water status: "It is clear from the binding statement that the discharge will not lead to deterioration of the status of the water or prevent the achievement of good status. However, this conclusion is not supported in any way by the statement and is not apparent from other documents in the administrative file. The first-instance administrative authority makes no further reference to this in its decision. Although the defendant is somewhat more specific about the protection of water, the administrative courts are still not in a position to examine whether the discharge of water diverted from the motorway after treatment in the sedimentation and retention basin will not actually lead to a deterioration in the condition of the streams concerned within the meaning of the case law of the Court of Justice of the European Union (paragraph [20] of the judgment). In fact, the contested decisions do not contain specific and substantiated considerations by the administrative authorities regarding the purity of the water discharged. In that regard, even the defendant's simple and general reference to the alleged commonness and adequacy of the proposed water treatment procedure for other similar projects is not sufficient" (paragraph 29).

On the other hand, the courts are often concerned with applying transposing legislation (requirements of the Water Act or other transposing legislation mentioned above). Such case law is numerous, as more than a thousand judgments refer to the current Water Act, and there is also abundant case law on the older version of the Act. Not all of these cases have an EU dimension, as

[212] Section 171 et seq. of Act No. 500/2004 Coll.

the legislation combines both EU and country-specific requirements. For example, the RBMPs have not been subject to judicial review so far. The courts have been dealing with their content when corresponding urban plans or building permits had been challenged (see, for example, the judgement of the Regional Court of Usti nad Labem of 20 December 2022, No. 40 A 3/2022-87, the judgement of the Regional Court in Pilsen of 14 February 2018, No. 59A 9/2017-94, the judgement of the Regional Court of Prague of 14 October 2021, No. 51 A 11/2020-142).

Denmark

Peter Pagh & Thomas Haugsted

General information

The legal status of water is not addressed in the Danish Constitution. Regarding legal concepts, ground water is considered as *res communes* (common good) while rivers, streams and lakes (fresh surface water) can be either publicly or privately owned. The legislation on water goes more than 100 years back (The Act on Drinking Water and The Act on Water Streams). The Act on Drinking Water focuses mainly on conflicts between different users when drilling for ground water. The Act on Water Streams did from the beginning focus on draining and discharge of fresh surface water (including discharge of waste water) to avoid flooding and to make farming land more use-full. Since 1972, priority streams and lakes have been subject to a regime under the Nature Protection Act (section 3) prohibiting active changes of the conditions of the waters with the exception of ordinary maintenance that keeps the stream in same condition. From 1974, the regulation of discharge of waste water was moved from the Act on Water Streams to the Environmental Protection Act.

The first EU water directive (75/442) on fresh water for drinking supply was never implemented because Denmark only use groundwater for drinking water. Directive 76/464 on discharge of dangerous substances into the aquatic environment as well as the directive 78/659 on fish water quality was implemented through non-binding regional plans and did not include quality goals for dangerous substances and did not rely on chemical and physical monitoring but was instead based on a fauna-monitoring system which is still the most commonly used monitoring method for surface water (stream, lakes and coastal water).

The Water Frame Directive (WFD) was first implemented in 2003 in the Environmental Goals Act. The first Danish water plans and action plans was adopted in 2011 but all the water plans were annulled by the Nature and Environmental Board of Appeal in 2012 because of too short hearing of affected citizens. Apart from an infringement case before the CJEU (C-190/14), this lead to a new implementation of WFD in The Act on Water Plans, which is still the legal framework for the Danish implementation of WFD.

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law?

The WFD has not led to any changes in the definition of water in Danish legislation.

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

There has been no such debate on Water as Commons in Denmark.

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

Questions

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

The Danish legal system does not recognize the right to water and sanitation as a fundamental right, but there is legislation addressing the drinking water supply as well as release of waste water.

4- How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?

The water needs of ecosystem is reflected in the monitoring fauna index, but the question on Rights of Rivers & aquatic ecosystems has not been presented as a legal argument in legal disputes on water nor in Danish legal theory.

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

♣ INTEGRATED WATER MANAGEMENT

Questions

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions? We invite you to focus on the most relevant topic in your country.

The main political and administrative focus has been on nitrate pollution from agriculture. Lately, the legal focus regarding WFD has been on the implications of the obligation of non-deterioration in WFD art. 4(1)(a). Based on the CJEU rulings in C-461/13 (Weser), C-535/18 (Land Nordrhein-Westfalen) and C-525/20 (Association France Nature Environnement), the Danish Environmental and Food Board of Appeal has in late 2022 and in early 2023 rendered two decisions which has gained a lot of attention among environmental lawyers.
In the first decision of 16 November 2022, the Board of Appeal annulled an EIA permit to three projects on climate change adaptation (flood barriers) outside of the Danish town Holstebro as the municipality had not conducted an assessment of the (temporary and permanent) effects on the status of the affected water bodies. However, the Board of Appeal also pointed at the potential possibility of granting an exception under WFD art. 4(7) as the specific area was identified as a flood risk area under Directive 2007/70 on the assessment and management of flood risks.
In the second decision of 23 February 2023, the Board of Appeal annulled an EIA permit to the construction of a new road through a nature area with reference (primarily) to the WFD art. 4(1) and the Danish implementing legislation. The road would lead to an emission of copper to a nearby water stream which was already in the lowest ecological class because of the levels, among other things, copper which exceeded the relevant thresholds for specific pollutants (WFD Annex V). The Board of

Appeal held that any further deterioration in this case was prohibited which meant that there could not be any increase in the concentration of cobber, cf. Case C-535/18 (Land Nordrhein-Westfalen), paragraph 110, unless there was made use of the exception in WFD art. 4(7).
Another legal question of the WFD, which has caused high public and political attention, is the use of "mixing zone" under article 4 of Directive 2008/105 on environmental quality standards in the field of water policy, which in particular has been used in granting permits to discharge waste water from several industries. Until now, however, this question has not been subject to cases before the Environmental and Food Board of Appeal or the Danish courts.

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management? Please focus on the most illustrative example either in relation to the Floods Directive or the Water Reuse Regulation or national/local measures concerning water stress and/or droughts which could inspire a future EU Law framework.

No stories to report.

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

This has not been questioned in Denmark.

- ♣ WATER BIODIVERSITY

Questions

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country? Please provide examples of success / failure of integration in particular cases if relevant.

No, not in particular. The EU rules apply next to existing national Danish legislation on protection of nature and water areas etc. However, the EU rules do often set out stricter protection than the national Danish legislation.

9-**Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?**

Yes, the Act on Water Streams (section 37) contains a provision of restoration of water streams, e.g. remeandering. The municipalities cover the expenses with government subsi-dies.

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn? Please feel free to answer this question only if you have a concrete example (successful or not) to share.

Nothing to report.

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

Questions

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake ?

Depending on your national context, you may illustrate these conflicts with Agriculture (agricultural irrigation - the controversial case of metabasins for agriculture) or Energy (hydroelectricity - cooling nuclear power stations) or Tourism (increased tourist numbers - development of new tourism infrastructures) or extension of urban areas.

No specific expertise, criteria etc. are used to resolve the conflicts.

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

There are no such debates in Denmark at the moment.

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation ?

As mentioned in the introduction above, the WFD was first implemented in the Environmental Goals Act. In some ways, this legislation went further than the WFD in implementing the right to public participation (e.g. with an idea phase before the adoption of the water plans and a right to bring the final plans before the Environmental and Food Board of Appeal). However, this was changed for the second round of water plans, and the Danish implementation is now a minimal implementation.

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

Nothing to report.

France

Nathalie Hervé-Fournereau & Simon Jolivet

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law ?

Four major laws mark the construction of current French water law: the 1964/1245 Law on the Management and Distribution of Water and the fight against Pollution[213], the 1992/3 Law on Water[214], the 2004/338 Law transposing Directive 2000/60/EC[215] and the 2006/1772 Law on Water and the Aquatic Environment[216]. The 1964 Law promoted a territorial water policy based on river basins, which would inspire the WFD. The other two laws were influenced by European legislation that required France to strengthen its water policy.

Law 1992/3 states that "*water is part of the common heritage of the nation*" (Art. 1). It stipulates that "*its protection, improvement and development of usable resources, while respecting natural balances, are of general interest" and that "the use of water belongs to all, within the framework of laws and regulations and prior rights*" (Art. 1).

The choice of legal categories is rarely insignificant. The use of the terms "*common heritage*" and "*use*" initiates a change in the way water and aquatic ecosystems are represented and also expresses the need to raise awareness and mobilise all stakeholders. However, the term "*common heritage*" does not lead the legislator to question the different legal status given to distinct type of water. Such fragmentation between the status of *res communis*[217] (water of river water/"running" water[218]), res nullius (rainwater[219]) and commercial good (water-related services) shows the persistence of tensions between ownership and use, commercial and non-commercial (...). Similarly, the distinction between watercourses belonging to the public river domain and other watercourses[220] reveals the "ecological" inadequacy of all these legal constructs. One of the jurists who inspired the drafters of the French Civil Code, Jean Domat, already recognised that "*the river is outside the usual conditions*

[213] JORF n°295 du 18/12/1964

[214] JORF n°3 du 4/1/1992

[215] JORF n°95 du 22/4/2004

[216] JORF N°303 du 31/12/2006

[217] Art. 714 Civil Code: "*There are things that belong to no one and whose use is common to all. Police laws regulate how they are enjoyed*".

[218] "Running water" (eau courante) cannot be appropriated and the bed of the watercourse belongs to the owners (the public owner for the bed of publi-owned watercourses (classified in the public river domain) and the private riparian owner for the bed of non-public owned watercourses).

[219] Art. 641 of the Civil Code: "*Every owner has the right to use and dispose of rainwater that falls on his land ... the same provision applies to spring water originating on land...*". Other underground water that infiltrates or flows onto an owner's land may be collected by the owner on the grounds that "*ownership of the land entails ownership of the land above and below it*" (art. 552 of the Civil Code).

[220] In the overseas departments (Guadeloupe, French Guiana, Martinique, Réunion), watercourses (subject to declassification and rights duly acquired by users and riparian properties before 1953) "*form part of the public river domain*" (L5121-1 general code of property of public authorities/Code General de la propriété des personnes publiques).

of ownership"[221]. Beyond the river itself, it is indeed water in its uniqueness and the diversity of its forms and locations that pose a constant challenge to jurists.

Neither Law 2004/338 transposing the WFD nor Law 2006/1172 on Water and the aquatic environment calls into question Article 1 of the 1992 Water Law. In addition to water, the Environmental Code states that "*spaces, resources and environments on land and sea, the sounds and smells that characterise them, sites, landscapes by day and by night, air quality, water quality, living beings and biodiversity are part of the common heritage of the nation*" (Art. L110-1). This heritage "*generates ecosystem services and use values*" (idem[222]).

Consequently, the first recital of the WFD, "*Water is not a commercial product like any other, but a heritage that must be protected, defended and treated as such*", has already found its way into French law, without leading to any change in the different legal status of water mentioned above. However, there are differences. Apart from the place of the provision in the legal text (recital of the WFD, article 1 of the 1992 Law (L 210-1 Environmental Code)), the statement that "*water is not a commercial product like any other*" is questionable; it implies that water is a commercial good, whereas it is water-related services that can be the subject of commercial transactions unlike any other. The difference is not merely semantic, as the European citizens' initiative Right2Water has clearly shown. It is true that the wording of the recital of the WFD "*rather (...) a heritage*" reflects the intention of the European legislator not to support a process of ownership of water and aquatic environments by imposing a series of result-oriented obligations on public authorities. The implementation of such a dynamic is also closely linked to the process of recognising the right to water.

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

"Make water, all water, a common good for which the State is the guarantor"; "Water is a common good and a vital necessity"; "*We all agree that water is a scarce resource, a common good, and that it is high time that everyone became aware of this*"[223]. These recent statements by French senators illustrate the exponential spread of the term "*common good*" in political[224] and legal rhetoric[225], from the international to the local level, over the last decade. However, beyond the appearance of a consensual concept, this expression lends itself to a diversity of interpretations of the notions of "*good*" and "*common*", and this diversity is not neutral in terms of rights, duties and democracy.

These critical debates are mainly expressed in the academic sphere and in environmental and human rights movements. The success of the European citizens' initiative Right2Water in 2013 bears witness to these actions in favor of notions of a common *'public good'* based on human rights and not subject to market rules. Like other researchers, several French academics have taken up the question of the renewal of the commons, particularly through the prism of Ostrom's theory of the governance of the

[221] B. Nadault de Buffon, *Des usines et autres établissements sur les cours d'eau*, Ed. 1874, réédité Hachette BNF 2019.

[222] Wording introduced by Law 2016/1087 for the reconquest of biodiversity, nature and landscapes, JORF n°184 of 9.8/2016.

[223] Senate report on sustainable water management: the urgent need to act for our uses, our territories and our environment, No. 871, July 2023

[224] Eg. Ministerial Water Strategy 2030, Ministry of Defence, France, 2023.

[225] Including in the conclusions of the Advocates General of the CJEU: example of the conclusions of Mr. ATHANASIOS RANTOS presented on 13/1/2022, Case C-525/10 Association FNE v Premier Ministre, Ministre de la transition écologique et solidaire, ECLI:EU:C:2022:16.

commons[226]. The national research programme OneWater - Water as a Common Good (2022-2032) is part of this dynamic to go further[227]. One of the aims of this programme is to explore new forms of water governance and to consider extending the concept of the commons to non-human living organisms. The programme also contributes to the European research initiative Water4all[228]. The OneWater programme aims to strengthen the research community and broaden the range of disciplines involved, while involving non-academic stakeholders as part of a transdisciplinary approach. At the intersection of the broader concepts of heritage and common goods, private and public initiatives have also multiplied, such as the creation of socio-cultural atlases of rivers in Brittany[229].

Similarly, the decision by several local authorities to return to public management of their drinking water services[230] illustrates also the political value of water and of the construction of common goods.

However, at this time, the French legislature has not yet taken the step of transforming the various existing legal statuses of water into a single status; such a 'revolution' could revolve around the concept of *res communis*, or even of *natural common*[231], which escapes appropriation and monopolisation, especially for commercial purposes. Nevertheless, the recognition of water as the "*common heritage of the nation*" has potential that should be further exploited (reconciliation of rights and interests, duty of care, access to justice, liability and compensation, intergenerational equity, etc.).

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

Questions

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

The 2006/1172 Law on Water and Aquatic Environments acknowledges that "*everyone has the right of access to drinking water for food and hygiene, in conditions that are economically acceptable to all*". However, the fact that this access is subject to these requirements raises questions about the fundamental nature of this Right. Several proposals for a constitutional Law recognising the Right to water as a fundamental human right have been put forward, but to no avail[232]. For

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[226] *Dictionnaire des biens communs*, M. CORNU, F. ORSI, J. ROCHFELD (dir) PUF 2017, 1240 p; Special issue 2022, Revue juridique de l'environnement (2023), *Les communs en droit de l'environnement*. S. BOUSSSARD & C. BORIES, *L'eau : un bien commun ?* Mare et Martin Edition, 2023, 354 p. S. AUBERT & A. BOTTA (dir) *Les Communs-un autre récit pour la coopération territoriale*, Quae Ed. 2022, 272 p.

[227] https://www.onewater.fr/fr/defis-scientifiques/transitions-socio-ecologiques-nouveaux-modes-de-gouvernance-pour-proteger-eaux

[228] First meeting in Rennes in March 2024, https://onewater.sciencesconf.org

[229] https://atlas-rivieres.bzh

[230] Of the 1 296 drinking water distribution services in France, 30.6 % are managed by a private service provider (57.3% of the French population) in 2018. Report by the National Assembly's committee of enquiry into the takeover of water resources by private interests and its consequences (2021), which examined the dominant role of private operators in the management of public drinking water and wastewater services in 2021. https://www.assemblee-nationale.fr/dyn/15/rapports/ceeau/l15b4376_rapport-enquete.pdf

[231] M-P. CAMPROUX-DUFFRENE, Les communs naturels comme expression de la solidarité écologique, *RJE* 2020/4, Vol. 45, 689-713

[232] Proposed constitutional Law No. 498/2017. More recently, Constitutional Bill No. 953/2023 was proposed to enshrine the right to water in the form of an additional article to the Constitutional Charter of the Environment.

instance, a constitutional law proposal in 2017 added the following provisions to the Constitutional Charter of the Environment: "*Water is a common good of humanity. Everyone has the fundamental and inalienable right of free access to the quantity of drinking water essential to life, as a priority over any other use. The supply of drinking water to inhabitants and its purification shall be ensured exclusively by the state or local authorities, directly and on a non-profit basis*"[233]. A further constitutional law proposal was presented recently which sought to recognise "*the Right to drinking water and sanitation as a human right essential for the full enjoyment of life and the exercise of all human rights*"[234].
However, other similar Law proposals have also been unsuccessful[235]. In 2015, for instance, a Law proposal aimed at the effective implementation of the human Right to drinking water and sanitation provided for the insertion of a new chapter entitled "*The human right to water" in the Public Health Code. This proposal specifies that this right is "a human right guaranteed by the State" and includes the right of each person: The aforementioned law proposal stipulates that individuals should have access to a sufficient quantity of drinking water each day to satisfy their essential needs, as well as facilities enabling them to ensure their hygiene, privacy and dignity. Furthermore, they should be able to use sanitation services and networks in conditions compatible with their resources*"[236].

The European Economic and Social Committee's recent opinion on water scarcity (2023) emphasises the social dimension of everyone's right of access to quality essential services, including water and sanitation, in accordance with principle 20 of the European set of social rights. In France, Law 2013/312 prohibits the cutting off of water in a main residence in the event of unpaid water bills[237]. However, Saur, a water distribution company, has challenged this ban before the court on the grounds that it infringes freedom of contract and freedom of enterprise. The Court of Cassation referred a priority question of constitutionality to the Constitutional Council, which ruled that the legislature "*intended to guarantee access to water for anyone occupying their main residence... and... to ensure that no person in a precarious situation can be deprived of water (...) by guaranteeing in these conditions access to water that meets an essential need of the person (...) and has thus pursued the objective of constitutional value that constitutes the possibility for all persons to have decent housing*"[238]. In this case, the court ruled that the contested provisions are not contrary to any right or freedom guaranteed by the Constitution. Law 2013/312 also introduces an experimental system of social pricing for water for a period of five years for local authorities that volunteer to do so (see Question 7).

4- **How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?**

The 1992/3 Law on Water sets out the principle of balanced water management, which aims to ensure "*the preservation of aquatic ecosystems, sites and wetlands; protection against all forms of pollution and the restoration of water quality; the development and protection of water resources;*

[233] Proposed constitutional Law no. 498/2017
[234] Proposed constitutional Law no. 953/2023.
[235] For example, in 2015 and again in 2021 (proposed Law "*aimed at guaranteeing the right to water by introducing free access to the first volumes of drinking water and access for all to water for the needs necessary for life and dignity*", Senate, n°503/2021).
[236] The National Assembly proposed the bill, numbered 2715, on 8 April 2015.
[237] Article L 115-3 of the French Social Action and Family Code.
[238] Decision n°2015-470 QPC of 29 May 2015, Société SAUR SAS (prohibition on interrupting distribution in residences).

the development of water as an economic resource and the distribution of this resource". Such balanced management aims to satisfy or reconcile the "*requirements of public health, public safety, civil security and environmental protection". - public health, public safety, civil security and the supply of drinking water to the population;- the conservation and free flow of water and protection against flooding;- agriculture, fisheries and marine cultures;- industry, energy production, transport, tourism, (…)*".

In light of the WFD, the 2006 Law on Water and Aquatic environments introduced amendments to the provisions relating to balanced management. These amendments require that balanced management "*satisfy, as a priority, the requirements of public health, public safety, civil security and the supply of drinking water to the population*". It is specified that this balanced management must also "*make it possible to satisfy or reconcile, during the various uses, activities or works, the requirements of: - conservation and the free flow of water and protection against flooding; agriculture, fishing and marine culture; industry, energy production, transport, tourism, (…)*".

It would appear that the expression "*water needs*" of ecosystems in article 1 of the Water Framework Directive is not expressly included in the 2006 Law on Water and Aquatic environments. While this is undoubtedly a complex matter, it is nevertheless an essential prerequisite for achieving good status for water bodies and balanced management. Furthermore, it cannot be reduced to a simple assessment of a minimum volume that guarantees the proper functioning of ecosystems and the dynamics of the hydrological regime.

It is worth noting that while the concept of ecological minimum flow has gradually been extended to other dimensions, the expression 'flow' remains a matter for experts. Its interpretation is open to a certain degree of confusion, misunderstanding and even manipulation by certain stakeholders. In light of the impact of climate change, it is becoming increasingly important to address the exacerbation of tensions over the sharing of the resource.

The WFD does not define the concept of water flow, although it does require Member States to monitor "*the volume, level or flow of surface water insofar as this is relevant for ecological and chemical status and ecological potential*" (art. 8). One of the guidance documents produced as part of the WFD implementation strategy is devoted to ecological flows, which are defined as "*a hydrological regime compatible with the environmental objectives of the WFD in surface water bodies*"[239]. In its latest report on the implementation of the WFD, the Commission notes that only seven Member States have adopted ecological flow objectives for all or part of their water bodies[240].

The 2006 Law on water and aquatic environments requires that "*any structure to be built in the bed of a watercourse*" include "*devices maintaining in this bed a minimum flow that permanently guarantees the life, movement and reproduction of the species living in the water at the time the structure is installed* (...)" (codified: L 214-18-1 Environment Code).

In France, in light of the increasing drought, the need for robust studies to assess the volumes that can be abstracted has been highlighted by two decrees and a recent ministerial instruction on the quantitative management of water resources[241]. In sub-basins where there is a quantitative imbalance or a very fragile balance between resources and abstractions, the basin coordinating prefect coordinates a strategy for assessing withdrawable volumes.

The determination of the volume that can be withdrawn is based on a "*statistical assessment of the minimum needs of the environment*". It corresponds to "*the volume that can be statistically withdrawn 8 years out of 10 during the low-water period from the natural environment for human*

[239] Ecological Flows in the implementation of the WFD, Guidance document n°31/2015.

[240] COM (2021) 970 final.

[241] Ministerial instruction of 14/12/2023 relating to the implementation of decree 2021/795 and decree 2022/1078 relating to the quantitative management of water resources, NOR: TREL2322748J

uses, while ensuring the proper functioning of the aquatic environments dependent on this resource and the environmental objectives of the water development and management master plan are respected" (Art. R 211-21-1 Environment Code, introduced by decree 2021/795[242]). It would seem that Decree 2022/1078[243] suggests that the assessment of volumes that can be abstracted from surface water takes into account a number of factors, including "*the hydrological regime of the watercourse, its relationship with groundwater and the biological state and functioning of aquatic environments dependent on surface water*". (R 211-21-2) Similarly, for groundwater, the assessment must take into account "*the annual or multiannual recharge rate of the water table*" and the volume that can be abstracted must not exceed "*the renewal capacity of the available resource, taking into account the water supply needs of directly dependent surface water ecosystems and wetlands*" (R211-21-2). It is interesting to note the use of the notion of ecosystem needs in these latter legal texts.

Common goods, natural common goods, rights of nature: a growing number of doctrinal constructions that are questioning the traditional legal summa *divisio* of persons and things in the light of ecosystem approaches integrating bio-cultural dimensions. Aquatic ecosystems (lagoons, rivers, glaciers, etc.) are the focus of national and transnational mobilisation, including in Europe. Is the current legal status of watercourses on the horizon in France? Several initiatives have been inspired by the rights of nature movement and its spread in Europe, such as Spain's Law 19/2022, which recognises the legal personality of the Mar Menor lagoon and its basin and a series of rights to protection, conservation and restoration, including the "*right to exist as an ecosystem*" .The "*Parliament of the Loire*" project "*The river that wanted to write*"[244] and the recent symbolic declarations of the rights of French rivers such as the Tavignano, the Têt, the Durance and the Seine[245] illustrate these collective dynamics[246]. More recently, NGOs and local populations took France to court in Cayenne (Guyana) for negligence in the fight against illegal gold mining, notably in violation of the WFD, with the ambition of having the rights of the Maroni river, polluted by mercury, recognised. Despite controversies, these collective dynamics of the Commons/Rights of Nature appear to be moving towards the goal of developing new ways of thinking about our relationship with nature and our legal relationships with natural entities (see Question 13).

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

♣ INTEGRATED WATER MANAGEMENT

Questions

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions?

The French Ministry for Ecological Transition has indicated that by 2022, 43.6% of surface water bodies are in an ecological status that could be considered good or very good (compared with 41.4%

[242] Decree on the quantitative management of water resources and the management of crisis situations linked to drought, JORF n°145 of 24/6/2021.

[243] Decree on the quantitative management of water resources outside the low-water period, JORF n°175 of 30/7/2022.

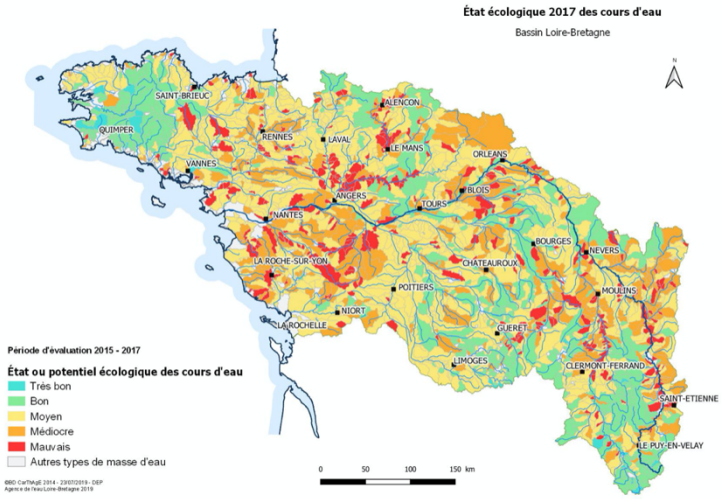
[244] The hearings of the Parliament of Loire, "*The river that wanted to write*", narrated by Camille de Toledo, Ed., les Liens qui libèrent, 2021, 377 p.

[245] Collective of Seine River Guardians

[246] The Garonne (White paper for the rights of the Garonne river, Wild Legal association), the Rhône, as well as lakes such as Viry-Châtillon.

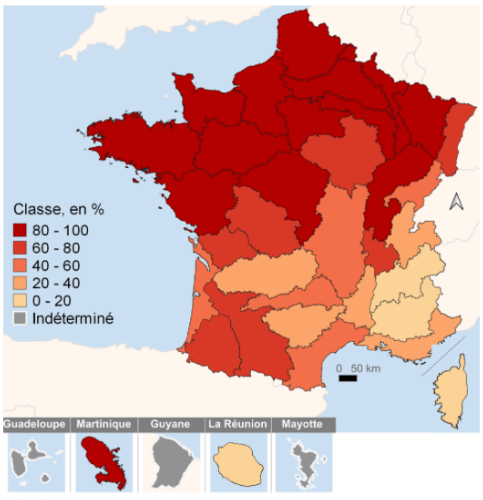
in 2010)[247]. Similarly, 67.9% of surface and groundwater bodies are of a chemical status that could be considered good (compared with 51.2% and 58.9% in 2010). Like other Member States, France has not yet reached the WFD's ambitious objective of good status for all bodies of water by 2015. While improvements have been made, there is still much to be done to ensure that the necessary changes are made in time to avoid serious compromises due to the impact of climate change on the hydrological regime and the proper functioning of aquatic ecosystems. It is also important to consider the differing timeframes between the actions being gradually implemented and the responses of ecosystems.

There are significant regional differences in the status of bodies of water in France. For instance, in the department of Ille-et-Vilaine (Rennes, Brittany), only 3% of water bodies were classified as being of good ecological status at the time of the last assessment[248]. The new Loire-Bretagne 2022-2027 river management plan (SDAGE)[249] plan sets a target of 61% of water in good condition, which represents an ambitious goal. However, it is important to note that only 24% of water bodies in the river basin district are currently in good condition.



In France, diffuse pollution of agricultural origin is a huge challenge, and the scale of the problem varies from region to region. Nitrates and pesticides are among the main pollutants of concern in groundwater and surface water. According to data from monitoring networks, nitrate levels in surface water have risen by 8% between 2000 and 2020. The presence of pesticides in water bodies[250] is a significant concern, particularly the persistence of residues of phytopharmaceutical products, some of which were banned from sale several years ago. France is the second-largest user of pesticides for agricultural use in Europe (67,000 tonnes sold in 2021), mainly in 19 French departments with arable farming, arboriculture and viticulture. The cumulative toxic pressure index is used to assess the potential harmful impact on the environment or its

Taux de stations dont l'IPTC-pesticides dépasse 1 sur la période 2019-2021



© SDES

Note : le cumul des pressions toxiques exercées par les pesticides est considéré comme élevé lorsque l'IPTC (indice des pressions toxiques cumulées) dépasse 1. Résultats provisoires.
Champ : cours d'eau et plans d'eau.
Sources : Eaufrance ; Ineris. Traitements : SDES, 2023

[247]https://www.statistiques.developpement-durable.gouv.fr/pollution-de-leau#:~:text=En%202022%2C%2043%2C6%20%25,%2C9%20%25%20en%202010).

[248]https://www.ille-et-vilaine.gouv.fr/Actualites/Espace-presse/Archives/2022/Qualite-de-l-eau-en-Ille-et-Vilaine#:~:text=Réunissant%20collectivités%2C%20acteurs%20économiques%20et,bon%20état%20écologique%20en%202027.

[249] Ministerial order (arrêté) of 18/3/2022 approving the master plan for water development and management for the Loire-Bretagne basin 2022-2027 and adopting the multiannual programme of measures, JORF 3/4/2022

[250] The pesticides and their metabolites most frequently detected include atrazine, simazine and bentazone (...),

probability (impact greater than 1: see map). Over the past 15 years, there has been a 50% reduction in phosphate levels.

As a result of these water quality issues, many drinking water catchments have been closed since the early 1980s (around 13,000)[251]. Furthermore, new metrology techniques are gradually making it possible to monitor PFAS (per- and polyfluoroalkylated) micropollutants and pharmaceutical substances in groundwater. In light of this, the 2016-2021 action national plan on micropollutants has been developed with the aim of protecting water, biota and sediments[252]. It seeks to strengthen the assessment of the impacts of these micropollutants and to reduce emissions and discharges of micropollutants into water. Similarly, the 2023 ministerial action plan on PFAS aims to enhance knowledge of discharges and environmental pollution by these substances. In this context, the government has requested that the national Agency of Sanitary Security of Food, Environment and Labour (Anses) determine maximum concentration values for the main PFAS in the environment, including aquatic environments. France is in favour of a Europe-wide ban on the marketing of several PFASs, along with other Member States[253].

Another area of concern is the impact of human activity on river morphology, ecological continuity and the hydrological regime of river beds. In France, for instance, there are more than 80,000 structures (weirs, dams, culverts, etc.) that have been identified in 2015. Given the different views and tensions on the issue, the government set out a plan for a more calmed approach to the issue in 2018, which was followed by a technical note in 2019[254].

Following the conferences "*Assises de l'eau*" (2018-2020)[255] and the conferences "*Varenne agricole de l'eau*" (2021-2022)[256], the government has identified three main areas for action. The action plan for resilient and concerted water management (March 2023) confirms the emphasis placed on preserving water quality and protecting and restoring aquatic environments. It also reiterates the objective of limiting uses and sharing resources. The Water Conferences also concentrated on improving the quality of services provided to users, while the Water Action Plan (2023) [257] advocates for the optimal utilisation of water resources. The severe drought that occurred during the summer of 2022 and the protests against the construction of large water storage basins had a significant impact on this direction.

The failure to comply with the Water Framework Directive (as well as with Directive 91/271/EEC on urban waste water and Directive 91/676/EEC on nitrate pollution from agricultural sources) raises questions about the reasons for this situation. A number of decisions handed down

[251] According to the French Ministry for Ecological Transition (2023), there are 37,600 water catchment points for drinking water supply, including 36,000 groundwater extraction points.

[252] Interministerial plan on micropollutant (2016-2021) to preserve water quality and biodiversity. A micropollutant is defined as "an undesirable substance that is detectable in the environment at very low concentrations (micrograms per litre or even nanograms per litre) (...) and that can have negative effects on living organisms due to its toxicity, persistence and bioaccumulation", https://www.ecologie.gouv.fr/sites/default/files/Plan_micropolluants_def_light.pdf

[253] Ministerial action plan on PFAS, January 2023. Per- and polyfluoroalkylated substances are a large family of more than 4,000 chemical compounds with diverse properties ...widely used since the 1950s and have the particularity of being very persistent. https://www.ecologie.gouv.fr/sites/default/files/22261_Plan-PFAS.pdf

[254] June 2018: Action plan for a "calmed policy" to restore ecological continuity,, https://www.ecologie.gouv.fr/sites/default/files/plan_action_pour_politique_apaisee_restauration_continuite_ecologique.pdf ; Technical note of 30/4/2019 on the implementation of this plan: https://www.legifrance.gouv.fr/download/file/pdf/cir_44619/CIRC

[255] Review of the "Assises de l'eau" by the National Water Committee, July 2020. https://www.ecologie.gouv.fr/assises-leau#:~:text=Announced%20in%20November%202017%20by,articulated%20around%20two%20sequences.v

[256] Conclusions of the « Varenne agricole de l'eau et de l'adaptation au changement climatique », February 2022, https://agriculture.gouv.fr/conclusions-du-varenne-agricole-de-leau-et-de-ladaptation-au-changement-climatique

[257] Action plan for resilient and concerted water management, March 2023, https://www.ecologie.gouv.fr/sites/default/files/MAR2023_DP-PLAN%20EAU__BAT%20%281%29.pdf

by national courts and by the Court of Justice of the European Union offer some interesting insight. The notion of non-deterioration is not defined by the WFD, which has given rise to differing interpretations between Member States. In Case C-461/13[258], the CJEU clarified that the prevention of deterioration in the status of bodies of water, including when authorising specific projects, is an obligation of "*general scope*"[259] with an "*autonomous status*"[260] and not a *"in programmatic terms"*[261]. Similarly, the Court was asked to clarify the boundary between the obligation not to deteriorate and the obligation to improve the status of bodies of water, as well as the criteria to be used to assess compliance with the obligation not to deteriorate[262].

In 2022, the French Council of State respectfully requested the CJEU to provide guidance on whether the non-consideration of temporary, short-term negative impacts on the status of water bodies aligns with the obligation not to deteriorate. The Court observed that, unless there is a derogation (Article 4(7)), ""*any deterioration of bodies of water (…) is to be avoided*"[263]" and emphasized that "*to consider that a deterioration of a foreseeable duration of months or even years would not be contrary to article 4 (1) (…) is manifestly incompatible*"[264]. The Court concluded that Member States, when assessing the compatibility of a particular programme or project with the obligation of non-deterioration, should consider that ""*are not allowed to disregard temporary impacts of short duration with no long-term consequences on water bodies, unless it is clear that such impacts on the status of the bodies of water concerned and cannot lead to deterioration of that status within the meaning of article 4*"[265].

In light of the CJEU ruling, the Conseil d'état concluded that the last paragraph of Article 7 of Decree 2018/847, which amended Article R 212-13 of the Environment Code ("*short-term temporary impacts with no long-term consequences are not to be take into accoun*t"), should be annulled.

A number of legal actions have been brought before the courts by various associations to challenge authorisations for the construction of water storage facilities (the famous "megabassines"), arguing the violation of the WFD's obligation of non-deterioration[266]. It is also worth noting the indispensable role played by environmental protection associations, including before the courts[267].

The devil is also in the derogations and postponements. The WFD provides for the possibility of less stringent environmental objectives, derogations and postponements of deadlines, which is a

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[258] Case C-461/13 Bund für Umwelt und Naturschutz Deutschland, 1/7/2015, ECLI:EU:C:2015:433

[259] Case C-535/18, IL e.a. v Land Nordrhein-Westfalen, 28/5/2020, ECLI:EU:C:2020:391

[260] Case C-525/20 Association France Nature Environnement v Premier Ministre et Ministre de la transition écologique et solidaire, 5/5/2022, ECLI:EU:C:2022:350

[261] Case C-461/13, ibid.

[262] See the recent Judgment of the Court of EU, 25/4/2024, case C-301/22, P. Sweetman. The Court concluded that the competent authority of a Member State is "*also required, unless a derogation is granted, to refuse consent for an individual project (on a Lake which its surface area is below 0,5km2 was not characterised and monitored) where it may cause (…) a deterioration of the status of another surface body which have been or ought to have been identified by that Member State*". It's clearly a way to take into account the unity of water bodies and the connection between a small lake and water bodies.

[263] Case C-525/20 Association FNE v Premier Ministre et Ministre de la transition écologique et solidaire

[264] Case C-525/20 Association FNE v Premier Ministre et Ministre de la transition écologique et solidaire

[265] Case C-525/20 Association FNE v Premier Ministre et Ministre de la transition écologique et solidaire

[266] Example of the Bordeaux Administrative Court of Appeal ruling of 4/4/2023, 20BX02305, association pour la Protection de la Nature et de l'Environnement du département de la Vienne, the Poitou Charente Nature association, the Confédération paysanne de la Vienne and the Vivrenclain association v Préfet de la Vienne. In the judge's view, it was not clear from the investigation that the creation of the fifteen replacement reserves at issue would have the effect of degrading the quality of bodies of water and should therefore have been subject to the derogation procedure provided for in article R. 212-16 of the Environment Code. For another case: CAA de Bordeaux, 21/12/2021, 21BX01326, Syndicat mixte Irrigadour.

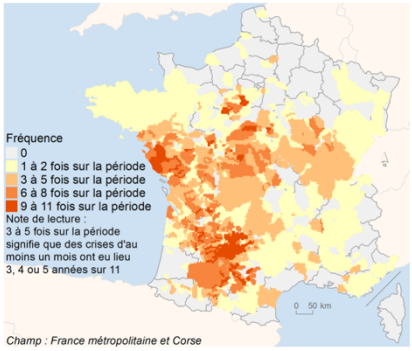
[267] Not to mention the watchdog role they play through complaints lodged with the European Commission. Example of the breton association Eau et Rivières de Bretagne (https://www.eau-et-rivieres.org).

real breeding ground for litigation (nid à contentieux). In the case of C-559/19, the Court highlighted that *it is clear from the scheme of article 4 of Directive 2000/60 that a deterioration of the status of a body of water, even if transitory, is authorised only subject to strict conditions and that the threshold beyond which breach of the obligation to prevent deterioration of the status of a body of water is found must be low*"[268].

In France, following the example of Regulation (EU) 2022/2577 (extended by Regulation (EU) 2024/223), the recent Law 2023/175 on accelerating the production of renewable energy introduces a series of derogations from environmental obligations. For instance, the legislation allows the administrative authority, in exceptional and temporary circumstances, to grant derogations to the flow rate to be left downstream of one or more structures, in the event of a serious threat to the security of electricity supply identified by the network management authority (codified: art. L 214-18 Environment Code). In their third river basin management plans, the Commission kindly requested that Member States consider ways to "reduce the use of derogations" and "improve the transparency of the justifications used". Furthermore, as the Court pointed out, " *exception of postponing achievement of the objectives laid down in article 4 (1) is applicable only to the enhancement obligation (…) but not to the obligation to prevent deterioration*"[269].".

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management?

Fréquence des épisodes annuels de restriction de niveau « crise » des usages de l'eau superficielle d'une durée de plus d'un mois, sur la période 2012-2022



The challenges of quantitative water management have become a prominent issue on the political agenda in the context of climate change. The severity and temporal amplitude of droughts are forcing public authorities to consider the imperative of water sobriety and a more equitable sharing of water. In September 2022, more than 700 French communes were still without drinking water because of the summer drought. In France, restrictions on water use, and even bans, have increased (see map). In October 2023, 83 French departments were in a drought situation with restrictions on water use.

The situation in some overseas departments is extremely worrying. The territory of Mayotte is currently experiencing a significant hydrological drought due to an unprecedented rainfall deficit. In 2023, a series of restrictions on certain water uses have been adopted and the distribution of bottled water have been organised for the entire population in November 2023. Since spring 2024, the hydrological situation in the region has been improving, but strategic stocks of drinking water are being built up to ensure that drinking water can be distributed if necessary.

All activities are affected by these difficulties in obtaining water in sufficient quantity and quality. The distribution of water abstraction

[268] Case C-559/19, Commission v Kingdom of Spain, o.c.
[269] Case C-559/19, Commission v Kingdom of Spain, o.c.

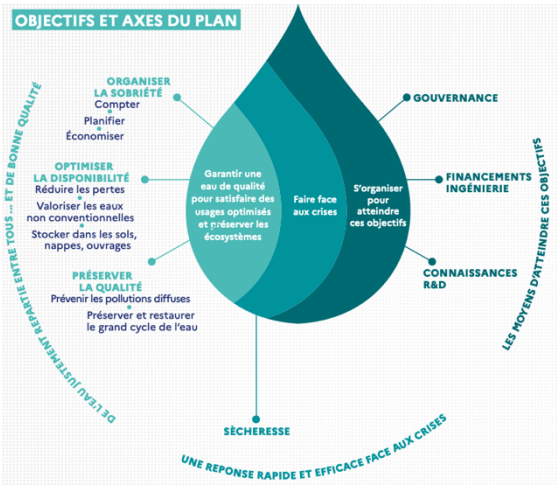
by sector is as follows: 58% for agriculture, 26% for drinking water, 12% for cooling power stations and 4% for industrial uses[270].

In 2019, at the conclusion of the Assises sur l'eau (water conference), the government set a target of reducing water abstraction by 10% by 2025 and by 25% over the following 15 years. In addition, the government proposed a study with the objective of defining the volumes that could be abstracted in 2020[271].

In March 2023, President Macron presented the government's Water Action plan[272], which set a target of reducing abstractions by 10% by 2030. This Action Plan for resilient and concerted water management comprises 53 measures structured around three axes: organising sober use, preserving water quality and optimising the availability of the resource (including the reuse of so-called unconventional water).

The implementation of this reduction target has to be implemented across the territories covered by the SDAGE "Schémas directeurs d'aménagement et de gestion des eaux" (river management plan WFD) according to their local conditions. The SDAGE will have to adopt a plan for adaptation to climate change with a trajectory for reducing abstractions by 2023[273]. The Water development and management schemes (SAGE) for the sub-basins have to define quantified reduction targets from 2027.

The Water Action plan also calls for the government to support at least 50 industrial sites in their efforts to reduce water consumption. Based on three criteria (high water consumption, location in a water-stressed area, potential for water savings), 55 sites have been identified, representing 25% of the industrial sector's water withdrawals and consumption[274]. The sites selected will be required to draw up a water-saving plan. However, a critical reading of the government's assessment of the actions carried out by industry under the Water Plan reveals a risk of confusion between water-saving actions (in the sense of reducing withdrawals) and actions to optimize the resource withdrawn by reusing wastewater. The Axis 3 of the Water Action Plan aims to "optimize" the availability of water resources. In addition to reducing leakage from outdated or poorly maintained drinking water distribution networks, the aim is to increase the rate of reuse of so-called non-conventional water from the current 1% to 10% by 2030. The government hopes to support 1,000 projects to reuse this type of water by 2027, and plans to



[270] Ministry for Ecological Transition, Water in France: resources and use - summary of knowledge in 2023, https://www.statistiques.developpement-durable.gouv.fr/leau-en-france-ressource-et-utilisation-synthese-des-connaissances-en-2023#:~:text=connaissances%20en%202023-,L'eau%20en%20France%20%3A%20ressource%20et%20utilisation%20–,Synthèse%20des%20connaissances%20en%202023&text=Ressource%20naturelle%20jusqu'à%20présent,%2C%20refroidissement%20des%20centrales%20électriques)..

[271] https://agriculture.gouv.fr/cloture-des-assises-de-leau-un-nouveau-pacte-pour-faire-face-au-changement-climatique

[272] https://www.elysee.fr/emmanuel-macron/2023/03/30/presentation-du-plan-eau

[273] For example: the plan to adapt to climate change in the Loire Bretagne basin, adopted in 2023 : https://sdage-sage.eau-loire-bretagne.fr/files/live/mounts/midas/Donnees-et-documents/Plan_d'adaptation_Change

[274] Including 20 sites in the chemicals and materials sector, 14 sites in the food industry : https://presse.economie.gouv.fr/plan-eau-bilan-des-actions-menees-par-lindustrie/

set up a wastewater reuse observatory. The implementation of Regulation (EU) 2020/741 on minimum requirements for water reuse[275] in France has led to the adoption of Decree 2023/835 on the uses and conditions of use of treated wastewater and rainwater[276]. This replaces Decree 2022/336, which only concerned treated wastewater. In light of the above, two ministerial decrees have recently been adopted: the decree of 14/12/2023 on the use of treated wastewater for watering green spaces[277] and the decree of 18/12/2023 for irrigating agricultural crops[278].

The need for water for agriculture and the water footprint of agricultural production are significant ecological and food security issues. In its opinion on the Blue Pact for Europe (2023), the European Economic and Social Committee suggests the introduction of specific standards for water use in various sectors, including agriculture. The Water French Action Plan focuses on improving storage in soils, aquifers and structures and developing agricultural hydraulics. One of the measures aimed at optimising the availability of water resources is the development of a national strategy and technical guide for the implementation of controlled aquifer recharge systems. With the increase in droughts, projects to build artificial water storage facilities to store water taken in winter for crop irrigation have multiplied. These projects (ranging from 8 to 18 hectares) have met with strong protests, which contest the monopolising of water resources by a handful of farmers to the detriment of public needs and ecosystems[279]. A recent report by the French Senate suggests that 20% of farms use irrigation (equivalent to 6.8% of French farmland, 38% for maize – see map). Several researchers have highlighted the potential risks of a technological illusion (improved irrigation systems and the use of digital optimization techniques) as THE solution, as well as the "*perverse effects of dams and reservoirs in the event of long droughts*"[280]. "*Megabasins may not be the solution to the water crisis*"[281], and they may not address the urgent need for an agro-ecological transition in agriculture.

[275] JOUE 2020 L 177/32; Guidelines to support the application of Regulation 2020/741 on minimum requirements for water reuse, JOUE 2022 C 298/1; Commission delegated regulation (EU) 2024/1261 of 11 March 2024 supplementing Regulation (EU) 2020/741 with regard to technical specifications of the key risk management, JOUE L 2024/1261

[276] JORF 200 du 30/8/2023- codifié R-2111-123-1 et suivant dans le code de l'environnement. JORF 200 of 30/8/2023- codified R-2111-123-1 et seq. in the Environment Code

[277] JORF n°295 du 21/12/2023.

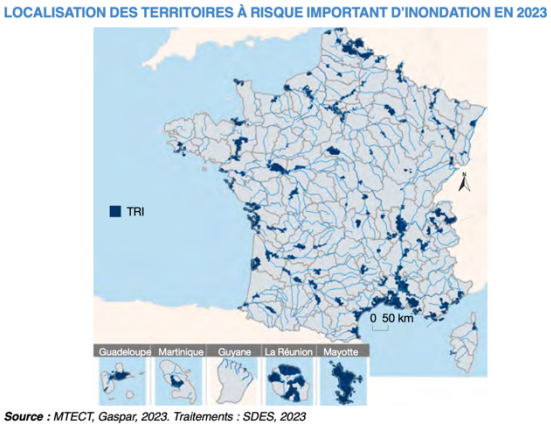
[278] JORF n°300 du 28/12/2023

[279] An example is the 10-hectare Megabassin project (628,000 m3 of water) at Sainte Soline in the Deux Sèvres department. This project is located in a special protection area under the Birds Directive. The Conseil national de la protection de la nature (National Council for the Protection of Nature) took up this issue on its own initiative and concluded in its opinion of December 2023 that the prefectoral authorisation decrees for this water storage facility at Saint Soline (2017 and 2020) should have been preceded by an application for a "protected species" exemption requiring its opinion, and that the construction work carried out without this exemption authorisation adversely affect the Little Bustard population and the protected fauna of the Poitevin plain. https://www.avis-biodiversite.developpement-durable.gouv.fr/11-novembre-2023-avis-cnpn-plenier-a395.html

[280] F. HABETS, CNRS hydrologist mentioned in the National Assembly's report on water management for economic activities, n°1455/2023.

[281] V. BRETAGNOLLE, ecologist CNRS, Journal du CNRS, "*Freshwater, a precious resource*" December 2023 https://lejournal.cnrs.fr/billets/les-megabassines-ne-resoudront-pas-la-crise-de-leau

Since the transposition of Directive 2007/60/EC on the assessment and management of flood risks, France has developed a national strategy in 2014 and adopted 14 risk management plans for each river basin (premier cycle 2015-2021, second cycle 2022-2027)[282]. In areas at risk of flooding, flood prevention action programmes are implemented by local authorities or their intercommunal authorities with their own tax revenues (since 2018) in response to calls for projects from the State[283].



Source : MTECT, Gaspar, 2023. Traitements : SDES, 2023

In France, flood risk is the leading natural risk, with 124 territories at significant risk and a quarter of the French population exposed (16,000 municipalities and 27,000 km² of flood-prone areas[284], mainly in Mediterranean zones with intense rainfall, - 78 -see map Ministry of Ecological Transition 2023).

The extreme flooding caused by storm Alex in October 2022 in the Roya valley (Alpes-Maritimes) left a lasting impression. Since October 2023, Vigicrues has recorded 95 days of flood warnings. In November, 24 communes in the north of France and 181 communes in the Pas-de-Calais were declared natural disasters following flooding and mudslides. The gravity and scale of these flooding phenomena (in particular, runoff) challenge the efficacy and efficiency of the existing legal framework, as well as the sufficiency of the financial resources required to address them. In response, the Senate has initiated a fact-finding mission on flooding in 2023 and early 2024, in conjunction with a consultation of local elected representatives[285]. Similarly, at the request of the Prime Minister, an inter-ministerial mission of the General Inspectorate for the Environment and Sustainable Development was recently established to propose a series of recommendations[286]. Furthermore, given the increase in the number of claims, including those linked to flooding, the Association des maires de France is very concerned about the difficulties encountered by many local authorities in maintaining their insurance cover. A recent Senate mission has also been set up to address this issue[287].

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

The 2004/388 Law, which transposes the Water Framework Directive (in particular article 9 on the recovery of the costs of water services), amends the Environment Code accordingly.

In accordance with article L 210-1, "*the costs associated with the use of water, including the costs to the environment and the resources themselves, shall be borne by the users, taking into account the social, environmental and economic consequences as well as the geographical and climatic conditions*". Similarly, the river basin management plans must include a description of the manner

[282] For example : Flood risk management plan for Loire Brittany Basin (2022-2027) march 2022. https://www.centre-val-de-loire.developpement-durable.gouv.fr/le-plan-de-gestion-des-risques-d-inondation-sur-le-a3972.html

[283] This scheme has been in place since 2002, with financial support from the State: Government instruction of 29/6/2017 relating to the labelling scheme for flood prevention action programmes, https://www.ecologie.gouv.fr/sites/default/files/Cahier%20des%20charges%20PAPI%203%202021_0.pdf ;

[284] https://www.ecologie.gouv.fr/prevention-des-risques-naturels

[285] April to May 2024 : https://participation.senat.fr/prevention-des-inondations-et-gestion-de-crise

[286] https://www.igedd.developpement-durable.gouv.fr/inondations-dans-le-pas-de-calais-rapport-de-la-a4011.html

[287] https://www.senat.fr/travaux-parlementaires/commissions/commission-des-finances/les-problemes-assurantiels-des-collectivites-territoriales.html

"*in which the costs associated with water use are borne by users, distinguishing at least between the industrial sector, the agricultural sector and domestic uses*" (art. L 212-8). It is also specified that this data must be updated each time the river basin management plans are updated.

The current system of water agency fees (redevances) was established by the 1964 Water Act, which contributes to the financing of French water policy. The 1964 law stipulated that the agencies would levy fees, "*the basis and rate of which are set with the assent of the basin committee*" (art. 14). In 1982, however, the French Constitutional Council ruled that such fees constituted "*taxes of all kinds for which article 34 of the Constitution reserves to the legislator the right to set the rules concerning the basis of assessment, the rate and the methods of collection*"[288]. The 2006 Law on Water and Aquatic Environments reformed the system of fees levied by water agencies on public and private bodies, with the aim of distinguishing between various types of fees. These included "fees/redevances" for water pollution, for modernisation of collection networks, for diffuse pollution, for abstraction from water resources, for storage of water during low-water periods, for obstacles in watercourses and for protection of the aquatic environment.

Similarly, the 2006 law stipulates that "*Parliament shall define the priorities of the multiannual intervention programme of the water agencies and set the overall ceiling for their expenditure for the period in question* (...)" (codified: art. L 213-9-1 of the Environment Code).

Since 2018, there has been a general discussion about the possibility of reforming the system of fees/redevances levied by the Water Agencies with the aim of improving the implementation of the polluter-pays principle. A series of reports by the French Court of Auditors, National Assembly and Senate have highlighted potential areas for improvement in the application of this principle. The Court of Auditors has indicated that 75% of water abstraction charges (excluding hydroelectric production charges) are paid by domestic users, who are responsible for 16.4% of these abstractions[289]. Similarly, 88% of pollution charges are paid by domestic users[290]. A study commissioned by the Cercle français de l'eau has suggested that domestic users contribute 54% of water policy funding, with 23% coming from industry and 8% from farmers[291].

The introduction of new taxes to combat diffuse pollution has not yet been successful, following the example of the tax on nitrogen fertilisers, which was merely envisaged in the 2021/1104 Law on climate and resilience[292].

In addition to the inequitable distribution of costs between users, there is a growing concern about the lack of financial resources and investment[293], particularly in view of the many challenges exacerbated by climate change. These include the issue of emerging pollutants and persistent diffuse pollution[294], water shortages, flooding, outdated waste-water treatment facilities[295], and so forth.

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[288] Constitutional Council decision no. 82-124 of 23/6/1982, Legal nature of articles 13-1 and 14-2 of law 1964/1245 - referral by the Prime Minister

[289] Report on quantitative water management in climatic periods, July 2023.

[290] Senate report on sustainable water management no. 871/2023, op. cit.

[291] Actu Environnement, 28/11/2023. https://www.cerclefrancaisdeleau.fr

[292] Law to combat climate change and strengthen resilience to its effects, JORF n°196 du 24/8/2021

[293] The budget for the water agencies (2019-2024) is €12 billion. In its report on water (2023), the Cour des Comptes (French Auditor Court) points out that the extent of funding for water policy is poorly understood, and recommends in particular that the ceiling on the revenue from fees collected by the agencies should be removed.

[294] Proposals have been made to include medicines, cosmetics, PFAS and other micropollutants in the diffuse pollution charge

[295] In its opinion on drinking water (2023), the French Economic, Social and Environmental Committee estimates that dealing with this obsolescence over the next 5 years will require more than €16 billion

Following the adoption of the government's Water Plan 2023[296] and the various reports published, the long-awaited Finance Act for 2024 to reform the system of water fees has generated considerable interest. It had been proposed to increase the fee for diffuse pollution by 20% (i.e. an additional €37 million), but this was not included in the final version of the Act, which was agreed upon by the government in consultation with the majority of farming unions. The extension of the fee for diffuse pollution to micropollutants and microplastics was also not included in the final version of the Finance Law. Similarly, despite the government's political commitment, the Finance Act does not provide any funding to support local authorities' efforts to comply with Article 16 of Directive 2020/2184/EU. The Finance Act 2023/1322 for 2024[297] changes the domestic pollution charge with a "*drinking water consumption redevance*", payable by subscribers to the public water supply network. Similarly, in place of the "*modernisation of water collection networks*" charge (redevance"), the Finance Law for 2024 introduces two "*charges for the performance of public water supply and sanitation services*" to be paid by local authorities responsible for public water supply and sanitation services.

Law 2013/312 also introduces an experimental system of social pricing for water for a period of five years for local authorities that volunteer to do so. This experiment has been extended until 2021 and has been implemented on a more generalised basis. The 2019/1461 Law *"on involvement in local life and the proximity of public action"* authorises public water and wastewater services to implement social measures to ensure the effective implementation of the right of access to drinking water and sanitation[298]. By 2020, some forty local authorities were experimenting with social pricing for drinking water. The national Water Committee has evaluated this experimentation and identified a series of obstacles that are holding back the commitment of more local authorities[299]. Similarly, a Flash mission by the French National Assembly in 2022 put forward a number of recommendations to improve the social pricing system[300].

[296] Ministry for Ecological Transition and Territorial Cohesion, Water Action Plan, 1 year on : 100% of measures implemented. https://www.ecologie.gouv.fr/plan-eau-1-apres-100-des-mesures-engagees

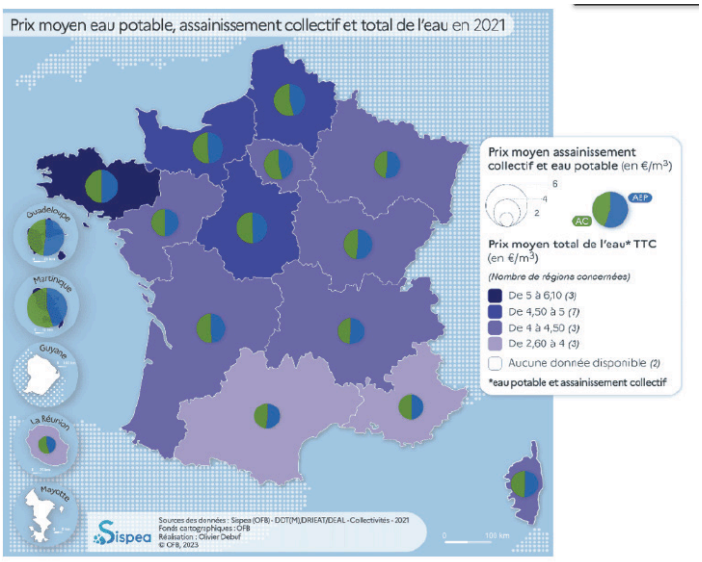
[297] JORF n°303 du 30/12/2023 -

[298] JORF n°301 of 28/12/2019; codified provision: L 2224-12-1-1 of the General Code of Territorial Authorities

[299] Report on the experiment in social water pricing, May 2019. https://www.ecologie.gouv.fr/sites/default/files/Rapport_experimentation_eau_loi-Brottes_2019_0.pdf

[300] Mission Flash on the results of the social water pricing experiment, February 2022. https://www2.assemblee-nationale.fr/static/15/commissions/CDD/COMMUNICATION_MI_flash_tarification_eau.pdf

The average price of drinking water and sanitation services in France is €4.3 (€2.1 for drinking water and €2.2 for sanitation)[301]. However, this average mask significant territorial disparities, particularly between rural and urban areas, mountainous regions, and overseas departments and regions.



Source : Office français de la biodiversité (OFB)

One million people connected to the public drinking water network are faced with water bills exceeding the threshold of 3% of their income and benefiting from this experiment. One of the difficulties encountered by volunteer local authorities is identifying the people likely to benefit from the social tariff for water. Local authorities are having problems obtaining data held by social services. Nevertheless, the French Data Protection Authority (Commission nationale de l'informatique et des libertés) has reiterated the legality of transmitting and cross-referencing such data within the framework of public services. Additionally, not all social housing has individual water meters (in particular in social housing). Furthermore, the people concerned do not request the benefits of aids or water social tariffs for various reasons. Finally, a number of volunteer local authorities have highlighted the high cost of managing the scheme. Among the experiments that have been set up, the one run by the Dunkerque water authority introduces a differentiated pricing system for water based on volume. This system differentiates between "*essential water*" (80 m3), "*useful water*" (80-200 m3) and "*comfort water*" (above 200 m3)[302].
However, these experimental schemes only concern people connected to the drinking water public supply network. Directive 2020/2184/EU requires Member States to identify people with no or limited access to drinking water, including vulnerable and marginalised groups. The Member States are obliged to take all necessary measures to guarantee access to water for these people and groups. In France, 99% of the population has access to a drinking water network. However, there are significant disparities between metropolitan France and the overseas departments and regions. According to the French Court of Auditors, 300,000 people in mainland France are homeless (including 40,000 homeless people)[303] and lack continuous, safe access to drinking water and sanitation. The Order (ordonnance) 2022/1611 on access to and quality of water intended for human consumption[304] amends the Public Health Code to transpose Directive 2020/2184. It is now stipulated that "*every person shall have at least daily access, at home or in their living environment or, failing that, in the vicinity thereof, to a quantity of water intended for human consumption sufficient to meet their drinking, food preparation and cooking, personal hygiene and general hygiene needs, and to ensure the cleanliness of their home and living environment*" (art. L 1321-1 A)[305]. It is

[301] French Economic, Social and Environmental Committee, report on Drinking water: challenges that go beyond progressive pricing, opinion November 2023.
[302] *Ibid*.
[303] Public report 2021, (Tome Accommodation and housing for homeless people during the health crisis of spring 2020). https://www.ccomptes.fr/sites/default/files/2021-03/20210318-03-TomeI-hebergement--logement--personnes-domicile-pendant-crise-sanitaire-printemps-2020.pdf
[304] JORF n°297 du 23/12/2022.
[305] Decree 2022/1721 on improving access for all to water intended for human consumption states that "the sufficient quantity of water intended for human consumption (...) is, depending on the situation of the people concerned, between

the responsibility of the local authorities responsible for water and sanitation to implement the necessary measures to improve or maintain access to water, taking into account the specific characteristics of the local situation (art. L 1321-1 B). In accordance with Decree 2022/1721, the local authorities and inter-municipal cooperation establishments are obliged to conduct a territorial analysis (by January 2025 at the latest) and "*an inventory of the methods of access to water, uses and practices. This must be carried out without any exclusions, including with regard to the legality of occupation or the administrative status of individuals*"[306]. In line with Directive 2020/2184, the proposed revision of Directive 91/271/EEC on urban waste water treatment introduces a specific provision on access to sanitation. It requires Member States to adopt measures by 31 December 2027 to improve access to sanitation, particularly for vulnerable and marginalised groups.
In France, the adoption and implementation of these provisions, which are the responsibility of the local authorities in charge of water and sanitation, are attracting the attention of associations. This is illustrated, for example, by the recent referral to the Human Rights Defender and the Administrative Court of a commune's refusal to provide a permanent water supply near precarious housing on its territory[307].

♣ WATER BIODIVERSITY

Questions

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country?

It is often difficult to isolate with certainty the part played by European Union law in strengthening the integration between water law and the law on the protection of ecosystems and species. All the more so in a country such as France, where water law was structured prior to European action (including with the 1964 and 1992 Water Acts). The transposition of the Water Framework Directive, for example, has been described as "minimalist"[308]. However, there are a number of elements in several areas and/or with regard to several instruments, where it can be seen that, overall, Natura 2000 sites are being given priority for greater integration. This mainly concerns planning and environmental assessment.
With regard to planning, law no. 2004/338 of 21 April 2004[309], adopted to transpose the Water Framework Directive, reforms pre-existing water planning documents, particularly since the 1992 Water Act. Among its contributions (direct or resulting from application texts, such as decree no. 2005-475 of 16 May 2005 relating to water development and management master plans[310]) from the point of view of integration, we note the register of protected areas which must be appended to the *Schéma directeur d'aménagement et de gestion de l'eau* (SDAGE, which correspond to the directive's river basin management plans), and which includes in particular Natura 2000 sites (C. envir., art. R.

50 and 100 litres of water per person per day available at the home or in the place where the people live or, failing that, at the nearest possible access point, taking into account the technical, geographical and topographical constraints and the easements to which the territories concerned are subject" (art. R 1321-1 A of the Public Health Code).
[306] Decree 2022/1721 on improving access for all to water intended for human consumption, JORF n°302 of 30/12/2022.
[307] Decision of the Defender of Rights, no. 2023-260, 6/12/2023. https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=21923
[308] B. DROBENKO, « De la pratique du minimalisme : la transposition de la directive-cadre « eau » », Revue juridique de l'environnement 2004, p. 241-256.
[309] JORF of 22 April 2004, text n° 1.
[310] JORF of 17 May 2005, text n° 20.

212-4 6°). However, the register does not include other categories of protected natural areas under French law that are not directly derived from EU law (national parks, nature reserves, biotope and natural habitat protection orders, etc.).In the protected areas of the register, the SDAGE may set stricter objectives aimed at preventing pollution, particularly by nitrates and pesticides (C. envir., art. R. 212-14), which will be implemented by measures contained in the multiannual programme of measures (C. envir.,art. R. 212-21)[311]; extensions of the deadline for achieving the objectives of good ecological and chemical status are only possible subject to compliance with the specific standards and provisions applicable to these zones (C. envir., art. R. 212-15); the same applies to the use of less ambitious derogation objectives (C. envir., art. R. 212-16).
With regard to environmental assessment, it should be noted that for the transposition of Article 6 § 3 of the Habitats Directive, the following planning documents in particular are subject to an assessment of their impact on Natura 2000 sites: SDAGE and *Schémas d'aménagement et de gestion des eaux* (SAGE, planning documents drawn up at the level of a sub-basin or group of sub-basins); and the following operations: installations, works, works and activities subject to authorisation or declaration under the Water Police Act for abstractions and discharges (C. envir., art. R. 414-19 I 3°), the channelling and regulation of watercourses, agricultural hydraulic projects (including irrigation and land drainage projects), groundwater catchment and artificial recharge systems, dams and other installations designed to retain or store water, wastewater collection and treatment systems, and installations designed to produce hydroelectric power.

9-Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?

In France, there is no specific legislation concerning the restoration of aquatic ecosystems (or other types of ecosystem) or concerning nature-based solutions. The very expression 'nature-based solutions' does not appear in the Environment Code. There are only rather discreet references to it in an uncodified text: decree no. 2019-1400 of 17 December 2019[312] adopting the revised version of the *Orientations nationales pour la préservation et la restauration en bon état des continuités écologiques* (national guidelines for the preservation and restoration of ecological continuity). This is the reference text, at national level, for planning the French ecological network, known as the *Trame verte et bleue* or Green and Blue infrastructure (green for terrestrial areas, blue for aquatic environments). This text calls for the promotion of "wherever possible, the use of nature-based solutions as part of the developments required, in particular for risk prevention". It sets out the guidelines to be followed by the regional planning document for the green and blue infrastructure (*le Schéma regional d'aménagement et de développement durable du territoire* - the regional plan for sustainable land use and development). As such, it encourages the regions to use the contractual tool with other categories of territorial authorities (departments, municipalities, inter-municipalities) to implement green and blue infrastructure planning. The decree of 17 December 2019 states that "contracts or agreements may mobilise any area of intervention contributing directly or indirectly to the preservation or restoration of biodiversity. These measures may in particular refer to nature-based solutions insofar as they are technically feasible, and in particular with regard to (...) projects for the restoration of ecological continuities aimed at reducing the fragmentation of environments, for the restoration of landscapes, in particular those deemed to be priorities for the region; (...)

[311] The multinannual programme of measures stands for an operationnal application of the SDAGE : J.-L. GAZZANIGA, X. LARROUY-CASTÉRA, J.-P. OURLIAC, Le droit de l'eau, Lexis Nexis, 4ème éd., 2021, p. 198.
[312] JORF of 20 December 2019.

projects linked to the reduction of flood and immersion risks and relating to the restoration of the good ecological status of bodies of water" (Orientations nationales pour la préservation et la restauration en bon état des continuités écologiques, § 3. 4.3).

The green and blue infrastructure is therefore an interesting entry point for restoring aquatic ecosystems. The aim of the latter is to "halt the loss of biodiversity by participating in the preservation, management and restoration to good condition of the environments necessary for ecological continuity". The notion of "restoring to good condition" is similar to that of restoration. Thus, according to article R. 371-20 of the Environment Code, restoring the environments necessary for ecological continuity "consists in restoring or improving their functionality. This is achieved in particular through management, development or removal of fragmentation elements that significantly disrupt their functionality and thus constitute obstacles".

Another entry point for the restoration of aquatic ecosystems is the competence initially devolved to municipalities, then to inter-municipal bodies, for the management of aquatic environments and flood prevention (known as "GEMAPI"[313] competence, C. envir., art. L. 211-7 I bis). There are four main components to this remit: development of a river basin or part of a river basin; maintenance and development of a watercourse, canal, lake or body of water and access to them; flood and sea defence; protection and restoration of sites, aquatic ecosystems and wetlands, as well as riparian woodland.

In particular, the aim is to link responsibility for flood prevention with town and country planning policies by placing them in the same hands, so that "flood risk" is integrated into planning and the issuing of town planning authorisations[314].

The restoration of ecosystems (not just aquatic ecosystems) can also result from compensation measures that must be implemented to offset anticipated or foreseeable damage to biodiversity caused by the implementation of a works project or the execution of a plan (C. envir, art. L. 163-1 et seq.); it could also constitute a measure of reparation for ecological damage ordered by the civil court, following significant damage to the elements or functions of ecosystems or to the collective benefits derived by man from the environment (C. Civ., art. 1246 et seq.).

The future regulation on nature restoration could have the effect of introducing a logic of quantified objectives, or even obligations to achieve results, with which French law is not particularly familiar. For example, the National Biodiversity Strategy 2030 (a non-legally binding government policy document), which was finally adopted late in 2023, aims to restore 50,000 hectares of wetlands by 2026 (Measure 25). However, the regulation on nature restoration could generalize in French law this logic of quantitative objectives against which public action could be evaluated retrospectively, including before the administrative judge, in terms of restoring aquatic ecosystems.

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn ?

One of the major points of contention in France concerns the maintenance and restoration of the free flow of watercourses to allow the movement of migratory fish. There are a huge number of structures obstructing the flow of watercourses (101,500 structures were counted in 2020, i.e. one every 5 kilometres)[315], and this is one of the main reasons why the status of migratory fish remains poor. In 2019, only 15% of amphihaline species were not threatened or near-threatened in France[316].

[313] Gestion des Eaux et des Milieux Aquatiques et Prévention des Inondations.
[314] A. VAN LANG, Droit de l'environnement, PUF, 5ème éd., 2021, p. 266.
[315] Ministère de la Transition écologique, Eau et milieux aquatiques – les chiffres clés – édition 2020, dec. 2020, p. 72.
[316] Ibid., p. 68.

Articles L. 214-17 et seq. of the French Environment Code enshrine an obligation to preserve the ecological continuity of watercourses, which applies in particular to hydraulic engineering structures. Resulting from the law of 30 December 2006 on water and aquatic environments[317], article L. 214-17 I of the Environment Code provides for two types of list to be drawn up by the administrative authority for each river basin or sub-basin: "1° A list of watercourses, parts of watercourses or canals among those that are in very good ecological status or identified by the master plans for water development and management as playing the role of biological reservoir necessary to maintain or achieve good ecological status of the watercourses in a catchment area or in which complete protection of migratory fish living alternately in fresh and salt water is necessary, on which no authorisation or concession may be granted for the construction of new works if they constitute an obstacle to ecological continuity" and " 2° A list of watercourses, parts of watercourses or canals in which it is necessary to ensure the adequate transport of sediments and the circulation of migratory fish. Any structure must be managed, maintained and equipped in accordance with rules defined by the administrative authority, in consultation with the owner or, failing that, the operator".

However, the ecological continuity of watercourses comes up against competing interests, some of which also come under environmental law and/or the protection of heritage in the broadest sense of the term: these include the preservation of hydraulic heritage, and the promotion of hydroelectric power generation, which contributes to the development of renewable energies. With tensions growing with defenders of cultural heritage, in particular water mills, the law of 7 July 2016 on the freedom of creation, architecture and heritage[318], added an IV to Article L. 214-17, to specify that the measures resulting from the application of this article are "implemented in compliance with the objectives of protection, conservation and enhancement of the protected heritage (...)". An exclusion from the scope of the ecological continuity obligation was granted shortly afterwards, for the benefit of watermills already in existence and equipped to produce electricity, outside watercourses with very good ecological status (i.e. only on watercourses in the second list of article L. 214-17 I). Thus, Article 15 of the law of 24 February 2017[319] states: "water mills equipped by their owners, by delegated third parties or by local authorities to produce electricity, regularly installed on the watercourses, parts of watercourses or canals mentioned in 2° of the I of Article L. 214-17, are not subject to the rules defined by the administrative authority mentioned in the same 2°. This article only applies to mills existing on the date of publication of Law 2017-227 of 24 February 2017" (new Article L. 214-18-1 of the Environment Code).

The exemption of water mills from ecological continuity obligations has been challenged in the courts, both in terms of its constitutionality and its conventionality. The resulting decisions are apparently contradictory. In fact, the exemption resulting from the law of 24 February 2017 was first ruled by the Constitutional Council to be consistent with the Constitution, in a decision of 13 May 2022[320]. The limitation placed on the right to live in a balanced environment that respects health, enshrined in Article 1 of the (Constitutional) Charter of the Environment (of which it can be deduced from the decision that preserving the ecological continuity of watercourses would be a component) is linked to two reasons of general interest: preserving hydraulic heritage, and encouraging the production of hydroelectric power, which contributes to the development of renewable energies. In addition, the infringement of Article 1 of the Charter of the Environment is proportionate to the objective pursued: only watermills equipped to produce electricity and existing on the date of

[317] Loi n° 2006-1772, JORF of 31 December 2006, text n° 3.
[318] Loi n° 2016-925, JORF of 8 July 2016, text n° 1.
[319] Loi n° 2017-227 of 24 February 2017, JORF of 25 February 2017, text n° 4.
[320] Cons. constn. 13 May 2022, FNE, n° 2022-991 QPC : Revue juridique de l'environnement 2022, p. 857, note M. COMBE et Th. SOLEILHAC.

publication of the law are covered, and the exemption does not apply to works installed on watercourses in very good ecological condition, which play the role of biological reservoir or in which complete protection of fish is necessary. However, in terms of compatibility with European Union law, the Council of State ruled on 28 July 2022[321] that these provisions, insofar as they exempt water mills existing on the date of publication of the Law of 24 February 2017 from the obligations mentioned in 2° of I of Article L. 214-17 of the Environment Code, regardless of their impact on the ecological continuity of the watercourses concerned and their capacity to affect the migratory movements of eels, fail to comply with the objectives of the [Water Framework] Directive of 23 October 2000 and the Regulation of 18 September 2007 [establishing measures for the recovery of the stock of European eels]". Following this ruling by France's highest administrative court, article L. 214-18-1 of the Environment Code (resulting from article 15 of the law of 24 February 2017) was repealed by the law of 10 March 2023 on the acceleration of renewable energy production (art. 71)[322].

However, it remains politically difficult to strike a balance between preserving our hydraulic heritage and developing renewable energies, on the one hand, and restoring aquatic ecological continuity to its original state, on the other. Article 49 of the "climate and resilience" law of 22 August 2021[323] therefore added a second restriction to Article L. 214-17 I 2° of the Environment Code, which sets out the obligation to preserve aquatic ecological continuity in the management, maintenance and equipping of an existing structure, after the one resulting from the law of 24 February 2017: "without its current or potential use being called into question, in particular for the purposes of energy production". With regard to water mills in particular, the maintenance, management and equipping of retaining structures are the only methods provided for to fulfil the obligations relating to the passage of migratory fish and the adequate transport of sediments, to the exclusion of all others, in particular those relating to the destruction of these structures". The destruction of water mills, with the aim of restoring the ecological continuity of watercourses, is now excluded in principle by law. This provision, whose compatibility with the objectives of the Water Framework Directive raises just as many questions as the restriction introduced by the law of 24 February 2017[324], is still in force.

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

Questions

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake?

Article L. 211-1 I of the Environment Code affirms the principle of "balanced and sustainable" management of water resources, which "takes into account the necessary adaptations to climate change". A very (too?) large number of objectives must be pursued by balanced and sustainable water management, including flood prevention and the preservation of aquatic ecosystems, sites and wetlands; pollution control; the restoration of water quality; the economic use of water through hydroelectric production; and the restoration of ecological continuity within river basins. The law of 30 December 2006 on water and aquatic environments began to establish a hierarchy of water uses:

[321] CE, 28 July 2022, SARL Centrale Moulin Neuf, n° 443911 : Droit de l'environnement 2023, p. 34, conclusions S. Hoynck.
[322] Loi n° 2023-175, JORF of 11 March 2023, text n° 3.
[323] Loi n° 2021-1104 of 22 August 2021 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets, JORF of 24 August 2021, text n° 1.
[324] M. PRIEUR et al., Droit de l'environnement, Précis Dalloz, 9ème éd., 2023, § 1171.

"Balanced management must give priority to meeting the requirements of public health, public safety, civil security and the supply of drinking water to the population" (C. envir., art. L. 211-1 II). However, environmental requirements, particularly in terms of preserving aquatic biodiversity, are not directly included among the priorities. Furthermore, this initial prioritisation of uses is weakened by the requirements of the many economic activities that balanced water management must also enable to be "satisfied or reconciled" (agriculture, fishing, industry, energy production, transport, tourism, leisure, water sports, etc.).

Given the topicality of the subject in France, we have chosen conflicts of use with agriculture, and more specifically the construction of “megabasins” (even if the issue of agricultural pollution of water by the discharge of plant protection products and fertilisers also remains very prevalent), to illustrate our point. In recent decades, the acceleration of climate change has led to an increase in the number and intensity of droughts in France. This is bound to have an impact on agricultural production. In order to adapt to this, successive governments, under pressure from certain farming unions, have promoted the solution of agricultural water storage during the winter period, through the construction of hill reservoirs, also known as replacement reservoirs, basins or megabasins[325]. The "promotion of an active water storage policy" to guarantee agricultural irrigation thus joined the cohort of balanced and sustainable water management objectives with a law of 28 December 2016 (C. envir., art. L. 211-1 I 5° bis)[326].

The construction of hill reservoirs falls within the scope of the water policy, and is therefore subject to a single or integrated administrative authorisation, known as an "environmental authorisation" (C. envir., art. L. 181-1 et seq.). Systematically challenged in court by environmental protection associations, several authorisations for the construction of megabasins have been annulled by the administrative courts. The grounds are generally as follows: inadequate environmental assessment, incompatibility with water planning documents (SDAGE and SAGE) due to the excessive storage capacity of the reservoirs in relation to the state of the environment[327]. Remarkably, in a ruling handed down on 3 October 2023[328], the Poitiers Administrative Court cancelled the authorisations for six replacement reservoirs (as well as for nine others, in a second ruling handed down on the same day[329]) for breach of the principle of balanced and sustainable management of water resources as defined in article L. 211-1 of the Environment Code. The projects were oversized and located in a basin - the Clain basin in the Vienne department - that suffers from a structural imbalance between water resources and needs, and failed to take account of the foreseeable effects of climate change.

Proof, if any were needed, that the debate on megabasins is alive and kicking in France, a bill (which has little chance of succeeding, however, because it was tabled by an opposition ecologist MP, former Environment Minister Delphine Batho) was tabled in the National Assembly on 21 December 2023, to introduce a moratorium on the construction of water storage facilities for agricultural irrigation[330].

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[325] B. GRIMONPREZ, « Le stockage agricole de l’eau : l’adaptation idéale au changement climatique ? », Revue juridique de l’environnement 2019, p. 751 ; of the same author, « Agriculture et sécheresse : la pénurie de droit ? », Revue de droit rural, June 2023, p. 37.

[326] Loi n° 2016-1888 de modernisation, de développement et de protection des territoires de montagne, JORF of 29 December 2016, text n° 2.

[327] See for instance TA Poitiers, 7 June 2018, n° 1600785 ; CAA Bordeaux, 17 May 2022, n° 21BX00206 ; CAA Bordeaux, 21 February 2023, n° 20BX02357, Synd. Mixte des réserves de substitution de la Charente-Maritime (SYRES 17) : Revue de droit rural, April 2023, p. 35, note B. GRIMONPREZ.

[328] TA Poitiers, 3 October 2023, Vienne Nature et a., n° 2102413 : Revue de droit rural, December 2023, p. 16, note B. Grimonprez ; La Semaine juridique administration et collectivités territoriales, 5 February 2024, n° 2043, note D. GUINARD.

[329] TA Poitiers, 3 October 2023, Poitou-Charentes nature et a., n° 2101394 : M. VALO, « La justice stoppe quinze projets de mégabassines », Le Monde, 5 October 2023.

[330] Proposition de loi AN n° 2038.

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

There are currently a number of citizens' initiatives in France, operating on the fringes of the law and administrative institutions, whose aim is to promote the governance of a watercourse and/or catchment area in the form of a community and/or by giving it a legal personality. These include (but are not limited to):
- the "parlement de Loire" initiative[331]. Its website states: "The approach of the Parliament of the Loire is inspired by Bruno Latour's 'parliament of things', as well as Philippe Descola's reflections on the relationship between nature and culture. It is also influenced by the global movement to grant rights to nature, as well as by struggles linked to the Loire. The project proposes a fictional account of the creation of a parliament of the river, with the aim of recognising and defending the rights and voices of the Loire". "Loire Assemblies" were held in Tours in September 2021, following which a collective called "Vers un parlement de Loire" (Towards a Loire Parliament) was formed to extend the approach to the whole of the Loire catchment area.
- L'appel du Rhône[332], a transnational citizens' initiative (between Switzerland and France) aimed at recognising the legal personality of the river, from its glacier in Switzerland to its delta in France. This initiative led to the creation of a "People's Assembly of the Rhône"[333]. 25 residents of the Rhône catchment area in France and Switzerland were chosen by lot. For two years, they were given the task of investigating their catchment area and devising a new form of governance with and for the river and its inhabitants. The results of the work of the Rhône People's Assembly were made public on 15 March 2024 in Lausanne.
- The "Tavignanu Vivu" collective[334] concerns the Tavignanu river, the second largest in Corsica. This collective is a non-governmental organisation made up of citizens, professionals and farmers. It was set up in January 2016 to oppose a planned landfill for household waste and asbestos in a meander of the Tavignanu. Along with other environmental protection associations, it initiated the "Declaration of the Rights of the River Tavignanu" on 29 July 2021. In addition to recognising the river's rights, the declaration also envisages the appointment of "guardians" to defend it in court and claim compensation for any damage it suffers. This declaration, which has no legal scope at this stage, should in the minds of its initiators be an asset in their fight against the landfill project[335].

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation ?

In France, the transposition of the provisions of the Water Framework Directive relating to public participation has been gradual and laborious[336]. Today, we can consider that these provisions have been transposed and that the French legal framework goes a bit further. In the case of water development and management master plans (SDAGEs, which correspond to the directive's river basin

[331] https://www.parlementdeloire.org/
[332] https://www.appeldurhone.org/
[333] https://www.assembleepopulairedurhone.org/
[334] https://www.tavignanu.corsica/
[335] Inspired by the declaration of the rights of the Tavignanu, see also the declaration of the rights of the Têt (2021), a river of the Pyrénées-Orientales : https://encommun66.org/droitsdelatet/
[336] B. DROBENKO, « De la pratique du minimalisme : la transposition de la directive-cadre « eau » », loc.cit., p. 245-246.

district plans), public participation takes place at several stages in the preparation process and concerns several documents (C. envir., art. L. 212-2 and R. 212-6[337]): the timetable and work programme (at least three years before the planned date of entry into force), the provisional summary of important issues (at least two years before), the draft SDAGE and the environmental assessment (at least one year before). The *Comité de bassin* (Basin Committee), the body responsible for drawing up the SDAGE, is also responsible for organising participation. Participation is carried out electronically and must last at least six months. At the end of each public participation phase and no later than the date of adoption of the master plan, the basin committee publishes on a dedicated website[338] a "summary of the opinions and comments received and the manner in which they have been taken into account". This wording, which is absent from article 14 of the Water Framework Directive, suggests that there is an obligation (albeit limited) on the part of the Basin Committee to take account of the results of public participation in the preparation of the master plan.

Moreover, public participation is not limited to SDAGEs: in France, it also extends to water development and management schemes (SAGEs). SAGEs are planning documents drawn up at the level of a sub-basin or group of sub-basins. The procedures for public participation differ from those for SDAGEs: the SAGE project is not subject to an electronic public participation procedure, but to a public enquiry – *enquête publique* (C. envir., art. L. 212-6 and R. 212-40). The reason for this is that the SAGE regulations and maps are enforceable against third parties[339]. The public enquiry is the oldest public participation procedure in French law. Compared with electronic participation, it has the advantage of having an independent third party, a sort of guarantor of the procedure, in the person of the *commissaire-enquêteur* (investigating commissioner). Appointed by the president of the administrative court, which is a guarantee of independence, the investigating commissioner ensures that the enquiry runs smoothly, may organise public meetings and, at the end of the procedure (within a maximum of 30 days following the close of the enquiry), issues a report and reasoned conclusions. This report must set out the "observations and proposals" made during the enquiry, as well as any responses from the author of the document submitted for participation (C. envir., art. L. 123-15). The draft SAGE may be amended to take account of the opinions and comments expressed during the public enquiry (C. envir., art. R. 212-41).

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

For several years now in France, there has been a climate of increasing threats against environmentalists[340], not only associations[341] but also journalists[342] and academics[343]. The case of a

[337] See also the order of 3 October 2018 relatif aux modalités de participation du public pour l'élaboration et la mise à jour des schémas directeurs d'aménagement et de gestion des eaux (JORF of 27 October 2018).
[338] https://www.eaufrance.fr/
[339] J.-L. GAZZANIGA, X. LARROUY-CASTERA, J.-P. OURLIAC, Le droit de l'eau, op.cit., p. 212.
[340] M. PRIEUR et al., Droit de l'environnement, op.cit., § 224.
[341] B. DROBENKO, « Enquêtes sur des acteurs de la protection de l'environnement, Déméter trahie », Revue des droits et libertés fondamentaux, 2020, chron. n° 50 (paper initially published on the French Society for Environmental Law website, https://www-sfde.u-strasbg.fr/activites/tribune/page:2).
[342] See https://reporterre.net/En-Bretagne-la-liberte-d-informer-sur-l-agroalimentaire-est-menacee.
[343] See relating to « SLAPP suits » against academics, and especially environmental lawyers : G. J. Martin, « Doctrine ? Vous avez dit doctrine ? Qu'elle se taise ! », Revue juridique de l'environnement 2017, p. 9 ; « Doctrine ? Vous avez dit doctrine ? Qu'elle s'exprime ! », Revue juridique de l'environnement 2017, p. 613.

violation of the rights and freedoms of water defenders, reported here because of the media and legal attention it has received, is part of this more general context, which should be borne in mind.
Following protests and violence surrounding a proposed agricultural 'megabasin' at Sainte-Soline (Deux-Sèvres department) at the end of 2022 and the beginning of 2023, the Government decided to dissolve one of the protest movements: the 'Soulèvements de la Terre'. Les Soulèvements de la Terre is not an officially registered association, but a simple "groupement de fait" under French law. The group was set up at the end of January 2021 to "fight against concrete development, artificialization and land grabbing, with a view to protecting food-producing land, water and other natural resources"[344]. The "Soulèvements de la terre" group was dissolved by decree on 21 June 2023[345]. The decree is based on article L. 212-1 of the French Internal Security Code, which provides for the dissolution of de facto associations or groups "that provoke armed demonstrations or violent acts against people or property". The decree dissolving Soulèvements de la Terre states that "under the guise of defending environmental conservation and presenting itself as a militant movement, this group incites sabotage and damage to property, including through violence (...)".
When Soulèvements de la Terre appealed to the Council of State, it first suspended enforcement of the dissolution decree[346], then annulled it on the merits[347]. In its review, it weighed up the seriousness of the infringement of freedom of association caused by the dissolution against the seriousness of the public order disturbances likely to be caused by the collective. Following this balancing exercise, the Council of State found that the dissolution measure was disproportionate to the seriousness of the public order disturbances likely to be caused (Soulèvements de la Terre was responsible for provoking violence against property, but its scope was limited).
In conclusion, it should be noted that, in his position paper on state repression of environmental protests and civil disobedience, the United Nations Special Rapporteur on Environmental Defenders (under the Aarhus Convention) expressly cites the dissolution of Soulèvements de la Terre as an example of the criminalisation of certain environmental movements in Europe[348].

[344] https://lessoulevementsdelaterre.org/
[345] JORF of 22 June 2023, text n° 15.
[346] CE ord., 11 August 2023, Les Soulèvements de la Terre, n° 476385 : Actualité Juridique Droit Administratif 2023, p. 1529.
[347] CE, 9 November 2023, Les Soulèvements de la Terre, n° 476384 : La Semaine juridique administration et collectivités territoriales, 8 avril 2024, n° 2099, note J.-S. Boda.
[348] M. FORST, State repression of environmental protest and civil disobedience : a major threat to human rights and democracy, position paper, February 2024, p. 15.

Germany

Bernhard Wegener & Gerd Winter

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law ?

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

In Germany, water is traditionally and legally regarded as a common good.
Its use beyond common use (Gemeingebrauch[349]) regularly requires official authorisation, to which - unlike in other areas of environmental law - there is generally no entitlement.
The management of water resources is largely in the hands of public authorities. The public water supply is seen as the responsibility of local authorities and as part of public services of general interest („Daseinsvorsorge“). There are around 6000 municipal water companies.
Germany was (and still is) one of the main critics of all European tendencies towards privatisation of the public water management. With the exception of the small liberal party FDP, all other political parties are against the privatisation of water management.
Accordingly, the public water management and supply in Germany is only entrusted to private companies in very exceptional cases, and even then only partially. In recent years, the already very low level of partial privatisation of the public water supply in Germany has tended to decline. Instead, a trend towards complete remunicipalisation of the water management can be observed. The development of the water supply system in Berlin is an example of this. Here, a minority share of the water company was initially sold to private investors (RWE/Veolia) in 1999. Following successful citizens' initiatives against this, the state of Berlin bought back the minority shares in full by 2013.

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

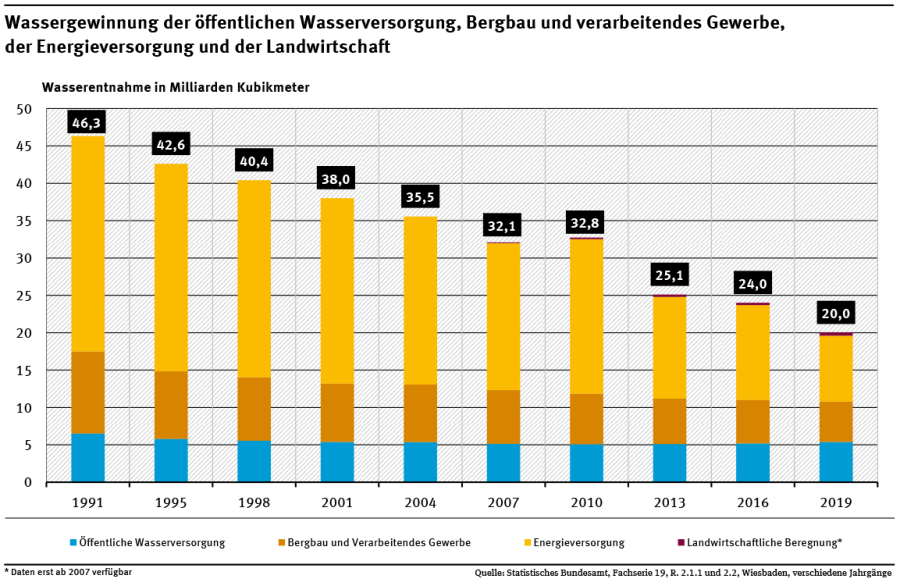
3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

4- How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?

In the current climatic situation, Germany is a water-rich country by international standards. The average natural water supply of almost 180 billion cubic metres exceeds the total water withdrawal

[349] Land legislation defines this as extraction of small quantities for gardening purposes. Introduction into waters of substances is not permitted.

of around 20 billion cubic metres many times over. In addition, total water consumption in Germany has fallen sharply since 1991. It more than halved between 1991 and 2019 (see below).



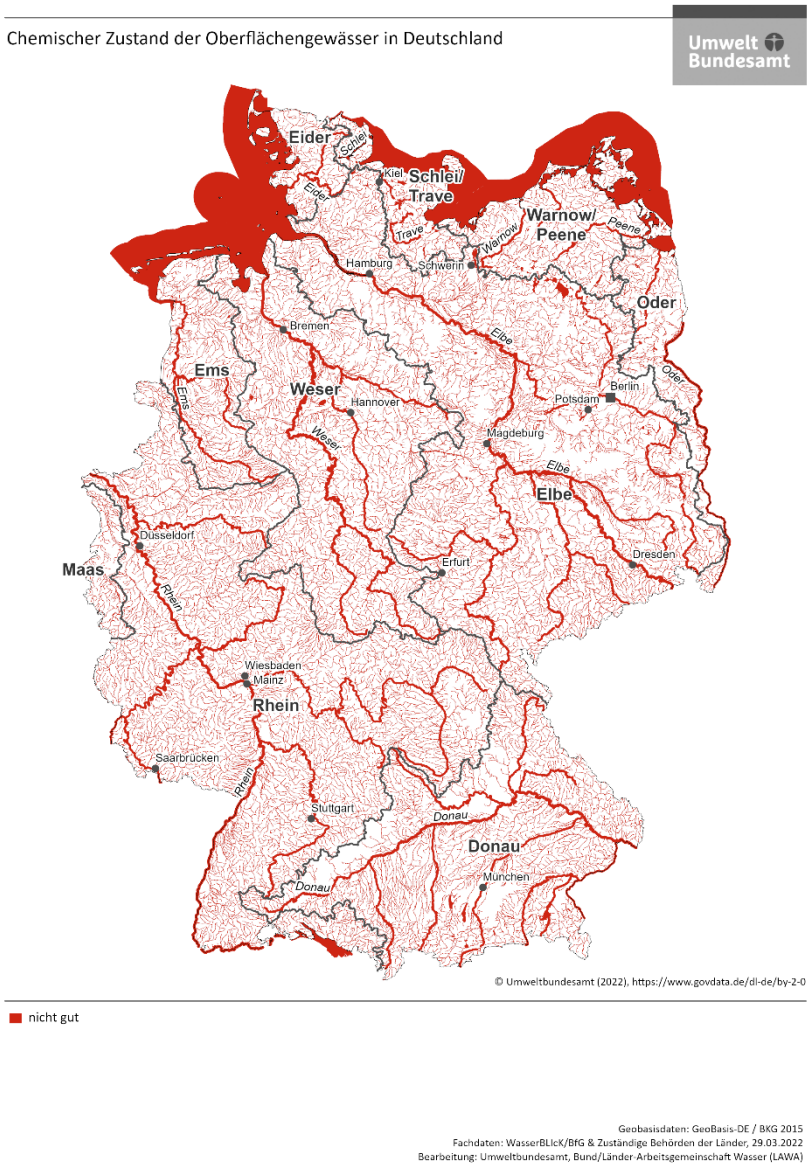
In the last few years of relatively low precipitation, there has been widespread public discussion about the possible threat of water shortages or drought in Germany as a result of climate change. Due to last year's very rainy weather, this discussion has receded into the background again despite some not inconsiderable damage, particularly in conifer cultivation.
Germany has consistently supported the international resolutions on the human right to water and sanitation. German constitutional law does not contain an explicit constitutional right to this effect. However, the right to water and sanitation is regarded as part of a right to a minimum subsistence level derived from the fundamental right to life and physical integrity (Art. 2 GG) and as a right derived from human dignity (Art. 1 GG).
The German debate on potential deficits in the area of the human right to water focusses on more marginal issues such as the number of publicly available drinking water fountains in pedestrian areas in city centres.
The international debate on the rights of rivers or aquatic ecosystems - which, from a German perspective, originates primarily from the Latin American context - has so far received comparatively little attention in Germany. It is rejected by parts of the legal community as superfluous and esoteric. According to the majority understanding, it serves to improve the enforcement of ecological protection claims, which in the German and European context are more likely to be achieved through the means of fiduciary representative action by NGOs under the pretext of the Aarhus-Convention.

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

♣ INTEGRATED WATER MANAGEMENT

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions? We invite you to focus on the most relevant topic in your country.

Actually hardly any surface water in Germany has a good or high status. This is a complete failure considering that according to Art. 4 Dir 2000/60 a good surface water status or (for heavily modified bodies of water, at least good ecological potential and good chemical status) was to be achieved by 2015.



The tools to this effect include, as is well known, the **non-deterioration and enhancement/restoration requirements** and a broad range of more concrete measures that could be grouped as planning/programming, regulation/pricing of direct impacts on water bodies (emissions, dredging, construction work etc) and regulation of indirect impacts (fertilizers, pesticides, chemicals, air pollution, agricultural subsidies etc).

As for the **non-deterioration and improvement obligations** (Art. 4 Dir 2000/60) the ECJ has, as equally well known, decided that they are **not just policy objectives but legal requirements**, that deterioration already exists if one component of the water quality is degraded without the entire water body falling to a lower grade, and that if the component has already the lowest grade it may not be further deteriorated. (ECJ C-461/13)

The German Federal Administrative Court (BVerwG)[350] who had initiated the ECJ judgment of course followed the guidance but ruled on some more related issues. The case concerned the deepening of the river Weser for enabling navigation of vessels with deeper draught, with three staged depths upstream from the outer Weser to Bremerhaven port, from there to Brake port and finally from Brake Bremen port. While the water body as an entirety was not degraded – which after the ECJ decision was not sufficient to declare non-deterioration - the competent administrative authority did have a look at different quality components but found the deterioration not to be significant. The Court responded that the authority had not based this assessment on technical expertise. This means in more general terms that the evaluation of a deterioration is not just a matter of rule of thumb. Further, the court also went into the **derogation clause** the authority had also relied on. It said that before derogation is addressed it must carefully be examined what kind and grade of deterioration is to be expected and how it could be prevented. On the other hand, for a derogation it is not necessary that the project was included in a river basin management plan. For the weighing up of pro and contra interests the authority had worked out an overall assessment of the entire project but the court said that the three staged river courses had to be evaluated in separation. This means that the different weight of interests of the three ports should be taken into consideration. In conclusion, the court did not quash the plan approval but declared it unlawful entailing the possibility of curing the failures by additional assessment. However, due to ongoing political discussions no legalisation initiative was not undertaken so far. A new initiative may be started soon.

The BVerwG also ruled on the relationship between non-deterioration and **improvement**. It said that both requirements are to be separated from each other. If a project may cause a deterioration it must first be determined whether the deterioration is really to be expected and unavoidable. If we understand this correctly this means: Only if no deterioration is to be expected then the improvement obligation takes place.

While the ECJ-principles of determining deterioration were designed to be applicable to all quality elements additional case law of the ECJ and BVerwG has emerged for the **chemical elements**, as applied to **groundwater**. The case concerned the plan approval of the construction of a highway close to the city of Ummeln in NorthRhine-Westfalia that had authorised the introduction into surface water and groundwater of rain water running from the highway. Owners of adjacent property who lawfully extracted groundwater challenged the approval. Dir 2000/60 is applicable with specifications of the quality criteria by the Groundwater Directive 2006/118 which consist of EU standards (50mg/l for nitrates and 0,1 microgr/l for individual pesticides and 0,5 microgr/l total pesticides), and of any further standards the MS were required to establish (Annex 1 Dir 2006/118). Upon referral of the BVerwG the ECJ ruled "that, first, the exceedance of at least one of the quality standards or threshold values referred to in Article 3(1) of Directive 2006/118/EC (…) and, secondly, a foreseeable increase in the concentration of a pollutant when the threshold set for that pollutant has already been exceeded must be regarded as a deterioration of the chemical status of a body of groundwater as a result of a project." The BVerwG applied this ruling in the case finding deterioration to exist. Once again it did not quash the plan approval but allowed to cure the mistake by subsequent assessment or compliance measures. As an aside according to both the ECJ and BVerwG locus standi was granted to those persons who extracted groundwater, but not to the general drinking water consumers.

I wonder, by the way, why the Court did not simply require that the threshold values set on the basis of the Groundwater Directive are to be respected as such, rather than only via the classification of

[350] Case 7 A 1.15 of 11.08.2016, BVerwGE 156, 20.

the groundwater body. After all, the plan approval authority must apply any binding standard notwithstanding the quality status of a water body.[351]

A further step was taken by the BVerwG, but without referral to the ECJ, concerning the regime for **heavily modified bodies of water (BVerwGE 158, 1)**. The case concerned the deepening of the river Elbe from its mouth to the port of Hamburg. As a matter of fact the ecological quality of the river was expected to deteriorate. But was that deterioration in the legal sense? The court argued that for heavily modified bodies – as was the Elbe – deterioration is not to be measured against the factual situation but against the **ecological potential** which it found not to be deteriorated. This is hardly defensible because the ecological potential is applied as criterion only in relation to improvement obligations (see Art. 4 (1.) (a) (iii) Dir 2000/60). I believe the issue which has enormous consequences should have been referred to the ECJ. The BVerwG also examined the improvement obligation. It ruled that the administrative authorities enjoy a broad margin of appreciation in that respect. They are guided by the river catchment management programme. As the existing programme did not specify relevant measures the authority was free to choose its own approach, apparently including not to do anything.

In a more general perspective, all of the large German rivers discharging in the North Sea (Ems, Weser, Elbe) are under high pressure to be turned into dead muddy channels serving coastal and inland ports and ship-building industry. One obvious solution would be an enhanced cooperation between the competing ports of Wilhelmshaven, Bremerhaven and Hamburg, including also ports in other MS such as Rotterdam and Antwerp. This has always been difficult due to competition of ports and states behind them. But this also raises legal questions, including whether the testing of alternatives provided by Art. 4 (7)d) Dir 2000/60 can be extended to more basic solutions that clearly are "significantly better environmental options", such as the concentration of giant container ships on only a few ports. Such enlarged consideration of alternatives has always been rejected by German courts, including in the Weser case (BVerwGE 156, 20, paras 139-140) and more recently by the river Elbe case (BVerwGE 158, 1, paras 409-416), based on the distinction between alternatives within a project and alternatives of projects. But is that the only possible interpretation of alternatives?

On **programmes of management and river basin management plans**: they have different content the plans putting together facts and targets and the programmes measures to be taken. We discussed by e-mail how detailed they are and must be. It seems that they are rather general the programmes allowing for more detailed measures as supplementary measures. I pointed to the example of the Bremen contribution to the overall programme and plan for the entire Weser catchment area, the Bremen contribution going much into details and the overall programme only listing the number of measures envisaged. The management programme for the entire catchment area shows that the concrete measures are just compiled and put together in tables. For the more concrete level the larger Laender probably have either additional specific management programmes or use tools on a more concrete level of planning.

The legal status of plans and programmes in Germany is that they are regarded as what is called inner-administrative guidelines that are not "externally" binding for the citizens. They nevertheless are to be respected by administrative agencies when licensing water uses, such as for water construction work, extractions from a surface or ground water, and discharge of pollutants into a water.

[351] I also would like to know if the practice of German courts to allow for a curing of an established illegality is also common in other MS.

In more general terms one could have doubts (but I am not sufficient expert to judge) whether the **planning and programming approach** of the Water Framework Directive has held its promises. It was designed to approach water quality from a comprehensive perspective on direct and indirect adverse impacts on water. It seems that at the end it has rather become a paper tiger. It does not help much to set targets the implementation of which is not sanctioned, repeat the different legal bases relevant for water protection which are already laid out in various laws, and put lists of measures together without specifying them. It appears that the music plays on the more concrete levels that regulate the different impacts on water quality. Concerning chemical pollution core is I believe to control emissions of hazardous substances. As Ludwig describes it in his EU Env. Law Book the original Community approach to harmonise emission standards was given up under UK influence to rather set water quality standards. But even those have been slowly and only partly been introduced and anyway not adequately enforced. It is therefore crucial to look at initiatives on the MS. In Germany, for example, there is a waste water regulation that sets emission standards for a high number of sectoral polluters. It is difficult to assess if they really mirror best technologies. Maybe there are reports comparing standards of other MS or even a new initiative on the EU level of the sort of BREFs under Dir 2010/75.

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management? Please focus on the most illustrative example either in relation to the Floods Directive or the Water Reuse Regulation or national/local measures concerning water stress and/or droughts which could inspire a future EU Law framework.

The focus of water law in Germany is on the quality of water. There is not much attention yet to water distribution in drought and water scarcity situations. The legal basis is that any major extraction of ground water needs prior authorisation. The competent authority has discretion (Bewirtschaftungsermessen) to prioritise most important uses. The same is true for the distribution of water by public water services. I am not aware of an elaborate study on criteria of prioritary need and their human rights dimension, especially the equal treatment aspect.

A major case concerning allocation of scarce water resources is the construction of a huge factory of Tesla for the construction of e-automobiles in Grünheide/Brandenburg. The Wasserverband serving, inter alia, the Grünheide area , a corporation under public law of the served cities and districts, had applied for enlargement of its groundwater extraction allowance to cover the additional supply. The authorisation was provided by the competent Land authority, Landesamt für Umwelt. Two environmental NGOs filed action at the administrative court Frankfurt/Oder submitting that they were not heard, no EIA was made, and the scarce groundwater resources would be overexploited at the risk of drying out of nature protected areas. The court dismissed the action concerning the EIA and the overexploitation issues but held that the NGOs were not adequately heard declaring that the authorisation was procedurally unlawful but could be legalised by subsequent procedure (Verwaltungsgericht Frankfurt/Oder 5 K 469/21, 04.03.2022, ECLI:DE:VGFRANK:2022:0304.5K469.21.00) . Concerning the issue of overexploitation the court looked at the ratio of extraction and replenishing of the ground water body finding that there was no risk of depletion of the stock. Interestingly, the court dismissed the submission of applicants that the increase in drought periods due to climate change should be factored in.

Concerning re-use it seems that the related actors are in the process of implementing the requirements of the Reuse regulation. The water the factory claimed to amount to 1,2 million cbm/a was to be provided by the water service authority. It's probably too early to assess whether that has been successful.

More attention has been paid to flooding. Since last autumn Germany was suffering from permanent and heavy rainfalls that led to overflooding of vast low-lying land areas. Sometimes dikes were at risk to break down. Streams became torrents flooding the Ahr-Valley and destroying settlements. In addition, there is concern about the rising sea level. In reaction the traditional approach still predominates the public discussion and politics, namely the construction of ever higher dikes. The law has various provisions aiming at reserving areas for intentional flooding but they are difficult to implement when disallowing the construction of buildings. This is particularly problematic if already existing buildings shall be removed or be guarded against flooding. More questions arise concerning insurance when basements are flooded. See as a detailed study about legal problems of intentional retreat of settlements Linda Schumacher, The law of coastal adaptation. Insights from Germany and New Zealand, Springer 2020, a dissertation written under my supervision.

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

Water services, including the provision fresh water and the removals and treatment of waste water, must of course be paid by consumers. The price is per cubic meter received water irrespective of social concerns. The social dimension is taken care of by social payment schemes.

In addition, Laender legislation foresees the payment of fees per cubic meter of larger amounts of extracted groundwater for industrial or commercial purposes.

Further, for the introduction of waste water into recipient waters a charge is to be paid that is calculated according to the load of polluting substances. The rationale has since long been controversial: is it in order to cover rehabilitation costs (but how to count them?) Is it compensation for environmental damage (but how to monetarise that?), is it in order to incentivise polluters to reduce emissions (but how to measure effects?), how does it relate to and overlap with regulatory tools such as BAT standards and emission limits?

Finally, strict liability for damage caused to water bodies has been an old measure to reflect the polluter pays principle, but cases of application in practise are rare. The same is true with the more elaborate tools of liability for environmental damage following the Environmental Liability Directive.

♣ WATER BIODIVERSITY

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country? Please provide examples of success / failure of integration in particular cases if relevant.

In the above cases on river deepening the BVerwG spent many pages also on the nature protection concerns as FFH areas were affected. The court stated that the question of habitat deterioration is more sensible than the rougher concept of deterioration of the WFD (BVerwGE 158, 1 para 458). I am not sure that is well grounded. When it comes to the derogation stage the Court does not see much difference between the components of weighing interests and testing alternatives.

9-Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favour of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?

I don't see any more specific provision than the general improvement obligation.

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn ? Please feel free to answer this question only if you have a concrete example (successful or not) to share.

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake ?

In contrast to the pan-European trend reported in the Questionnaire, water consumption in Germany has not increased. On the contrary, it has fallen by more than half over the last thirty years (see the graph above).

This is primarily due to savings in the area of energy production and secondly in the area of industry. In contrast, water consumption by private households has only fallen slightly. Agricultural consumption (which plays only a very minor role in Germany due to the abundance of natural precipitation), on the other hand, has increased slightly.

Conflicts regarding the adequate supply of water are therefore rare. In most cases, they relate solely to comparatively minor local supply issues or - to a greater extent - to issues of ensuring sufficient quality, particularly of the drinking water supply. In Germany, too, the latter problem is primarily caused by the input of pollutants (nitrate/pesticides) from agriculture.

Overall, the water situation in Germany differs fundamentally from the situation in other EU member states and also from the EU average.

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation?

To my knowledge, there is no substantial experience with changes in water management or (citizen) participation in water law. The river basin approach contained in the WFD has only led to comparatively minor administrative adjustments. In particular, water riparians in the lower reaches of rivers still feel that their ability to influence the behaviour of water users in the upper reaches of rivers is inadequate.

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

As far as I know, there are no such problems in Germany.

Hungary

Gyula Bándi

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law?

Yes, the Water Framework Directive has broadened the legal definition of water. Prior to the Directive, the legal protection of water in Hungary was primarily quantitative. The entry into force of the Directive has been a major step forward in the development of legislation on the protection of water quality.
In addition, this legal harmonization introduced a unified approach to the protection of water, i.e. the protection of water as an environmental element and water-related (protected) areas designated in legislation or administrative decisions. It was also at this time that the Water Management Act introduced the requirement that groundwater may only be used to the extent that the balance between abstraction and recharge is maintained without damaging the quality and that the requirements under specific legislation to ensure the achievement of good water status objectives are met (Article 15).

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

During the 2023 amendment of the Act LVII of 1995 on Water Management (Vgtv.), the legislator changed the authorisation system of the Vgtv., which also serves the protection of groundwater resources and the drinking water base, and replaced it with a system whereby the establishment and operation of certain wells is subject to notification instead of the previous authorisation, or even none at all. According to my opinion, the legislative provisions adopted have changed the right to a healthy environment and the guarantee conditions for access to healthy drinking water.
Regarding the disputed provisions, there is currently a procedure in progress before the Constitutional Court, as the body had previously annulled a regulatory solution with the same content, among other things, with regard to the protection of the interests of future generations.
In this context, the Constitutional Court, in its Decision No 13/2018 (IX. 4.), explained that the legislation which allows the termination of the prior authorisation procedure, even for a specific limited category of abstractions, and instead seeks to ensure the preservation of the quantity and quality of groundwater through ex-post control by the authorities, constitutes a step backwards from the level of protection already achieved, hence violates the constitutional principle of non-regression.

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

Questions

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

Hungary formally mentions access to drinking water in its highest internal source of law, the Fundamental Law, under the heading of Freedom and Responsibility, in Article XX (2) on the fundamental right to physical and mental health. This right was recognised in 2011.
Article XX of the Fundamental Law reads as follows:
„(1) Everyone shall have the right to physical and mental health.
(2) Hungary shall promote the effective implementation of the right referred to in paragraph (1) through agriculture free of genetically modified organisms, by ensuring access to healthy food and drinking water, by organising safety at work and healthcare provision and by supporting sports and regular physical exercise as well as by ensuring the protection of the environment."

Article XX (2) of the Fundamental Law mentions the protection of the environment among the protection of institutions. According to the domestic interpretation of the law - in the light of the UN General Assembly resolution of 28 July 2010 (The Human right to water and sanitation (A/RES/64/292)) - the collection and treatment of wastewater related to sanitation is indirectly reflected through this.
According to the Constitutional Court's decision[352], "the State has a duty to ensure that everyone has access to drinking water of sufficient quantity and quality. The State fulfils this obligation primarily through water utility providers.
The Vgtv. sets out the principles for the management of water resources, stating, among other things, that groundwater may be used only to the extent that the balance between extraction and recharge is maintained without damaging the quality of the water, taking into account the provisions of this Act, and that the requirements of specific legislation to ensure the achievement of good water status objectives are met.[353]
If water restrictions are imposed in Hungary, e.g. during periods of low rainfall, and the amount of water available is not sufficient to meet all water needs, the Vgtv. sets out the order in which water needs are to be met.[354]

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[352] Decision 3196/2020 (11.VI.) AB, paragraphs [9]-[12].
[353] Article 15. (2) of Vgtv.: In view of the protection of the quantity and quality of available water resources as well, the water demand may be primarily met from the water resources not yet committed for water use.
Article 15. (3) of Vgtv.: When using mineral, thermal, and medicinal water resources, the uses by therapeutics and convalescence recreation shall be preferred.
[354] Article 15 (4) The order of satisfying water demand, taking into consideration the contents of subsections (1) to (3) as well, shall be the following:
water uses aimed at
a) subsistence drinking, public health, and emergency response to disasters,
b) therapeutics, as well as production and service activities serving directly the supply of the population,
c) livestock watering, fish farming,
d) nature conservation,
e) irrigation,
f) economic activities,

In the domestic legal system, the Government Decree 5/2023 (I. 12.) on the quality requirements for drinking water and the monitoring protocol serves to comply with the Drinking Water Directive 2020/2184/EU.

4- How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?

In its Decision No 13/2018 (IX. 4.), the Constitutional Court made a number of relevant statements in the context of groundwater resources. According to these, groundwater resources, as a natural resource, are a ""limited resource"" with limited capacity for renewal, and without responsible water resource management, the sustainability of water resources will be threatened. It is justified to have a unified management of water resources, which only the state can provide. The task of water resource management is to ensure that justified water needs are met safely and without endangering the protection of the quantity and quality of water and the sustainability of groundwater ecosystems.

A good practical example of taking into account the needs of ecosystems is the establishment of the water level of Lake Tisza, which tries to reconcile different water needs (e.g. water management, nature conservation, fishermen, etc.). The water level of Lake Tisza is always a matter of debate depending on the definition of the target. It has been a long-standing practice for the managing authority to convene a stakeholder meeting, and to indicate in the invitation the expected date, water level and timing of the winter water level adjustment. At the meeting, everyone can express their interests and, in accordance with these interests, their needs in relation to the planned intervention. [355]

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

♣ INTEGRATED WATER MANAGEMENT

Questions

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions? We invite you to focus on the most relevant topic in your country.

The large number of diffuse and point sources is the main difficulty in Hungary. This problem is addressed by the existing authorisation system, the application of controls and the application of sanctions in case of non-compliance with the relevant legislation. The aim is to ensure the implementation of the related EU directives (WFD, waste water, drinking water, nitrates), including the implementation of the relevant measures of the River Basin Management Plan, and to ensure an appropriate legal framework for water quality remediation. The Environmental Liability Directive 2004/35/EC (ELD) contains a separate regulatory regime for the remediation of water damage.[356]

This problem is addressed by the legislation establishing the limit values: e.g. Decree No. 10 of 2010 (VIII. 18.) of the Ministry of Rural Development providing limit values for water pollutants in surface

g) other activities (like ones aimed at sports, recreation, vacation, bathing, and tourism).

[355] https://kotikovizig.hu/doksik/tisza_tavi_kodex/tiszatavikodex.pdf

[356] National Water Strategy - Jenő Kvassay Plan Page 73

waters and rules of application and Decree No. 220 of 2004 (VII. 21.) of the Government providing rules on the protection of surface waters quality.

In Hungary a water quality problem may arise by the fact that there is no legislative measure upon which the competent authority could establish the limit value for the NMP concentration of the discharged wastewater in the licensing procedures related to the production of Li-ion based batteries. This might lead to divergent jurisprudence, also to the establishment of inadequate limit values in individual cases causing a threat to water quality.

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management? Please focus on the most illustrative example either in relation to the Floods Directive or the Water Reuse Regulation or national/local measures concerning water stress and/or droughts which could inspire a future EU Law framework.

The major problem in our country is that, overall, more water is leaving our borders than is coming in. In addition, groundwater levels are falling, and streams, rivers, small lakes, and reservoirs are drying up. There is a need to develop water management adapted to climate change and changing conditions. In the past, also in the context of protection against flash floods, the main goal was to drain the falling water and not to keep it in place, which must be fundamentally transformed, both in attitude and in practice.

This situation is complicated by the above-mentioned amendment to the legislation, which changed the authorisation system for wells. If there are no accurate official records of water exceptions, the water management balance is distorted, and the data given do not reflect reality.

In order to be able to improve the quantitative status of groundwater - especially in the case of shallow aquifers - in addition to stricter regulation of water use, we must place greater emphasis on the planning and implementation of climate adaptation measures, as well as the development of systems supporting natural and artificial water retention and water replacement.

Solving the overall problems is the most important, as their impact is horizontal and has a beneficial effect on the state of each water body category. In the past period, risk management, prevention and adaptation have come to the fore in the protection against water damage. The Government adopted the National Flood Risk Management Plan for Hungary by Government Decision 1146/2016 (25.III.), which also deals with inland water risk management. In Hungary, the damage caused by water scarcity and drought significantly exceeds the damage caused by inland water. Climate change is increasing the frequency of droughts and the extent of damage, which requires solutions not only in the water management field. The "Climate Adaptation and Risk Assessment Handbook for the Danube macro-region" was prepared in 2014 within the framework of an international project (SEERISK), led by the Directorate General of the Ministry of Interior. However, no drought strategy and drought risk management action plan has been adopted so far, which has been subject to an impact assessment and sustainability analysis.[357]

Success stories:

https://vizmegtartomegoldasok.bm.hu/hu

[357] Hungary's third river basin management plan: Page 433

In the LIFE MICACC project (vizmegtartomegoldasok.bm.hu), implemented with the participation of WWF Hungary and coordinated by the Ministry of Interior between 2017-2021, we tested solutions to various problems caused by climate change by applying natural water retention solutions in 5 small Hungarian villages with different problems.

1. Bátya –Renewal of inland rainfall management by retention of rainwater in a multi-level wetland created from an old, neglected material storage facility;
2. Püspökszilágy –Reducing the risk of flash floods in hilly areas by slowing down runoff using leaky log dams and lateral storage, with an integrated watershed-level water management approach;
3. Rákócziújfalu – Municipal inland water storage for water retention (later rainwater storage) and drought risk management, and the closure of an existing inland water channel to be used for water retention instead of water drainage;
4. Ruzsa – Ground water refill in the Homokhátság by retaining and infiltrating municipal greywater in multi-basin small ponds and solving the problem of canal closure;
5. Tiszatarján – Tiszatarján - Water retention in restored floodplain wetlands for sustainable, complex floodplain management and grazing, and ecotourism development (Water Buffalo Nature Trail).[358]

A good example of water retention is the operation of the Beregi reservoir:

https://wwf.hu/a-beregben-elebe-mennek-az-aszalynak-igy-tartjak-meg-az-arhullammal-erkezo-vizet/

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

One of the instruments for regulating the management of water resources is the water resources fee, the rules for which are laid down in Article 15 of the Vgtv. The Vgtv. allows for a wide range of exemptions from the payment of the water resources fee, especially for agricultural use. There may be concern that this regulation may encourage groundwater irrigation more than water conservation and the promotion of alternative water sources.

To assess the affordability of water utility services, total gross household water expenditure is compared to net household income. The VAT rate for water utility services in Hungary is currently 27%, which is high by European standards.
Based on data from MEKH and KSH, total water-related expenditure per household is estimated at 54-55 eFt/year on average, which is 1.65% of average net household income in 2018.

The long-esteblished fee subsidy system still operates, where the state provides fee subsidies to residential users based on applications submitted by local governments in those settlements where the costs of the water utility service are higher than a certain threshold value. This system of tariff subsidies does the not enforce the principle of need, it ensures the lower fee for all residents in the

[358] https://wwf.hu/onkormanyzati-egyuttmukodes/termeszetes-vizmegtarto-megoldasok/

high-cost service area, regardless of social status. It also does not encourage more cost-saving and efficient operation.[359]
There is also the possibility of municipal fee compensation: many municipalities use a system of fee compensation, i.e. they typically keep the fee at a maximum level below the costs, taking into account social aspects.[360]
In Hungary, after July 1, 2013, the amount per service unit to be paid by residential users (including the basic fee) decreased by 10% compared to the prices in force on January 31, 2013. The so-called fee income lost due to overhead reduction was 3.8% of the 2013 income, so it had a significant impact on cost recovery. The utility tax and the income tax of the energy service providers had an even more significant impact on the management of the water utility service providers, which in total accounted for 6.6% of the fee income.[361]
In addition, one of the most serious problems of the sector is the continuous postponement of reconstruction investments and the use of public utility assets.[362] The current condition of the devices determines not only the maintenance costs, but also the production costs (here water production/treatment and wastewater treatment), the increase in water loss is clearly related to the technical condition of the water facilities.[363]

In the Hungarian water utility service, the discrepancy between affordable tariffs and the cost of high quality service has so far been unresolved.

♣ WATER BIODIVERSITY

Questions

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country? Please provide examples of success / failure of integration in particular cases if relevant.

Yes, it certainly helped in several cases.

For example, following the national publication of legislation on Natura 2000 sites, water management authorisations for watercourses (rivers, streams, canals, etc.) designated as Natura 2000 sites had to be reviewed and, where necessary, amended to comply with the Birds and Habitats Directives and the national legislation that published them. In addition, new water authorisations for Natura 2000 sites had to take into account the conservation objectives of Natura 2000 sites.[364]

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[359] Hungary's second river basin management plan: Page 30
[360] Hungary's third river basin management plan.
[361] Hungary's second river basin management plan: Page 28
[362] Hungary's third river basin management plan: Page 265
[363] Hungary's third river basin management plan: Page 267
[364] Government Decree 72/1996 (V. 22.) on the exercise of water management authority, Section 5 is supplemented by the following paragraphs (10)-(11):
„(10) A water permit for the operation, maintenance, restoration or prevention of damage necessary to ensure the discharge of water without causing damage may be granted for a period of 5 years, in accordance with the provisions on water establishment permits, in large water bodies, riparian zones, waterways and areas threatened by watercourses and watercourses of watercourses in Natura 2000 areas not classified as protected natural areas, after an assessment of the impact on the conservation status of the species or habitat types on which the Natura 2000 site is based. In the course of the procedure, the Authority will obtain the opinion of the body responsible for nature conservation management.
(11) The authorisation pursuant to paragraph (10) shall provide for

9-**Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?**

There are no specific legal requirements for the restoration of aquatic ecosystems, but in general there are several sectoral requirements for the restoration of environmental and natural systems, including aquatic ecosystems.

Current environmental protection and nature conservation legislation primarily requires the restoration of the damaged environment and nature in the case of illegal activities, the detailed provisions on this are contained in Act LIII of 1995 on the General Rules for the Protection of the Environment (Kvt.), Act LIII of 1996 on the Protection of Nature (Tvt.) and its implementing regulations (e.g.: Government Decree 90/2007 (IV. 26.), Government Decree 91/2007 (IV. 26.), Government Decree 92/2007 (IV. 26.))[365]

In addition, Tvt. and Kvt. generally makes the restoration of the environment and nature the responsibility of everyone (state, legal and private individuals).[366] For example, the task of the state is in particular to manage the use of the environment, its protection, the prevention of its damage, the elimination of its endangerment, its restoration, and the gradual improvement of its condition. Pursuant to Article 56(1)(c) of Kvt., the central budget shall finance the costs of measures to prevent environmental damage and of restoration measures in cases where they cannot be charged to another party.

In accordance with the Fundamental Law, the Tvt. imposes an obligation on all natural and legal persons and other organisations to protect natural values and areas. To this purpose, they are obliged to contribute, to the extent that they can be expected to do so, to the prevention of dangerous situations and damage, to the mitigation of damage, to the elimination of its consequences, and to the restoration of the situation before the damage occurred.[367]

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn? Please feel free to answer this question only if you have a concrete example (successful or not) to share.

(a) the rights and obligations relating to operation, maintenance, restoration and damage prevention activities,
(b) the conditions for carrying out the operation, maintenance, restoration and prevention of damage, in particular with regard to the maintenance of the Natura 2000 area; and
(c) the territorial scope and duration of the authorisation."
Government Decree 23/2010 (II. 11.) Section 6 (4) The permits pursuant to Section 5 (10) of Government Decree 72/1996 (V. 22.) on the Exercise of the Authority's Powers in the Field of Water Management shall be reviewed by 31 December 2010. If the water permit procedures have not yet been carried out, they shall be completed by 31 December 2010.

[365] E.g. Kvt. 8. § (2), Tvt. 81. § (1), (3)

[366] E.g. Kvt. 38. §, Tvt. 2. § (2) d)

[367] Tvt. 5. §

The regulatory environment of the current water management framework primarily serves the objectives of protection against water damage and discharge without damage. Water management can be achieved through both grey and green infrastructure development, in the latter case typically using nature-based solutions (e.g. fish ladder development, revitalisation of estuaries, bank protection with wattle, water storage in low-lying grasslands). The domestic regulatory environment neither prohibits nor encourages investment in green infrastructure. To create the regulatory and institutional environment necessary for the deployment of green infrastructure, cross-sectoral coordination and an organisational, institutional and legal framework to facilitate cooperation between sectors would be needed. At present, this type of investment is limited to what is necessary and sufficient and is most often financed by EU funds at project level.

Good examples, pilot projects:

https://networknature.eu/team-hub-term%C3%A9szet-alap%C3%BA-megold%C3%A1sok-magyarorsz%C3%A1gi-h%C3%A1l%C3%B3zata

TeAM HUb is a professional community of organizations and individuals committed to the widespread dissemination of nature-based solutions in Hungary. The aim of TeAM HUb is to provide a forum for the sharing of national and international knowledge, experience and good practices on nature-based solutions, and to encourage dialogue and cooperation between government, municipal, professional and civil actors for the widespread practical application of nature-based solutions.

https://life-climcoop.hu/

Climate change is having a significant impact on freshwater resources, which are seen as a strategic resource for the 21st century, and through them on the green infrastructure of individual regions. The project develop modern/innovative water management methods to protect natural waters used in large quantities by industry and to prevent the more frequent flash floods. In addition, we place great emphasis on protecting existing green infrastructure and creating new green spaces in industrial areas.

https://vizmegtartomegoldasok.bm.hu/hu

The five sample areas are located in settlements in Hungary, where water risks and settlement vulnerability, typical of small settlements in Central-Eastern Europe, are more intense due to climate change. The project aims to address these situations by integrating natural water retention solutions into local water management systems.

https://lifelogos4waters.bm.hu/

Building on the experience and results of the LIFE-MICACC project, which ended in November 2021, the overall objective of the LIFE LOGOS 4 WATERS project is to strengthen the adaptation and coordination capacities of local governments to climate change, to support the calling and efficient use of related funding, and to promote natural water conservation solutions to reduce Hungary's water loss. A further key objective of the project is to encourage the dissemination of more NWRM (Natural Water Retention Measure) good practices at municipal and river basin level, both nationally and internationally, through the sharing of results, coordinated by local authorities.

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

Questions

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake ?

Depending on your national context, you may illustrate these conflicts with Agriculture (agricultural irrigation - the controversial case of metabasins for agriculture) or Energy (hydroelectricity - cooling nuclear power stations) or Tourism (increased tourist numbers - development of new tourism infrastructures) or extension of urban areas.

This includes the definition of the water use hierarchy regulated in the Vgtv.

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

There are none.

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation ?

Yes, the provisions on public participation in the relevant legislation are binding in both legislation and enforcement.

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

The involvement of the public, including professional and civil society organizations, in the drafting of legislation in the water sector is weak and often lacking. Sometimes, only the published legislation can be appealed afterwards. The effectiveness of the institutional system of public authorities has become less effective as a result of continuous reorganization and the disintegration of quantitative and qualitative, uniform water protection. On the one hand, possible court proceedings are also retrospective, and on the other hand, except for the rare cases of successful immediate legal protection, they are not capable of dealing with irreversible processes.

Iceland

Aðalheiður Jóhannsdóttir

General introduction

Some facts relating to water in Iceland and the Icelandic water legislation

Freshwater resources are thought to be abundant in Iceland. The origins of both surface water and groundwater are from precipitation and melting glaciers. Both rivers and lakes support the biodiversity of aquatic life. Icelandic fresh water is generally unpolluted. Some 96% of the drinking water originates from groundwater aquifers, geothermal water is used for space heating and make-up the hot water supply for the largest parts of Icelandic households. Hydropower, 14 larger plants and ~ 100 small ones, and geothermal steam, seven plants, are used for electricity production. Two of the geothermal plants are also providing hot water for the greater capital area.[368] Icelandic water legislation is traditionally private property law based. Water and water rights are directly connected to the land (plot of land). Thus, the landowner controls surface water on the land, and has, with some general restrictions, the right to utilise the water. In the case of groundwater and geothermal resources, the law particularly stipulates the ownership of the landowner of these resources, which, as in the case of surface water, can be utilised with some general restrictions. Rules relating to water quality and protection against pollution etc., belong to public law regulation and may in some instances limit the possibilities of the landowner to utilise water.

EU´s Water Framework Directive and Iceland´s implementation

Directive 2000/60/EC of the European Parliament and the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1) (the WFD), became a part of the EEA-Agreement in 2007.[369] As the incorporation into the EEA took place on 28 September 2007, some adjustments to the WFD were necessary. The most important ones related to the various time limits found in the WFD. The constitutional requirement (ratification of the Icelandic Parliament) was not in order until 1 May 2009. This date is instrumental as it equals the entry into force date in the EU, i.e. 22 December 2000. Accordingly, Iceland´s first water cycle should have begun 1 May 2018 (9 years after 1 May 2009). In line with Article 7 of the EEA-Agreement, the WFD was implemented into the Icelandic legal system with the adoption of the Act on Water Management (AWM) (36/2011), which entered into force 19 April 2011. While the AWM incorporates most of the principles of the WFD into the legal system, the AWM has generally not be followed by either the responsible central authorities or the local authorities. In spide of the EEA date adjustments to the WFD, the first River Basin Management Plan 2022–2027 (RBMP), the Programme of Measures 2022–2027 (PoM), and the Monitoring Plan 2022–2027 (MP) were ratified by the Minister for the Environment, Energy and Climate on 4 April 2022, or almost four years after 1 May 2018. Although the EFTA Surveillance Authority (ESA) has been made aware of the delay, no formal action has yet been taken against Iceland.

[368] https://www.government.is/topics/environment-climate-and-nature-protection/water/ (12 May 2024) and https://www.ni.is/en/geology/water (12 May 2024). https://map.is/os/# (15 May 2024).
[369] Cf. Joint EEA Commission Decision No 125/2007, 28 September 2007.

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law?

The WFD has introduced a few new legal definitions relating to water, such as the terms “artificial water body” and “heavily modified water body”, however, the WFD has not led to the broadening and/or modification of traditional water-related definitions.

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

I am not aware of any legal debates on water as commons or changes in the legal framework relating to the usage of phrase. As a general rule, either water or water rights have been permanently separated for the land right and governed as commons.

♣ RIGHT TO WATER & ECOSYSTEM’S WATER NEEDS

Questions

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

While the Icelandic Parliament has been interested in water related issues and has, e.g. passed a resolution on the necessity of defining water for human consumption as a resource according to law, there is no explicit recognition of the fundamental right to water and sanitation in the law. Moreover, the Drinking Water Directive 2020/2184/EU has not been made part of the EEA-Agreement and is still under scrutiny by the EFTA-states. Therefore, an administrative regulation (536/2001) on Water for Human Consumption implementing, *inter alia*, Directive 98/83/EC, is still in force. Interestingly, among the objectives of the general Water Act (15/2023) is to cover issues relating to the right of the public to utilise water and to ensure access to sufficient and clean water. While this is the objective, the public rights that are legally ensured related to the right to travel on water (rivers and lakes), and to swim and bath in these waters.

4- How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?

Article 1 of the Act on Water Management (AWM) (36/2011) does indeed reflect Article 1 of the WFD. For ensuring water needs of ecosystems the most important tools are the RBMP, PoM, and the MP. In addition, the Act on the Conservation of Lake Þingvallavatn (85/2005) and the Act on the Conservation of Lake Mývatn and the River Laxá (97/2004) have as an objective to ensure the

relevant water ecosystems and their biological diversity. The drawback is that these two Acts are only applicable to two defined lakes and one river in Iceland. The general Water Act (15/1923) does not address the issue. To the best of my knowledge the issue of rights of rivers & aquatic ecosystems have not particularly been debated or has it given rise to citizen experiments or legal recognition.

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

♣ INTEGRATED WATER MANAGEMENT

Questions

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions? We invite you to focus on the most relevant topic in your country.

While water shortage is generally not a problem in Iceland, eutrophication has been identified as a local problem in few places. Moreover, the RBMP 2022–2027 defines some 22 water bodies as "uncertain" of being able to achieve the environmental objective of good water status and good ecological status. Two water bodies have been evaluated as being "in danger" of being able to achieve the environmental objectives. This is, nevertheless, not the whole story. While several artificial water bodies and heavily modified water bodies have been identified, none of them has been formally designated as being falling into these categories. Further, the quantitative status of groundwater aquifers is not yet clear. In spide of this the RBMP does not make use of any of the possible exemptions of the WFD (the possibilities are present in the AWM), which should perhaps have been done. The first exemption according to Article 18 of the AWM (WFD Article 4(7)) was recently awarded concerning one water body of the lover part of the River Þjórsá. However, its legality has now been challenged before the Civil Court of Reykjavík, a case lodged late in April 2024, by, inter alia, a few landowners along the river Þjórsá, arguing its incompatibility with Article 18 of the AWM and the WFD.

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management? Please focus on the most illustrative example either in relation to the Floods Directive or the Water Reuse Regulation or national/local measures concerning water stress and/or droughts which could inspire a future EU Law framework.

Neither the Floods Directive 2007/60/EC or Regulation (EU) 2020/741 on Water Reuse have been made part of the EEA-Agreement and have therefore not been implemented into the legal system.

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

In line with Article 19, cf. Annex II of the AWM, the RBMP should contain a report concerning the principle of recovery of the costs of water services. The RBMP 2022–2027 contains a reference to a

report on the issue from 2011 (Institute of Economic Studies[370]). Moreover, a bill of law containing the principles of Article 9 of the WFD was submitted to Althingi 29 January 2015[371] but was not processed and has not been submitted again.

♣ WATER BIODIVERSITY

Questions

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country? Please provide examples of success / failure of integration in particular cases if relevant.

As the Birds & and Habitats Directive and the Regulation on Invasive Alien Species are not part of the EEA-Agreement there is no obvious integration of water biodiversity into Icelandic water law from this perspective. With the exemption of rules relating to the conservation of salmon and trout, and even though Iceland is a party to the Bern Convention and the Convention on Biological Diversity, it is difficult to find clear references in law where these two issues are tackled together.

9-**Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?**

Article 1 of the Nature Conservation Act (60/2013) contains a general reference to the restoration of ecosystems, however, as the Act only contains traditional nature conservation methods and approaches, the reference is not of much significance. On the other hand, Act on Environmental Liability (55/2012) (implementing Directive 2004/35/EC on Environmental Liability) contains references to the restoration of ecosystems, including water ecosystems.

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn? Please feel free to answer this question only if you have a concrete example (successful or not) to share.

This is difficult to evaluate, however, while existing law is indeed containing several and different kinds of barriers preventing or slowing down the maintenance or restoration of green infrastructure, the general answer would nonetheless be in the affirmative.

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

Questions

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake ?
Depending on your national context, you may illustrate these conflicts with Agriculture (agricultural irrigation - the controversial case of metabasins for agriculture) or Energy (hydroelectricity - cooling

370 https://ust.is/library/Skrar/Atvinnulif/Haf-og-vatn/Vatnatilskipun/Hagfr%c3%a6%c3%b0ileg%20greining%20vatnsnotkunar%202011-C11_04.pdf (16 May 2024).
371 https://www.althingi.is/thingstorf/thingmalalistar-eftir-thingum/ferill/144/511/?ltg=144&mnr=511 (16 May 2024).

nuclear power stations) or Tourism (increased tourist numbers - development of new tourism infrastructures) or extension of urban areas.

Traditional water conflicts are basically solved on the basis of the principles of private property law, which has a strong constitutional protection. I am not aware of any water related conflict that has been resolved on other legal basis.

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

I am not aware of any open debates on the issue; however, legal researchers have drawn attention to the necessity of developing further new forms of water governance, and how important it is to work with concepts such as adaptive management and eliminate and work with and adapt particular barriers found in the legal system to new norms.

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation ?

While the relevant WFD provision (Article 14 basically) is far from being exhaustive, its basics has been followed in Iceland.

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

I am not aware of any such violations. However, several ENGOs have the last few years been active in challenging water related decisions (permitting), and only few weeks ago, the first Article 18 case (WFD Article 4(7)) was lodged before the Civil Court of Reykjavík.

Ireland

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* The law and policy governing water and water services in Ireland is vast and is spread across a range of measures. Detailed treatment and analysis of the relevant law lies beyond the scope of this brief report. What is provided here is mainly a selection of relevant headline points. I have aimed to reflect the position as at 30 June 2024. *I acknowledge and thank Liam Cashman and Sibylle Grohs for invaluable input while I was preparing this report. Responsibility for the content and any errors and omissions is mine.*

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law?

Water law in Ireland is complex and fragmented. Regulation of water and water services is governed by a range of legislative measures including e.g. the Water Supplies Act 1942, the Arterial Drainage Acts 1945 and 1995, the Local Government (Water Pollution) Acts 1977 and1990, the Water Services Acts 2007 to 2022, the Water Environment (Abstractions and Associated Impoundments) Act 2022 and a series of detailed regulations (statutory instruments).[372]

The most significant provisions in Irish law purporting to implement the Water Framework Directive (WFD) include: the European Communities (Water Policy) Regulations 2003 (SI No 722 of 2003); the European Communities Environmental Objectives (Surface Waters) Regulations 2009 (SI No 272 of 2009); the European Communities Environmental Objectives (Groundwater) Regulations2010 (SI No 9 of 2010); the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 (SI No 610 of 2010); the European Union (Water Policy) Regulations 2014 (SI No 350 of 2014); the European Communities Environmental Objective (Surface Waters) (Amendment) Regulations 2022 (SI No 288 of 2022) (amending SI No 272 of 2009) and the Water Environment (Abstractions and Associated Impoundments) Act 2022. The 2003 Regulations and the 2022 Act generally incorporate the definitions used in the WFD.[373]

The WFD created a more extensive legal framework governing water when compared with what existed previously in Ireland. In particular, the WFD applies a unified legal framework to a broad definition of 'water'.

The WFD is not comprehensive on all aspects of water management, however, e.g. it does not

[372] Note that regulations to commence the 2022 Act have not yet been made. The 2022 Act provides for the repeal of the 1942 Act.

[373] Article 2(2) of the 2007 Regulations provides: 'Any word or expression which is used in these Regulations and is also used in the [WFD] has the same meaning as in the [WFD] except where these Regulations provide otherwise.' A similar provision is found in section 2(2) of the 2022 Act. Note that the 2022 Act has not yet been commenced.

deal fully with the microbiological contamination of water abstracted for drinking water purposes. It follows that account must also be taken of the Drinking Water Directive (Directive (EU) 2020/2184) and the Irish implementing regulations – the European Union (Drinking Water) Regulations 2023 (SI No 99 of 2023).

It is notable that EU water legislation pre-dating the WFD (i.e. Ground Water Directive, Drinking Water Directive and Urban Waste Water Treatment Directive) already had a significant impact in Ireland. Rulings of the Court of Justice of the European Union (CJEU) against Ireland over the years have given added 'bite' to these Directives.

The recent decision of the CJEU in Case C-301/22 *Sweetman v An Bord Pleanála, Ireland and the Attorney General* EU:C:2024:347 (25 April 2024), a reference for a preliminary ruling from Ireland, is also noteworthy. Here, the CJEU determined that WFD Article 5(1) and Article 8, read in conjunction with Annexes II and V, must be interpreted as meaning that a lake with a surface area below 0.5 km² is not covered by the obligation to establish its type-specific reference conditions or by the obligation to establish programmes for the monitoring of water status which are laid down in those provisions. The implications of this judgment for smaller water bodies remain to be teased out fully. Butler J in the Court of Appeal summarised the position in the following terms in *Hayes v Environmental Protection Agency* [2024] IECA 162:

> The effect of the judgment might be described as a nil-all draw. The CJEU held that there was in fact no obligation under the WFD to designate a water body of the size of the lake inquestion but, more broadly, that in making a decision regarding the grant of development consent which potentially affected an undesignated water body, the decision maker had to be satisfied that the development would not, by reason of its effect on the lake, cause deterioration of any other designated water body, and that the project was compatible with the programme established under the WFD for the river basin district concerned. Therefore it would seem that non-designation does not deprive a decision maker of jurisdiction to make a decision, but the process must nonetheless take account of factorswhich would be relevant under the WFD.[374]

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

As regards debates on 'Water as Commons', the example of the intense controversy and protests provoked by the introduction of domestic water charges in Ireland in may be of interest.[375]

A new system of charging for domestic water services was introduced in 2014. Prior to this, Ireland had a system of charges for provision of water services by local authorities to *commercial* users but not to *domestic* users. The introduction of domestic water charges was intended as part of a wider overhaul of water services. The plan was to move these services from the responsibilityof local authorities (municipalities) to a new national water utility. To this end, Irish Water was incorporated in 2013 as a semi-state company. Since the commencement of the Water Services (Amendment) Act 2002, Irish Water is now known as *Uisce Éireann*.

[374] Hayes v Environmental Protection Agency [2024] IECA 162 para 76.
[375] 'Irish Water timeline: from March 2011 to July 2018' *Irish Times* 16 July 2018.

From the outset, the move to introduce domestic water charges faced intense opposition, including street protests.[376] One of the main arguments mounted against domestic water charges was that it would be a prelude to privatisation, although this was denied vigorously by the Government. The intensity of the resistance against domestic water charges was such that the Government of the day was forced to back down and abandon domestic water charges in 2016. As things stand, public water supplies and wastewater collection services for domestic users do not attract a charge. Funding for domestic water services must therefore be provided through general taxation. An 'excess use charge' for domestic users is provided for in the Water Services legislation. At the time of writing, however, this charge has not been activated.[377]

The intense resistance to domestic water charges was compared to the earlier, successful resistance to the planned introduction of a licence system for anglers in the 1980s.[378] This is often referred to as the 'rod licence' dispute which ran from 1987-1989. The proposed introduction of a licence system was seen as a step toward regulating the entitlement to access rivers and lakes.

In 2017, a Joint Oireachtas Committee (i.e. a cross-party Parliamentary Committee) supported the idea of a referendum on the issue of water services remaining in public ownership. It considered that 'public ownership should be enshrined in the Constitution as an extra measure of protection against privatisation'.[379] No referendum on this matter has been held to date.

The Water Environment (Abstractions and Associated Impoundments) Act 2022 is a very significant piece of legislation aimed at underpinning more sustainable water resource management.

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

Questions

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

There is no explicit legal recognition of a fundamental right to water and sanitation under Irish law. As outlined in the response to Q2 above, for political reasons domestic users served by publicly-controlled water services are not charged directly for either drinking water or wastewater treatment. These services are funded through general taxation.

Some people living in rural areas must provide their own drinking water (sometimes through what

[376] 'Over 50,000 march in Dublin to protect against water charges' *Irish Times* 11 October 2014.
[377] 'Lack of action on water charges seven years beyond special committee "beyond disappointing"' *Irish Times* 27 May 2024.
[378] 'Comparison to rod licence row in 1980s being played down' *Irish Times* 7 April 2014.
[379] *Report of the Joint Committee on the Future Funding of Domestic Water Services* (April 2017) p6. This report was informed by the earlier report of the Expert Commission on Domestic PublicWater Services, *Report on the Funding of Domestic Public Water Services in Ireland* (November 2016).

are known as 'group' schemes) and must provide for treatment of wastewater (through the use of 'septic tanks'), but there are significant financial supports for this from the State.

Article 21(1) of the European Communities (Drinking Water) Regulations 2023 provides *inter alia* that a water supplier, while taking into account the local, regional and cultural perspectives and circumstances for water distribution, 'shall take the necessary measures to improve or maintain access to water intended for human consumption for all its customers, *in particular for those in vulnerable or marginalised groups*' (emphasis added). See further Article 21(2)-(4) on the specific obligations on *Uisce Éireann*, water suppliers, local authorities and public bodies in this context. These obligations are particularly relevant in the context of the Traveller Community.[380]

There have been two significant rulings against Ireland by the CJEU as regards contaminated drinking water supplies. The first of these concerned Ireland's failure to deal with widespread microbiological contamination: Case C-316/00 *Commission v Ireland* EU:C:2002:657 (14 November 2022). The second, more recent, case concerned contamination with trihalomethanes (THMs): Case C-481/22 *Commission v Ireland* EU:C:2024:85 (25 January 2024).

The most recent Environmental Protection Agency (EPA) report on the quality of drinking water from public supplies indicates that water quality generally remains very high.[381] However, the resilience of many supplies needs to improve (481,000 people are currently served by 'at-risk' supplies on the EPA's Remedial Action List), up from 374,000 people in 2021). Persistent Trihalomethane (THM) failures were detected at supplies serving 235,000 people, doubling the population affected since 2021. The cumulative risk from lead in drinking water was found to be continuing, with insufficient progress reported for 2022.

As regards private water supplies, the most recent EPA report found that urgent action is needed to improve private drinking water quality.[382]

Constitutional law / fundamental rights dimensions

In *Friends of the Irish Environment v Government of Ireland* (Climate Case Ireland) [2020] IESC 49, the Supreme Court was not convinced that a right to a healthy environment could be derived from the text of *Bunreacht na hÉireann* (Constitution of Ireland). The Court questioned what the asserted right would add to the existing constitutional right to life and right to bodily integrity. If it is the case that it does not add anything to these existing rights, then the right to a healthy environment is superfluous and there is no need for it. The Court also considered that the asserted right to a healthy environment was excessively vague and ill-defined, in other words, there was a lack of clarity about the parameters within which it would operate.

Having made those observations, the Supreme Court then went on to note that in the majority of jurisdictions where a constitutional right to a healthy environment has been recognised, this has come about by way of a specific process, usually by inserting express wording into the text when a Constitution is being adopted or amended. The advantage of this approach (i.e. express

[380] *Final Report of the Joint Committee on Key Issues affecting the Traveller Community* (December2021).

[381] Environmental Protection Agency, *Drinking Water Quality in Public Supplies* (2023).

[382] Environmental Protection Agency, *Drinking Water Quality in Private Group Schemes and SmallPrivate Supplies 2022* (2023).

incorporation) is that the precise type of constitutional right to the environment which is to be recognised 'can be the subject of debate and democratic approval'. Reading between the lines here, it appears that the Supreme Court was hinting at the referendum process being the most appropriate method to pursue if it was considered that a right to a healthy environment should be given constitutional recognition. (See further on this aspect the recommendations of the Citizens' Assembly on Biodiversity Loss below).

It is interesting to note that the landmark Supreme Court decision *Ryan v Ireland* [1965] IR 294, which first established that the Constitution recognised certain 'unspecified' personal rights, concerned a claim that the Health (Fluoridation of Water Supplies) Act 1960 was unconstitutional. In general terms, the plaintiff claimed *inter alia* that the fluoridation of the public water supply is or may be dangerous to health and, therefore, that the 1960 Act constituted a violation of her personal rights and the personal rights of her children under Article 40.3 of the Constitution which, she asserted, included a right to bodily integrity. The plaintiff's case failed on the merits, but the Supreme Court's aceptance of 'unspecified' personal rights in Article 40.3 guaranteed MrsRyan a place in Irish constitutional law history.[383]

The Citizens' Assembly on Biodiversity Loss reported in April 2023 (link to its report here). It recommended *inter alia* that there should be a referendum to amend the Constitution with a view to protecting biodiversity. More specifically, the Assembly recommended that the proposal to amend the Constitution should include: 'Human substantive environmental rights, e.g. a right to a clean, healthy, safe environment, a right to a stable and healthy climate; rights of future generations to these or other environmental rights' and 'Human procedural environmental rights, e.g. the Aarhus rights regarding access to environmental information, public participation in environmental decision-making and justice in environmental matters.' The Assembly also recommended that the proposal to amend the Constitution should include substantive and procedural rights of nature.

The Citizens' Assembly's report and recommendations was examined subsequently by the Joint Committee on Environment and Climate Action. The Joint Committee reported in December 2023. It accepted, in principle, the Assembly's recommendation that the people be given the opportunity, in a referendum or referendums, to protect biodiversity through the incorporation of the rights of nature and/or the right to a healthy environment in the Constitution. At the time of writing, it remains to be seen whether any such referendum will be held at some future date and,if so, what specific wording might be proposed.[384]

4- How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?

The water needs of ecosystems are covered, at least in part, by the domestic legislation purporting to implement the Birds Directive (Directive 79/409/EEC) and the Habitats Directive (Directive 92/43 EC) – the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended).[385] See also the replies to Q8 below.

[383] See generally, *Kelly: The Irish Constitution* (5th ed) (2018) paras 7.3.82-7.3.85.

[384] See *Dáil Debate* 18 April 2024, Vol 1052 No 6.

[385] The Department of Housing, Local Government and Heritage recently announced a publicconsultation on review and

The Water Environment (Abstractions and Associated Impoundments) Act 2022 (not yet commenced) is also relevant here. Detailed regulations to be made under this Act are forthcoming at the time of writing. The Act itself provides the overall framework. See further Q6 below as regards Commission action against Ireland on *inter alia* control of water abstraction.

The Citizens' Assembly on Biodiversity Loss (March 2023), and the Joint Committee on Environment and Climate Action (December 2023) which considered the Assembly's report, made a series of important recommendations aimed at the protection and restoration of ecosystems.

As regards the rights of rivers and aquatic ecosystems, see the response to Q3 above regarding the recommendation of the Citizens' Assembly on Biodiversity Loss concerning recognition of substantive and procedural rights of nature. There appears to be a growing interest in rights of nature in Ireland. A number of academics and NGOs continue to campaign for recognition of rights of nature and implementation of the Citizens' Assembly recommendations.[386]

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

♣ INTEGRATED WATER MANAGEMENT

Questions

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions? We invite you to focus on the most relevant topic in your country.

The latest assessment of the pressures that impact on water quality in Irish rivers, lakes, estuaries, coastal waters and groundwaters was published by the EPA on 22 May 2024.[387] This assessment demonstrates that 34% of waterbodies are at risk of not meeting their water quality objective due to the impacts of human activities.

It is not surprising to find that nutrient pollution from agriculture[388] and urban wastewater remain the two most significant issues. Massive capital investment is required to ensure adequate wastewater treatment infrastructure. The European Commission continues to pursue Ireland for ongoing breaches of the Urban Waste Water Treatment Directive.[389] The latest assessment also

update of Ireland's wildlife law, including the 2011 Regulations. Details here.

[386] See generally Rachel Killean et al, 'Rights of Nature on the Island of Ireland: Origins, Drivers, and Implications for Future Rights of Nature Movements' (2024) 13 *Transnational Environmental Law* 35.

[387] Environmental Protection Agency, *Update on Pressures Impacting on Water Quality* (May 2024).

[388] See further W Osawe and J Curtis, 'An assessment of farmers' knowledge, attitudes and intentions towards water quality and pollution risk mitigation actions' *Social Science and Humanities Open* Vol 9 (2024) 100858 https://doi.org/10.1016/j.ssaho.2024.100858 andW Osawe and J Curtis, Farmers' knowledge, attitudes and intentions towards water quality and pollution risk mitigation actions *ESRI Research Bulletin* 17 June 2024.

[389] Case C-427/17 *Commission v Ireland* EU:C:2019:269 and see most recently Commission Press Release 7 February 2024, where the Commission announced that it has decided to open an infringement procedure by sending a letter of formal notice to Ireland for failing to fully comply with the obligations set in the Urban Waste Water Treatment Directive. The basis for this case is stated to be that in eight agglomerations with a population of more than 2,000 people, urban

confirms that alternations to the physical aquatic habitat (hydromorphology) caused by dredging, straightening of river channels and drainage, as well as loss of excess fine sediment to waterways are also a significant concern.

The European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022 (SI No 113 of 2022 (as amended) give effect to Ireland's Fifth Nitrates Action Programme. These regulations provide statutory support for *inter alia* good agricultural practice to protect waters against pollution from agricultural sources.

In September 2023, the Minister for Agriculture announced that there was no prospect of the Commission re-opening its (very unpopular) decision to tighten derogation standards in certain areas under the Nitrates Directive.[390] This tightening was due to the deterioration of water quality in the south and southwest of the country due to expansion of agricultural activity.

An Taisce – the National Trust for Ireland – has brought judicial review proceedings challenging the validity of Ireland's fifth Nitrates Action Programme. This case is currently before the High Court. Two interim judgments have been issued to date: *An Taisce v Minister for Housing (No 1)* [2024] IEHC 129; *An Taisce v Minister for Housing (No 2)* [2024] IEHC 248.

The recent EPA Report, *Water Quality in 2023: An Indicators Report* (12 June 2024) provides an update on the key indicators of the quality of Ireland's rivers, lakes, estuaries, coastal and groundwaters using monitoring data collected in 2023. The overall finding is that there has been no significant change in water quality. Water quality is not improving. Notwithstanding various initiatives nationally, 'measures to address water quality are not being implemented at the scale or pace required.'[391] The report also highlights the importance of ensuring full compliance with the Good Agricultural Practice Regulations and acceleration of the pace at which Uisce Éireann is delivering improvements in waste water infrastructure.

The report concludes with a strong call to action:

> While many efforts are being made to address the main pressures and stressors on water quality it is imperative that the next River Basin Management Plan, now over two years late, is published without further delay. The Plan needs to be clear on what will be achieved by 2027 and must be fully implemented. Progress on the implementation of measures needs to be tracked and reported so that their impact on water quality can be assessed and measures adapted where necessary.

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management? Please focus on the most illustrative example either in relation to

waste waters are not properly treated before being discharged. A further three agglomerations with a population of more than 10,000 are discharging wastewater in sensitive areas without the more stringent treatment as required by the Directive.

[390] 'Commission rules out re-visiting Ireland's Nitrates Derogation Decision' Government Press Release, 23 September 2023.

[391] EPA Press Release, 'There are no signs yet of an improvement in water quality and more actionis needs, says EPA' 11 June 2024.

the Floods Directive or the Water Reuse Regulation or national/local measures concerning water stress and/or droughts which could inspire a future EU Law framework.

Flooding and droughts are becoming more common in Ireland as we experience more extreme weather conditions. More specifically, Dublin's water supply is on a knife-edge,[392] with ever-increasing pressure on the current system.

The Government recently approved in principle the *Water Supply Project, Eastern and Midlands Region*. This project, which will be one of the largest infrastructure projects in the history of the State, proposes to abstract a maximum of 2% of the average flow of the River Shannon at Parteen Basin downstream of Lough Derg. Treated water will then be piped 170km through counties Tipperary, Offaly and Kildare to a termination point reservoir at Peamount in County Dublin, connecting into the Greater Dublin network. The aim is to 'ensure sustainable water supplies for half of the population up to 2050 and beyond'.

It is notable that Ireland has one of the highest leakage rates in the EU. According to Uisce Éireann, 37% of treated water is currently lost through leaks. The National Leakage Reduction Programme aims to achieve a national leakage reduction rate of 25% by 2023. It is good to see anincreased focus on leakage and that targets have been set.

The Commission has referred Ireland to the CJEU for failure to correctly transpose the WFD (Case C-204/24 *Commission v Ireland* (pending)).[393] The Commission asserts that Ireland must provide for appropriate controls in the following areas: water abstraction, impoundment and activities causing hydro-morphological changes such as dams, weirs and other interferences in natural water flow. The Commission considers that efforts by the Irish authorities to date have been unsatisfactory and insufficient.

The Commission has also referred Ireland to the CJEU for failure to adopt and communicate its third River Basin Management Plan.[394]

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

See the response to Q2 above. Cost recovery via water charges is applied to commercial users of public water services. Charges are not applied to domestic consumers. The introduction of domestic water charges in 2014 was hugely unpopular and led to protests. The Government of the day backed down and abolished the charges. An 'excess use charge' for domestic users is provided for in the Water Services legislation, but this has not been activated as yet.

[392] 'Public urged to conserve water as demand in parts of Dublin regularly exceed supply' *RTÉ News* 5 April 2024; 'Fast action needed amid pressure on water supplies' *RTÉ News* 5 April 2024; 'Reducing leaks won't be enough to save Dublin's water supply' *RTÉ News* 5 April 2024.

[393] European Commission Press Release, 26 January 2023.

[394] European Commission Press Release, 7 February 2024.

♣ WATER BIODIVERSITY

Questions

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country? Please provide examples of success / failure of integration in particular cases if relevant.

In principle, yes, but in practice application of EU environmental law faces significant and persistent challenges.

By way of example, the European Communities Environmental Objectives (Freshwater Pearl Mussel) (Amendment) Regulations 2009 (SI 269 of 2009) were adopted in response to the CJEU ruling against Ireland in Case C-282/02 *Commission v Ireland* EU:C:2005: 334. These regulations set legally binding objectives for water quality in rivers, or parts of rivers, inhabited by freshwater pearl mussel *Margaritifera margaritifera* and designated as Special Area of Conservation (SAC) to protect those species and requires the steps necessary to attain those objectives. The freshwater peal mussel is highly sensitive to water pollution and has been in very serious decline in Ireland due to worsening surface water quality. The 2009 regulations envisaged the adoption of a range of targeted measures in the rivers hosting *Margaritifera margaritifera*. However, following the financial crash in 2008, funding to the National Parks and Wildlife Service (NPWS) was cut significantly with the result that these measures were not implemented in practice. The anticipated advance in terms of integration of water law and ecosystems did not therefore translate into effective action on the ground.

More recently, in 2023, the CJEU issued another ruling in Case C-444/21 *Commission v Ireland* EU:C:2023:524 condemning Ireland for *inter alia* failing to adopt the necessary conservation measures for a wide range of habitat types and species as required by Article 6(1) of the Habitats Directive. These include aquatic species and the freshwater pearl mussel was mentioned specifically. In terms of integrating water law and ecosystems management, it remains to be seen how the Court's ruling will translate into practical measures.

9-Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?

The domestic regulations to implement the Habitats Directive – the European Communities (Birds and Natural Habitats) Regulations 2011 (as amended) – provide for a range of tools to implement the obligation to have conservation measures under Article 6(1) of the Habitats Directive. In light of the fact that the Habitats Directive requires action to maintain or *restore* the favourable conservation status of species, and given that there is now a CJEU ruling against Ireland (Case C-422/21) requiring *inter alia* conservation measures for habitats and species such as the freshwater pearl mussel, these regulations are relevant to restoration both in theory and in practice. However, the current Irish regulations are strictly limited by the material scope of the Birds Directive and the Habitats Directive. In so far as the EU Nature Restoration Law would go beyond the material scope of the nature directives, additional Irish measures would appear to be necessary.

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn? Please feel free to answer this question only if you have a concrete example (successful or not) to share.

This particular topic lies beyond the scope of the research undertaken. River barriers are an issue Ireland, but I do not have sufficient detail on the practical side of this to elaborate. See further: Inland Fisheries Ireland, National Barriers Programme.

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

Questions

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake ?
Depending on your national context, you may illustrate these conflicts with Agriculture (agricultural irrigation - the controversial case of metabasins for agriculture) or Energy (hydroelectricity - cooling nuclear power stations) or Tourism (increased tourist numbers - development of new tourism infrastructures) or extension of urban areas.

It is difficult to generalise here because decision-making power lies with many different competent authorities (including e.g. local authorities, *An Bord Pleanála* (the Planning Board), the EPA and Government Ministers etc.).

By way of an example of such decision-making see the recent CJEU ruling in Case C-301/22 *Sweetman v An Bord Pleanála, Ireland and the Attorney General* EU:C:2024:347 (25 April 2024). This case concerned a proposed abstraction from a small lake (*Loch an Mhuillin*) in the west of Ireland. The case – which involved a challenge to the grant of planning permission for theproposed development by *An Bord Pleanála* – led to an important preliminary ruling on the interpretation of the WFD and the criteria to apply to decision-making affecting water outside of an identified water body. See response to Q1 above.

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

An Fórum Uisce / The Water Forum is a statutory body established to advise the Minister for Housing, Local Government and Heritage (who has responsibility for implementation of the WFD) and provides stakeholder input into policy development.

The Local Authority Waters Programme (LAWPRO) works with local authorities and other State agencies and public bodies to co-ordinate implementation of measures on the ground. It aims to collaborate and work with private sector stakeholders and local communities.

A recent report on *Using an Experimental Governance Lens to Examine Governance of the River Basin Management Plan in Ireland 2018-2021* (2021) provides some interesting insights and recommendations on water governance arrangements.

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation ?

Article 14 of the European Communities (Water Policy) Regulations 2003 (SI No 722 of 2003) as substituted by Article 9 of the European Union (Water Policy) Regulations 2014 (SI No 350 of 2014) purports to transpose the requirements of Article 14 of the WFD.

As regards arrangements for public participation, see for example the webpage for the Public Consultation on the draft River Basin Management Plan for Ireland 2022-2027 and the outcome of the public participation process in the Third Cycle Draft River Basin Management Plan 2022-2027 - Consultation Report.

The Sustainable Water Network (SWAN) response to the consultation is also instructive (see pp 13-16 of the response on public participation specifically).

See also the response to Q13 above regarding *An Fórum Uisce* and LAWPRO.

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

I am not aware of any issues of this nature with regard to water defenders in Ireland. At a more general level, however, there has been a significant back-lash against individuals and NGOs who exercise their rights of participation and challenge in the context of planning and environmental decision-making. The High Court has called attention to so-called 'applicant shaming' (i.e. persistent criticism of individuals and NGOs who make submissions on planning applications and/or initiate judicial review proceedings challenging planning decisions) on a number of occasions. See for example: *An Taisce v An Bord Pleanála* [2021] IEHC 422, *Flannery v An Bord Pleanála* [2022] IEHC 83 and *Environmental Trust Ireland v An Bord Pleanála* [2022] IEHC 540.

Italy

Massimiliano Montini & Emanuela Orlando

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law ?

In Italy, the Water Framework Directive has been transposed into national law by means of **Part III of Legislative Decree 3 April 2006 No 152** (also called 'Codice dell'Ambiente', Environmental Code) titled "***Norme in materia di difesa del suolo e lotta alla desertificazione, di tutela delle acque dall'inquinamento e di gestione delle risorse idriche***". The provisions in this Part, and the subsequently adopted legislative measures of implementation[395], represent at present the main legal framework for the governance and protection of waters in the Italian territory.

The transposition of the WFD in the Italian legal system led to the replacement of the previous Law 5 January 1994 No 36 (Law 36/1994 or Law Galli) "Provisions on Water Resources" (*Legge Galli – Disposizioni in Materia di Risorse Idriche*), a law which at the time of its adoption represented a turning point in the definition and approaches to water governance and for many years constituted the principal framework for the regulation, governance and management of water in Italy. Law Galli was in fact the first systematic attempt to organize the water system and water services, which until then were characterized by considerable institutional fragmentation and economic dependence on the municipalities.

That law also introduced for the first time in the Italian legal order the idea of water as a public common good. Article 1 of Law Galli establishes the principle that "all surface and groundwaters, even if not extracted from the subsoil, are public and constitute a resource which is safeguarded and used according to criteria of solidarity" and that "any use of water is carried out safeguarding the expectations and rights of future generations to enjoy an intact environmental heritage". In that sense, Law Galli innovated significantly compared to the old framework. In the past, and until the beginning of the XXI century, water was predominantly conceived as a private property right and was thus subject to civil law rules aimed at realizing maximum exploitation and protection of the good itself. It was only with Unified Law (*Testo Unico*) 1775/1933 that the idea started to emerge to regulate water through public law framework with a view to ensure the collective use of water

[395] These include: Ministerial Decree 16 June 2008 No 131 on the technical criteria for the characterization of water bodies; Legislative Decree 16 March 2009 No 56 which transposes Directive 2006/118/CE on the protection of groundwater from pollution and deterioration; Ministerial Decree 14 April 2009 No 56 on the technical criteria for the monitoring of water bodies and the identification of the conditions to modify the technical disposition of Legislative Decree 152/2006; and other legislative instruments listed on this page: https://www.mase.gov.it/pagina/recepimento-della-direttiva-italia-0

resources for the general public interest.[396] This was accompanied by the idea that rivers and freshwaters, and water resources were property of the state (*proprietà demaniale*), also reaffirmed in the Italian Civil Code of 1942. Yet, in this pre-republican legislation of 1933 water was still protected not for its own value but for the (mainly economic) activities that were possible through water exploitation. Against this background, Law Galli ìalready operated an important shift in the conceptualization of water as a collective, yet scarce and fragile, resource to be protected in itself, and not only as a means functional to production. In that sense, Law Galli already made a first link between water and environmental protection.[397]

The implementation of the WFD with the Legislative Decree 152/2006 maintains and reaffirms the idea, established in the 1994 Law Galli, of water as a public resource (see article 144 of Legislative Decree 152/2006, which reaffirms the contents of the previously mentioned article 1 of Law Galli) – as well as other important principles of that law concerning the ownership and governance of water. At the same time, according to some commentators, the Environmental Code of 2006 goes even further in that sense. The critics point out that the previous Law Galli, despite the recognition of water as a public resource, still tended to consider it mainly as a good, which can be subject to the ordinary discipline of trade according to a market logic. On the other hand, the Environmental Code places greater emphasis on the idea of water as a resource to be protected in itself, and this approach seems to inspire the overall regulation of the water resources laid down in the decree particularly with respect to the uses and destinations of the water on the basis of criteria of sustainability and equity and in close relation to the idea of environmental protection.[398] Thus, a complete reversal of the perspective is taking place whereby the state ownership of water coincides with the interest in the safeguard of the water heritage and its quality, on their own value, and no longer because functional to the possible uses that can be made of water resources. It is not clear, however, to what extent this greater emphasis on the environmental protection aspects of water as a public resource which emerges from the Legislative Decree 152/2006 was triggered directly by the transposition into Italian law of the WFD or was instead the result of a natural evolution in the conceptualization of water as a public good that already started to feature in the Law Galli, as better explained below.

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

In Italy, the debate concerning water as common has been at the centre of an important debate, and in 2011 a referendum was held concerning certain legislative provisions on the privatization of water management.

In order to understand properly this debate, it is appropriate to situate it in the context of the evolving legal framework on water governance, especially after the reforms introduced by the Law Galli of 1994. Both the Law Galli of 1994 and currently also Article 144 (1) of Legislative Decree 152/2006 affirm the fundamental principle of state ownership of all water, including surface and groundwaters.

[396] A Lucarelli, 'Il diritto all'acqua: profili di metodo', 5 Aprile 2016, Giornata di Approfondimento, La Nuova Agenda ONU per lo Sviluppo Sostenibile 2030 e il dibattito verso un diritto umano all'acqua, <https://contrattoacqua.it/public/upload/1/2/tab_elms_docs/1467899722lucarelli.pdf>

[397] R Miccu' e M Francaviglia, Le forme giuridiche dell' acqua, Giappichelli 2019, p 10: excerpt available at https://www.giappichelli.it/media/catalog/product/excerpt/9788892183377.pdf

[398] G. Sanna,'L'acqua: dai modelli storici spunti per alcune riflessioni sul regime e sulla tutela giuridica di un bene ambientale'in GIURETA, (2012) Rivista di Diritto dell'Economia, dei Trasporti e dell'Ambiente, Vol X, < https://www.giureta.unipa.it/2012/22_Sanna_DirPub_19112012.pdf> 442, also 448-49.

A distinction is, thus, established between the ownership of water and of the relevant infrastructures, which are entrusted on the state, and the management of water, which instead can be entrusted by concession to a company, be this entirely public, private or mixed.

In that sense, Law Galli was the first step opening the way to the privatization of water management, by allowing the possibility that management of water services be allocated to entirely private companies. The rationale for such reform, and of subsequent legislative interventions in this direction, was the need to address the sheer fragmentation in the governance and management of water services. In fact, prior to the 1994 Galli reform, both water production and distribution were directly dealt with by the municipalities. This led not only to the lack of a uniform approach and significant disparities in the management of water across different areas of the national territory (in 1990 Italy there were at least 5,500 organisation which dealt with the distribution of waters), but it also had a considerable impact in terms of cost inefficiencies, inadequacies and poor managerial practices that affected the water sector.[399]

With a view to address these problems, Law Galli sought to introduce a better integration of management tasks among fewer actors organised on a territorial basis.[400] In particular, it introduced the Integrated Water Service Management (*Servizio Idrico Integrato*) defined in article 141 of Legislative Decree 152/2006 as "all the public services of collection, adduction and distribution of water for civil use, sewerage and wastewater purification", adding that it "must be managed according to principles of efficiency, effectiveness and cost-effectiveness in compliance with national and EU regulations". This was also in line with the spirit of the law that acknowledging the value of water as an important public resource to be protected and safeguarded and the importance of a sustainable management of that resource in a way to safeguarding the right and expectations of future generations.

Integration was envisaged horizontally and vertically. Vertically, the establishment of the Integrated Management System aimed at achieving the aggregation and coordination of the different services of water capture, delivery, sewage etc in order to reduce the fragmentation. Horizontally, through the creation of the Optimal Territorial Scope Areas ("*Ambito Territoriale Ottimale*" - ATO), which were defined according to the river basins' geographical boundaries and were placed under the jurisdiction of the Regions. For each ATO a specific Authority was established (*Autorita d' Ambito Territoriale Ottimale* - AATO) that took over the water management competences previously entrusted to municipalities. However, municipalities still retained a role as they were mandatorily part of the AATOs and appointed their members - a feature which created a concrete risk of regulatory capture. Regions had the task to promote the cooperation among the different municipalities within the AATOs.

Yet, in the pursuit of efficiency and greater cost-effectiveness, the law also for the first time paved the way for a different approach to water management, more open to a managerial and market-based orientation.401 [https://boa.unimib.it/bitstream/10281/20369/4/Phd_unimib_716326.pdf,

[399] See C. Armeni, 'The Right to Water in Italy', ielcr.org 2008 <https://ielrc.org/content/f0801.pdf>

[400] M. C. Alberton and F. Cittadino, 'La Gestione delle Acque in Italia prima e dopo la'adozione della direttiva quadro sulle acque e della direttiva alluvioni', 2018 < https://iris.unitn.it/retrieve/e3835195-0f01-72ef-e053-3705fe0ad821/COLLANA%20QUADERNI%20VOLUME%2038.pdf >116

401 F. Castoldi, "Il Servizio Idrico Nazionale : problematiche attuali e prospettive di riforma" https://boa.unimib.it/bitstream/10281/20369/4/Phd_unimib_716326.pdf, 12

12]. This approach was subsequently translated in the Legislative Decree 152/2006. First, it introduced a tariff system based on the idea of a unified tariff for each ATO – to be defined by the relevant AATO – which shall cover all the costs related to management of water services and the relevant investments. Secondly, in the attempt to disconnect the water budget from the municipalities, the Law building on the parallel reform of the public services brought about with Law 142/1990, opened the management of water services to private companies, with the possibility to allocate the management of water services to a "Manager of the Service" (*Gestore del Servizio*), which could be either an entirely publicly owned company (*azienda speciale*); a private company (*concessione a terzi*) or a mixed private/public company.402

While Law Galli and Legislative Decree 152/2006 opened the way to private sector's intervention in the water management sector, it was the adoption in 2008 of article 23-bis of Law Decree 112/2008 on the reform of local public services of economic relevance which controversially introduced the principle that management of local public services should be entrusted preferentially to either private or mixed companies. In particular, Article 23-bis(3) significantly restricted the scope for public management of water, by providing that only in exceptional cases, on the basis of special economic, social and environmental characteristic the service can be given to an entirely public company.

The vision underlying this reform was one of a market-based management of general interest services, including water, with a view to promote competition and competitiveness. The provision raised extensive criticisms especially from the public and, thanks to the effort of a bottom-up civil society movement – *Forum Italiano del Movimento per l'Acqua* – a referendum was proposed and held in 2011.

The referendum had a tremendous success. A vast majority of Italian citizens (representing around 57% of the electorate, a threshold that was never reached in the previous 24 referendums held in Italy since 1997) went to vote in a referendum to abolish two provisions concerning the privatization of water management.[403] Over 95% of those who went to vote, voted Yes to the abrogation of those provisions, in a clear signal of the important concerns and significance that public water, as a common good, had for Italian citizens. The referendum victory was regarded as an inspiration for water justice movements given the important role that bottom-up social movements, and particularly the Italian Water Movement Forum (*Forum Italiano del Movimento per l'Acqua*), had in securing the possibility that the referendums was held and in ensuring that the quorum was reached.

At the basis of the referendum was the idea that water is a common good, and a universal human right, which cannot be the object of private ownership entitlements, nor can it be exploited for a profit purpose. The referendum thus also raised the question of the nature and qualification of water services – that is not as an economic service, subject to market logic and competition rules, but as a public, social service.

Despite the success of the referendum, which reaffirmed the clear consensus of the Italian population for the consideration of water as a human right and as a public common good, the full recognition of principle in the governance and regulatory framework concerning water has been slow. The controversy between the supporter of water as a universal right – who found their voice

402 G.Molinari, La Disciplina Giuridica del Settore Idrico, in Diritto.it https://www.diritto.it/la-disciplina-giuridica-del-settore-idrico/#:~:text=Al%20sensi%20della%20Legge%20Galli,dei%20costi%20di%20gestione%20delle

403 see D. della Porta et al,'Expanding the comparison: the water referendum in Italy', in *Social Movements and Referendums from Below* (CUP 2017).

especially in the representation of the Italian Movement for Water – and the governmental approach revolved particularly around the cost of water. In particular, the Italian Water Movement sustained the idea of a minimum right for everyone to have free access to a minimum of 50 lt per person per day with the cost spread through general taxation. Yet, the recognition of such right in the legislation was quite controversial [see for example, the debate over a legislative proposal (*Disegno di Legge* No. 2343) concerning "Principles for the Protection, Governance and Public Management of Waters" (https://contrattoacqua.it/public/upload/1/2/tab_elms_docs/1474018276memoria-audizione-cicma--senato-13.09.pdf)]. At present this right has been recognized for those who are in demonstrated economic need (see further infra reply under Question 3, under sub b, p 7-8).

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

Questions

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

(a) On the fundamental right to water and sanitation

Italian Constitution does not include a specific right to water. There are however a few constitutional provisions concerning fundamental human rights and dignity (art 2 and 3), the protection of human health as a fundamental right and collective interest (art 32) and the protection of the environment and ecosystem as exclusive state competence (art 117), which can be interpreted as to identify an implicit right to access to water as a fundamental resource indispensable for human life. In particular, commentators believe that article 2 of the Constitution can be interpreted as an open clause (see: Alberto Lucarelli, "*Il Diritto all'Acqua: Profili di Metodo*" Aprile 2016).

At the legislative level, both article 1 of Law Galli and the corresponding provision in the Legislative Decree 152/2006, reflect the recognition of the importance of water for human life, introducing the idea of water as a public, common resource which must be protected on the basis of criteria of solidarity. This legislation also refers to the obligation of using water in a way to protect the expectations and the rights of future generations to benefit from an unharmed environmental heritage and affirms that uses of water must be aimed at the saving and renewal of the water resources so as not to jeopardize the water heritage and the aquatic environment. The law also established the priority of the use of water for human consumption over all other uses.

In practice, there is not however an express recognition or assertion of a human right to water. This, in Italian law and in Italian jurisprudence, water has been mainly considered "as an environmental priority rather than as a fundamental human right", as a fundamental resource for the satisfaction of human needs and part of the environmental heritage but not a distinct and specific human right.[404]

For example, in 2003, the Consiglio di Stato ruled that '[w]ater is to be considered as an essential component of the natural ecosystem that needs protection in a long-term perspective, with special attention to water resources fit to human consumption' [Comune di Carrosio e Comune di Gavi v

[404] C. Armeni, 'The Right to Water in Italy', ielcr.org 2008 https://ielrc.org/content/f0801.pdf

Presidente Consiglio dei Ministri, Regione Piemonte, Provincia di Alessandria e Cementir-Cementerie di Tirreno S.p.A., Consiglio di Stato, Sez. VI , Decision, 18 April 2003 n. 2085, para.4.3, at 3].

A similar conclusion emerges from the decisions of the Constitutional Court, in which the question of water as a public good was discussed in the context of proceedings concerning the allocation of relevant powers between the State and the Region. Thus, Constitutional Court's decision No. 259 of 1996 defined water as the primary good for human life. The decision was adopted in the framework of a proceeding concerning the constitutional legitimacy of art. 1 of Law No. 36/1994 affirming that "all surface and underground waters, even if not extracted from the ground, are public". According to the referring court, while the rationale of that provision lies in the protection of the environment, that would not justify the state ownership of all waters and of all areas and territories where there is water, with the consequent abolition of private property on those territories. The Constitutional Court dismissed the question of constitutional illegitimacy of the provision and explained that the norm in question, and the consequent assertion of a more incisive intervention by the state, is in line with the overall trend at European level (including the Council of Europe's 1968 European Charter of Water and the relevant directives in the European Union) which reflect "the growing attention on water as a primary good for human life, regarded as a resource to be safeguarded, on the risks arising from pollution, on the waste of water resources and on environmental protection, in an overall framework characterized by the idea of a fundamental right to maintain the integrity of environmental heritage". The Court further explained that the provision in question, and the corresponding qualification of water as a public resource, is concerned especially on the utilization of water, as a limited resource which must be safeguarded, rather than on question of ownership 405.

Subsequent hints in that sense emerge in decisions concerning the nature of the water service. EU law is neutral on this point as the TFEU does not impose a specific preference in the allocation of the water service to private or to public entities. On that point, decision No. 117 of 2015, in line with other previous decisions, has provided an interpretation of EU Law and of the relevant provisions of the Italian constitution, affirming that certain aspects related to the management of public services, such as water services (such as typically the modalities for allocation of the water management services and the determination of the tariff) must be ascribed to the State as they are strictly linked to the protection of the environment.

On the other hand, express recognition of a human right to water can be found in legislation adopted at regional level. For example, Regional Law 11/2011 of Puglia which asserts that "1. Water is a common good, subject to collective ownership, essential and irreplaceable for the life. 2. The availability of and access to drinking water, as well as to the water necessary for the satisfaction of collective needs, constitute inviolable and inalienable rights of the human person, universal rights that cannot be subjected to market reasons. 3. The Region Puglia defends and guarantees the supply of water and protects the right of each individual to the minimum daily subsistence level, as an essential condition for the realisation of the fundamental right to drinking water as a function of the right to life'. In a similar vein, the Veneto regional law (art. 8 (2)) states that 'The availability of and access to drinking water drinking water, as well as to water necessary for the satisfaction of collective

405 https://giurcost.org/decisioni/1996/0259s-96.htm

needs constitute universal rights. The Region guarantees each individual the right to the daily vital minimum of water as a right to life'.406

That said, in Italy drinking water is considered a service to be guaranteed to everyone. According to data, more than 95% of Italian population has access to drinking water, whilst only 84,7% is connected to a sewerage system and 70% has a purification plant. Nevertheless, art 4 (principle related to the management of the hydric system)

(b) on taking into account the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU

Directive 2020/2184 has been transposed in Italy in 2023, with the entry into force of Law Decree 18/2023, which concerns the quality of water for human consumption, and repeals previous Legislative Decree 31/2001 by revising the parameters and values for drinking waters.

This was the first legislation in the Italian system to establish uniform requirements for the substances and materials that come to contact with drinking water, including plastic pipelines. The scope of the decree is limited to water for human consumption, and in line with the directive it establishes (art 5) minimum requirements to ensure that those waters are safe and clean, establishing minimum requirements that must be respected. It also specifies that the norms of the decree cannot be applied in a way to allowing a deterioration of the existing level of waters aimed at human consumption so to have a detrimental impact on human health. The decree also contains provisions aimed at reducing losses of water (one of the main problems of existing water infrastructures in Italy) by providing that hydro-power operators supplying at least 10,000 cubic meters of water per day or serving at least 50,000 people, shall carry out an assessment of leakage levels and of the potential improvements in terms of reducing water network losses, using the water network loss indicators as defined in a relevant provision of the decree.

The decree also establishes a risk-based approach to water safety by implementing a holistic control of dangerous events, covering the entire water supply chain from abstraction to distribution, and identifying the most significant risks which deserve priority in terms of allocating resources and the timing of intervention. The assessment and management of risk will be based on the relevant principles defined by the WHO and translated into the National Guidelines for the implementation of Water safety plans which were elaborated by the High Institute of Health (*Istituto Superiore di Sanità*).

Another objective of the decree, in line with the Directive, is to ensure and/or enhance access to drinking water by vesting Regions and Autonomous Provinces with the task of adopting the necessary measures to improve access to water for everyone, especially vulnerable and marginalised groups, and improving the use and consumption of tap water. The decree distinguishes between the general regulatory competences and responsibilities at national level, through legislation aimed at guaranteeing the supply of the minimum vital quantity of water to domestic users of the integrated water service who are in a documented state of economic and social hardship, and specific operational responsibilities for the Regions and Autonomous Provinces. The latter in particular must identify persons on their territory with no or limited access to drinking water, including vulnerable

406 A. Lucarelli, 'Il diritto all'acqua: profili di metodo', 5 Aprile 2016, Giornata di Approfondimento, La Nuova Agenda ONU per lo Sviluppo Sostenibile 2030 e il dibattito verso un diritto umano all'acqua, < https://contrattoacqua.it/public/upload/1/2/tab_elms_docs/1467899722lucarelli.pdf>

groups (such as homeless, refugees, minorities or nomads) and adopt the relevant practical measures aimed to guarantee access to water, such as the setting up of water access points in priority buildings (eg. Airports, stations, bathing establishments), take action to promote the use of drinking tap water: eg creating devices and points for dispensing water outside and inside public spaces, and promoting the use of those points by means of appropriate information; encouraging the availability of free drinking water in restaurants and canteens. The decree also contains provisions aimed at making available to the public information on the quality of waters for human consumption. See for details on the decree: https://www.risorsa-acqua.it/leggi/il-nuovo-decreto-legislativo-sulla-disciplina-delle-acque-potabili/

4- **How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?**

As mentioned above, ecosystem protection in Italy is a value and an objective recognized explicitly in the Constitution (art 117) which confers the primary competence for its protection to the State. The main legal framework concerning the protection of aquatic ecosystems, and t**he water needs of ecosystems** is represented by Section II of Part III of the aforementioned Italian Code for the Environment (Legislative Decree 152/2006), dedicated to the protection of waters from pollution, covering surface and underground waters and marine waters (art 73.1). This Section represents in most part the implementation of the commitments deriving from WFD concerning the quality status of the waters. In line with the art 1 WFD, article 73(1)(f) of the Code recognizes explicitly the water needs of ecosystems and sets as the main aim of Section II "to protect, improve and prevent the further deterioration of aquatic ecosystems as well as of the terrestrial and wetlands ecosystems which are directly dependent on aquatic ecosystems from the point of view of their water needs". This provision (article 73.2) also identifies several means to achieve this aim. Among them, of particular relevance is the identification of environmental quality objectives and destination-specific quality objectives for water bodies to be implemented across the entire national territory. According to the law those objectives are to be defined in a way to also consider the needs of water dependent ecosystems. In particular, pursuant to art 76, the **environmental quality objective is defined on the basis of the capacity of water bodies to maintain natural processes of self- purification and to support the large and well-diversified animal and plant communities**. The **destination-specific quality objectives** concern instead the status of 'destination specific' waters, which include (art 79) "fresh waters requiring protection and improvement in order to be suitable for fish life and waters intended for shellfish life", as well as waters for particular human uses, such as the production of drinking waters and for bathing). While the objectives are set at national level, the Regions retain however the power to establish higher level of environmental quality objectives, and to identify further destinations for the water bodies and corresponding quality objectives (art 76.5).

The implementation of measures to attain those objectives (both environmental quality objectives and destination-specific objectives) is done through the Water Protection Plans (*Piani di Tutela delle Acque*, see article 121 of Legislative Decree 152/2006) and the Water Management Plans (art 117 of Legislative Decree 152/2006). The Water Management Plan, which is envisaged in the WFD, is adopted at the level of district basin and identifies the measures to achieve the good quality status

of water bodies and a sustainable management of water resources. The WMP is the reference instrument for the District Basin Authority.

Water Protection Plans (art 121) are adopted at regional level, through a collaboration of the Regions with the Basin Authorities and constitute the main planning instrument for the protection and management of waters on the basis of an in-depth knowledge of the natural and quantitative features characterizing the relevant water bodies. It is the main operational instrument for the achievement of the quality objectives of surface and groundwater bodies and for the protection of water resources and for the safeguards of ecosystems at regional level. These Plans represents the regional articulation of the Water Management Plans elaborated at the district level, thereby realising the integration of district planning within the regional context.

See: https://www.isprambiente.gov.it/it/attivita/acqua/gestione-delle-risorse-idriche-in-italia/piani-di-tutela-delle-acque; see also: https://www.regione.piemonte.it/web/sites/default/files/media/documenti/2019-01/relazione_generale_0.pdf

Thus, it is mainly through those plans and in particular the water protection plans that ecosystem interests are taken into account.

With respect to legislative provisions, however, it is possible to find express, yet sporadic, references to the need of protecting aquatic ecosystems in certain recent regional laws which regulate fishing activities: see for example, the Regional Law of Basilicata No 5 of 13 February 2024 and in the Veneto Region, Regional Law of 28 April 1998 No 19, providing norms to regulate fishing activities with a view to take into account and aim at the protection of hydrobiological resources and fish fauna (available here: https://elezioni.regione.veneto.it/documents/10701/10721074/Normativa+pesca+2023+VR+new/6181af5b-5ceb-4e38-97c6-321917a41b57)

In practice, however, Italy seems lagging behind the full realisation of the WFD objectives concerning aquatic ecosystems protection. According to recent data from ISPRA [*High Istitute for Environmental Research and Protection*, 3 Dicembre 2021, ISPRA, ISBN 978-88-448-1083-2] river habitats and the chemical and physical conditions sustaining river dependent ecosystems have been deteriorating significantly: at present only 43% of the river water bodies is in good status whereas 41% is below good; similar situation applies to lakes, whereby only 20% of the lakes classified is in a good status or above, whereas 39% is below good and for the remaining 41% the classification is unknown. The report also points out that several water bodies remain still unclassified: see on those the report from the NGO *Legambiente*: *Focus Ecosistemi Acquatici*, at < https://www.legambiente.it/wp-content/uploads/2024/01/Focus-ecosistemi-acquatici-2024.pdf>]

In addition to the above, considerations concerning biodiversity and water ecosystems are integrated into plans and strategies aimed at preventing floods and at mitigating hydrogeological risks. Legislation in this context points to the need to reconcile and pursue at the same time the need to adopt interventions to prevent risks of flooding with the protection of freshwater ecosystems. For example, article 7(2) of Law Decree 133 of 2014 which concerns the measures to be financed to address and mitigate the hydrogeological instability, identifies as a priority the interventions that simultaneously address flooding risk reduction and the protection and recovery of ecosystems and biodiversity. This provision finds implementation in article 117 (2-quater) of Legislative Decree 152/2006 which provides that the Water Management Plan (*Piani di Gestione*) drafted by the Basin

Authority with other responsible subjects also includes a programme for the management of sediments at river basin level, as a tool to get knowledge, and to manage the morphological structure of river corridors. According to this provision "the objective of the sediment management programme is to improve the morphological and ecological status of watercourses and to reduce the risk of flooding through action on solid transport" by means of appropriate interventions identified therein.

Concerning rights of nature, Italy has not yet reached an official recognition of those rights into the legal system. Nevertheless, an important step in this direction has been the reform of article 9 of the Italian Constitution which, for the first time, include an express reference, and an explicitly a responsibility of the State, to the protection of the environment, biodiversity and ecosystems. This provision now allows courts to take into account environment and biodiversity on the basis of an explicit provision, and not only through the interpretation of other constitutional provisions, such as those on the protection of landscape or public health.

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

Questions

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions? We invite you to focus on the most relevant topic in your country.

In terms of water quality, data from ISPRA and those emerging from the report submitted to the EU Commission concerning the Water Management Plan for the third cycle of implementation of the WFD (completed in August 2023) allow for some optimism. At present, more than 75% of the surface waters that have been monitored has a good chemical status and more than 45% has a good ecological status. As for groundwaters, 70% of aquifers are in good chemical status and more than 70% have good quantitative status (which is important in Italy because groundwater is the main source of drinking water in the country). An important good trend is also that the number of unclassified water bodies is diminishing, meaning that more data are available concerning the status of the waters (ISPRA, World Water Day, 2024 https://www.isprambiente.gov.it/files2024/area-stampa/comunicati-stampa/comunicato-acqua-2024.pdf).

Albeit these data invite to a cautious optimism, the quality of waters in the country is subject to various pressures and among those there are pressures from agricultural production. One of main challenges is represented by the level of pesticides and the presence of polluting substances in surface waters. According to data from ISPRA, in 2020, glyphosate (which is the herbicide mostly used in Italy) and fungicides have trespassed the limits set in legislation, while insecticides are the most frequently found substance {https://www.isprambiente.gov.it/it/istituto-informa/comunicati-stampa/anno-2020/su-426-sostanze-inquinanti-cercate-nelle-acque-trovate-299-insetticidi-quelle-piu-diffuse]. These data are confirmed by a more recent study by ISPRA published in 2022 [https://indicatoriambientali.isprambiente.it/it/sostanze-o-agenti-chimici/qualita-delle-acque-inquinamento-da-pesticidi] which reiterates the significance of the problem especially for surface waters.

These findings seem confirmed by the recent 2030 National Biodiversity Strategy, adopted in 2023, which points (p 56) to agricultural production as one of the main pressures in terms of water quality

targets, alongside water abstraction and hydro-morphological alterations. The Strategy thus identifies the reduction and removal of chemical pollution as one of the priority actions to protect environment and human health, although the Strategy itself does not point out to specific legal developments to be adopted for that purpose (*Strategia Nazionale Biodiversità 2030*, 2023: https://www.mase.gov.it/sites/default/files/archivio/allegati/biodiversita/2_snb_2030_marzo_23.pdf).

In order to assess the level of contamination in waters, the data are confronted with the maximum admitted levels set in national and European legislation. It must be added, however, that ISPRA studies also highlight that there is a problem with the monitoring and availability of data and information, and that the data so far collected are insufficient to represent the entire national situation, although efforts to update regional monitoring programmes suggest that the effectiveness of those surveys is gradually improving. So far, the area with greater contamination of surface water is the northern area of Veneto region and Po valley. This is due not only to the hydrogeological characteristics of the territory and the intense farming taking place in these areas, but also to the fact that there is a greater presence of monitoring points, and that surveys and analysis are more complete and reliable in this part of the country [source: https://www.certifico.com/ambiente/documenti-ambiente/257-documenti-riservati-ambiente/9907-pesticidi-nelle-acque-quadro-normativo ;

6- What are the main difficulties and/or the main success stories in your country related to quantitative water management? Please focus on the most illustrative example either in relation to the Floods Directive or the Water Reuse Regulation or national/local measures concerning water stress and/or droughts which could inspire a future EU Law framework.

General overview:

Italy is one of the European countries with the highest water consumption per person (see Eurostat database, 2015 cited in ISTAT - *Utilizzo e Qualitá della Risorsa Idrica in Italia* 2019). Moreover, data demonstrates that the withdrawal of drinking water has increased significantly over the last 10 years, mostly in the North-Western region (especially Lombardy), Lazio and Campania. Italy is also among the EU countries which use for most part underground waters for drinking and the needs of public water services (48% from the wells, and 36,3 % directly from the source). The country is indeed very fortunate as water comes from good quality sources so there is a more limited need of subjecting it to treatment for drinking water.

Despite Italy good reserves of water, water availability is recently becoming an increasingly serious issue, especially in some regions. For example, some areas in the South have recently experienced periods in which water was rationed [ISTAT statistics on water, 21 March 2022: https://www.istat.it/it/files/2022/03/REPORTACQUA2022.pdf]. See also: Water Economy in Italy, *Osservatorio Proger*, https://www.proger.it/water-economy-in-italy/].

In terms of quantitative management of water, one of the main issues is the high amount of withdrawal and consumption of drinking water for public needs, despite in the recent years there has

been a slow, albeit modest, trend towards reduction in such consumption. There are also significant disparities among the Italian regions in terms of both water consumption and water availability, which are due not only to the different water needs and uses of water (including non-civil uses), but also in large part to disparities in the performance of the transport infrastructures and pipelines from the withdrawal of water to the delivery to the final user and the different performance of the services.

The most critical areas from the quantitative point of view are therefore those where a shortage of the water resource is associated with obsolete plants and management that is not always attentive to sustainability. In the phase of distribution, one of the main problems in quantitative management of water concerns the loss of water from the transport and distribution pipelines. This is particularly exacerbated in those cases where the source of the water is far from the end user and several kilometres of pipelines are therefore needed. In most Italian cities, water infrastructures are old and deteriorating. Thus, dispersions are in part physiological and related to the size of the network, the number of connections, their density and the operating pressure; in part, they are caused by pipeline breaks, ageing plants, unauthorised consumption, unauthorised withdrawals from the network, etc. The distance between the source of water and the end-users is another important factor, with water dispersion being typically more contained in those cases where the distance between the water abstraction points and that of delivery is short, such as it is the case in the North-east regions. Moreover, the fact that water losses are more contained in northern regions is also due to the fact that those regions have started to modernise the infrastructures and introduced specific monitoring and tele-controlling systems.

It is well known however that heavy and persistent dispersion and loss of water throughout the system, mostly due to the obsolescence of infrastructures and pipelines is one of the main problems in terms of quantitative water management. According to ISTAT - *Italian Institute of Statistics*, in 2020, 36,2% of the water fed into the network was lost (see source cited above); data which increased in 2022 with 42% of water lost in distribution networks (ISTAT Report 2023).

Improving the efficiency of the water infrastructure has thus become a widespread and urgent priority for many water service managers, who in recent years have committed to minimise leaks, identify hidden ones, ensure a high level of quality in the measurement of consumption and carry out more assiduous monitoring of the infrastructures. According to the aforementioned ISTAT Report however it seems that the fragmentation of water management, despite the attempt at reducing this done through various reforms in the governance of the sectors, continues to be an issue which also exacerbates problems concerning the quantitative management of water [ISTAT Report 2023: https://www.istat.it/it/files//2023/03/GMA-21marzo2023.pdf]

The achievement of a more effective and efficient management of water services, from a quantitative point of view, has recently become a government priority and is one of the priorities identified in the National Plan of Resilience and Recovery (PNRR). Among the measures envisaged by the PNRR there are: investments in primary water infrastructures for the security of water supply; investments aimed at reducing losses in water distribution networks, including digitisation and network monitoring; investments in the sewage and purification systems; and normative reforms are aimed at simplifying legislation and strengthening governance to realize the infrastructure for water supply. Yet, more remains to be done. According to commentators, the investments and reforms envisaged in the PNRR will only be operational in 2040, and there seem to be not proper measures aimed at enhancing access to water and prevention of pollution [see *Alleanza Italiana per lo Sviluppo Sostenibile*:

https://asvis.it/notizie-sull-alleanza/19-13816/litalia-e-il-goal-6-lefficientamento-della-rete-idrica-e-unurgenza-nazionale

Finally, a further aspect to mention relates to the non-uniform distribution of water resources among the various regions, with differences closely linked to the hydrogeological characteristics, the usability of the resource, to possible non-civil usages and recently also to climate factors. To address this and ensure water availability in areas and in periods most affected by draughts, over the years a dense network of water interchanges among regions has been developed, which allows water to be transported to the neighbouring territories. The majority of water exchanges in terms of volume occur in the central and southern regions, whereas northern regions, and in particular Valle D'Aosta and the autonomous provinces of Trento and Sardinia are the areas that are most self-sufficient, i.e. for which the water used in the municipal transport and distribution networks comes exclusively from internal resources.

Reuse of water in Italy: normative framework

Italy has been quite innovative at least at normative level concerning water reuse. In fact, even prior to the adoption of EU Regulation 2020/741, water reuse was already envisaged in the Ministerial Decree no. 185 of 12 June 2003 ("Regolamento recante norme tecniche per il riutilizzo delle acque reflue") (still in force), which establishes the technical rules for the reuse of domestic, urban and industrial waste-water, and regulates the use destinations for those waters and the corresponding quality requirements. The stated aim of the decree (art 1) is the "quantitative and qualitative protection of water resources, by limiting the withdrawal of surface and groundwaters, reducing the impact of discharges on receiving water bodies and promoting water saving through the multiple reuses of waste water". The decree also explicitly states that the reuse of wastewater must take place in situations of environmental safety, in order to prevent adverse impacts on ecosystems, land and crops as well as health risks for people. To this end, it sets up specific quality (chemical and microbiological) requirements to be respected in the reuse of wastewater in irrigation or civil buildings.

Article 3 of the decree envisaged three possible destinations for the treated wastewater: (i) crops irrigation; (ii) civil use: e.g. for roads cleaning, for heating or cooling systems, etc.(iii) industrial use: for the supply of dual adduction networks, separate from those of drinking water, with the exclusion of the direct use of such water in civil buildings, except for drainage systems in toilets.

The decree is implemented by the Regions, which are responsible for the adoption of the relevant norms and measures aimed at achieving the quality objectives for the treatment of urban wastewater (as established by relevant legislation implementing EU law: i.e. Legislative Decree 152/1999 implementing Directive 91/271). Regions are also responsible (art 5) to define the depuration plants, the networks to distribute wastewater to be reused and the infrastructures to connect treated wastewater with the distribution networks. The water recovery systems are subject to regular controls and monitoring to check that the quality requirements are respected.

At present, however, and further to the adoption by the EU of Regulation 2020/741, this area of the law is under revision and there are planned normative interventions aimed at adopting a new regulation with the aim of promoting a greater diffusion of this water reuse practice in the country. The prospective regulation is expected to differ from the previous Ministerial Decree 185/2003 on several aspects, including scope of application and use destinations, the introduction of an approach based on the management of risk, the range of responsible subjects, and a different approach for the quality control of the waters.

Meantime, and to face the problems caused by recent draughts, the government adopted last year Law Decree 39/2003 – *Urgent provisions to combat water scarcity and to enhance and adapt water infrastructures* [now converted into Law 68/2023]. The decree ("*decreto siccità*") seeks to address the problem particularly through the simplification of authorization procedures for relevant interventions, including those for the reuse of depurated wastewaters for agricultural irrigation purposes, and by setting up at governmental/ national level a specific governance body responsible to address the water scarcity emergency in collaboration with the Regions. Specifically, the decree envisage:

- the establishment at national level of a 'steering committee' (*cabina di regia*) for the water crisis, with directing, coordinating and monitoring functions. This committee is also responsible to carry out an inventory of the most urgent measures and interventions that need to be realized in the shorter term to face the water emergency; and to identify actions needed to enhance water capacity and which can be carried out by means of private-public partnerships. It is presided by the Prime Minister, with the involvement also of the President of the Conference of the Regions and provides that—in the event of inertia, delay or non-conformity in the design and implementation of the necessary measures and intervention or in case of dissent or opposition by one of the territorial entities to the realization identified by the Steering Committee as necessary to combat the water crises—it can activate substitutive powers.
- the establishment of a Permanent District Observatory of Water Uses, as one of the bodies involved in the Basin District, tasked with supporting the integrated governance of water resources, and collecting, updating and diffusing the relevant data.
- The establishment of a national extraordinary Commissary, with competence over the national territory, and with the task of adopting the urgent measures related to water scarcity. The Commissary acts on the basis of data provided by the Permanent District Observatories established for each Basin Authority.
- The introduction of measures to increase the climate resilience of water systems, including: the increase in the useful volumes of reservoirs and the possibility to build rainwater tanks for agricultural use within a set maximum volume (50 cubic meters for each hectare of land); the possibility for the Regions to authorise the use for agricultural irrigation of purified waste-water produced by plants that are already operational ; simplified procedures of desalination plants (art 10), as well as simplified procedures for the authorization and implementation of certain infrastructural interventions in the water sector (such as the urgent intervention aimed at facing the water crisis in the short term), referring in that respect to the procedures concerning the infrastructural projects financed with PNRR resources.
- Finally, it includes provision concerning the elaboration of a public information and communication plan aimed at informing the public about the persistent situation of water crisis which affect the national territory and on the serious implications that this may have at the social and economic level.

Despite this rather sophisticated system set up in terms of administrative structure with respect to measures to combat water scarcity, more could be done particularly with respect to improving the reuse of wastewater. In fact, according to recent surveys, despite the country having state-of-the art facilities for the purification and reuse of wastewaters, the country is at present only using 200 million cubic meters (apparently a third of Spain) (4% of the treated and purified water) of treated water destined for irrigation and industrial uses, including direct and indirect reuse. It remains to be seen

whether the new legislation adopted in implementation of the EU regulation will bring the country in the right direction in that respect.[407]

It must also be noted, that unfortunately Italy has had problems with the treatment of wastewater and since 2012 has been the object of infringement proceedings for violation of EU Directive 91/271. The Commission referred Italy to the CJEU first in 2013 and a Court judgment in 2014 ruled that Italy was in breach of its obligations concerning the treatment of urban wastewater, as 41 agglomerations failed to ensure that urban wastewater was adequately collected and treated (C-85/13). Despite progresses made since then, the Commission found that urban wastewater was still not adequately treated in several agglomerations posing significant risks to human health, inland waters and the marine environment. Thus, after a letter of formal notice to Italy in June 2018, followed by a reasoned opinion in July 2019, the Commission has recently decided to refer Italy back to the Court of Justice (INFR (2017)2181) for failure to fully comply with the previous CJEU judgment of 2014: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1234. To our knowledge the case is currently still pending before the CJEU.

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

The principle of full recovery, dictated by EU law (art 9 WFD) is explicitly recognised in art 119(1) of Legislative Decree 152/2006, whereby it vests to the "competent authorities" to *consider the principle of full recovery of water services costs, including environmental and resources costs*, taking into account the economic analysis carried out according to the criteria indicated in the relevant Annex to the decree, and also the polluter pays principle. According to this provision (art 119. 2 and 3) the principle of full recovery of costs is implemented and operationalised by taking into account those costs in the determination of both the tariffs and the concession fees.

In terms of competences, the Italian system identifies different levels:

The Authority ARERA [*Autoritá di Regolazione per Energia Reti e ambiente* (ARERA)] is the independent body that regulates and control the water services at national level, and has the task to protect consumers interest and to promote fair competition, and efficiency in the management of water services] defines at national level the cost components of the tariff and is also responsible for preparing and periodically reviewing the method for determining the tariff of the integrated water service and for approving the tariffs proposed by the competent body.

The tariffs are then determined at regional level by the *Enti di Governo d'Ambito* - EGAs (these are the entities replacing the AATOs) or other competent subjects identified by the regional law; the tariffs are then submitted to ARERA for approval. In the case of inertia by the EGAs, the initiative is taken by the management entity (*gestore del servizio idrico*) or by the ARERA itself. Moreover, at regional level, the Water Protection Plans (*Piani di Tutela*) identify the directions for allocating the costs among the various sectors and uses of the water, with a view to ensure the application of the principle of full recovery.

Thus, the tariff must ensure a full recovery of the costs for the investments (i.e. the interventions on the water network that the manager need to carry out); the cost of management of the water

[407] See : Nuove Energie: "We reuse only 4% of the Waste water" < https://www.nuoveenergie.it/en/news/drought-italy-we-reuse-just-4-wastewater > ; see also: Laboratorio REF Ricerche, Giugno 2023: https://laboratorioref.it/riuso-delle-acque-depurate-ladattamento-ad-un-clima-che-cambia/

services (i.e the operational costs, plus taxes and other financial burdens); and the environmental and resource costs.

The inclusion of ERC costs however occurred more slowly, and it is only from 2016 (ARERA second regulatory period 2016-19) that they have been included in the tariff methodology approved by ARERA. More recently, for the third regulatory period 2020-2023 (MTI-3) definition of ERC was extended to include "the economic valuation of the reduction and/or alteration of aquatic ecosystem functions, i.e. from lost opportunities resulting from a given use of a scarce resource" [ARERA, *Deliberazione* 580/2019/R/IDR, art 2].[408] This means that now ERC also include all the measures aimed at the protection and safeguard of the drinking water sources, as well as the intervention to prevent impairment and alteration of the functionalities of aquatic ecosystem and to re-establish their functioning'.

The practical implementation of those objectives however, and the definition of the specific measures to that end is delegated to the Regions, through the EGAs which are responsible to identify, at the territorial level (with the support of the Regions and the approval of the Regulatory Authority – ARERA) the interventions to protect the ecosystems.[409] (see on this 5th Report on the Natural Capital, p 136).

Problematic and obstacles to reach the full recovery:

The cost of water is influenced by different factors, which are related to the natural features of the territory (such as whether water comes from sources of high quality which reduce costs related to purification; or whether the morphology of the territory entails greater investments to withdraw water etc.), and can therefore vary slightly among the various regions.

Recently, however, a major problem for the economic and financial balance of water service management has been represented by the increase in electricity prices in 2021-2022. Electricity is one of the cost components of the water tariff and the higher price of electricity has exerted lot of pressure on the management of water, highlighting some critical issues in the way water supply cost are calculated. Electricity counts for about 18% of the operational and management costs and it impacts on 10% of the income.

One of the challenges arising is therefore how to face the increase in energy costs while also taking into account the EU objectives concerning energy efficiency. At present, the last tariff methodology approved by ARERA had already taken included the twin aims of promoting more efficiency in the energy consumption and maintaining prices sustainable (MIT-4 approved by ARERA with decision 639/2023/R/idr for the regulatory period 2024-2029). To address this, the new methodology envisages an update in the component covering the cost of electricity to account for the noticeable fluctuations which took place in recent years.

On social water pricing and access to water:

Since 2016 Italy carried out a national policy aimed at ensuring a homogenous access to water for all citizens without discrimination, with special support for the weaker customers. A ministerial decree of October 2016 defined the criteria for access to a minimum quantity of water which aims at safeguard human dignity while also taking into account the importance of protect water resources.

[408] Laboratorio REF Ricerche, « Costi Ambientali e della Risorsa : La Tariffa Idrica nel XXI Secolo < https://www.sipotra.it/wp-content/uploads/2020/11/Costi-ambientali-e-della-risorsa-la-tariffa-idrica-nel-XXI-secolo.pdf>

[409] Fifth Report on the State of the Natural Capital, p 136 < https://www.mase.gov.it/pagina/il-rapporto-sullo-stato-del-capitale-naturale-italia>

The aim of the decree is to support economically and socially weaker customers through tariffs which give them access to a minimum quantity of 50 lt of water per person per day. The decree also introduces a "water bonus" (*bonus idrico*) which guarantee free access to that minimum amount of water only for households with a demonstrated economic and social need; and for other categories of users identified it allows access to that minimum amount through subsidised tariffs [see: Minister of Environment and Energy Security, SII – *Tariffa S*ociale, https://www.mase.gov.it/pagina/sii-tariffa-sociale].

♣ WATER BIODIVERSITY

Questions

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country ? Please provide examples of success / failure of integration in particular cases if relevant.

In the Italian legal system there are examples of fruitful integration between the aims and objectives related to the protection of water and the protection of ecosystems. For example, considerations concerning biodiversity and water ecosystems are currently integrated into plans and strategies aimed at preventing floods and at mitigating hydrogeological risks. For example, art 7(2) of Law Decree 133/2014 identifies as a priority, among the measures to be financed to address and mitigate the hydrogeological instability, the integrated interventions that simultaneously aim at flooding risk at risk reduction and the protection and recovery of ecosystems and biodiversity. In that sense, art 117 (2-quater) of Legislative Decree 152/2006 (introduced in implementation of art 7(2) of Law Decree 133/2014) provides that the Water Management Plan (*Piani di Gestione*) drafted by the Basin Authority with other responsible subjects also includes a programme for the management of sediments at river basin level, as a tool to get knowledge, and to manage the morphological structure of river corridors. According to this provision "the objective of the sediment management programme is to improve the morphological and ecological status of watercourses and to reduce the risk of flooding through action on solid transport" by means of appropriate interventions identified therein.

Another example of integration between the objectives of water protection and those related to the protection ecosystems and biodiversity can be found in relation to the areas designated for the protection of habitats and species as part of the Water Protection Plan in each Region. Specifically, in order to implement art 6 of WFD and its Annex IV, Italy has proceeded to the setting up of a *registry of areas deserving special protection*, which also includes a list of "areas designed for the protection of habitats and species in which it is important to maintain or improve the status of the water"[see art 117(3) of the Legislative Decree 152/2006 concerning management plans and registry of protected areas and Annex 9 to Part III of the Decree]. These areas also encompass Natura 2000 sites and each Region shall include in the Water Protection Plan (*Piano di Tutela*) a summary of the protected areas situated under their territorial competences.

To operationalize this system, a Ministerial Decree established in 2015 a Working Group for the definition of the general directions and the specific objectives of water bodies in areas designed for the protection of habitats and species.[410] The Guidelines drafted by this working group explicitly

410 Source : https://www.mase.gov.it/sites/default/files/archivio/allegati/trasparenza_valutazione_merito/Pianificazione_governo_territorio/decreto_direttoriale_istitutivo_gdl.pdf; the guidelines adopted by the working group can be found here:

mention the need to achieve the integration between the WFD and the Habitats and Birds Directives. To this end they strongly recommend a greater coordination between the regional offices competent for the Water Management Plan with the management entities of the natural protected areas in order to exchange data and information to achieve a proper harmonization of the relevant protection objectives, and to identify correctly the proper interventions.[411]

9-**Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?**

In Italy, a number of important legislative and constitutional development have prepared the ground for a greater consideration for the need to protect and preserve the country's natural capital and in that context also for the adoption of nature-based solution and restoration of biodiversity resources, including water and freshwater ecosystems. First of all, the landmark constitutional reform of 2022 which included the protection of biodiversity and ecosystems among the principles of the Italian Constitution (article 9). Secondly, Law 221/2015 concerning "Provisions to promote the green economy and contain the excessive use of natural resources" established a "Committee for the Natural Capital", tasked among others to submit to the Prime Minister an annual report with detailed information on the state of the natural capital, including also information on the assessment ex-ante and ex-post of the impact of public policies on the Natural Capital and Ecosystems services.

The Fifth and most recent report of the Committee (2022) brings special attention to freshwater ecosystems restoration. It points out that ARERA has recently envisaged the inclusion in the water tariff of the costs for the restoration of the natural capital and the restoration of water resources. It also identifies the instruments for the integration of the natural capital value into policy choices, building on the UK experience of ENCA Guidelines (See p 7 of the Fifth report, referring to the UK ENCA – Enabling a Natural Capital Approach). With respect to water resources, the Committee recommends, among other things, a preference for restoration ecology interventions apt to respond in synergic, transversal and coordinated fashion to different directives, such as the WFD, the Flood assessment and management Directive [Directive 2007/60) and the EU 2030 Biodiversity Strategy.

In more practical terms, specific nature-based solutions and measures aimed at the restoration of freshwater ecosystems are envisaged in the projects financed by the PNRR. In this respect, the PNRR allocates funding to cover two main projects within the framework of investments aimed at contrasting climate change and hydrological risks.[412] One project concerns the renaturation of the river Po to revert the processes of pollution, soil consumption and digging of the riverbed that over the years have undermined the main characteristics of the river and increased the hydrogeological risk. The intervention aims at the recovery of the ecological corridor represented by the riverbed. The other project aims at the restoration and protection of the seabed and marine habitats to stop

https://www.mase.gov.it/sites/default/files/archivio/allegati/trasparenza_valutazione_merito/Pianificazione_governo_territorio/linee_guida.pdf]. See for more info: https://www.mase.gov.it/pagina/linee-guida-lindicazione-di-obiettivi-specifici-i-corpi-idrici-ricadenti-nelle-aree-protette

[411] See p 14 of the Guidelines

[412] https://www.italiadomani.gov.it/content/sogei-ng/it/it/il-piano/missioni-pnrr/rivoluzione-verde-transizione-ecologica.html; see also : https://www.mit.gov.it/nfsmitgov/files/media/notizia/2022-10/MIMS_PNRR_Risorse%20Idriche%2002.10.2022_compressed.pdf

the degradation of the Mediterranean ecosystem and to recovery at least 20% of the seabed and marine habitats in Italian waters by 2026.

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn ? Please feel free to answer this question only if you have a concrete example (successful or not) to share.

Omissis

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

Questions

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake ?

Depending on your national context, you may illustrate these conflicts with Agriculture (agricultural irrigation - the controversial case of metabasins for agriculture) or Energy (hydroelectricity - cooling nuclear power stations) or Tourism (increased tourist numbers - development of new tourism infrastructures) or extension of urban areas.

In Italy, one of the main concepts used in the governance of water to reconcile conflicts between potential competing uses of the resource is that of "hierarchy of uses". This concept, already established in Law Galli, has been reaffirmed in Article 144 (4) of Legislative Decree 152/2006 according to which priority is to be given to human consumption. Article 96(3) specifies that other uses are allowed on the condition that they do not undermine the quality of water reserved for human consumption; that the resource are quantitatively sufficient; and where there is no possibility to re-use wastewater or rain waters or where the use of such waters is not economically sustainable. Furthermore, in case of periods of draughts or water scarcity, art 167(1) envisages as a second priority after human consumption, the agricultural use of water, including aquaculture.

Beyond those provisions, there remains the need, given the quantitative pressures experienced by water resources in Italy over the most recent years due to draughts and climate related factors, to adopt more systematic responses to address potential conflicts among different uses and among users of the resource. Indeed, so far conflictual situations related to water availability which have arisen recently have been addressed through an emergency approach. An example of this is represented by the situation of water scarcity experienced in the North of Italy, in the Po valley (*Pianura Padana*), in summer 2022. From a legal point of view, the reaction, and thus the regulatory instrument chosen to deal with that emergency and to balance private and public interest involved, was the enactment by the affected municipalities of several 'emergency orders' aimed at regulating the use of water by setting out the priorities of use. In some cases, Regions even provided municipalities with models or schemes to follow when adopted those emergency ordinances. The problem with this type of response, according to research carried out by researcher of the CIMA Foundation in collaboration of with the Law Department of Genoa University[413], is that they were mainly adopted as contingent, emergency responses, enacted individually by municipalities. The

[413] Francesca Munerol e altri, 'I Provvedimenti avverso la siccità come "seme di conflitto"', in *Consulta Online* [2024] Fascicolo 1, https://giurcost.org/contents/giurcost/studi/aavv_siccita.pdf; see also: https://www.cimafoundation.org/news/acqua-dal-conflitto-alla-cooperazione/

contents of those orders were not homogeneous. Thus, some of them were not too effective in terms of the identified preventive measures, whereas others sought to redefine the uses of waters among different users, but through different strategies (from the request to control the operation of irrigation systems for private use, to the ban on the use of drinking water for gardens or sports fields). Most importantly the researchers underline the lack of appropriate planning and coordination strategy on the part of the authorities, as demonstrated by the fact that those emergency orders were only enacted in summer 2022, whilst warning of an incoming water scarcity were already evident during the winter. Thus, those orders had in practice the effect of creating, or in some cases exacerbating, greater conflicts concerning the uses of water.

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

Omissis

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation ?

Public participation is envisaged especially with respect to planning instruments: i.e. for the elaboration and update of water management plans for the district basin, and the water protection plans at the regional level.

Specifically, in implementation of the WFD, article 122 of Legislative Decree 152/2006 provides that the Regions promote active participations of all interested parties in the implementation of the provisions of this part of the decree (provisions related to the transposition of the WFD and other provisions concerning water management), "and in particular in the elaboration, reassessment and update of Water Protection plans. On the basis of reasoned request [by the public], Regions shall allow access to reference documents and to information used for the elaboration of the Water protection plan's proposal". Moreover, for the water district under their jurisdiction, "the Regions shall publish and make available to the public, for the submission of observations: (a) the timetable and work programme for the presentation of the Plan, including a statement of the consultative measures to be taken at least three years before the beginning of the period to which the Plan refers; (b) a provisional global assessment of the priority water management problems within the river basin to which the Plan relates, at least two years before the beginning of the period to which the Plan relates; (c) a copy of the draft Protection Plan, at least one year before the beginning of the period to which the Plan relates. The provision indicates that the public must have at least six months to submit their written observations.

Overall, article 122 is a direct transposition of article 14 WFD. Yet, the Italian provision explicitly refer to the elaboration and update of Water Protection Plans, rather than to Water Management Plans as in the WFD, but since it extends the scope of application of "active public participation" to all the aspect of implementation of Part III of the legislative decree (see above), it must be presumed that public participation and consultation principles apply also to the other planning instruments. Besides those national level provisions in the field of water, norms on public participation also apply to water planning instruments when these are subject to SEA, and where so provided in regional legislation [see for example, art 3 of Regional Law 1/2015 for Tuscany which dictates provisions for the

consultation with environmental associations in case of planning instruments – thereby including those related to water - adopted at regional level].

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

In Italy, legislation (Law No 6 of 22 January 2024) has been recently approved which allow for the creation of new criminal sanctions for damage to landscape and artistic and cultural goods. The law provides for administrative and criminal sanctions for those who destroys, disperse, damage or render wholly or partly unusable cultural or artistic goods. Those developments have been regarded with apprehension by those, including the UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, Michel Forst and Amnesty International, who see them as further threats to the freedom and human rights of environmental defenders.[414] Amnesty international in particular points out to the broad wording of the provision which provides for criminal and administrative sanctions up to euro 40,000 also for those who "defaces or defiles cultural or landscape assets of one's own or others, or assigns cultural goods to a use detrimental to their conservation or integrity or to a use incompatible with their historic or artistic character'. According to Amnesty international the second part of the provision (assign cultural goods to a use incompatible with their historic or artistic character) leaves a wide margin of discretion to the enforcing authorities or the judge. [415]

Another strategy often adopted against environmental activists consists in the use of instruments normally conceived to deal with criminal organisations, including prevention instruments such as the so-called '*foglio di via'*, a sort of injunction/ prohibition for the activist to enter or return, for a certain amount of time from 1 to 3 years to the place where they participated in the protest.[416]

[414] See https://www.editorialedomani.it/idee/voci/the-criminalisation-of-environmental-defenders-is-not-an-adequate-response-to-civil-disobedience-ws3u0ha3

[415] https://www.amnesty.it/il-ddl-contro-gli-attivisti-climatici-e-legge/

[416] https://altreconomia.it/perche-le-misure-spropositate-e-repressive-contro-gli-attivisti-per-il-clima-sono-una-minaccia/

Latvia

Dr. iur Žaneta Mikosa

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law?

The Water Framework Directive (WFD) has prompted the development of definitions concerning water resources that we didn't have before, such as water basins, water bodies, as well as required changes in some of basic definitions as on surface water, groundwater etc. The approach (system) envisaged by the WFD was completely new system that had to be established in Latvia before joining the EU. The legislation implementing the WFD and establishing the governance system was different from the one existing before. Accordingly, quite some new concepts were introduced, however, a new system was not well integrated in the existing institutional governance, especially at the local level (lacking the determination of an appropriate role and responsibilities for the municipalities). In addition, after "Soviet era" of no-private property, the legislation defined broadly private property on resources, including water (incl.groundwater) (and rights over it) without determining appropriate set of obligations. Thus, quite some challenges with respect to implementation of the requirements of the WFD appeared that triggered the studies mentioned below under Q2 connected with the willingness of the Ministry of Environmental Protection and Regional Development (MEPRD)[417] to improve the system and develop more effective framework for water governance and management. One of suggestions under discussion is on the concept of 'water' as public (common) good. See more under the next Q.

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

The main or even the only studies discussing quite in detail the concept on water as *commons* has been carried out in 2018 and continued with the second stage in 2020.[418] The second study requested by the MEPRG was aimed at examining legislation and the system of water governance and developing proposals for its improvement. In this study the concept on waters as commons is used as the basis on which some conceptual suggestions for amendments were argued.

[417] This ministry is responsible for protection of waters and implementing the WFD.

[418] Research project of 2018: "Responsibility of landowners, municipalities and the state for the protection of small rivers". (Further – study of 2018). Available (in LV): https://www.bef.lv/projekti/upju-parvaldiba; Research project of 2020: Assessment of water management and development of a framework for more effective management and governance of rivers. (Further - Study of 2020). Available (in LV): https://www.bef.lv/publikacijas2/publikacijas/zinojumi/. Both projects performed by a well-known (in Latvia) NGO "Baltic Environmental Forum" (BEF) involving as the main legal expert the author of this report.

According to the study of 2018: the specific nature of 'water' as part of the interlinked ecosystems requires certain specificity of regulation to ensure the protection of public interests in sustainable and rational use of waters protecting and sustainably managing them. The study of 2020 added to this "need of specific regulation" and a system for effective governance of waters, the discussion on the concept of "commons" arguing in favor of defining the "flowing waters" as in substance "*res communis omnium*", i.e. determining that they are not included in the scope of private property but should be seen and managed as part of 'public domain'. [419] These studies and proposals included therein aimed at enabling the legislator to develop more effective system of water governance triggered discussions within different fora including among ENGOs and the Ministry, as well as in the Parliament. At this moment, some amendments of the legislation are prepared by the Ministry but quite some conceptual discussions are on-going.[420] The debates are on-going *inter alia* about establishing a definition that "flowing water" is a common public resource to be defined as "resource encompassing the entirety of watercourses, including rivers, streams, and tributaries, as well as lakes interconnected with these watercourses."

The discussions on water as commons at European level would certainly be useful and could help to foster the discussions and appropriate attention at national level.

At this moment, amendments prepared and discussed at expert level including with respect to extending the definitions are pending for a while due to quite some changes at the political level and uncertainties about the place of the "Environmental block" (departments dealing with the environmental issues) and "Nature protection block".[421] So, quite some good initiatives are stuck for a while.

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

Questions

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

The Constitution of the Republic of Latvia in Chapter on Fundamental rights provides a right to "a benevolent environment".[422] The scope of the article 115 presumably embraces the right to clean water and sanitation although not explicitly. So far, however, there is no case-law of the Constitutional Court to confirm this presumption, as no case initiated before it with respect to a right to clean water or sanitation. At the same time, some lines of argumentation stemming from other

[419] Study of 2020.

[420] For example, on the 10th May 2024 the Parliament's several Committees including on Sustainable development and Environment and Climate has organized Conference on: "Sustainability of Latvia's Waters and How to Achieve It?" with the participation of experts and policy makers The aim of the conference (as defined by the organizers) was: "to inform policy makers about the current challenges related to water quality and resources, and to take practical and legislative steps to address them."

[421] One planned to be reallocated under the recently established Climate and Energy Ministry and one planned to stay in the Ministry of Environmental Protection and Regional Development, probably with changes in the titles…) this summer, 2024.

[422] Art. 115 of the Constitution: The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.

cases concerning Art.115 allow to presume existence of a constitutionally protected right to clean water recognized so far indirectly by the Constitutional court.[423]

With respect to water poverty and insecurity.

The *Law on Water Management Services* is aimed "to facilitate availability of water management services which are qualitative and conforming to the environmental requirements in order to ensure service users with continuous and safe services balancing the interests of environmental protection, sustainable use of natural resources and socio-economic interests".[424] However, the law does not specifically address the water poverty issue. Amendments to this law are currently in the process of inter-institutional discussion. These amendments instruct local governments to identify residents that have no or limited access to drinking water and to take measures to improve access to drinking water, as appropriate. Similar legislation initiative is going to be developed on access to sanitation after adoption of the Recast of the EU Urban Wastewater Treatment Directive as expected later this year.

Additionally, according to *the Local Government Law*, a local government shall organize water management (water supply and sanitation) for inhabitants, irrespective of the ownership of the housing. They are organizing the availability (and affordability) of the service in the form of public interest service which is covered by the pricing calculations approved by the Public Utilities Commission (Regulator).[425]

According to the quite recent legislation, the municipality is entitled (and under certain conditions incl. due to the environmental reasons, obliged) to require that a connection to the centralized wastewater treatment system is envisaged in a case of a new housing development. The requirement was "tested" by some developers challenging such requirement as 'economically unfeasible/unjustified'. However, the Administrative Supreme Court approved the decision of the municipality by inter alia stating:

> "The legal obligation to establish centralized water supply and sewerage systems has a legitimate basis - the interests of environmental protection. The installation of individual sewerage systems poses a greater risk of environmental hazards than a centralized sewerage system, as their proper operation is within the discretion of the individual owner."[426]

The same law while entitling municipalities to require a mandatory connection to sewerage networks entitles as well a local government council to decide on providing co-financing for connection of the

[423] E.g. The Constitutional Court judgement of 11.04.2024 in case 2023-09-0106 recognizing the prohibition of "breeding and keeping of livestock ..where the sole or main purpose of which is the production of fur" as compliant with the Constitution (a right to property) referring inter alia to a right to clean environment (including against water pollution) that have form the main basis of "legitimate justification" for the prohibition established by law. As emphasized by the Court referring to the legislator and experts involved in the case: "the main problems associated with the fur industry are nitrogen and phosphorus pollution of water" and that together with some other pollution problems referred affects inter alia the right to a clean environment serving one of justifications to limit such type of activity as the legislator has decided. See about the case in report on Recent development.

[424] Art.2 of the Law on Water Management Services. Available (in EN): https://likumi.lv/ta/en/en/id/275062-law-on-water-management-services

[425] In the water management sector, the approval of the tariffs covers: water supply services (water abstraction and preparation; water delivery) and sewerage services (wastewater collection and drainage; wastewater treatment), if volume of services provided by a company exceeds certain limit defined by law.

[426] The Supreme Administrative Court, judgment of 20.06.1018, case No A420349813, SKA-170/2018 ECLI:LV:AT:2018:0620.A420349813.4.S

immovable property to centralized water supply system and/or centralized collecting system, by determining the amount of co-financing and conditions for receipt thereof.[427]

4- How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?

The water needs of ecosystems have some reflections in the Latvian Law on Water Management starting with appearance in the objectives of the Law.[428] The concept has been integrated under the Article 7 defining "duties of a user of water resources," however, in practice it is not clear how and whether it has been really taken into account.
At the same time, in recent years some discussions are ongoing among the environmental experts in relation to actions needed to ensure free flowing rivers, removal of obstacles and ensuring ecological flow. According to the Ministry (responsible for environmental protection) related amendments to the water use permitting regulation are planned this year aimed at significantly improving the requirements on ecological flow that has to be ensured by the small hydropower plants (HPP).[429]
The current debate is about new approaches, methodology on how legally-correctly to determine new thresholds on ecological flow and to ensure enforcement. The discussion is focused on needs to achieve good ecological status as well as favorable conservation status, but not yet about "rights" of rivers or so. Even if there are some arguments upheld on good ecological status as a need of water ecosystem but understanding behind any provision or regulation is rather anthropocentric with emphasizes of a need of water protection as part of human needs of surveillance. At the same time, ENGOs and some politicians try to bring the issue on the 'rights of nature' in the spotlight of some political and academic discussions but those are rather about the situation in the other parts of the world without really suggesting providing rights to any particular river or so in Latvian legal system.

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

♣ INTEGRATED WATER MANAGEMENT

Questions

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions? We invite you to focus on the most relevant topic in your country.

Apparently there are quite some problems with respect to water quality (as defined in the WFD) as only about one-third of surface waters are being in good or high ecological quality.[430] According to

[427] Article 5(6) of the Law on Water Management Services.
[428] Art.2 defines the objectives of the Water Management Law stating: "prevents the deterioration of water and the state of the terrestrial ecosystems and wetlands directly dependant on water, protects such ecosystems and improves the condition thereof." (Art.2(1)(b). Available (in EN) https://likumi.lv/ta/en/en/id/66885-water-management-law
[429] In Latvia there are 146 small HPPs on the rivers, but their contribution in the generation of electricity is really insignificant (less than 2% of overall production of electricity in the country). Therefore, time to time the discussions spark about the need and possibilities to dismantle those HPP which are creating more damage to the environment then any economic benefit even at local level. So far those are only debates without any action in practice.
[430] Up to now, groundwaters are in much better situation (in good chemical quality – 86%; in good quantity – 100%)

the River Basin Management Plans (2016-2021 and 2022-2027)[431] and taking into account the data prepared by the representative of the Environmental Centre[432] one may see that *hydromorphological stress* is the main reason why ~65% of Latvia's rivers and lakes cannot achieve good ecological quality.[433] Another significant group of pressures is diffuse pollution, mainly from agriculture. Eutrophication is one of water quality problems caused by leakage and discharge of nutrients. The number of surface water bodies affected by significant diffuse loads (31%), i.e., more than four times larger than the number of surface water bodies affected by significant point-sources (~ 7%).

With respect to both major problems: **hydromorphological alterations and diffuse pollution** (mostly from agriculture) the legislative response is rather weak, with no legal obligation to remove the obstacles that impact the water environment and no legally binding incentives for the agricultural sector to protect water bodies from substances used on their fields.[434] In fact, use of fertilizers and pesticides has been increasing in the country, causing eutrophication and pollution with hazardous substances. Strict measures to reduce fertilizer use or impose environmental taxes are not being implemented. The requirements that stem from the Common Agricultural Policy are criticized by ENGOs as "not delivering benefits for the environment; rather, it is having the opposite effect" due to the approach how it has been implemented.

Eutrophication is also caused **by wastewater discharges** due to insufficient wastewater treatment facilities (in some of regions). Investments in smaller-sized wastewater treatment facilities, which are causing local water quality problems, have been rather limited. At the same time, some positive developments are observed after adoption of the Law on Water Management Services defining *inter alia* a broader involvement of local municipalities, including through competences on planning of funding for smaller facilities (for smaller agglomerations).

With respect to chemical quality of surface water bodies that is affected almost everywhere by several ubiquitous pollutants (like mercury) being present not only due to domestic sources, but also due to trans-boundary transfer of pollution. Latvia is a downstream country receiving about half of the pollution load of nutrients from neighbouring countries — the EU and third countries (Russia and Belarus). The geographic location also influences (in)capability of policymakers to take proactive measures facing quite some difficulties to agree about common measures needed to address transboundary pollution. At this stage, only with Estonia and Lithuania process of cooperation in protecting shared water bodies are on-going.

[431] All plans and their SEA available: https://videscentrs.lvgmc.lv/lapas/udens-apsaimniekosana-un-pludu-parvaldiba

[432] Šīre, J. representative of Latvian Environment, Geology and Meteorology Centre. The institution responsible for implementation of the WFD under supervision of the Ministry of Environmental Protection and Regional Development. Presentation prepared for the discussions with the Parliamentarians about problems and needed solutions for improving the status of waters as required by the WFD.

[433] Th main type of destructions: Regulation - channel straightening, dredging; Polders - diversion of water (regulation), flooding, regime change; altering the structure of the banks (harbors); Hydropower plants (HPP) and dams. In general, on rivers in Latvia: there are ~1400 different obstacles (locks, floodgates, dams) and 146 small, as well as 3 large HPPs; There are lack of effective solutions addressing the problems of hydromorphological alterations (only 6 fish migration aids, problems with assurance of ecological flow as well as methodology of its calculation).

[434] There are recommended distance requirement (as part of a "good practice") to leave a stripe of a land uncultivated in certain distance (2 m-10) from a waterbody to reduce pollution from agriculture reaching waterbody. However, the payments are higher for quantity of cultivated land than those earmarked for such type of environmental incentives.

With respect to an obligation of 'non-deterioration' – according to the Environmental State Service (permitting and controlling authority) this obligation should be taken into account during both an environmental impact assessment procedure and environmental permitting. However, one may doubt an existence of effective possibilities to implement such obligation in practice as there is neither clear methodology nor reflections on the application of such considerations in environmental permits or decisions refusing authorization. At the same time, according to the information provided by the permitting authority recently there has been no such type of projects that should have been refused due to 'non-deterioration' considerations.[435]

With respect to exemptions- as only about 35% of surface water bodies have good or high ecological status, the exceptions are widely applied, till so far mostly "an extension of the deadline" (Art.4.4.) relying on or combining with "natural conditions"[436] and less but also to Art.4(5) relying on "infeasible or disproportionately expensive."

Article 4(5) is different in nature from Article 4(4) as it allows Member States to derogate from the environmental objectives of good status and set "less stringent objectives" to those required in accordance with Article 4(1). Thus, less stringent objectives under Article 4(5) are applied to specific water bodies when they are so affected by human activity, or their natural conditions are such that the achievement of good status are "infeasible or disproportionately expensive." It is worth noting that a reference to the term 'infeasible' "includes technical infeasibility but could also refer to situations where addressing a problem is out of the control of a Member State."[437] Thus, it seems that under this exemption Latvia will strive to include waterbodies affected by transboundary pollution that is out of the control of the country due to the situation next to its borders.

A bit surprising but Art.4(7) derogation never applied (so far). On the other hand, it could be explained by the fact that an approach how this provision is implemented results in an obstacle (or even impossibility) to apply it in accordance with the WFD.[438]

With respect to the legal responses in particular to reduce reliance on WFD exemptions: one could note a system established by the law for classifying water bodies at risk ('RWB') to achieve the environmental objectives in time. According to specific criteria and an assessment carried out under the auspice of the Ministry responsible for water governance the list of water bodies and regulation providing specific requirements with respect to them are approved by the Government.[439] The

[435] It is difficult to check to confirm or deny these considerations but there is no litigations either that could indicate another situation. At the same time there are some indications with respect to e.g. river dredging that raises questions on their effects to the status of water body.

[436] In the third planning cycle (RBMP 2022-2027) it has been taken into account that for the application of Article 4(4)-time extensions on grounds of 'natural conditions', the measures required to achieve good status should be implemented by 2027, but water body recovery is expected to take longer such that good status can only be achieved after 2027. Thus, according to Art.4.4. exemption is to be applied when "natural conditions do not allow timely improvement in the status of the body of water."

[437] CIS Guidance Document No. 20 on "Exemptions to the environmental objectives"

[438] Such conclusion stems from the Study of 2020, pointing out that the institution defined as responsible for deciding on whether all pre-conditions are met in accordance with the Art.4(7) requirements, is lacking competence to assess and decide on some of them, e.g., whether "the reasons for those modifications or alterations are of overriding public interest."

[439] Regulations Regarding Water Bodies at Risk (418/2011) defining: "surface water bodies which are at risk of failing to meet good surface water status specified in the Water Management Law within the period of time provided for in the referred to law." Available (in EN): https://likumi.lv/ta/en/en/id/231084-regulations-regarding-water-bodies-at-risk

Regulation on the RWB provides some additional competences upon the environmental authority for assessment and permitting of the activities that might affect those water bodies, as well as requires planning authorities to take into account this status (and specific requirements) for planning of the EU funding allocations, including stating that "the measures allowing to reduce adverse impact on water bodies at risk quantitatively shall be included therein."

However, it is difficult to assess (reliable information is not in my possession) whether those measures have reduced the amount of water bodies where the exemptions are applied. Statistically such water bodies have risen if compare the first RBMP with the third RBMP (2022-2027). That is, however, most likely due to obtaining more and more information about the conditions of water bodies and more reliable data that the Environmental Centre has with respect to the conditions of water bodies clarifying 'status of water bodies' comparing with the time when the first two plans have been prepared.

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management? Please focus on the most illustrative example either in relation to the Floods Directive or the Water Reuse Regulation or national/local measures concerning water stress and/or droughts which could inspire a future EU Law framework.

On the positive note one may highlight the integration of flood risk reduction measures into the River basin management plans (RBMP). However, measures envisioned for flood risk management are predominantly still conventional — grey infrastructure. (Very often they are co-funded by EU funds. However, recently in the Regulation on some EU funded programmes one of conditions were introduced to require nature-based solutions).[440] Nature-based solutions are slowly gaining traction, particularly in the agriculture and forestry sectors, yet primarily through pilot projects.

New dams are being constructed, justified by the overriding public interest of protecting inhabitants and rural settlements. In Riga region, new dams are planned due to urban sprawl, as much of the former summer-house areas are being converted into permanent living zones. Local municipalities have permitted dwellings in wet and flood-risk zones, necessitating the construction of dams to protect against flooding.

Difficulties are in balancing of interests when inhabitants and farmers are complaining about occasional flooding and the damage caused to fields and estates and due to that renovation (through method of dredging) of river streams are allowed often at risk to damage habitants of waterbed. So, quite different situation/complains comparing with the situations (on droughts) described under this part of the questionnaire.

With respect to the Regulation (EU) 2020/741 on **Water Reuse,** Latvia has applied Article 2.2. exemption provided by it**.** The explanation received on application of this exemption states that we have "sufficient freshwater resources and costs related to the use of treated wastewater would be significantly higher than costs related to the use of natural waters."

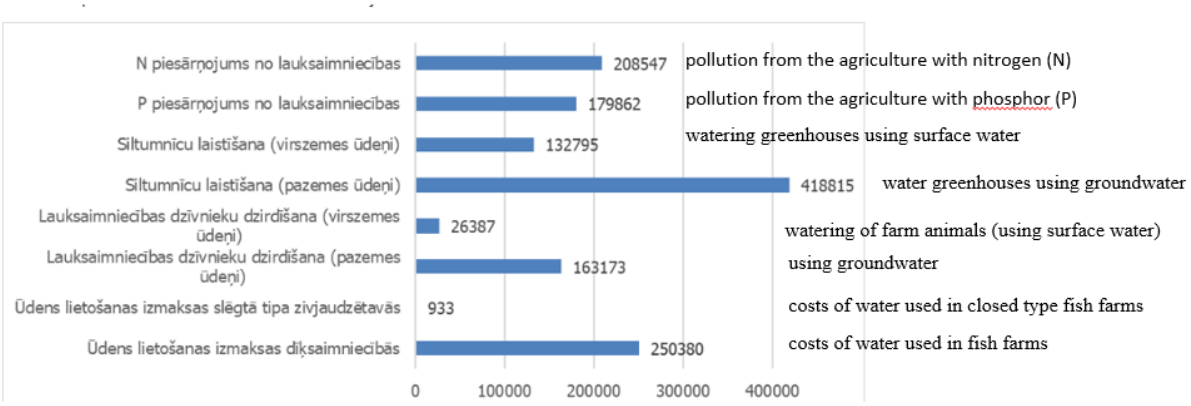
[440] See under the Q9 below.

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

With respect to the households' - the costs of water supply and sanitation are 'regulated', and the service is provided by public companies.

We do not have special legal mechanisms on social water pricing. They are not discussed either, at least currently. However, affordability of water supply and wastewater treatment services is a challenge. On the one hand, there is a need for investments in water services sector, especially considering new requirements of the Recast of Urbans Wastewater Treatment Directive. On the other hand, if the only source for these investments would be payments of users of services via tariffs, it will inevitably reduce the affordability of water services.

In general, the cost of using water resources is covered by the natural resources tax aimed at stimulating reduction of the usage of the natural resources.[441] However, as indicated in the RBMP, there are quite some sectors that are using water resources without covering environmental costs at all or not in accordance with the 'polluter pays principle'. They are listed in the following table by indicating the amount uncovered (in EUR) by activity or pollution.[442]



For these types of water usage, there are general regulatory frameworks in place which allow existing business practices that water is used without costs being covered. The RBMP contains recommendation (conclusion) that "in order to put into practice the polluter/user pays principle, a system needs to be developed where charges are levied for the actual quantities consumed water or for the damage caused to water resources."

However, it does not seem that the recommendation is followed in the programme of the most recent set of measures that could lead to such recovery of costs.

♣ WATER BIODIVERSITY

[441] Natural Resources Tax Law, Available (in EN): https://likumi.lv/ta/en/en/id/124707-natural-resources-tax-law
[442] Table copied from the RBMP of the Daugava River basin 2022-2027.

Questions

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country? Please provide examples of success / failure of integration in particular cases if relevant.

It seems the answer is negative although logic dictates it should be rather positive. From the outset the implementation of these Directives has been carried out in a way that doesn't ensure the integration of the requirements in coordinated decision-making system and there has been even lack of efficient cooperation between different competent authorities responsible for protecting natural resources. The later deficiency has been highlighted by the Study of 2020 that provoked quite a few discussions and seems to be leading to some improvements. For example, recently closer cooperation has been noted between the Nature Protection agency and competent authority for developing RBMP and monitoring their implementation, exchanging with data, and contributing to each other decision-making process.

Up to recently, Latvia also had challenges in defining responsibilities for invasive species management and listing. There is a lack of effective implementation of those requirements in the legal system. Some time ago, the Commission started an infringement procedure that reached up to the CJEU, but recently (2023) it was withdrawn by the COM and the case closed, as finally some progress dealing with the invasive species was demonstrated.

In any case, Latvia is one of those "certain EU MS" where "water law and nature conservation law are two different sectors of environmental law, whose integration has not always seemed obvious;" (quote from the description of the Context of this Q.) In addition, as indicated by the Ministry, there are difficulties in establishing WFD environmental objectives in harmonized way with those on protected species and habitats. A typical example where those objectives have been even contrasted (for long time) is with respect to a lake Lubans.[443] Recently a study has been carried out with respect to this lake considering that "the interests of lake management are diverse and contradictory. In these circumstances, the application of the requirements of European Union and Latvian legislation in the context of the conservation and management of Lake Lubans poses a challenge."[444] In short, (and in very simplified way) there was a problem in agreeing about measures that are needed for achieving a good conservation status for particular fish types (requiring to keep high water level in the lake) that is opposite to the objectives defined for this area as a SPA for migratory birds where the impressive amount of them is resting and feeding, as well as to measures identified according to the Floods Directive. At the same time, one of conclusions of the *Goodwater Study 2021* was: "that the objectives of the Water Framework Directive, the Habitats Directive, the Birds Directive, the Floods Directive, the Nitrates Directive, the Urban Wastewater Treatment Directive … are consistent and complementary, and they are not mutually exclusive." The Study includes some suggestions on "the preferred sequence for defining the objectives of the Water Framework Directive, the Habitats Directive, the Birds Directive and the Floods Directive in the context of Lake Lubāns." It has been

[443] Lake Lubāns is the largest embanked lake in Europe incorporated in a complex of wetlands of international importance, with an utmost role in conservation of nature values. Economic activity in agriculture, aquaculture and other sectors is actively carried out in the vicinity of the lake.

[444] The study was prepared (in 2021) by Ģ.Baranovskis as part of the integrated project "Implementation of Latvian river basin management plans for achieving good surface water status" (LIFE GOODWATER IP, LIFE18 IPE/LV/000014). (Further – Goodwater Study 2021)

suggested to include the measures for harmonizing and coordinating different interests in the Nature Protection (Management) Plan for Nature Reserve "Lubana mitrajs" that should also cover lake Lubans next to quite some other type of protected areas, including bogs etc. In addition, the objectives, integrated conditions and management measures should be included in the Individual Regulations on Protection and Use of Lubāna mitrājs Nature Reserve.[445]

However, a decision on how to proceed and what to prioritize is for the political level to take and that might not follow the suggestions developed in the Study.

Nevertheless, one may note that there are some incentives for integrating different requirements and objectives. However, at this moment, there is no example that could be highlighted as success with respect to results that might be achieved by integration.

9-**Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?**

There are some elements with respect to nature-based solutions, not comprehensive regulation. For example, in the regulation defining the conditions to receive EU funding under the subprogramme on "Flood and Coastal Erosion Measures of National Importance"….one of the conditions for investments requires: "to strengthen protection against floods in an area…. applying "green" or "blue" infrastructure techniques."[446] In overall, nature-based solutions are introduced mostly through piloting projects and demonstrating phase – supported by EU funding.

Restoration as discussed in the EU nature restoration law is not well perceived by those representing agriculture and forestry sectors and they are very loudly expressing their disagreement with any activities that might be required for implementing a new legislation.[447] So, at this moment, there is no enthusiasms noticed or any initiatives "on the table" for changes in the light of the requirements stemming from the nature restoration legislation.

In general, there are no provisions in the national law to restore water ecosystem except when damage is caused by accident or illegal activities but even then, there are no advanced examples to share with respect to any restoration that would have been made due to damaged caused to water body after an accident or illegal activity. At the same time, there are some restoration projects (for example, the return of a meandering river type after it has been straightened during the Soviet times; and construction of fishway in the dammed river). However, they are initiated and carried out as part of pilot projects under the EU funding programs not as a part of the country policy on restoration of nature or so.

[445] Such type of regulation is developed for each territory under nature protection legislation (including Nature 2000)

[446] Government Implementation Regulation No.247 of 30 April 2024 on European Union cohesion policy programs 2021-2027, supporting objective "Promote adaptation to climate change, risk prevention and disaster resilience". Under this objective the Regulation contains conditions for selection of projects for "Flood and Coastal Erosion Measures of National Importance."

[447] Part of them supported activities organized by European farmers associations in Brussels recently and organized some activities also locally (the main claim – against Brussels bureaucracy and bureaucratic requirements but that included position against the 'Green deal' and the Nature restoration law. (In fact, opinions within the agricultural sector are divided but those that are not against environmental requirements are much quieter, less visible.) smaller).

At this moment there are several initiatives under the discussions and development with respect to "improving the flow of waters", as indicated above, one of the major pressures on rivers in Latvia is hydromorphological alterations, such as multiple barriers and dams stopping the free flow of rivers (all together more than 1400, including 146 HPP as noted above). The legislative initiatives under the developments are focused:

> firstly, on improving the requirements on ecological flow that must be ensured by the small hydropower plants (HPP),[448] and
>
> secondly, possibilities to deal with (incl. legally destroy, if one may say so) dams and different other obstacles that are blocking free flow of the rivers and passage of migratory fish. The issues on private property and unwillingness to cooperate complicate the possibilities to deal with these issues.

One of the recent examples (funding initiatives) worth mentioning is the Government Regulation on procedure for granting state and European Union funding for "Improving the quality of fish habitats"[449] that aimed at supporting only those activities that are carried out in the water bodies where obstacles to fish migration are identified as the most problematic according to the River basin management and flood risk management plans (2022-2027) of all four regions. Supported activities are, for example: *the demolition of the barrier and the restoration of the river; reconstruction of the transport structure to ensure fish migration; creation of a natural fishway; creation of a technical fish road* etc. (Art.14).

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn? Please feel free to answer this question only if you have a concrete example (successful or not) to share.

Certainly, not.
One good example (even if challenging from the implementation viewpoint) could be mentioned, i.e., legislation on protection zones, including along the surface water bodies and along or around the water abstraction sites. [450] Among other things, this legislation requires protection of floodplains and other areas that are periodically, naturally flooded. However, its enforcement is not always easy due to the pressure from those interested in the development of territories (next to watercourses). Moreover, according to some recent amendments, the exceptions were introduced that allowed dams to be built to protect from floods that, in general, is understandable exemption. But it seems to be used by some municipalities to build dams in a way that some territories to which a ban to plan housing area applied due to flooding risks would become terrestrial territories and thus, development of housing would be allowed.

As indicated above, some legislative initiatives are under discussion that could include legislation on free-flowing rivers. However, there are neither concrete proposals published nor political approval yet with respect to such development, thus difficult to assess whether and when might be something on a table.

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[448] According to the RBMP 2022-2027 "the introduction of ecological flows in small hydropower plants together with the creation of fishways should be a priority for a management measure to be carried out."
[449] Government Regulation No 156 of 5 March 2024.
[450] Protection Zone Law (of 1997 with a lot of amendments). Available (in EN) https://likumi.lv/ta/en/en/id/42348-protection-zone-law

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

Questions

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake ?

Depending on your national context, you may illustrate these conflicts with Agriculture (agricultural irrigation - the controversial case of metabasins for agriculture) or Energy (hydroelectricity - cooling nuclear power stations) or Tourism (increased tourist numbers - development of new tourism infrastructures) or extension of urban areas.

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

Nothing spectacular to report as inspiration for others.
However, we do have Consultative boards in each river basin district (4) as part of water governance system, establishing a platform for cooperation among representatives from public institutions, municipalities, NGOs. This is a platform to exchange ideas and inform other parties about new projects or initiatives etc. They function as consultative institutions thus without competence to take decisions or decide or one or another direction or development. However, their opinions, suggestions are taking into account during the preparation of the RBMP and related issues.
According to the Study of 2020, the water governance does not function efficiency noting as one of reasons: the fact that the municipalities (that are responsible for spatial planning of their territories) are not effectively involved in the water governance. The discussion on the 10th of May 2024 in the conference organized by the Parliament[451] includes *inter alia* the issue on needed changes to improve water governance in order to achieve the objectives of water quality.

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation ?

Yes, it has, and to some extent, the possibilities for the public participation are wider establishing the platform (in the form of Consultations boards mentioned above) through which the consultations and discussions are taking place including on the drafts and assessment of the RBMPs. Each draft of a plan is presented and discussed in the respective Consultation board apart from "standard" consultation process that is organized for each RBMP and its SEA. The consultations are more structured and better organized involving broad spectrum of the ENGOs within those Consultation boards. Moreover, the rights to public participation are not limited to "public concerned", any one is entitled to express their opinion and participate in the discussions on the RBMP, as well as their mid-term reviews.

[451] See above FN 4

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

I am glad, that I have nothing to report. Neither the Ministry nor the ENGO were indicating any violation that we could classify as threat to water defenders or so.

Norway

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law ?

The main modern Norwegian legislation on water issues was adopted in 2000 as the Water Resources Act (no. 82 of 2000).[452] At the time of preparing the Act, some attention was paid to the emerging WFD. The main conclusion was that the upcoming Directive was considered not to necessitate significant amendments.[453] Nevertheless, the WFD has contributed to broadening the Norwegian legal definition of water in two main dimensions:

1) The integration of fresh water and coastal water legislation.
2) The introduction of water quality requirements as a paradigm shift from traditional rules on use of water resources, pollution prevention and species protection.

These changes came about through the adoption of the Norwegian Water Regulation in 2006, which preceded the decision on including the WFD in the EEA Agreement in 2007 with effect from May 2009. This regulation is based on and thus serves to integrate the following four Acts: Pollution Control Act (1981 no. 6), Water Resources Act, Planning and Building Act (2008 no. 71), and Nature Diversity Act (2009 no. 100).

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

As demonstrated by a recently published PhD dissertation (in Norwegian only),[454] the implementation of legislation relating to ground water has been a largely ignored topic in the Norwegian context. The WFT is likely to contribute to accelerating the mapping of groundwater resources and the development of guidelines and administrative practice. While groundwater has been extensively privatized in practice, the current legislation allows for public authorities to take significant control over activities that exploit or otherwise affect groundwater resources. Whether such developments will lead to significant reforms of the Norwegian legal framework remains an open question.

Norway has had longstanding legislation on the rights of energy production from water, including the development of a specialized concept “fallrettigheter”. The basic legislation restricting foreigners’ access to invest in such rights evolved starting from legislation adopted in 1888. Subsequent legislation has made private rights to such energy production time-limited and set out that such rights

[452] An unofficial translation of the original Act is available at https://www.regjeringen.no/globalassets/upload/oed/vedlegg/lover-og-reglement/act_no_82_of_24_november_2000.pdf. An updated Norwegian version of the act can be accessed here: https://lovdata.no/lov/2000-11-24-82.

[453] Ot.prp. nr. 39 (1998-1999) p. 26.

[454] Solli, Gunnhild Storbekkrønning, Ute av syne, ute av sinn. Om rettigheter til og forvaltning av grunnvann i norsk rett. (Karnov Group Norway AS 2021).

can be transferred to public authorities without compensation after 60 years. This arrangement was contested before the EFTA Court, with the EFTA Surveillance Authority (ESA) arguing that less favourable treatment of private right-holders as compared to public undertakings represented a violation of articles 31 and 40 of the EEA Agreement.[455] The Court concluded that the Norwegian legislation was in violation of the provisions, and the judgment resulted in swift amendments of the law, focusing on strengthening the rights of public authorities while omitting discriminatory rules.[456] The resilience of the Norwegian position on the issue of public ownership to and control over hydropower production might be of interest to EU Members.

The use of different forms of protected area status and opportunities to change or disregard the status of protected areas has become increasingly contested in Norway in recent years. The habitats, birds, and bathing waters directives are not part of the EEA Agreement, and this has been made explicit in the EEA adaptation text to the WFD.[457] The status of protected areas[458] under the WFD has therefore not been much debated in the Norwegian context. One key example is the status and protection of areas for wild salmon in coastal waters and rivers. Such areas are designated as national salmon rivers and salmon fjords by the Parliament in accordance with section 7a of the Act relating to Salmonids and Fresh-Water Fish (1992 no. 47). Several controversial cases regarding revision of permits for hydropower installations, permits to the dumping of mining waste and the location of salmon farming activities in such rivers and fjords raise significant questions regarding the status of such areas under of the WFD. Of the 26 151 protected areas registered by Norway under the WFD, only 791, or slightly above 3 %, are classified as having good or very good ecological and chemical status.

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

Questions

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

In Norway, 90 % of drinking water comes from surface water and only 10 % from groundwater. More than 80 % of the population get their supply of drinking water from municipal suppliers. Currently, water poverty and insecurity are regarded as of limited importance in the Norwegian context. According to a report from 2023, public authorities are criticized for not implementing sufficient measures to reduce leakages and renew water pipelines. Norway has 50 000 km of such pipelines.[459]

The 2020 version of the Drinking Water Directive has not yet been included in the EEA Agreement, and Norwegian authorities have not yet concluded their assessment of this Directive. The 2015 version of the directive has been implemented through the Drinking Water Regulation (2016 no. 1868). The Regulation defines the duties of water suppliers and defines the powers of public authorities. It does not define consumer rights beyond implicit rights following from suppliers' duties. Despite being strongly supportive of the UN Resolution on the right to water and sanitation, Norway

[455] Case E-2/06, judgment of 26 June 2007.
[456] See Ot.prp. nr. 61 (2007-2008).
[457] Annex XX to the EEA Agreement no. 13ca.
[458] See Annex IV para. 1 (i), (ii) and (iv) of the WFD.
[459] Riksrevisjonen, Myndighetenes arbeid med trygt drikkevann, St.dok 3 :8 (2022-2023).

has not adopted any provision in the Constitution or other legislation providing such rights to consumers.

4- **How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?**

The water needs of ecosystems is not mentioned in the Norwegian Water Regulation. Relevant provisions can be found in chapter II of the Nature Diversity Act, which contains general rules regarding ecosystem-based management and ecosystem services. However, these rules do not address the role of adequate availability of water. In recent years, there has been significant discussion about preservation of marshlands, and legislation to this effect is in the pipeline.

Beyond animal rights legislation, which in exceptional cases have been applied to wild animals such as wolves, Norway has no legal recognition of rights of nature. An example is article 112 of the Norwegian Constitution, which recognizes the rights of "enhver", i.e. human individuals, to an environment whose productivity and diversity are maintained. Hence, it can be observed that the "deep ecology" approaches promoted by the Norwegian philosopher Arne Næss have had very limited impact on Norwegian legislation. Nevertheless, recourse to article 112 by environmental NGOs seems to be gaining some, but so far very limited, traction in Norwegian courts.

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

♣ *INTEGRATED WATER MANAGEMENT*

Questions

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions?

Currently, the most acute water quality problems in the Norwegian context are the deterioration of coastal water quality due to salmon farming and permits to dump mining waste. In the context of salmon farming, the response of Norwegian authorities has been to implement a management regime that has been limited to use of a narrow approach to the occurrence of salmon lice as the only environmental criterion on which to base decisions on further expansion of production capacity.[460] This is despite the fact that the Parliament has requested that the environmental criteria for such decisions be expanded to other environmental criteria, such as pollution and unintended escape of farmed salmon. The latter challenges are addressed through traditional legislation depending on effective follow-up measures by public authorities on a case-by-case basis. Local acceptance of significant negative environmental effects has been achieved through the establishment of a tax regime that transfers significant revenue from the salmon farming industry to local and regional public authorities based on their willingness to expand access to production locations. The controversies related to the regulation of salmon farming has been reflected in Norwegian water management plans, where public authorities have been unable to agree on the extent to which the sector causes deterioration of water quality.

[460] See the Production Area Regulation (FOR-2017-01-16-61), section 8.

The dumping of mining waste in Norwegian coastal waters has been a longstanding controversial issue, related in particular to the amount of waste dumped, the content of hazardous chemicals in the waste, and how the dumping of the waste is carried out. The issue has gained increased significance, due to two controversial new large-scale projects that have been approved in recent years. These have so far been unsuccessfully challenged before Norwegian courts[461] and the EFTA Surveillance Authority.[462] A request for an advisory opinion regarding the concept "overriding public interest" is pending before the EFTA Court.[463]

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management?

Neither the Floods Directive nor the Water Reuse Regulation are included in the EEA Agreement. I have not found any information on why the Floods Directive has not been included. The Water Reuse Regulation is currently under consideration for inclusion. In their assessment of this regulation, Norwegian authorities indicate that due to good availability of water in Norway, the regulation is not expected to have significant impact in the near future. However, as there have been some instances of drought in recent years, the perception of the potential impact of the regulation might have changed.

Norway has had significant floods in recent years and uses dams extensively to control damage. The density of dams along Norwegian and the fact that floods from melting snow in the spring is relatively easy to predict, means that the use of dams for the control of such floods normally is very effective in the Norwegian context. Nevertheless, Norway remains vulnerable to floods, and has established a database currently containing information about 81 significant floods.[464] Norway has also developed advanced forecasting services that effectively predict risks of flooding in the short term (upcoming three days).[465]

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

The pricing of water in Norway is decided through municipal regulations and budget decisions, and is determined together with the cost of wastewater treatment. These expenses vary significantly between municipalities. Generally, the expenses depend on running the costs of providing access to water and wastewater services, including needs for maintenance of associated infrastructure, needs for significant water and wastewater infrastructure investments, as well as the general economy of the municipality. The amount to be paid by each household is determined based on either actual

[461] Oslo tingrett judgment of 10 January 2024 (TOSL-2022-165021, Førdefjorden). This judgment has been appealed. See also the Norwegian Supreme Court judgment of 20 March 2024 in a parallell case (HR-2024-550-A).

[462] EFTA Surveillance Authority closing decision of 8 December 2021 in case no. 78448 (link) and EFTA Surveillance Authority closing decisions of 18 January 2017 in cases no. 76709 (link) and 77424 (link). Se also, regarding established mining cases, EFTA Surveillance Authority closing decision of 8 December 2021 in case no. 80570 (link). A complaint against Norway has also been brought on the basis of compliance with the Extractive Waste Directive, case no. 80563 (link).

[463] Borgarting lagmannsrett, Request for an Advisory Opinion in Case No 24-036660ASD-BORG/01, 8 May 2024 (link).

[464] See https://naturhendelser.varsom.no/. The database contained 3728 registrations as of end of May 2024.

[465] See https://www.varsom.no/en/.

consumption of water or the size of the inhabited parts of housing. In many cases, consumers are allowed the choice between these alternatives. There are examples that non-permanent housing (summer houses etc.) incur higher water prices than permanent housing.

- ♣ WATER BIODIVERSITY

Questions

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country?

The directives and the regulation mentioned are not included in the EEA Agreement. While Norwegian authorities state that they aim at having at least as strong protection of ecosystems and species as these instruments, there is very limited references to these instruments and their mechanisms for ecosystem and species protection in relevant law and policy documents.

9-Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?

There are several provisions of the Water Resources Act that allow public authorities to require or undertake reestablishment of watercourses and vegetation along watercourses (sections 12, 14, 35 no. 9 and 59 first paragraph) as well as to include conditions in permits to use water resources that require such reestablishment when the permits expire (section 26). However, these provisions do not require public authorities or private parties to undertake such measures. In addition, these provisions do not refer to freshwater ecosystems. The provisions that are relevant to ecosystem issues, concern wildlife on the terrestrial edge zones of watercourses. Hence, the restoration of freshwater ecosystems would only be a potential side-effect of measures taken under these provisions.

Two provisions of the Water Resources Act might be interpreted to impose duties that are more closely related to restoration of ecosystems. Section 41 requires that those who have operated an installation in a watercourse are obliged to remove the installation and as far as possible reestablish the conditions that prevailed before the installation was established. This can be interpreted as an obligation to also reestablish ecosystems that have been negatively affected by the installation. Similarly, section 59 third paragraph refers to the duty of public authorities to consider the imposition of measures in accordance with the Environmental Liability Directive (2004/35/CE), including articles 6 and 7 and annex II which include restoration. I have no information regarding the extent to which sections 41 or 59 have been used as legal bases for requiring restoration of freshwater ecosystems.

Under the Nature Diversity Act, restoration of freshwater ecosystems might be the purpose of establishing a nature reserve under sections 37. Moreover, it may be necessary to take such restoration measures to fulfill obligations under protected area regulations of specific protected areas (section 47 of the Act). Those rivers that are protected under the Water Resources Act's chapter on protected river systems are not similarly regulated. The only provision of some relevance in this chapter is the above-mentioned section 35.

Section 4 of the Nature Diversity Act highlights the objective to maintain ecosystem structure, functioning and productivity to the extent this is considered to be reasonable. This is a general objective that applies to all sectors. The lack of binding rules on restoration of freshwater ecosystems beyond those that follows from the Water Framework Directive is reflective of the softness and relativity of the objective set out in section 4 of the Nature Diversity Act.

The main measures that have been taken to remedy freshwater ecosystems in Norway consist of measures to reduce acidification of lakes (including through Norway's very active participation in the negotiations of protocols to control emissions of SO_2 and NOx under UNECE Convention on Long-range Transboundary Air Pollution), to prevent and eliminate pests and diseases (with main focus on wild salmon and freshwater decapoda), and cultivation of populations of salmon and trout to be reintroduced to lakes and watercourses.

There is a significant need for Norway to implement more systemic and effective approaches to the restoration of freshwater ecosystems. The current initiative to revise old permits of hydropower installations is a good opportunity to gather information on what needs to be done and how restoration initiatives should be designed more generally.

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn?

There have been many initiatives to uncover rivers and creeks that have been moved underground during processes of land-use change. These initiatives have been carried out for multiple purposes, including to improve ecosystems and adapt to climate change. Such initiatives are facilitated in legislation. They are generally not mandatory, and thus dependent on the political will, mostly within municipal authorities. Many of these initiatives have been popular and improved living conditions, mostly in urban areas. In order to benefit from such initiatives from an ecosystem perspective, it would be good to explore how they could be promoted also in rural areas. The role of legislative reforms in this context seems mostly to be relevant to facilitate such initiatives, but could also be relevant as a means to empower NGOs and individuals to initiate relevant processes.

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

Questions

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake?

Water conflicts have been relatively scarce in Norway. This is exemplified by the fact that droughts have not been registered in the same way as floods. There have very few examples of draught periods in Norway since the 1990s.[466] It may seem that draught is becoming increasingly frequent in Norway. However, there seems to be no data indicating that wildfires are increasing in frequency.[467]

[466] See https://www.nve.no/naturfare/laer-om-naturfare/toerke/.
[467] Based on statistics from 2016, see https://www.brannstatistikk.no/brus-ui/about.

Rules derived from traditional neighbor law still have an important role in the Water Resources Act. One example is section 6, which sets out general rules regarding procedures to be followed and compensation to be paid in cases where use of water affects interests of other private parties relying on the watercourse.

The threshold for triggering a duty to apply for a permit for water extraction or other modifications to watercourses is whether the activity may cause appreciable harm or nuisance to any public interest (sections 8 for surface water and 45 for groundwater). Property owners can withdraw water for household and husbandry without permits. If there is water shortage, household usage is to be prioritized. Withdrawal of water for irrigation would sometimes cases require permits. In the context of groundwater, there is a requirement that withdrawal of more then 100 m^3 per 24 hours triggers a duty to notify water authorities, who shall consider whether a permit is required.

The most significant conflicts regarding access to water has been between commercial users, in particular between hydropower production and downstream users. There are also examples of emerging challenges regarding access to and pollution of groundwater. One case is pollution from the main airport of Norway, Gardermoen, which is situated on the top of the most significant groundwater aquifer of Norway. While this situation has created some conflicts from time to time, the extent of surveillance and communication with communities that are potentially affected has kept conflicts under control.

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

The main issue concerning water governance in Norway in recent years has been the revision of old hydropower permits. The project has identified 430 permits, and the most controversial issue concerns the balancing of environmental and profitability issues. Since hydropower frequently provides significant economic benefits to public authorities and local populations, the balancing exercise frequently becomes politically challenging. This has led the authorities to prioritize those permits that have the most significant potential for the realization of a combination of low reduction of power production combined with significantly improved environmental conditions.

The public authorities' follow-up of the need to revise old permits has been criticized. Several complaints have been initiated before the EFTA Surveillance Authority since 2011.[468] No data is readily available on the progress regarding revision of old hydropower permits.

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation?

Norway has implemented the minimum requirements of the WFD regarding public participation.

[468] See https://www.vannportalen.no/organisering2/europeisk-vannsamrbeid/norge-og-esa-rapportering-klager-og-tilbakemeldinger/klagesaker-og-brev-til-esa-om-norges-gjennomforing-av-vanndirektivet/klagesaker-til-esa-om-vanndirektivet-og-vannkraft-2011/.

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

Some of the major civil disobedience cases of Norway have related to hydropower developments. The hydropower development of the Alta River in the Sami area in the 1970s and 80s marked a turning point for the recognition of Sami rights. However, public participation and mobilization in such cases remain a hot topic to this day, exemplified by recent controversies regarding wind power development in areas where conflict occurs in relation to Sami reindeer herding. The parallels between the Alta River case and the Fosen Wind case are striking, except for the fact that the Sami lost the Alta case and won the Fosen case in Norwegian courts, and that the courts were significantly more lenient towards protesters that were fined by police in the latter.

One significant problem that persists is that public authorities and courts tend to allow projects to move forward while they remain contested. This tends to happen in many environmental cases, including also water related cases, such as the recent case concerning dumping of mining waste in Førdefjorden.[469] In general, it has been very difficult for claimants to achieve effective injunctive relief in environmental cases.

[469] See question 5.

Poland

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Relevant acts:

The Constitution (1997)
The Environmental Protection Law Act (2003)
The Water Law Act (2017)
Act of 7 June 2001 on collective water supply and collective sewage disposal (2001)

Since the enactment of the first Water Law Act of 1922, the concept of a separate "water law act" has remained unchanged, despite numerous changes in environmental law regulations.
The first Water Law Act was enacted in 1962, the following one in 1974, in 2001 and in 2017 (the actual one).

There is no dispute that the scope of "the water law" should not be limited to the regulation of the Water Law Act alone. Instead, the Water Law Act is the fundamental piece of legislation for water management. The fundamental importance of the Water Law Act in the water law system is also due to the fact that within the scope of its regulation a significant part of EU water legislation have been implemented.

Some facts:

1) ***Resources of water***[470]

Poland is classified as a water resource-poor country. The average water resources in Poland are about 60 billion m3, and in dry seasons this level may fall even below 40 billion m3. Poland's surface water resources are characterized by high temporal and territorial variability, resulting in periodic excesses and deficits of water in rivers.

The retention reservoirs are characterised by low capacity - in total does not exceed 7.5% of the volume of annual water outflow from the country's area, which does not provide sufficient protection against periodical water excesses or deficits.

The result is the occurrence of difficulties in water supply in some areas of the country. In particular, in the south of Poland, water-intensive industry and the development of demographic processes, as well as specific geographical and hydrographic conditions, cause water deficits.

2) ***Water abstraction and consumption***

[470] Data from Central Statistical Office: Environment 2023, p. 50.

The distribution of water abstraction volumes by economic sector has not changed significantly over the last 20 years. The proportions of water use were as follows: 69% water for industry, 22% for municipal economy, 9% for filling and replenishing fishponds[471].

The main source of water supply for the national economy is surface water. The groundwater (as water of much better quality than surface one) is mailny used. The underground water is mainly used for drinking water. [472]

The average water consumption of Polish households was around 150 litres per inhabitant per day in 2020. The average daily water footprint of one Polish inhabitant is 3 900 litres. [473]

Statistics from the Central Statistical Office (CSO) show that an increase in the amount of water consumed by households per inhabitant has been observed in Poland. In 2022, household water consumption increased by 0.5%[474].

More than 90 per cent of Poland's population has access to safe drinking water[475].

3) *Water supply*

Collective water supply systems served approximately 92% of the country's population in 2022. Collective sewage disposal systems served 72% of the country's population. The number of people covered by collective water supply and sewage disposal systems is gradually increasing[476].

In Poland, the population is mainly supplied with water from a collective drinking water supply system, while the rest of the population is supplied with water from individual water intakes[477] within the limits set by the ordinary water use as defined by the Water Law Act.

4) *Water resources management*

Water resources management is implemented taking into account the division of the country into river basin districts, water regions and catchment areas. The organisational units responsible for water management in a water regions are the Regional Water Management Boards (RZGW). In 2022, these bodies carried out their tasks in the area of 11 designated Regional Water Management Boards with headquarters in: Białystok, Bydgoszcz, Gdańsk, Gliwice, Kraków, Lublin, Poznań, Rzeszów, Szczecin, Warsaw and Wrocław[478].

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

[471] Data from Central Statistical Office: Environment 2023, p. 53.
[472] Data from Central Statistical Office: Environment 2023, p. 53.
[473] Wody Polskie https://wody.gov.pl/attachments/article/1523/Wszyscy%20mo%C5%BCemy%20przyczyni%C4%87%20si%C4%99%20do%20zmniejszenia%20kryzysu%20wodnego%20-%20broszura.pdf
[474] See: https://stat.gov.pl/files/gfx/portalinformacyjny/pl/defaultaktualnosci/5492/10/6/1/infrastruktura_komunalna_-_wodociagowa_i_kanalizacyjna_w_2022_r_2.pdf
[475] https://blog.ecol-unicon.com/modernizacja-sieci-wodociagowych-swietle-wymogow-dyrektywy-20202184/
[476] Data from Central Statistical Office: Environment 2023, p. 63.
[477] Data from Chief Sanitary Inspector, Sanitary State of the Country in 2020.
[478] Data from Central Statistical Office: Environment 2023, p.56.

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law?

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

The water is one of the component of the definition of the notion environment. However, there is no definition of the notion of water itself.

The environment is considered to be a "common good", subject to special protection, which is reflected in the formulation of the requirement to protect the environment in the Constitution of the Republic of Poland:

- in Article 5 - the Republic of Poland protect the environment, in accordance with the principle of sustainable development
- In art. 74 (1 and 2) - formulating the duty of public authorities to protect the environment and ensure ecological safety for present and future generations
- In art. 68 (4) - the duty of public authorities to prevent the negative health effects of environmental degradation,
- in art. 86 - the universal duty of care for the state of the environment and to bear responsibility for the deterioration caused by it (Article 86).

Environmental protection is one of the premises justifying the restriction of constitutional rights and freedoms (Article 31(3)of the Constitution).

In practice, these obligations have the character of rather general rules of conduct, which would be difficult to enforce directly before a court. They are subject to concretization in statutory provisions.

Implementation of the WFD have not changed the legal status of water, according to which waters are the property of the State Treasury, other legal persons or natural persons.

If the waters are owned by the State Treasury or local authorities, then they are classified as public waters.
The qualification of waters as public depends on the subject of ownership of particular categories of waters[479]. Inland flowing waters being public waters are not subject to civil law transfers, except in cases specified by statute.

Ownership of waters is a specific legal category of the Water law act.
Water ownership and the legal status of waters are exhaustively regulated in the Water Law Act[480].

[479] See the judgment of the Suprem Court of November 19, 2004, II CK 146/04.

[480] The ownership of water as a legal category of water law is confirmed by judicial decisions. The Supreme Court in its judgment of November 19, 2004,, II CK 146/04 stated that: "Against the background of the wording of the current Act - Water Law, the statements contained in the justification of the resolution of a panel of seven judges, which was given the force of legal principle, of November, 18, 1971, III CZP 28/71, OSNC 1972/3/43, that the Water Law distinguishes between the ownership of water and the ownership of land that is covered by surface water, remain valid. Ownership of water is a legal category of water law, different from ownership within the meaning of Article 140 of the Civil Code. The

It is presented as follows[481]:

(i) waters are owned by the State Treasury, other legal persons or natural persons,
(ii) waters of the territorial sea, internal sea waters, inland flowing waters and groundwaters are owned by the State Treasury; the other waters covered by the Water Law Act may be owned not only by the Treasury, but also by other legal entities;
(iii) inland standing waters, water in a ditch and water in a pond that is not filled as part of water services, but only with rainwater or snowmelt or groundwater, located within the boundaries of a landed property, are owned by the owner of that property.

In the literature is emphasized that "with the ownership of water (primarily flowing water), the legislator mainly connects public law obligations rather than entitlements. The guiding motive for the creation of the Act's instruments for the protection of water was therefore not to protect the ownership interests of the State Treasury, but to protect water as a public good. **This protection is provided not because of the property value of water, but because of its existential and environmental role**. This aspect of the protection of the environmental and existential functions of water is dominant in the provisions of the Water Law Act" [482].

The management of water resources is mainly in the hand of the public authorities. Water supply and sewage disposal issues are the municipality's own tasks.

The Water Law Act guarantees everyone the right to the common use of public inland surface waters, internal sea waters and the waters of the territorial sea, unless the provisions of the Act provide otherwise. The common use of waters is for the satisfying personal needs, household or agricultural needs, without the use of special technical devices, as well as for recreation, tourism, water sports and, under the terms of separate regulations, amateur fishing.

A landowner has the right of ordinary use of waters owned by him and of groundwater located in his land. The right of ordinary use of water does not entitle to perform water facilities without the required water consent. The ordinary use of water is for the purpose of meeting the needs of one's own household or one's own agricultural holding.

The particular use of water is regulated by a permit.

Due to the implementation of the WFD, the division of water use in Polish water law has been changed. The Water Law Act introduced the concept of **water services**, which introduced a breach in the previous division of the three categories of water use (common, ordinary and particular). In the literature it is accepted that "water services" should be considered as a type of environmental use"[483], as a fourth "category of use of surface water and groundwater" [484]. The use of "water services" involves the obligation to pay charges which serves to implement the relevant provisions of the Water Framework Directive and is an expression of the water management principle of cost

civilian definition of ownership fully applies to land covered by water, but does not include ownership of water as not being a thing within the meaning of Article 45 of the Civil Code".

[481] Article 211 and Article 214 of the Water Law Act.

[482] See: J. Rotko, *Ustawa prawo wodne w systemie prawa ochrony środowiska*, [in:] P. Korzeniowski (ed.), *Zagadnienia systemowe prawa ochrony środowiska*, Łódź 2015, p. 109.

[483] B. Rakoczy, *Prawo wodne. Praktyczny przewodnik,* Warszawa 2018, p. 57-58.

[484] P. Szuwalski [in:] *Prawo wodne. Komentarz do wybranych przepisów*, LEX/el. 2019, art. 35.

recovery of water services, taking into account environmental and resource costs and economic analysis (Article 9(3) of the Water Law Act).

The scope of permitted water use (regardless of the type/category of this use) is delineated in the Water Law by general rules relating to:

(i) **restrictions on water use** (water use must not cause deterioration of the state of the waters and the ecosystems dependent on them, in particular it must not violate the provisions of the water management plan in the river basin area, cause waste of water or waste of water energy, and must not cause damage - Article 29 of the Water Law Act);

In case law the view has been expressed that: "The general principle adopted in the Water Law is that the use of water must not cause deterioration of the state of the waters and the ecosystems dependent on them, or cause damage, **since waters, as an integral part of the environment and habitats for animals and plants, are subject to protection, regardless of whose ownership they are"**[485].

(ii) the use of groundwater (this water is used primarily for the supply of water for human consumption (Article 30 of the Act) and
(iii) the admissibility of use any water to an extent and at a time resulting from the need to combat "emergency situations" (like major emergencies, natural disasters, fires and so on) (Article 31 of the Water Law Act).

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

Questions

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

The Polish legal system does not grant individuals a subjective right to water or, more broadly, a right to an environment of a specific quality.

But there are regulations concerning the principles and conditions of collective supply of water intended for human consumption and collective discharge of sewage, including requirements concerning the quality of water intended for human consumption. This is regulated by the Act on Collective Water Supply and Collective Sewage Disposal (2001).

Three groups of conditions are set for drinking water: bacteriological, physicochemical and organoleptic. These conditions are defined numerically and descriptively in annexes to the implementing regulation[486]. In addition, recommended test methods and sampling frequencies have also been established.

485

486 The Regulation of the Minister of Health of 7 December 2017 on the quality of water intended for human consumption (Journal of Laws of 2017, item 2294).

Surface water which does not meet the quality requirements may not be used to supply water for human consumption to the public (Article 73 of the Water Law Act).

Supervision of the health safety of water intended for human consumption is one of the priority activities of the State Sanitary Inspectorate, regulated by the relevant legislation.

The entities responsible for the quality of water served in water supply facilities in collective supply are **water supply companies and local authorities (water producers**). In the case of using water from local intakes, the owner of this intake is responsible. The above-mentioned entities and, in particular, local authorities are obliged to inform the inhabitants about the quality of water in their area.

If undesirable substances are found in the water, on the basis of a health risk assessment, a decision is taken to suspend the supply of such water to consumers (substituting water in containers or from another source) or to set a transitional period for remedial action.

Water deficit

According to UN data, Poland is in the group of countries facing water deficit[487]. Taking into account its geographical location and temperate climate zone, water resources in Poland are small, with significant spatial variations[488].

The problem is the intensity of droughts. Over the last decade, i.e. 2010-2019, droughts occurred twice as often as in previous decades[489].

The main strategic planning document for drought is the **Plan to counteract the effects of drought (**Drought Management Plan - 2021)[490].

This document, together with other plans (water management, flood risk management and water maintenance plans), is expected to contribute to the improvement of water management in Poland. The objective of the Drought Management Plan **is to ensure an adequate quantity** and at least good quality of waters, useful for society, the environment and all sectors of the national economy.

The Plan contains a catalogue of measures (activities), the implementation of which is expected to contribute to minimising the effects of drought and is intended to achieve the specific objectives of the Plan: 1) effective management of water resources to increase disposable water resources in river basin districts; 2) increasing retention in river basin districts; 3) drought risk education and management; 4) planning the financing of activities to counter the effects of drought.

Other documents have also been developed, such as the Programme for the Development of Retention for 2021-2027 with an Outlook to 2030 or the Programme for the Development of Water

[487]https://ungc.org.pl/wp-content/uploads/2021/04/raport-zarzadzanie-zasobami-wodnymi-www-1.pdf
[488] Ibidem.
[489] Regulations of the Minister of Infrastructure of July, 15, 2021 on the adoption of the Plan to counteract the effects of drought (Journal of Laws of 2021, item 1615). The plan was developed for a period of 6 years (2021-2027).
[490] Ibidem.

Resources in Agricultural Areas[491]. The implementation of the latter was negatively assessed by the Supreme Audit Office (*NIK Report 2024*). According to the Report the implementation concerning investment tasks was ineffective and the reason for this was temporarily long process of obtaining water law permissions.

4- How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?

In the Polish law, there is an object-oriented approach to water resources and water ecosystems not the subject-oriented one. There are no discussions on granting legal subjectivity to aquatic ecosystems. Discussions are about ensuring greater efficiency and enforcement of existing laws.

The current the Water Law Act **regulates water management** in accordance with the principle of sustainable development. In particular, it concerns the shaping and protection of water resources, the use of water and the management of water resources (art. 1).

There is no legal definition of the notion of "water management". In the light of Polish regulations:

(i) water management is to be in accordance with the principle of sustainable development, the essence of which is the integration of political, economic and social activities **with maintenance of natural balance and sustainability of basic natural processe**s in order to ensure the possibility of satisfying the basic needs of particular communities or citizens, both the present generation and future generations (Article 3(50) of the Environmental Protection Law),

(ii) the elements of water management are, in particular, the shaping and protection of water resources, the use of water and the management of water resources (Article 1 Water Law Act),

(iii) water management shall be carried out in accordance with the principles set out in Article 9 of the Water Law Act[492]:

- the principle of rational and comprehensive treatment of surface and groundwater resources, taking into account their quantity and quality,
- the principle of common interest and cooperation between the public administration, water users and representatives of local communities to the extent that maximum social benefit is obtained,
- the principle of cost recovery of water services, taking into account environmental and resource costs and economic analysis,
- **the principle of managing water in accordance with the public interest without allowing for avoidable degradation of the ecological functions of water and the deterioration of ecosystems dependent on water.**

The objectives of water resources management are to meet the needs of the population, the economy and **to protect the waters and the environment associated with these resources** , in particular with regard to:

1) ensuring adequate quantity and quality of water for the population;
2) protection against flooding and drought;

[491] https://www.gov.pl/web/infrastruktura/program-przeciwdzialania-niedoborowi-wody
[492] See P. Korzeniowski, *Zgoda wodnoprawna*, Warszawa 2021, p. 73 -135.

3) protecting water resources against pollution and improper or excessive exploitation;
4) **maintaining or improving the condition of water and water-dependent ecosystems**;
5) providing water for agriculture and industry;
6) creating conditions for energy, transport and fishery use of water;
7) meeting the needs of tourism, sport and recreation.

Among the instruments of water resources management, the Act includes planning in water management, water permits, fees for water services and other charges, as well as water management control and water management information system (Article 11 of the Water Law Act).

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

♣ INTEGRATED WATER MANAGEMENT

Questions

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions? We invite you to focus on the most relevant topic in your country.

In March 2023, the White Book of Polish Rivers Lessons from the Odra River Disaster was prepared by environmental organisations.[493].

The authors identify systemic problems (legal and factual) in the area of river management and monitoring and propose recommendation. These include, among others:

- **systemic issues** - the problem is the location of water management in the Ministry of Infrastructure. The authors recommend that sustainable water resources management should be placed under the competence of the minister responsible for the environment. Water management is a key element of efforts to protect biodiversity and counteract climate change and its effects;
- **planning documents:** the authors recommend revising planning documents and the planned project (investments) provide in them with a view to the natural resilience of rivers to pollution. They recommend to promote measures increasing the resilience of ecosystems to the effects of climate change. Measures that lead to the deterioration of water status and failure o meet the requirements of the Water Framework Directive should be abandoned;
- **implementation financial mechanisms for water protection** - the authors recommend, inter alia, increasing the rates of charges for the discharge of saline waters to such a level which will encourage implementation of desalination systems before discharging saline waters into rivers;
- **water permission** - public authorities should analyse and assess the cumulative impact of issued permitś on the state of the river and controĺ whether the conditions of issued water

[493] See: M. Klimkiewicz, M. Starosta, A. Szafraniuk (Fundacja ClientEarth Prawnicy dla Ziemi), A. Chochoł, M. Włoskowicz (Frank Bold), J. Engel (Fundacja Greenmind), J. Choroś (Ogólnopolskie Towarzystwo Ochrony Ptaków), K. Czupryniak, A. Pawelec-Olesińska (Fundacja WWF Polska) – 2023. https://www.clientearth.pl/najnowsze-dzialania/materialy-do-pobrania/biala-ksiega-polskich-rzek/

consents are respected. The discharge of wastewater should bé dependent on the condition of the river. The system of issuiń water permits should bé reformed to ensure social control andreal protection of water (see also last question in the questionnair).

- lack of lack of effective monitoring of rivers and difficulties in coordinating interventions in the event of a disaster extending beyond the borders of one voivodeship.

The new regulation adopted in 2023 implement, in part, the indications contained in the White Book for Polish Rivers. This new regulations provides for, among other things:

1) establishment of a Water Inspectorate within the structure of the State Water Management Authority, whose activities are to serve the purpose of better detection of offences, incidents or violations that may cause damage to the aquatic environment. This objective is to be achieved by giving the Water Inspectorate competence to control compliance with the Water Law,
2) increase in variable charges for water services (will take place from 2030 for so-called salinity-enhanced plants),
3) introduction of fee exemptions for all entities discharging chlorides or sulphates into water, including plants with increased salinity, if they use wastewater treatment facilities according to the degree of treatment.

Facts from water quality monitoring of the designated water bodies (which are the basic unit of water management. [494]

2016 -2021 - **4, 585 surface water bodies** (SWBs) were assessed as part of diagnostic river monitoring (river waters including dammed reservoirs), with the largest number in the Vistula and Odra river basin districts. Only 22 SWBs achieved good, while 4,563 SWBs had poor status.

Ecological status was classified for 3 385 water bodies, of which less than 0.1% were in very good status and about 13% in poor status. The largest group were water bodies in moderate status (over 57%).
Ecological potential was determined for 1,143 water bodies, of which about 7% were classified as good or above good and more than 13% as bad.
Chemical status was assessed for 3,376 water bodies, of which only about 11% were classified as good[495].

In 2022, groundwater samples were taken at 1,404 measurement points.

- the largest number of measurement points were in quality class II (42%), while the smallest number were in quality class I (3%).
- water of quality class III was found in 35% of the measurement points,
- water of quality class IV - in 16%, and
- water of quality class V - in 6%.

This means that in about 79% of the points the groundwater chemical status was determined as good, in the remaining 21% as poor. Among the results of point investigations for waters with a free water

[494]Data from Central Statistical Office: Environment 2023, p. 72
[495]Data from Central Statistical Office: Environment 2023, p. 72

table, class II waters predominated (36%), while the largest number of points for waters with a tight water table were also in quality class II (47%)[496].

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management? Please focus on the most illustrative example either in relation to the Floods Directive or the Water Reuse Regulation or national/local measures concerning water stress and/or droughts which could inspire a future EU Law framework.
/

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

Currently in Poland it is a discussion regarding the approval of water and sewage tariffs.

Under the current provisions of the Act on Collective Water Supply and Collective Sewage Disposal, a water supply and sewage company (which are mostly companies owned by municipalities) sets a tariff for a period of three years. **They must be approved by the regulatory authority** (the director of the regional water management board of the State Water Management Authority)

In drawing up the tariff, the company takes into account that the necessary revenues are obtained (so to cover the employee labour costs, investments cost or energy costs), **but also that consumers are protected against unjustified increases in prices and fee rates and that consumers are motivated to use water rationally and to reduce wastewater pollution.**

An amendment to the Act on collective water supply and collective sewage disposal is currently being prepared with regard to tariffs[497]. The amendment is expected by local government.
Criticism of the current system includes the following: a) too long period of approval of tariffs by the regulatory authority (under an administrative procedure involving two administrative instances), b) arbitrary consideration of urgent applications without taking into account the needs of water and sewage companies at the local level, particularly in terms of necessary investments[498].

The essence of the solutions planned in the draft is a partial return to the regulations in force before 2017. The key planned change is awarding to commune council the competence to approve water and sewage tariffs by resolution.

The regulatory authority will be involved in the process only when new tariff will increase to an amount exceeding by at least 15% the average tariff rates in a given water region being in force in the previous year. This solution aimed at ensuring adequate protection of consumers against unjustified price increases.

The example of the legal mechanisms related to social water pricing: the municipal council may

[496] Data from Central Statistical Office: Environment 2023, p. 79
[497] See List of legislative and programme work of the Council of Ministers: https://www.gov.pl/web/premier/wplip-rm
[498] https://www.gov.pl/web/premier/projekt-ustawy-o-zmianie-ustawy-o-zbiorowym-zaopatrzeniu-w-wode-i-zbiorowym-odprowadzaniu-sciekow-oraz-ustawy--prawo-wodne

adopt a resolution on a surcharge for selected or all tariff customer groups. The surcharge is passed to the water and sewerage company.

♣ WATER BIODIVERSITY

Questions

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country? Please provide examples of success / failure of integration in particular cases if relevant.

From a formal point of view, the issues of water protection and nature conservation are the subject of separate laws.

The integrating instruments are:

- strategic environmental impact assessments of plans and programmes,
- environmental impact assessments of projects, and
- water-law assessments, the obtaining of which is required for investments or activities that may affect the possibility of achieving environmental objectives (for projects which do not require an EIA).

With regard to water damage, the Water Act Law refers to the horizontal Act on Environmental Damage Prevention and Remediation (2007, the Act implements the so-called Damage Directive).

The example of the Odra River disaster demonstrated the difficulties in applying the Act on Environmental Damage Prevention and Remediation (the Damage Act).

Proceedings initiated by the Regional Directorate for Environmental Protection in Wrocław under the Damage Act was discontinued. The reason was the impossibility of linking the toxic bloom of golden algae only to the high salinity of the water in the Odra river, or more broadly to the discharge of sewage into the Odra river. There were were multifactorial causes.

Communication from the Regional Directorate for Environmental Protection in Wrocław[499] concerning the discontinuation of proceedings:

"*In the case in question, we are dealing with a direct natural cause, but conditioned by anthropogenic factors, of an area-wide nature, linked to atmospheric and hydrological conditions, which are also largely influenced by human activity. However, this is not an activity regulated by "the Damage Act". It is therefore not possible to hold one or even several entities responsible for the situation that occurred on the Odra River in the summer of 2022. There is no evidence that the cause of the fish and shellfish die-off was the salinity of the Oder. (...) Consequently, there is no basis whatsoever to hold those discharging saline water into the Oder (jointly and severally) responsible for the massive die-off of aquatic organisms in the Odra river in 2022. There is no evidence that salinity was the cause of the deaths of organisms. The available analyses, research results, but also the literature indicate that the toxic blooms of the golden alga Prymnesium parvum have a multifactorial cause and an incompletely recognised mechanism*".

[499] https://www.gov.pl/web/rdos-wroclaw/decyzja-rdos-we-wroclawiu-w-sprawie-katastrofy-odrzanskiej---komunikat

The Supreme Audit Office in his report negatively assessed the correctness and effectiveness of the actions of public authority in relation to the ecological crisis on the Odra River. [500]

„The key public administrations responsible for the safety of citizens remained passive during the first phase of the crisis. Despite the growing scale of the phenomenon with an initially unidentified cause and the potential adverse health effects of contact with contaminated water, the threat was not given the proper prominence and the effective circulation of information required in such circumstances was not ensured. Nor were the appropriate crisis management structures put in place.
As a consequence, warning alerts about the threat were addressed to the population with a delay of at least several days and the first bans on the use of the Odra river and its tributaries were introduced. Also delayed were coordinated efforts to clean the river of dead organic matter, which became a secondary escalating factor in the crisis situation.
Despite the poor state of the water in the Odra River, there was also a failure to provide public access to the results of tests and measurements of its quality. This undermined citizens' trust in public institutions.
However, the negative assessment is not chanced by the fact that the Minister of the Interior and Administration, as well as the Minister of Climate and Environment, took a number of measures after 12 August 2022 to take control over the crisis situation. However, these actions did not result in the elimination of the fundamental factor determining the occurrence of Prymnesium parvum in the Oder River, i.e. its excessive salinity.
The environmental crisis revealed that the public authorities were not prepared to counteract the threats caused by river pollution. This was due to the previous omissions of the authorities responsible for the well-being of the water environment, which is an important link to national security, as well as insufficient legal solutions for the effective protection of surface waters from pollution.
At the same time, legal provisions do not explicitly define effective mechanisms to limit the negative impact of human activities on water and the water environment. They do not, for example, make the legal discharge of wastewater conditional on the current state of the waters and changing hydro-meteorological conditions. Nor do they impose an obligation to identify the cumulative impact of pollutants on water status when granting discharge consents. Public authorities have also failed to develop mechanisms to ensure effective implementation of statutory provisions aimed at protecting water quality and, as a consequence, have allowed water to be used in a manner that does not ensure the safety of the ecosystem.
This state of affairs is confirmed by the results of analyses carried out during this NIK audit, according to which even legally discharged wastewater can cause salinity levels in the Order River and its tributaries to repeatedly exceed ecosystem limits. In extreme cases, this can lead to salt concentrations three times higher than those found in the Baltic Sea.
Despite this, the Minister of Infrastructure, who is responsible for water management, introduced an amendment to the regulations limiting the number of parameters to be assessed that characterise such pollution, and after the disaster, against the needs and expectations, relaxed the environmental target for this body of water, relating to salinity levels.
The public authority has the obligation, set out in Article 74 of the Constitution of the Republic of Poland, to pursue a policy ensuring ecological safety for present and future generations and the obligation to protect the environment. The ecological crisis on the Oder demonstrates that these duties have not been properly implemented. Also, the solutions envisaged in the Oder Revitalisation

[500] Information on the results of the audit. “Actions of public entities in relation to the ecological crisis on the river Oder” (October 2023),

Regulations to reduce the salinity of the Oder and its tributaries, inter alia because of the distant time horizon for their implementation, are not a sufficient response to the needs arising from the current state of these waters and do not reduce the risk of a renewed ecological disaster"[501].

9-**Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?**

There are no specific legal regulations on the restoration of aquatic ecosystems in Polish law. The Water Law Act only stipulates that the tasks of the Polish Water Authority include, respectively, supervision, planning and implementation of projects related to the restoration of ecosystems degraded by the exploitation of water resources.

In terms of water management and achieving the WFD objectives (the quantity and quality of water), the River Basin Management Plan (RBMP) plays a special role[502]. It identifies primary and secondary measures to improve or maintain good water status in river basin districts.

The baseline measures are directed towards meeting the minimum requirements and include, inter alia

- **measures enabling the implementation of water protection legislation, such as**:
  a) meeting present and future water needs for the supply of water for human consumption to the population,
  b) protecting habitats or species,
  c) preventing pollution of waters by nitrogen compounds from agricultural sources,
  d) ensuring that there is no significant increase in concentrations of priority substances that tend to accumulate in sediment or biota;
- **measures to implement water protection legislation related to the environmental impact assessments of projects and Natura 2000 sites**;
- actions to promote efficient and sustainable water use in order not to compromise environmental objectives;
- prevention, protection and control measures relating to the protection of water against pollution from point and area sources

Waters and other wetland ecosystems (i.e. water-dependent ecosystems - marshes, floodplains, wetlands, etc.), play a major role in preserving biodiversity in Poland, as well as in achieving the objectives for which the Natura 2000 network was established[503].

Aquatic and water-dependent ecosystems cover 4.4 million hectares in Poland (about 14% of the country's area). Of the 68 types of protected natural habitats of European importance (for which e.g. Natura 2000 sites are designated) occurring in the Continental biogeographical region (covering

[501] See "Actions of public entities in relation to the ecological crisis on the river Oder" (October 2023), p. 10-11 (General assessment).
[502] Article 318(1)7) oraz 324(1)(2) of the Water Law Act.
[503] http://natura2000.org.pl/e-szkolenia/e4-obszary-wodne-w-sieci-natura-2000/i-obszary-wodne-w-sieci-natura-2000-wprowadzenie/

Poland with the exception of the Carpathians), almost half - as many as 33 types - are aquatic and water-dependent habitats[504].

As evidenced by the state of aquatic ecosystems in Poland, the application of existing law regarding the status of natural habitats is not effective.

The degree of threat to aquatic and wetland natural habitats (ecosystems) is high in Poland: resources of as many as 27 of these 33 habitats are characterised by unfavourable or poor conservation status. Some of them - e.g. submarine meadows, saltmarsh (halophilous) rushes and coastal pastures - are among the most threatened and rapidly declining ecosystems in Poland[505].

There is a lot to be hoped for in terms of obligations to restore aquatic ecosystems under the new EU Restoration Law.

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn? Please feel free to answer this question only if you have a concrete example (successful or not) to share.
/

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

Questions

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake ?
Depending on your national context, you may illustrate these conflicts with Agriculture (agricultural irrigation - the controversial case of metabasins for agriculture) or Energy (hydroelectricity - cooling nuclear power stations) or Tourism (increased tourist numbers - development of new tourism infrastructures) or extension of urban areas.

The protection of waters is implemented and justified primarily (directly) by the protection of the public interest, although this protection directly affects (touches) the water users and their legal interests (individual interests).

The variety of conflicts of interest in the water management is expressed in Article 9 of the Water Law, which sets out the principles of water management.

(1) Water management shall be carried out taking into account the principle of rational and holistic treatment of surface and groundwater resources, taking into account their quantity and quality.
(2) Water management shall take into account the principle of common interests and shall require the cooperation of public administration, water users and representatives of local communities to the extent of obtaining maximum social benefits.

[504] https://www.pine.org.pl/wp-content/uploads/pdf/seria_broszur_ine_3_wody.pdf
[505] http://natura2000.org.pl/e-szkolenia/e4-obszary-wodne-w-sieci-natura-2000/i-obszary-wodne-w-sieci-natura-2000-wprowadzenie/

(3) Water management shall be based on the principle of cost recovery of water services, taking into account environmental and resource costs and economic analysis.

(4) Water management shall be carried out in accordance with the public interest, avoiding avoidable deterioration of ecological functions of water and deterioration of terrestrial ecosystems dependent on water.

In the Water Law Act there are conflicts not only between public and private interests, but also between different types of public interests (e.g. the natural need to protect a river is in conflict with the need to regulate it and increase its navigability).

Considerations of "public interest" will be able to constitute a premise for the issuance of administrative decisions (water consents). The premise of public interest can be in the area of water protection:

- a rationale for revoking or limiting the permission granted,
- imposing obligations on private entities or
- a rationale for shaping the content of a decision,

In the Water Law Act, the overriding public interest clause is included in the regulation concerning the permissible failure to achieve good ecological status and the failure to prevent deterioration of the ecological status of surface waters.
The non-prevention of deterioration of the ecological status of surface water bodies from very good to good status or the non-prevention of deterioration of the ecological potential from maximum to good status may be the result of new human activities (compatible with sustainable development and necessary for the development of society).
These derogations are to be justified by an overriding public interest. Positive effects related to health protection, maintenance of safety and sustainable development are to outweigh the benefits to society and the environment related to the achievement of environmental objectives lost as a consequence of these activities.

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

No.

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation ?
15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

Plans, programmes and other strategic documents relating to water are adopted by:

- local government authorities or
- government bodies: at central level (by ministers or other central offices) or at regional level (specialised bodies of the State Water Management Authority).

The laws determine when and by whom a document should be adopted.

Some of these documents have the status of local law, which means that they are sources of law recognised by the Constitution of the Republic of Poland; others do not have this status, but are important for the management of the area in question (they affect individual decisions, define the actions of the relevant bodies, shape development, etc.).

The public has the right to participate in the development of documents in the area of water protection in the frame of strategic environmental assessment .

Judicial review of plans and documents that require a strategic environmental assessment (SEA) is subject to limitations:

- only those plans and programmes which have the status of acts of local law can be subject to administrative court review;
- second, a complaint to the administrative court may be brought by a private entity, but only if he or she demonstrates that the plan or programme violates his or her "legal interest or right".
- third, NGOs can not challenge a plan or programme (unless their own legal interest or right is violated, which means that they would be acting as private entities and not in the public interest).

Plans or programmes adopted by decree by the Council of Ministers or the competent minister are not subject to the rules on access to justice. A natural or legal person does not have direct access to court to challenge a normative act.

Water consents - exclusion of participation of social organisations in proceedings concerning water consents.

In principle, the participation of social organisations is guaranteed in administrative proceedings (Article 31 of the Code of Administrative Procedure).

However, according to the Water Law Act (Article 402), the provisions of Article 31 of the Code of Administrative Procedure do not apply in proceedings concerning water consents, thus public participation is excluded.

In the judgment of March 20, 2020 the Administrative Court in Warsaw, stated that Article 402 of the Water Law Act is contrary to EU law (Article 9(3) of the Aarhus Convention in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union and Article 14(1) of Directive 2000/60/EC). In this case the water authority (Director of the Regional Water Management Authority) refused NGO to participate in administrative proceedings on a water permit (on the base of the art. 402). The court revoked this decision[506].

The Supreme Administrative Court, in a judgment of Aprile 20, dismissed the cassation appeal of the Director of the Regional Water Management Authority[507].

[506] Ref. no. IV SA/Wa 1248/19.
[507] Ref. no. OSK 3140/21,

Portugal

Alexandra Aragão

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law ?

In 1989, a couple of years after the Portuguese assessing the EEC and well before the WFD, the definition of water as a common good belonging to the public domain was introduced in the Portuguese Constitution[508] (in the second constitutional revision[509]) .

> Portuguese Constitution - Article 84
> 1. The following belong to the public domain:
> a) **Territorial waters, together with their beds and the adjacent seabeds, and lakes, lagoons and watercourses that are suitable for navigation or flotation, together with their beds;**
> b) Airspace over Portuguese territory, above the recognised limit for proprietary or surface rights;
> c) Mineral deposits, mineral and medicinal water sources and natural subterranean cavities below the ground, save for rocks, ordinary earth and other materials that are habitually used for construction;
> d) Roads;
> e) National railway lines;
> f) Other property that is classified as such by law.
> 2. The law shall define what property forms part of the public state domain, the public domain of the autonomous regions and the public domain of local authorities[510], as well as the regime, terms and conditions of use and limits governing it.

The concept of "public domain" already existed in the law, as it was created by a royal decree in 1864[511]. However, it has only been introduced in the Constitution in 1989. Since then, Article 84 on Public domain has remained untouched until today.
In 2005 a parliamentary law (54/2005[512]) establishes rules on the ownership of water resources.

[508] English version of the constitution https://www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf
[509] There were 7 constitutional revisions, two of them, in 1992 and 1997, motivated by the process of European Integration (https://www.parlamento.pt/RevisoesConstitucionais/paginas/default.aspx) .The last revision took plane in 2005.
[510] Portugal is a unitary State, and State legislation applies throughout Portuguese territory. There are however, two autonomous regions, Azores and Madeira Archipelago, which benefit from a separate regime as outermost regions of the EU.
[511] https://apambiente.pt/agua/antecedentes-historicos
[512] Amended 6 times https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1377&tabela=leis.

According to the Law, depending on who is the owner, water resources can belong to the public domain (this is the rule), or to the private domain of public or private entities (this is the exception).

> Article 5 Public lake and river domain
> The lake and river public domain comprise:
> a) Navigable or floatable watercourses, with their respective beds, and also banks belonging to public entities, in accordance with the following article;
> b) Navigable or floatable lakes and lagoons, with their respective beds, and also the banks belonging to public entities, in accordance with the following article;
> c) Non-navigable or floatable watercourses, with their respective beds and banks, as long as they are located on public land, or those that by law are recognized as usable for public utility purposes, such as the production of electricity, irrigation, or plumbing of water for public consumption;
> d) Navigable or floatable canals and ditches, or opened by public entities, and the respective waters;
> e) Reservoirs created for public utility purposes, namely electricity production or irrigation, with respective beds;
> f) Non-navigable or floatable lakes and ponds, with their respective beds and banks, formed by nature on public land;
> g) Lakes and ponds surrounded by different private buildings or existing within a private building, when such lakes and ponds are fed by public current;
> h) Non-navigable or buoyant watercourses born in private buildings, as soon as their waters transpose, abandoned, the limits of the land or buildings where they were born or to which they were taken by their owner, if they are ultimately thrown into the sea or in other public waters.

Other water sources and reservoirs are also public:

> Article 7 Public water domain of the remaining waters
> The public water domain of the remaining waters comprises:
> a) Source waters and groundwater existing on public land or buildings;
> b) Waters born in private buildings, as soon as they abandonedly cross the boundaries of the land or buildings where they were born or where they were taken by their owner, if they are ultimately released into the sea or other public waters;
> c) Rainwater that falls on public land or that, abandoned, runs there;
> d) Rainwater that falls on private land, when it accidentally crosses the limits of the same building, if it ends up being released into the sea or other public waters;
> e) Water from public sources and public wells and reservoirs, including all those that have been continuously used by the public or managed by public entities.

The delimitation of public ownership requires a precise definition of geographical boundaries. The law provides a definition and the extension both for waterbeds and for water margins.

> Article 10 Concept of bed and its limits
> 1 - Bed is the land covered by water when not influenced by extraordinary floods, floods or storms. The bed includes *mouchões*, mudflats and sand formed by alluvial deposition.
> 2 - The bed of sea waters, as well as other waters subject to the influence of tides, is limited by the line of the maximum high tide of equinoctial spring waters. This line is defined, for each location, based on the spread of waves in average sea agitation conditions, in the first case, and in average flood conditions, in the second.
> 3 - The bed of the remaining waters is limited by the line that corresponds to the edge of the land that the waters cover in conditions of average flooding, without overflowing into the natural soil, which is usually dry. This line is defined, depending on the case, by the upper edge or crest of the marginal slope or by the alignment of the edge or crest of the wet slope of the slopes, bunds, ditches, banks or marginal walls.

> Article 11 Notion of margin and its width
> 1 - A margin is understood to be a strip of land adjacent to or overlooking the line that limits the water bed.
> 2 - The margin of sea waters, as well as navigable or buoyable waters subject to the jurisdiction of the local bodies of the Directorate-General of the Maritime Authority or port authorities, is 50 m wide.
> 3 - The margin of remaining navigable or floatable waters, as well as public service reservoirs, is 30 m wide.
> 4 - The margin of non-navigable or buoyant waters, namely torrents, ravines and streams with discontinuous flow, is 10 m wide.
> 5 - When the nature of a beach is greater than that established in the previous paragraphs, the shore extends as far as the land presents such nature.
> 6 - The width of the margin is counted from the bed limit line. If, however, this line reaches cliffs, the width of the bank is counted from the crest of the cliff.
> 7 - In autonomous regions, if the bank reaches an existing regional or municipal road, its width only extends to that road.

In some exceptional cases there can be private beds and margins of public waters.

> Article 12 Private beds and banks of public waters
> 1 - The following are private individuals, subject to administrative easements:
> a) The beds and banks of sea waters and navigable and buoyant waters that are subject to dispossession and subsequent alienation, or that have been, or will be, recognized as private due to previously acquired rights, under express provisions of this law, being presumed public in all other cases;

b) The banks of public service reservoirs, with the exception of parcels that have been subject to expropriation or that belong to the State in any other way.
2 - In the case of non-navigable and non-floating public waters located in private buildings, the respective bed and margin are private, in accordance with article 1387 of the Civil Code, subject to administrative easements.
3 - In autonomous regions, land close to the crest of cliffs and land located in consolidated urban centers, traditionally existing on the shores of sea waters on the respective islands, constitute private property, and this law constitutes a sufficient title for this purpose.

In 2023 the law was changed to allow the "disaffection" (giving away) portions of public margins or beds for purposes of national defence.

Article 19 Disaffection
By order of the members of the Government responsible for the area of finance, the area to which the property is allocated and the area of national defense, any portion of the bed or bank that should no longer be allocated exclusively to the public interest may be removed from the public domain. of the use of the waters it serves, thereby becoming part of the heritage of the public entity to which it was attached.

Despite the ownership approach, water is usually seen as an economic resource that must be carefully managed. In 1997 a new constitutional provision was added to Article 81 of the Constitution, on the priority duties of the state in the economic and social field: (…) the State is under a priority duty: (…) n) to adopt a national water policy that uses, plans and manages water resources rationally.

In practice, there have some typical cases where the ownership has been discussed:

- The case of river banks bought centuries ago (before 1864) to build watermills or fishing grounds have been claimed by families claiming to be heirs of their ancestor's heritage[513].
- The construction of artificial lakes on private land regularly filled with seawater (which is public water) as part of urban development activities for touristic purposes[514].
- The distorted private perception of water coming from wells as being private water, leading to a difficult control over private underground water abstractions. The citizens are unaware of the environmental impacts of such activities which require prior environmental permits.

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

[513] On public domain see Ana Raquel Gonçalves Moniz, *O Domínio Público - O Critério e o Regime Jurídico da Dominialidade*, Almedina, 2005.
[514] Such as the so called "lake city" in the south of Portugal https://siaia.apambiente.pt/AIADOC/AIA2088/itaa-30%20001-c-b_20090511201811221020 9.pdf

Recently some discussion has taken place regarding NGO protests claiming that a big national (and multinational) pulp and paper company (Renova) is carrying out a strategy of "privatization" of the source of a river.
The company, whose factories are located close to the Almonda river, on which they depend for their manufacturing process, started buying private plots of land bordering the river on both margins from the source to a few kilometers downstream. In practice, this prevents citizens and NGOs from having access to the river and from performing their whistleblowing role.
NGOs claim that this is a strategy to allow the company to hide industrial accidents or incidents that allegedly have happened in the past and have gone unpunished.
Besides, the company has used strategic litigation against public participation/SLAPP strategies to prevent initiatives such as popular picnic organized by local neighbors near the spring, accusing them of property invasion.
More recently, despite de negative opinion of the Portuguese Environmental Agency, the company decided to build a metal walkway to allow visitation in a certain area. This has been considered by the citizens as a proof that the river is being used exclusively for the private interest of the company[515], raising some debate on the nature of rivers as common goods.

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

The constitution does not recognize the fundamental right to water and sanitation.
On his report issued in 2023, and prepared after the visit to Portugal, the Special Rapporteur on human rights and environment acknowledged the enormous progress made by Portugal progress in the area of the rights to water and sanitation, with 96 per cent of dwellings currently served by a public water supply and a safe water index of 99 per cent: a jump from 50 per cent to 99 per cent in 20 years. However, Portugal is among the most unequal countries in Europe in terms of income distribution. In 2019, 16.2 per cent of the population was living below the poverty line, and the COVID-19 pandemic has caused an increase in that percentage[516].
For poorer families and mainly for larger families[517] access to water represents a heavy burden[518]. For social minorities (namely those living a nomad lifestyle such as some Roma communities) it can be a critical challenge. Besides, there is a perception of unfairness considering the different prices applied in different regions according to the number of family members and to the price of water. The result is an "equity index" that ranks the Portuguese regions according to the effort required in different regions of the country.

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[515] https://omirante.pt/sociedade/2024-01-03-Convite-da-Renova-para-visitar-nascente-do-Almonda-considerado-arrogante-e-inaceitavel-937a7415

[516] Human Rights Council (2023) Visit to Portugal Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable Environment, David R. Boyd (p.11) https://digitallibrary.un.org/record/4001924?v=pdf

[517] Associação Portuguesa de Famílias Numerosas (2019) *Ranking da água. O impacto da dimensão familiar no custo da água* https://www.apfn.com.pt/estudoagua/RelatorioEstudoAgua2019.pdf .

[518] On citizens' perceptions about water see Calouste de Gulbenkian (2020) "o uso da água em Portugal. Olhar, compreender e actuar com os protagonistas chave" https://gulbenkian.pt/wp-content/uploads/2020/06/Uso-da-%C3%A1gua-em-Portugal_Estudo-Gulbenkian.pdf

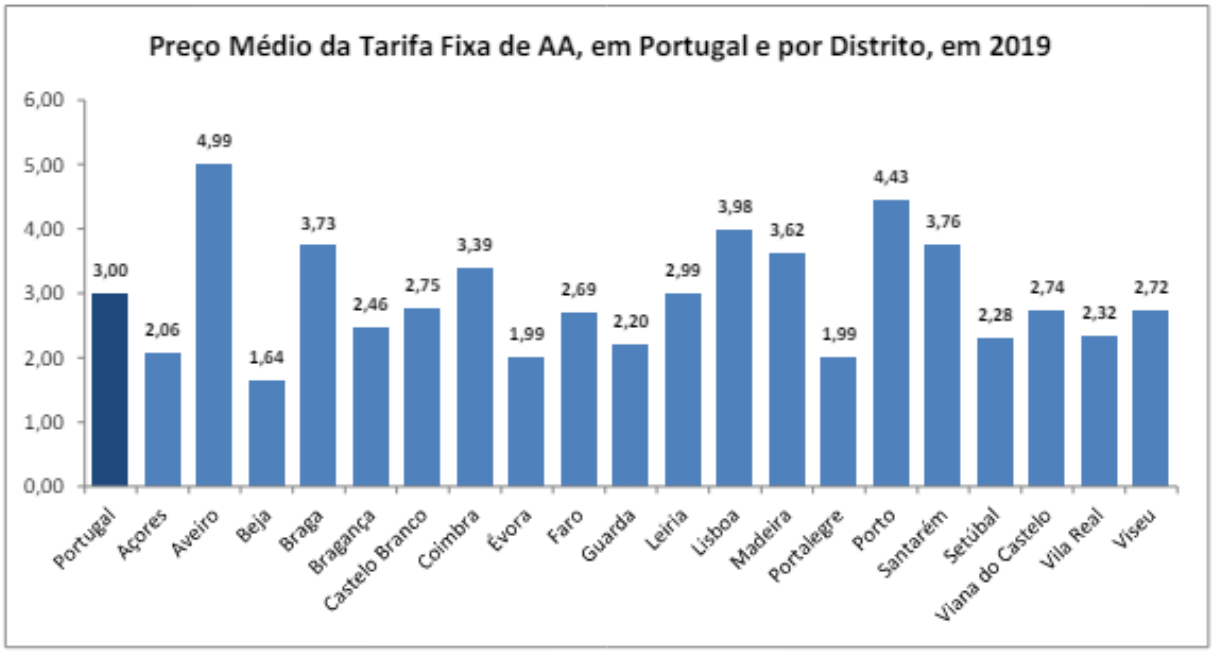


Fig.1 Associação Portuguesa de Famílias Numerosas (2019) *Ranking da água. O impacto da dimensão familiar no custo da água* [519]

In 2023, the independent authority supervising the provisioning of water services (ERSAR) issued a Recommendation to the water supply entities on the discount to be applied to families or persons in economic need. The maximum cost of 10 m3 water should not exceed €4.77 per service, including the repercussion of environmental fees and taxes[520].

According to the law creating a social tariff for water services[521], the benefit of a social tariff must be attributed to natural persons, with a contract for the supply of water and/or waste collection services associated with their tax residence, who are in a situation of economic need. In 2021, only 70% of the municipalities had implemented a social tariff for water and waste water treatment services[522]

In this regard the law transposing the Drinking Water Directive 2020/2184/EU [523] represents a progress in the recognition of the access to good quality water. However, considering that the law was transposed with a 7-month delay (transposition should have occurred until January 2023 but the law was only adopted in August) the impacts of this law in the real world are still dependent on the implementing measures.

4- How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?

[519] Associação Portuguesa de Famílias Numerosas (2019) *Ranking da água. O impacto da dimensão familiar no custo da água* page 9 https://www.apfn.com.pt/estudoagua/RelatorioEstudoAgua2019.pdf .

[520] https://www.ersar.pt/pt/consumidor/tarifas-dos-servicos/tarifarios-sociais

[521] Decree Law 147/2017 of 5th December https://diariodarepublica.pt/dr/legislacao-consolidada/decreto-lei/2017-114303794-114281640 , updated in 2020.

[522] Official data from the Independent authority regulating the water and waste sector https://www.ersar.pt/pt/consumidor/tarifas-dos-servicos/tarifarios-sociais (spread sheet with data available here https://www.ersar.pt/pt/site-comunicacao/site-noticias/Documents/Tarif%c3%a1rios%20sociais_2021.xlsx)).

[523] Decree Law 69/2023 of 21 August https://diariodarepublica.pt/dr/detalhe/decreto-lei/69-2023-220113533

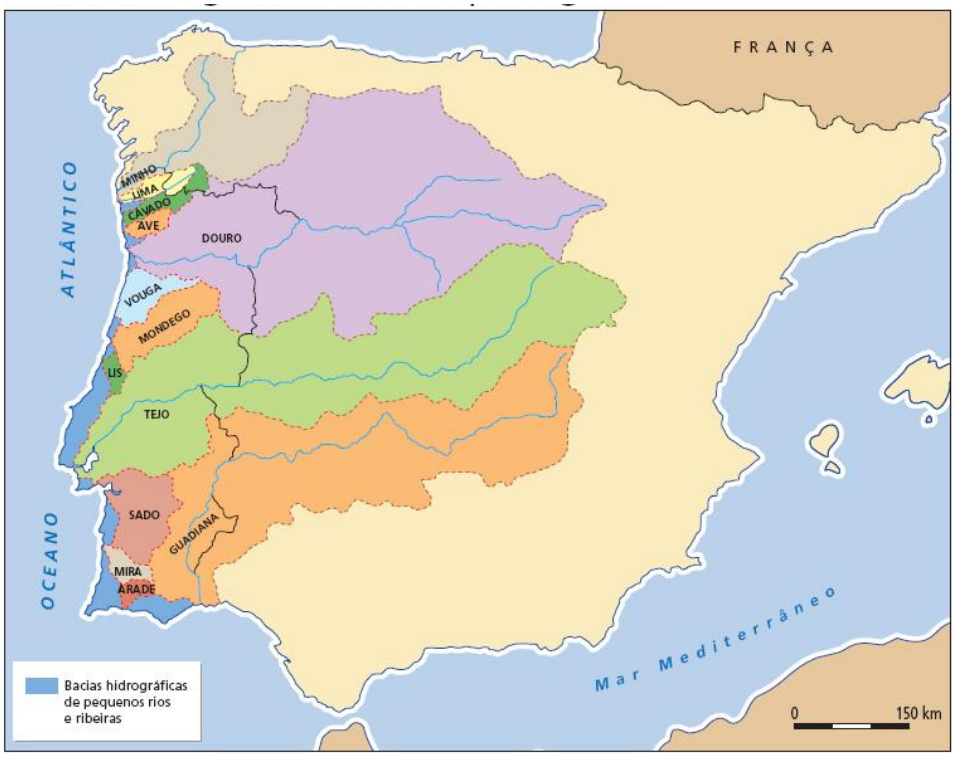
Water needs of ecosystems are barely considered during environmental impact assessments, and are mainly addressed in the national hydrographic plans.
Regarding RON, in the Academia these initiatives have been discussed as a possible theoretic approach under the influence of Brazilian and Spanish researchers.
In the artistic community some initiatives have been organized.
The lawyers community is skeptical.
Among NGOs it has been addressed as an interesting legal path taken abroad, but no initiatives to have been taken or are being prepared.
In the last legislative elections, the subject was not addressed by the political parties and was not discussed in the debates.

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

♣ INTEGRATED WATER MANAGEMENT

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions?

There are 10 river basin districts in Portugal:
- RH 1 Minho and Lima
- RH 2 Cavado, Ave and Leça
- RH 3 Douro
- RH 4 Vouga, Mondego and Lis
- RH 5 Tejo and Ribeiras do Oeste
- RH 6 Sado and Mira
- RH 7 Guadiana
- RH 8 Ribeiras do Algarve
- RH 9 Archipelago of Açores
- RH 10 Archipelago of Madeira



The competent authorities responsible for reporting on water quality of the two insular river basins (RH9 and RH10) are the regional governments. As a consequence, the most accessible official documents focus mainly on the eight continental river basin districts. Besides, the four largest rivers in Portugal (Minho, Douro, Tejo and Guadiana) are international rivers, with shared river basins between Portugal and Spain.

According to the summary report on the characteristics of the river basin districts under the water framework directive, there are ten major human pressures on surface waters in each of the basins, all represented in the following table:

Sources	Types of human pressure		River basin districts									
			1	2	3	4	5	6	7	8	9	10
Point	Urban waste waters											
	Industries*	Non IPPC										
		IPPC										
	Urban waste landfills											
	Mineral extraction**											
	Aquaculture											
Diffuse	Agriculture											
	Urban diffuse sources		-					-	-	-		
	Golf courses		***	***	***	***	***	***				
Abstraction	Agriculture (irrigation)											
	Public supply											

*Information not available
** Both active and inactive mines are considered. Abandoned mines are more polluting because they are not submitted to emission values, thresholds or monitoring systems.
*** Main industrial activities are livestock farming (pigs and cattle farms).
Very important Important Less important

For ground waters the major human pressures are

Sources	Types of human pressure	River basin districts									
		1	2	3	4	5	6	7	8	9	10
Point	Industries, landfills and waste dumps	-									
Diffuse	Agriculture	-									
Abstraction	Public supply, agriculture and private uses	-	-	-							

Very important Important Less important

Polluting substances (tons per year)				
	BOD	COD	N(total)	P (total)
RBD 1	795	1447	98	26
RBD 2	18906	35997	2306	487
RBD 3	19316	40459	4252	895
RBD 4	26699	60309	6524	1336
RBD 5	61294	145782	10137	2021
RBD 6	101523	240874	2838	429
RBD 7	8873	23900	934	117
RBD 8	6428	14882	1055	196
RBD 9				
RBD 10				

BOD- biochemical oxygen demand
COD - chemical oxygen demand
N - Nitrogen
P – Phosphorus

The data gathered in Portugal are not complete, accurate or exhaustive. It is worth mentioning the fact that the reports emphasize strongly the lacks of information, namely on:
- Industrial activities,
- Golf courses
- Distinction between diffuse pollution and point sources for some types of pressures (e.g. agriculture, livestock, municipal solid waste, mining extractions);
- Difficulty in determining the pollution loads originated from diffuse sources.

For this reason, in 2005, around one fifth of the information on water quality was doubtful (over 20% for surface waters and 17% for ground water).

Nevertheless, 35% of the surface waters and 6% of ground waters are at risk of not meeting the goals.

Classification of surface water bodies at risk of not meeting the goals						
	Not at risk	Doubtful	at risk	Not at risk	Doubtful	at risk
	Number of water bodies			Percentage (%)		
RBD 1	20	28	50	20,4	28,6	51,0
RBD 2	50	33	46	38,8	25,6	35,7
RBD 3	125	149	364	19,6	23,4	57,1
RBD 4	97	155	180	22,5	35,9	41,7
RBD 5	392	122	272	49,9	15,5	34,6
RBD 6	192	26	37	75,3	10,2	14,5
RBD 7	167	13	79	64,5	5,0	30,5
RBD 8	56	30	16	54,9	29,4	15,7
RBD 9						
RBD 10						

Classification of grund water bodies at risk of not meeting the goals						
	Not at risk	Doubtful	at risk	Not at risk	Doubtful	at risk
	Number of water bodies			Percentage (%)		
RBD 1	2	0	0	100	0	0
RBD 2	3	0	1	75	0	25
RBD 3	3	0	0	100	0	0
RBD 4	12	7	1	60	35	5
RBD 5	16	5	1	72.7	22.7	4.6
RBD 6	6	2	0	75	25	0
RBD 7	5	3	1	55.6	33.3	11.1
RBD 8	16	5	2	69.6	21.7	8.7
RBD 9						
RBD 10						

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management?

The main difficulties related with the quantitative water management are water scarcity in the southern part of the country in the summer and autumn period.
The improvised temporary solutions have been water rationing (reducing the flow and cutting it for a few hours a day), renouncing superfluous uses (fountains, irrigation of public gardens) and distributing water to the affected populations using tanker trucks[524].
Another sub-optimal solution is the positive EIA[525] for the construction of the first desalination plant in mainland Portugal[526], contested by the citizens because part of the water (produced at the expense of extensive energy consumption) will be used for irrigation of highly unsustainable although profitable agricultural products (avocado).

[524] https://www.aguasdeviseu.pt/noticias/noticia/71
[525] https://siaia.apambiente.pt/AIADOC/AIA3667/aia3667_dia%20(anexo%20tua)202443183416.pdf
[526] https://siaia.apambiente.pt/AIA.aspx?ID=3667

Other solutions require higher investments: offering support with public money to agricultural conversion (agriculture is the most water consuming activity in Portugal) to more sophisticated practices: "precision agriculture"[527].
The tense relations with Spain deserve being mentioned: NGOs claim that the minimal ecological flows established in the bilateral Albufeira Convention regulating waster management in the five river basins shared between Portugal and Spain are not being respected. Neither the total amount of water released to Portugal nor the periodicity are being respected. There should be regular weakly flows and in some river basins and some periods of the year the water discharges are released monthly, all at once. This violation, together with the lack of access to information in the website that has not been updated for several years https://www.cadc-albufeira.eu/pt.html lead to a complaint being presented to the Implementation Committee of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes [528] (still pending).

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

Indeed, there are difficulties in recovering the costs. The fact that the large majority of the entities responsible for water management (water supply and waste water collection and treatment) are private entities that receive a public concession to act at the scale of multiple municipalities whose main shareholders are the municipalities that sometimes (in fact, quite often) don't authorize the companies to make the necessary investments for the maintenance and upgrading of the infrastructure. The outdated and degraded infrastructure leads to large quantities of water loss in the water supply system and frequent environmental accidents in the waste water collection system. On the other hand, the independent authority responsible for supervising the provision of the service does not allow raising the prices to collect the necessary funds from the users.

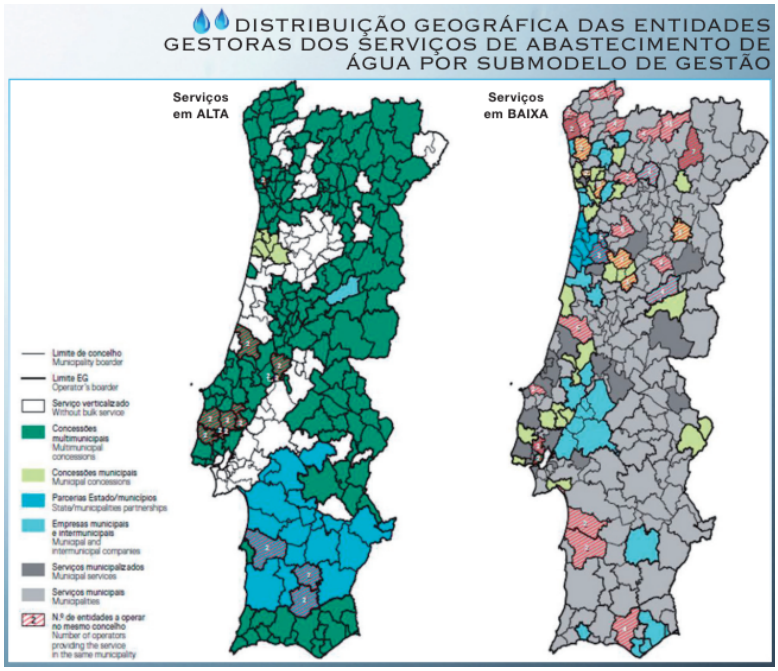


Fig. 2 Water management systems[529]
(On water pricing see the answer to question n.3 above.)

♣ WATER BIODIVERSITY

[527] https://www.portugal.gov.pt/pt/gc23/comunicacao/noticia?i=seca-hidrologica-mais-grave-do-seculo-devido-a-conjugacao-de-temperaturas-altas-e-fraca-precipitacao
[528] https://unece.org/sites/default/files/2023-06/ECE_MP.WAT_IC_2022_4_ENG.pdf
[529] http://www.ppa.pt/wp-content/uploads/2014/07/94967-AEP_Setor-Portugues-da-Agua.pdf

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country?

Not much. Not one single river in Portugal is free of invasive exotic species (both animals and plants). Not one single river is free of vertical obstacles: hydropower dams, irrigation dans, dams to supply cities with water, dams for cattle watering, dams to create tourist river beaches…
The last free river in Portugal was lost[530] in 2016[531] to another huge dam, the Baixo Sabor dam.
The main synergy are the ecological corridors that follow river stretches of the main rivers In Portugal. But the legal regime of the national ecological reserve could already protect those areas as well.

9- Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?

In 2016, the Ministry of the Environment, through the Ministerial order No. 15/MAMB/2016, of April 30[532], determined the creation of a Working Group with the purpose of identifying and studying Portuguese dams and reservoirs and to propose a plan to remove the obsolete infrastructures. In the first prospection, the number of obsolete dams identified was ridiculously low. The recommendation to develop a national strategy for removal of obsolete hydraulic infrastructures had no follow up and the project was put on standby.
It is worth noting that the only demolition of an obsolete small dam was conceived, financed and implemented by an NGO (Geota, Rios Livres). This demolition received an international award in 2024[533]. This was a symbolic action reinforcing the need to have a serious public policy for reconnecting the rivers.

In the future, hopefully, the obligation to establish restoration plans, with objectives, area-based measures and indicators, will be determinant for the improvement of the conservation status.

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn ?
Not at all. Stronger measures, steered by a transformative political will, inspired by intergenerational sustainability rather than by a short-term view of purely economic development. It is urgent to overcome the discourse that presents building new dams in the rivers and cutting down forests and fire resilient trees to install solar panels as… climate adaptation measures.

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

[530] João Joanaz de Melo et al A barragem do Baixo Sabor: um caso de má aplicação da avaliação de impactes ambientais https://rioslivres.geota.pt/wp-content/uploads/2016/09/2010CNAI_BaixoSabor_JJM_etal.pdf
[531] https://www.publico.pt/2018/09/29/fugas/noticia/morreu-o-ultimo-rio-selvagem-e-deu-lugar-a-lagos-de-agua-quente-1845055
[532] https://conselhonacionaldaagua.weebly.com/uploads/1/3/8/6/13869103/gt_remo%C3%A7%C3%A3o_de_infraestruturas_obsoletas_2017.07.07.pdf
[533] https://damremoval.eu/dam-removal-award-2023-winner/

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake?

The main concept is "priority" of uses. This concept is enshrined in the water framework law and allows decisionmakers to establish hierarchies of uses in different situations.

The general rule is established in article 64 on "order of preference of uses".

The preferences shall be established in the river basin management plans, priority being given to "the use that ensures the most economically balanced, rational and sustainable use".

> Article 64 Order of preference of uses
> 1 - In the case of conflict between different uses of the public water domain, the preference criteria established in the river basin management plan are followed, with priority being given to the capture of water for public supply compared to other planned uses, and on an equal basis of conditions, use that ensures the most economically balanced, rational and sustainable use is preferred, without compromising the protection of water resources.
> 2 - When considering the conflict situation referred to in paragraph 1, not only new requests for use titles are considered, but also current use titles that may be revoked.
> 3 - In the event of a declaration of a shortage, the order of priority referred to in the previous paragraphs may be changed by the national water authority, after consulting the hydrographic region council.
> 4 - The main uses of the public water domain are those referred to in article 61 and all the others as complementary.

The titles that authorize the operators to use the water, establish a duty to grant prevalence to the use considered priority under the law, in the case of conflict of uses.

In special occasions such as draught (article 41) "the availability of water for public supply and only afterwards for vital activities in the agricultural and industrial sectors". In case of pollution accidents priorities must as well be identified (article 42). If a state of environmental emergency is declared then other priorities for the use of water resources must be defined, derogating from the hierarchy established by law or water planning instruments (article 44).

The concept of "imperative reasons of overriding public interest" (in Portuguese project of national interest) has been used and abused to push forward unsustainable projects. For instance, in the case of hydropower projects, the dams are claimed to be multipurpose instead of having only economic purposes (electricity production or irrigation) to facilitate the statement of public interest. Water supply and touristic uses complement the arguments in favor of the dam. Water pumping associated with wind power and solar power and floating solar panels in the reservoir are the cherry on the top of the cake to strengthen the idea that the dam is indispensable.

The most obvious example is the Pisão Dam, being built with the support of the recovery and resilience plan. The construction moved forward thanks to the IROPI[534] declared a few days after the environmental impact assessment was issued[535], despite the forced displacement of populations living in one village that will be submerged, despite the statement in the EIA that the negative impacts of deforestation were significant[536], despite the fact that what is at stake is an irrigation dam in an area of high hydrologic pressure near a Natura 2000 site.

[534] Decree law n 62/2022 of the 26th September https://files.diariodarepublica.pt/1s/2022/09/18600/0000200007.pdf
[535] https://siaia.apambiente.pt/AIADOC/AIA3473/tua20220901002002_com_dia_anexo202292104915.pdf
[536] https://siaia.apambiente.pt/AIADOC/AIA3473/tua20220901002002_com_dia_anexo202292104915.pdf (page 24).

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

New water governance models are studied in the Universities but not really discussed in public forums.

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation?

The participation provisions have been implemented at a minimal level.

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

A serious case of foam pollution in the Tagus river in 2018[537], has been denounced in the social media by the fisherman and by one activist who was accused by the upstream companies of "slander". This was a clear case of strategic litigation against public participation (SLAPP) affecting a vulnerable victim[538]. The solidarity[539] towards the altruistic whistle-blower was fundamental to get legal support for his defence in the court[540].

[537] https://interiordoavesso.pt/interior-do-avesso/poluicao-no-rio-tejo-crime-ambiental-esta-ha-tres-anos-sem-culpados/

[538] https://maisribatejo.pt/2021/05/06/ambientalista-comeca-hoje-a-ser-julgado-por-alegado-crime-de-difamacao-contra-donos-da-fabrioleo/

[539] https://www.publico.pt/2018/11/10/sociedade/noticia/activista-arlindo-marques-distinguido-premio-nacional-ambiente-1850609

[540] https://www.youtube.com/watch?v=rrGe9U2rcx8

Slovenia

Rajko Knez

Contrary to popular belief, Slovenia, often hailed as a water country with its abundance of clean rivers and streams, is not as idyllic as it seems. This report, presenting a more nuanced perspective, delves into the less-than-rosy reality of the country's water situation.

However, let me start with, I think, good news. Drinking water supply is prioritised over all other needs. As per the Constitution, everyone is entitled to drinking water, and the state must manage and protect water resources. As a rule, the state is the main actor in safeguarding water resources. This task is not given to local communities. Legislation and regulations define rather precisely how to use and protect water. This task also includes monitoring surface and underground water's quantitative and qualitative state.[541] The underground water is mainly used for drinking water, pumped directly from aquifers or piped from springs. Only about 2% of drinking water is obtained from surface water. The critical problem is that most aquifers lie in densely populated valleys and basins, where intensive agriculture, industrial activity, and most traffic routes pass. In these areas, rainfall and river water bring many pollutants of different origins into the aquifer. There are also other problems… addressed by the answers.

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law?

Not really. What is rather interesting is that a draft directive on concession is the one that caused a shift in awareness of water in Slovenia. The Slovene Constitution is based on the principle that natural sources are a public good, accessible to everyone. The same is true for water. However, it is the draft Directive on concessions[542] that provoked a *new Art 70a of the Slovene Constitution* (it defines a right to drinking water). The draft directive mentioned in the preamble stated that concessions could be used to distribute drinking water (also a trigger for the well-known Right2Water initiative). This new article sets forth:

> ***Article** 70a*
> ***(Right to Drinking Water)***
>
> 1. *Everyone has the right to drinking water.*
> 2. *Water resources shall be a public good managed by the state.*

[541] In order to assess water quality, Article 8 of the Water Directive requires the introduction of monitoring programs (monitoring of the condition) of surface and underground waters. Monitoring and assessing the quality of water is one of the key tasks of the Environment Agency of the Republic of Slovenia. In Slovenia, water quality monitoring has a long tradition, and in 2007 it was carried out for the first time in accordance with the requirements of the Water Directive.

[542] Later adopted as a Directive 2014/23/EU on the award of the concessions contract.

3. *As a priority and in a sustainable manner, water resources shall be used to supply the population with drinking water and water for household use and in this respect shall not be a market commodity.*
4. *The supply of the population with drinking water and water for household use shall be ensured by the state through self-governing local communities directly and on a not-for-profit basis.*

Drinking water in Slovenia is not a commodity (explicitly mentioned in the third paragraph), not a commercial product for household distribution. It is a public good, and its distribution to households shall not be profit-based. It is a clear intention that private capital (usually in the form of concessionaires) is not welcomed for drinking water distribution. This article does not relate to using (drinking and other) water for commercial purposes. However, it is essential to note that water for commercial purposes is not prioritised over water sources aimed at household services.

A special water right regulates the commercial use of water or the use of water for business purposes. The state can grant this right, and a concession is also required when the water is necessary for a business activity, such as small hydroelectric plants, water pumping and selling bottled water, water for bathing, and so on. An individual has the right to personal use of water.

When the water source is in his territory, he needs permission to use it, but this is not a concession. The concession will only be given for the *economical use* of water.

However, an individual does not own water on or under his land. As a result, everyone has access to lakes, the sea, rivers, and so on. Access should not be restricted. It is also not allowed to build on coastal land. Two years ago, we held a referendum for this purpose, and the coastal lands also remained connected to the water public good. Access to water can be paid for, not for the sake of water, but for other services, such as, for example, the arrangement of access to the water itself, greenery to the waterway and silt removal services, embankment cleaning, etc.

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

As mentioned above, Slovenia reacted decisively and quickly to the draft Concession directive. Not only was it seen as a chance to invoke water as a commodity at the EU level, but we also did not like how it was proposed in the mentioned draft; somewhat hiddenly, through the backdoor. Relatively soon, the expert constitutional commission was established to prepare a change of the Constitution so that the idea of water as a commodity would trump the Slovene Constitution. The EU Commission was notified before the new Art. 70a was adopted, but it has never replied. We strongly defended the idea that water (and access to it) should remain a public good.[543]

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

[543] The process is described here: KNEZ, Rajko. Ajar door to private interests in water (drinking water supply) market - rare case of Slovenia, triggered by the EU proposal of the directive on concessions. InterEULawEast : journal for the international and European law, economics and market integrations. [Print ed.]. Dec. 2017, vol. 4, iss. 2, str. 19-34.

The right to drinking water is recognised constitutionally (Art. 70a mentioned above). The goal is that every Slovenian has access to (safe, healthy) drinking water. This is the law; a situation on the field is not so rosy.

The drinking water supply is mostly good, but not without problems. Water from larger water supply systems is generally of adequate quality. On the other hand, many smaller water supply systems (up to 500 users) are experiencing occasional or permanent microbiological water pollution (mainly caused by sewage water due to insufficient or even no wastewater treatment).

Chemical contamination of drinking water with pesticides and nitrates is present mainly in the northeastern part of Slovenia due to the influence of intensive agriculture. Solving this pollution should include observing the regime in the water protection areas of water resources (restricting the use of phytopharmaceuticals and fertilisers, observing the principles of good agriculture), regulating sewage networks, technological additions to water treatment that allow the removal of pesticides and nitrates from raw water or the search for alternative water sources with raw water of good quality.

Treatment, primarily collecting sewage water, is a long-lasting problem. Also, due to the geomorphological structure of the Slovenian landscape and the very dispersed placement of buildings, building sewage collecting systems is challenging. In that respect, Slovenia was also sued at the ECJ (C-328/22) for not respecting Directive 91/271/EGS. I come back to this topic below.

4- **How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?**

The regulations governing water stipulate the obligation to prepare updated water management plans in the water areas of the Danube and the Adriatic Sea every six years. The third water management plan is being prepared. The planning process also includes preparing a program of measures to achieve the goals of the water management plan, with a deadline for achieving the goals by the end of 2027. The water management plan is an important program document in water management. The primary purpose of water management plans is to achieve a good chemical and ecological state of surface waters, a good chemical and quantitative state of groundwater, prevent further deterioration of the state of water ecosystems, promote sustainable water use and ensure greater water protection and improvement of the water environment.

As part of the preparation of water management plans, a review of the state of the water environment, a review and analysis of loads and impacts on the water environment (use, pollution) are carried out, and a cost-effective program of measures to achieve goals in the field of water is prepared. In the program of water management measures, based on the i. of the primary measures already implemented, supplementary measures are also determined to improve the state of water bodies of surface and underground water, which are estimated not to reach the prescribed goals by the end of 2027.

For the period 2016-2019, 75 water bodies of surface water (49%) are estimated to achieve at least good ecological status[544] and thereby meet the objectives of the water directive. Seventy-nine water bodies (51%) do not achieve good ecological status. For water bodies that do not achieve good ecological status, the most extensive pressure is hydromorphological alteration together with general degradation, which is recognized either as the sole cause or together with other pressures for 82% of water bodies that do not achieve good ecological status.

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

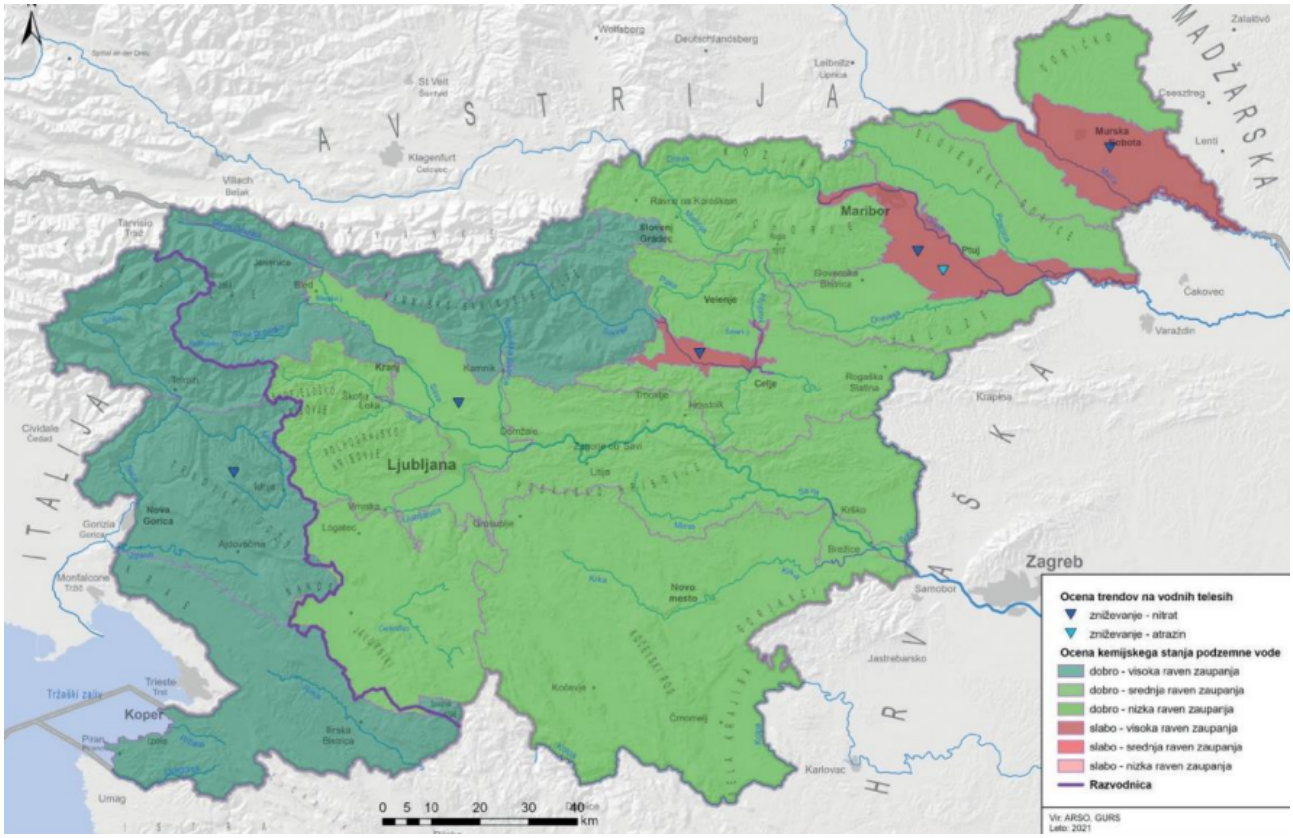
♣ *INTEGRATED WATER MANAGEMENT*

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions?

Although, in general, Slovene thinks that waters are generally in good condition and that we have enough water resources, official reports offer a rather different picture. The assessment of the chemical state of the underground water shows that due to intensive human activities (agriculture, industry, untreated sewage), the most stressed water bodies are in the northeastern part of Slovenia, which mainly have intergranular porosity. Groundwater in the Savinjska, Drava and Murska basins is excessively loaded with nitrates, pesticides, and their degradation products. In the Savinjska and Murska basins, highly volatile halogenated aliphatic hydrocarbons (tetrachloroethene) are also present. The water body in eastern Slovenia also has a poor chemical status due to exceeding the content of desmethyl-atrazine (atrazine has been banned since 2003).

These are areas (red) with the bad status of underground water (indeed, the rest of the natural water resources are better assessed):

[544] By assessing the ecological state of water bodies, we indicate the deviation from the natural state of the water body without human activities. The ecological condition is evaluated on a five-point scale: very good, good, moderate, bad or very bad. To evaluate the progress in improving the status in accordance with the objectives of the Water Directive, we combine the scores according to whether the water body achieves (rates very good and good) or does not achieve good ecological status (rates moderate, poor and very poor). In this text, the term ecological status is used equivalently to the term ecological potential, which is used to provide estimates for heavily modified and artificial water bodies.



Apart from the abovementioned problems, I have noted that releasing dangerous substances into surface and underground water sources occurs relatively often. These illegal emissions releases are usually related to agriculture and multiple industries, including construction activities. Hardly a month goes by without the media reporting on some release. In the last period, for example, it happened during the construction of a railway line, during the discharge from a food processing factory, or the discharge of manure tea from an agricultural farm, where the discharge was stopped by digging a hole. Due to the porosity of the soil, the manure tea even ended up in the famous Postojna Cave.

I believe that, to a large extent, this is the result of a poorly developed sewage system and wastewater treatment. This is a problem dating back in history. Slovenia allowed wastewater release into nature for decades by requiring only two-compartment septic tanks. We only started introducing treatment plants after joining the European Union. However, sewage treatment plants are built faster than sewage collecting systems. Especially in such a geomorphologically demanding environment as Slovenia and the dispersion of buildings (individual houses) in Slovenia, the construction of sewage collecting systems progresses rather slowly. Slovenia does encourage small (biological) water treatment plants, but it is also difficult to change decades of allowing wastewater to be discharged into nature.

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management?

Based on the reports assessing the quantitative status of groundwater, the quantitative status in the evaluation period 2008-2013 in all shallow aquifers of 21 water bodies of the Slovenian groundwater is assessed with an overall rating of good. The situation has deteriorated since then. Droughts have

recently become more severe. Except for 2023, when there were extreme floods, we recorded droughts. They particularly stand out in 2022, 2012, 2003, and 1993.

The year 2022 is an excellent example of how insufficient quantities of drinking water can be: In 2022, severe drought and heat waves hit the whole of Europe. The lack of precipitation, which has been present since the beginning of the year, has caused a decrease in water levels and river flows almost throughout Europe. The extreme lack of water threatened the water supply, affecting agriculture, the energy sector, river transport, fishing, tourism and all other water-related activities. Slovenia also experienced extraordinary drought conditions. All months except April were wet below average. From January to August 2022, only 64 per cent of normal precipitation fell on the national average. The least precipitation was in March, at only 10 per cent.

It is worst in the western part of Slovenia, where it is usually hotter and has less precipitation. The Rižana River, which also supplies the residents, did not provide a minimal flow. It was necessary to relocate the fish stock.

It also happens more and more often that precipitation (rain) is rapid; that is, it rains in a short period. This means the water drains away quickly and does not have time to seep into the ground and fill the groundwater in quantity. Also, this type of precipitation washes away the fertile substances of the soil.

The last report on water protection made quite a few requests to the Government and the parliament. All that is listed below is, therefore, currently lacking:

- water management was neglected for a long time, both financially and in terms of personnel. This needs to be strengthened. Even the floods in 2023 showed improper handling of watercourses and allowing constructions next to them.
- The water policy objectives must be included in other policy fields: agriculture, fisheries, renewable resources, energy, industry, transport, structural and cohesion funds, and disaster management.
- More effort should be invested in identifying the joint effects of policy measures from other areas, such as climate change, mobility and transport, and biodiversity.
- Special attention should be paid to the allocation and consumption of water in economic sectors, sustainable agriculture and the links between water, agriculture, energy and the environment.
- Together, agricultural areas and forests cover a large part of Slovenia's surface and play an essential role in preserving natural resources, especially water and soil, as well as biodiversity and various cultural landscapes. It is, therefore, necessary to support efforts to develop a more environmentally friendly agricultural policy, promote good agricultural and forestry practices, such as increasing the diversity of crops, protecting permanent grassland and pastures, and continue with a natural, multi-purpose and sustainable forest management system. Establishing and preserving ecologically valuable agricultural and forest areas should also be encouraged.
- When planning investment measures, looking for the best solutions for protecting water and aquatic ecosystems and preserving biodiversity is necessary. Further efforts are also needed to manage the nutrient cycle more cost-effectively, sustainably, and resource-efficiently and to encourage improvements in fertiliser use efficiency. In the last 20 years, the input of nitrogen and phosphorus into the environment has decreased significantly, and

the excessive release of nutrients continues to affect air and water quality and adversely affect ecosystems, thus causing problems for human health. Limit values of phytopharmaceutical residues are still exceeded in food, feed and the environment, which is why it is necessary to ensure the implementation of a more thorough systemic approach to the integrated protection of plants against harmful organisms and the reorientation of agricultural holdings from conventional cultivation to so-natural farming methods. It is necessary to ensure a reduction in the introduction of phytopharmaceutical substances into the environment and thus reduce the adverse effects of these substances on human health and the environment.

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

For many years, Slovenia did not demand any compensation for the use of natural resources - even the industrial (business) use of water was often free of charge (e.g. for small hydroelectric plants). This changed with the framework water directive or with it, all member states received a clear message that the use of water resources is not free. However, even after it should have been implemented, Slovenia did not follow it consistently. Even in the field of water, this turned out to be a big problem. Fees for water use were not paid by various entities, such as electricity processors at small hydropower plants, processors of different types of beverages that use water, multiple spas, baths, and so on. Even more, in the second phase, when the state nevertheless started with the requirement of paid use of water, it did not require this from all subjects equally, which opened the issue of equal treatment before the law. After new pressure from the EU, the state took a systematic approach and charged retroactive compensation for water use to everyone for five years (probably because the general statute of limitations in Slovenia is five years). This meant a big negative surprise for the large commercial players, also with a substantive financial burden. They started a dispute. In case U-I-348/20, the Constitutional Court is now deciding on this: that is, whether the principle of retroactivity and trust in the law was violated.

I believe the problem is the result of longstanding Slovenia's extremely generous approach to using water as a public good, i.e., beyond the limit of purely personal use (i.e. also for commercial use) and the desire to help one's own economy, which is also present in socialism.

- ♣ WATER BIODIVERSITY

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country? Please provide examples of success / failure of integration in particular cases if relevant.

The impact of the habitat and bird directive on Natura 2000 and waters in Slovenia is significant. The case of Mura is indeed instructive: the state, shortly before joining the EU (April 2004), granted a concession to a local electricity company for the construction of 10 hydroelectric power plants without first carrying out a SEA and EIA. Granted concessions did not derogate these obligations, of course, and the concessionaire started the SEA procedures. According to Article 6 HD, the SEA assessed the project with significant consequences for nature, for which it is necessary to prove the dominance of the overriding public interest and obtain the approval of the European Commission. This happened in 2017, 13 years after the concession was granted. Since then, the project has stood still, and no attempt has been made - at least according to my information - to prove the existence

of overriding public interest. Therefore, the river would have been built with power plants if it had not been for HD and Article 6. Because the river is lowland, this would probably mean the existence of large storage lakes, at least with such power plants as were envisaged (not small ones, as in Austria on the same river).

It is also essential to note that Slovenia transferred the HD approach to all protected areas, i.e., not only to Natura 2000 (the latter covers 37% of Slovenia's surface) but also to all protected nature areas regulated by national law, which amounts to over 56% of the Slovene territory.

9-**Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?**

Regarding restoration: areas that we have degraded in the past in Slovenia (these are mainly various valleys in which we have placed heavy industry, and there are usually also rivers in these valleys) or places with lakes where industrial wastewater could also be discharged, have been in restoration processes for a long time. These are slow processes. The difference from the previous period when we lived according to the curative model is significant. But we are still dealing with the consequences of that long-lasting period. Inevitable consequences were also - at least partially - taken care of by nature itself (for example, in the Gulf of Trieste, in the north of the Adriatic Sea, the river Soča brought a lot of mercury due to the mercury mine in Idrija (a bit northern), but the seabed is covered with marine sediments and there is less of it in the seawater itself; however, every large ship can dig up sediments (sometimes there are brown traces behind them). Thus, the turtles in the Gulf of Trieste have the highest mercury content in the world in the livers). After the pollution from the sewage waters stopped, a natural process revitalised some rivers (e.g., the Drava River). This is not always the case with lakes. Most of the dangerous substances are removed from the river bed. However, this sediment is a waste (maybe even dangerous) that needs to be processed.

Water is primarily protected by the general *Regulation on the emission of substances and heat in the discharge of wastewater into water*.[545] Indeed, we would have contributed a lot if we had not discharged wastewater from individual residences. Slovenia is (as I mentioned) rather unsuccessful in wastewater treatment. In 2019, 68% of the population was connected to communal and shared sewage treatment plants. After the tertiary treatment process, wastewater was treated for 44% of the population connected to the treatment plants. After the secondary cleaning process, water was cleaned for 24% of the population connected to the wastewater treatment plants. As of 2015, there are no more (only) primary cleaning procedures. Some progress has been seen in recent years, and the percentage of water with a tertiary level of treatment has increased to 71%.

Slovenia is also sued before the Court of Justice of the EU (C-328/22). This is not because of the lack of sewage treatment plants but mainly due to the lack of construction of sewage systems. These are difficult to build due to the geomorphological characteristics of Slovenia. The problem is further

[545] Its purpose is to reduce environmental pollution due to the emission of substances and heat emissions that occur during the discharge of municipal, industrial and precipitation wastewater and their mixtures into the waters. It determines the limit values of substance and heat emissions, evaluation of substance and heat emissions, measures to prevent the emission of substances and heat during wastewater discharge, measures to reduce substance and heat emissions during wastewater discharge, other measures to minimise substance emissions, conditions for wastewater discharge and obligations of investors and operators of devices that relate to the acquisition of an environmental permit.

compounded by the long-term enabling of decentralised and highly disseminated constructions, disregarding the land-sparing approach. This makes connecting all buildings with the sewage system practically impossible and requires more significant efforts to place small sewage treatment plants. We are not successful. Even until the end of 2025, the use of septic tanks is enabled (Regulation on the treatment of waste municipal water), which, as far as I know, is not in accordance with EU law (the EU did not allow another extension of this period).

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally, what lessons can be drawn? Please feel free to answer this question only if you have a concrete example (successful or not) to share.

Not really: In the period 2014-2019, 14 water bodies (9%) do not achieve a good ecological status due to being loaded with specific pollutants. Environmental quality standards for metolachlor, terbuthylazine, cobalt, zinc, molybdenum, sulfate and polychlorinated biphenyls (PCBs) are exceeded in watercourses. The lakes are excessively loaded with metolachlor, molybdenum and sulfate. Compared to the previous evaluation period, 3% more water bodies achieve good ecological status according to specific pollutants and 4% more water bodies compared to the period 2006-2008. The primary sources of surface water pollution with specific pollutants are agriculture and municipal and industrial wastewater discharges.

In Slovenia, nutrient overload is still the main problem regarding lakes and reservoirs, and *no improvement has* been observed from 2006-2019. In the evaluation period 2016-2019, out of 11 water bodies in the group of lakes, only four were assessed as good or very good status. Humans mainly cause the overloading of lakes with phosphorus with inadequate disposal of municipal wastewater and intensive agricultural use of the lake. The same applies to groundwater: Slovenia is divided into 21 groundwater bodies. The assessment of the chemical state of groundwater shows that, due to intensive human activities, the most stressed water bodies are predominantly in aquifers with intergranular porosity in the northeastern part of Slovenia.

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake?
Depending on your national context, you may illustrate these conflicts with Agriculture (agricultural irrigation - the controversial case of metabasins for agriculture) or Energy (hydroelectricity - cooling nuclear power stations) or Tourism (increased tourist numbers - development of new tourism infrastructures) or extension of urban areas.

One example of a conflict between farming activities and the preservation of water resources for future generations - the Constitutional Court decided a case with the right to water, even more precisely - to clean, healthy water for future generations. In case Nr. U-I-416/19, the issue of potential contamination of groundwater with phytopharmaceuticals was raised - the issue of the chemical state of water, namely drinking water. This is protected - among other things - by safeguard zones. Based on the principle of precaution and intergenerational responsibility, the Constitutional Court decided that even though it cannot determine to what extent the sprays used in agriculture can affect

underground water in the future (water samples currently do not exceed the limit values), it is not allowed to spray near pumping stations and instructed the legislator to establish safeguard zones that will exempt the vicinity of pumping stations from spraying. The Constitutional Court is aware of the deterioration of water quality and, therefore, sees this measure as one of the contributions to the better condition of underground water.

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

No really; see the following answer.

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation?

The drafter of the water management plan informs the public about the start of the preparation of an individual plan at least three years before the beginning of the period to which the plan refers using a public announcement on the Internet and in one of the daily newspapers covering the entire territory of the country. Interested persons may, within one year, forward to the drafter of the plan written proposals, opinions and initiatives relating to water management issues in the individual water area.

Public announcement of the draft plan is also guaranteed at least one year before the beginning of the period to which the plan refers. Within three months of receiving the comments from the previous paragraph, the plan drafter shall prepare a report on the extent to which and how he has considered the comments. The report is an integral part of the plan. The Water Act, which implemented the Framework Water Directive, determines this.

Otherwise, regarding public participation, Slovenian law also follows the Aarhus Convention also for plans regarding water. A registration system for NGOs is enacted (meaning that those NGOs that fulfil the criteria to represent the interest of the environment/nature are appropriately registered and allowed to enter all procedures). NGOs are enabled access to judicial protection procedures before the regular ones and the constitutional court (already at the preparation stage of general spatial acts). This also applies if they refer to watercourses and other inland waters. I think Slovenia has become friendly to NGOs over the years; they are perceived as *alter ego*, i.e. guardians of the environment. Although the government tried to deny them legal protection years ago, the Constitutional Court annulled the law. Since this decision, NGOs have been treated more favourably. The Constitutional Court also opened the door for judicial protection of even general acts – i.e. when all options regarding the spatial (projects) planning remain open. It is sufficient that the general act refers to the environment (and to the waters).

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

No to my knowledge or any media news.

Spain

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Introduction

1. Rainfall in Spain is an irregular phenomenon that varies with the seasons. Accordingto some estimates, the average annual rainfall is 0.61 metres of water equivalent. The spatial distribution of rainfall in Spain is very complex owing to the existence of mountainsystems and large inland basins and depressions. Certain areas stand among the rainiest in Europe, such as some areas of the Galician peninsula (north-west), with more than 1,800 and 2,000 m^3/year, or the Grazalema mountains (Cadiz), with 2.200 m^3/year whileothers, such as Almería (south-east) or some areas of the Canary Islands, receive less than200 m^3/year.[546]

2. The average water consumption of Spanish households was around 133 litres per inhabitant per day in 2020, the latest year for which data are available, the same as in 2018, according to figures from the National Statistics Institute. With regard to the organisation of water management, the Water Act (approved by Royal Decree 1/2001, hereinafter TRLA) defines a river basin district as the land and sea area made up of one or more contiguous river basins and the transitional, underground and coastal waters associated with these basins. Royal Decree 125/2007 of 2 February 2007 defines the territorial scope of river basin districts (see image below). There are currently 9 inter- community river basin districts (river basins that go beyond the territorial scope of an Autonomous Community), called Hydrographic Confederations, attached to the Ministryof Ecological Transition (hereinafter the ministry for the environment). There are also 12 Management Areas in Intra-Community Basins (hydrographic basins that do not exceed the territorial scope of an Autonomous Community) under the responsibility of the corresponding Autonomous Communities.

[546] According to the recent winter weather balance presented by the State Meteorological Agency (Aemet), the last quarter has been on the whole normal in terms of rainfall, with an average value over peninsular Spain of 170.5 litres per square metre, 90% of what it usually rains at this time of the year in the reference period 1991-2020.

Images 1 and 2. Distribution of main Spanish rivers and of hydrological river basins

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law?

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

3. These two questions can be answered together. With regard to the first question, it can

be said that the WFD has not changed the legal definition of water as a public good.This issue requires an explanation of certain features of the Spanish Constitution (CE)

and the regulation of the specific category of public goods. The Spanish Constitution does not expressly recognise the right to water. However, according to a common understanding of its text, it is included in other constitutional rights, such as the right to health protection (Article 43) and the right to adequate housing (Article 47). However, these "rights" are included in the category of guiding principles of social and economic policy and not among the fundamental rights that enjoy special protection before the Constitutional Court, since the CE creates a special appeal before this Court (*recurso deamparo*). The CE refers to the public domain in Article 132.2. This provision reads as follows:

> "1. The law shall regulate the legal regime of public and common property, inspiredby the principles of inalienability, imprescriptibility and non-seizability, as well astheir derogation.
> 2. The public property of the State shall be that defined by law and, in any case, themaritime and terrestrial zone, the beaches, the territorial sea and the natural resources of the economic zone and the continental shelf".

4. As it can be seen, the CE reserves to the law the determination of the public domainand attributes this classification to the maritime-terrestrial zone, beaches, territorial sea and natural resources of the economic zone and the continental shelf. The doubts that mayhave arisen at first regarding the scope of this constitutional precept were cleared up by the Spanish Constitutional Court in its judgment 227/88. The Court held that the reservation to State law does not refer to specific or singularly identified assets, but to generic types or categories of assets defined according to their homogeneous natural characteristics. The Court also held that the incorporation into the public domain involvesnot so much a specific form of appropriation by the public authorities, but a technique aimed primarily at excluding the property concerned from private legal traffic. However, there is no mandatory requirement to include water in the public domain. In its judgment149/2011 the Constitutional Court indicated that the CE does not consider water as publicdomain; it is rather an option of the legislator.

5. The State law that currently regulates the matter is the TRLA. Article 2 TRLA includes within the notion of public water domain the following goods: (a) inland waters, both surface water and groundwater, renewable irrespective of the time of renewal, (b) the channels of natural streams, continuous or discontinuous, (c) the beds of lakes and ponds and those of surface impoundments in public watercourses, (d) aquifers, for the purposes of acts disposing of or affecting water resources, and (e) water from seawater desalination. According to Article 5 TRLA, watercourses through which rainwater occasionally flows are private property insofar as they cross, from their source, only private property.

6. The Constitutional Court held in its judgment 227/1988 that the constitutional guarantee of property and patrimonial rights of individuals is not absolute since Article 128.1 CE establishes that all the wealth of the country in its different forms is subordinated to the general interest. In a similar fashion, Article 45 CE imposes on publicauthorities the duty to ensure “the rational use of all natural resources, in order to protectand improve the quality of life and defend and restore the environment, based on the indispensable collective solidarity”. From a systematic interpretation of these precepts, itis not possible to conclude that any measure of legal management of natural resources and, especially, “of a resource as vital and scarce as water”, must prioritise the criterion of avoiding any non-essential sacrifice of individual property rights and interests. More specifically, the CE does not guarantee that private property must extend to all types of property. Rather, Article 132.2 CE, while directly excluding private ownership of some

types of property, allows the legislator to included others in the public domain. In accordance with this constitutional provision, the Court held, the option of including continental waters in the public domain is legitimate in any case.

7. The proclamation of the right to water has taken place not in the TRLA but in a Statuteof Autonomy (the basic law governing the autonomous communities). The 2006 Statute of the Autonomous Community of Valencia (Article 20) reads:

> "The right of Valencians to an adequate supply of quality water is guaranteed. Likewise, the right to redistribute surplus water from surplus basins is recognised, based on sustainability criteria, in accordance with the Constitution and State legislation.
> The citizens of Valencia have the right to a sufficient and safe quantity of quality water to meet their human consumption needs and to develop their economic and social activities in accordance with the law".

8. The right to water supply is actually a compulsory municipal service (alreadyenshrined in Article 25.2.c) of Law 7/1985, on the powers of the local authorities). However, it should be observed that, in reviewing the above provision, the Spanish Constitutional Court judgment 247/2007 declared that the generic statement of the right to water supply was specified in two more precise formulations: the redistribution of surplus water from surplus basins based on sustainability criteria andthe provision of a sufficient amount of water quality. According to the Court both formulations were subject to condition ("in accordance with the Constitution and statelegislation", in its first formulation; in accordance with "the law", in its second determination). Therefore, the statutory right mentioned above was not exercisable directly and immediately before the courts, since it could only be exercised when theautonomous community implemented it and, even in this case, in accordance with theCE, and the law.

9. Royal Decree 3/2023 establishing the technical-sanitary criteria for the quality of drinking water, its control and supply, and transposing Directive 2020/2184 does employthe term human right to water. According to its preamble, this has a dual purpose: on theone hand, it establishes the legal framework to protect human health from the adverse effects of any contamination of drinking water by ensuring that it is safe and clean. On the other hand, it facilitates access to water in accordance with the United Nations' guidelines on the human right to water and sanitation in Spain. Article 9 of this royal decree provides that the volume of drinking water distributed must be sufficient for the hygienic and sanitary needs of the population and the development of the activity of the supply area. For these purposes, the net or average consumption endowment, as a minimum objective, must be at least 100 litres per inhabitant per day, unless the hydrological plan in force has established a higher endowment, in which case it may not be reduced.

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

Questions

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

10. First, Article 60 TRLA declares that everyone may, without the need for administrative

authorisation, use surface waters, while they flow through their natural channels, for drinking, bathing and other domestic purposes, as well as for watering livestock. Secondly, as indicated before, Law 7/1985 attributes to municipalities certain powers which include the supply of drinking water at home and evacuation and treatmentof wastewater. Article 109 TRLA (*Reuse of water*) provides that the public authorities responsible for water supply, sanitation, and treatment in urban agglomerations of more than 50,000 inhabitants must draw up plans to promote the reuse of water associated withurban uses. In a similar fashion, Article 101.5 indicates that applications for discharge authorisations from local authorities must contain, in all cases, a plan for the sanitation and control of discharges into municipal sewers. Local authorities are obliged to inform the water authority of the existence of discharges into local collectors of toxic and hazardous substances regulated by water quality regulations. Therefore, the TRLA recognises, as a common use, a right to drinking water and also a right to water supply. Itwould be difficult to recognise the latter right and at the same time excluding the former right. This is applicable, *mutatis mutandis*, to the right to sanitation.

11. Royal Decree 3/2023 of 10 January establishing the technical-sanitary criteria for thequality of drinking water, mentioned above, addresses the matter of water poverty. According to its Article 11 (*Access to water and vulnerable population*), it corresponds to the local authorities to take the necessary measures to improve access to drinking waterfor the whole population, in particular for vulnerable groups or groups at risk of social exclusion, including people who are not connected to municipal distribution networks. The criteria for the determination of the vulnerable population or at risk of social exclusion, are set out in Articles 3 and 4 of Royal Decree 897/2017, which regulates thefigure of the vulnerable consumer, the social bonus and other protection measures for domestic electricity consumers.[547] According to Royal Decree 3/2023, the local administration together with the competent authority for social programmes, in relation to vulnerable groups or groups at risk of social exclusion, shall: (a) Identify people who have no or limited access to drinking water and the reasons for the lack of access either because they do not have access to drinking water for personal economic reasons or because of the competent administration; (b) assess possibilities for improving access towater for these people and report on them or on alternative means; and (c) provide information on social action mechanisms for families with economic situations below the poverty line;

4- How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?

12. The TRLA (Article 92) contains several references to ecosystems. It first set out among the objectives of the protection of water and the public water domain are to prevent deterioration, protect and improve the status of aquatic ecosystems, as well as terrestrial ecosystems and wetlands that are directly dependent on aquatic ecosystems for their water

[547] Basically, that his income or, in the case of forming part of a cohabitation unit, the joint annual income of the cohabitation unit to which he belongs is equal to or less than 1.5 times the Public Indicator of Multiple Effect Income (IPREM) of 14 payments. When the cohabitation unit is made up of more than one person, the income multiplier with respect to the IPREM index of 14 payments will be increased by 0.3 for each additional adult member of the cohabitation unit and 0.5 for each minor in the cohabitation unit.

needs. The notion of pollution also refers to ecosystems by indicating that it means the action and effect of introducing substances or forms of energy, or inducing conditions in water which, directly or indirectly, result in a detrimental alteration of its quality in relation to (…) aquatic or terrestrial ecosystems directly associated with aquatic ecosystems. Furthermore, the TRLA provides (Article 68) that the river basin authority may not authorise the transfer of water use rights, by means of a reasoned decision, if it adversely affects among others the conservation of aquatic ecosystems.

13. The Regulation on the water public domain (approved by Royal Decree 849/1986), includes further references to ecosystems.

a) First, the regulation of banks of the land bordering the watercourses (an easement zone of five metres in width for public use and one-hundred-metre-wide police zone)is aimed at achieving the objectives of preserving the state of the public water domainand prevent the deterioration of aquatic ecosystems.
b) The owners of these easement areas may freely sow and plant non-tree species, as long as they do not deteriorate the river ecosystem.
c) The content the programme for monitoring and evaluation of the environmental flowregime must include an assessment of the forecasts of the effect of climate change on aquatic ecosystems and its relationship with the ecological flows in place.
d) Authorisations regarding plantations for forest harvesting and processing of other activities in the police zone must establish protection and safety distances between the plantation and the active areas of the watercourse to avoid degradation of the riverecosystem, minimise the impact on water resources and the risk of obstructions and falling trees in flood situations.

14. River basin authorities may establish perimeters of protection in areas of special interest for the protection of surface or groundwater bodies, aquifers or parts of aquifers associated with areas of special ecological, landscape, cultural or economic interest, including water-dependent ecosystems, such as hydrological reserves and other areas included in the Register of protected areas included in the river basin management plans.

15. As regards the rights of rivers, they are not mentioned or foreseen in the Law[548]. Recently, an interesting case came out, that of a "political" declaration adopted by a local authority in the Galicia Region, that of the Outes Town Council. On 1-03-2024 that bodyadopted the Declaration of Rights of the river Tins and commitments of its riverside community. The Declaration sets out 10 rights of the Tins River, including the rights (1)to life and existence as an ecosystem in equilibrium; (2) to be clean and free from pollution; (3) to regeneration and to evolve naturally without interruption caused by human activity; (4) to protection and conservation; (5) to flow freely; (6) to be respected;

[548] The only exception is the case of Mar Menor in Murcia (southeast). The Spanish parliament adopted Law 19/2022 of 30 September on the recognition of the legal personality of the Mar Menor lagoon and its basin, which declares that the Mar Menor lagoon and its basin is a subject of rights, that is, it enjoys legal personality. According to the law, the Mar Menor and its basin are recognised as having rights to protection, conservation, maintenance and, where appropriate, restoration, to be carried out by the governments and the riparian inhabitants. It is also recognised the right to exist as an ecosystem and to evolve naturally, which will include all the natural characteristics of the water, the communities of organisms, the soil and the terrestrial and aquatic subsystems that form part of the Mar Menor lagoon and its basin. In our opinion, the law is poorly drafted and leaves essential matters undefined. It is arguable whether a simple mass of water may have legal personality as a "sui iuris", and it has to be proved what practical results this law may trigger.

(7) to maintain and restore its banks and riparian forests; (8) to the intergenerational cultural and biocultural heritage it harbours (6) to be respected; (7) to maintain and restoreits banks and riparian forests; (8) to the intergenerational cultural and biocultural heritageit harbours; (9) to redress and restitution for any past, present or future harm, whether caused by human action or inaction, that violates the rights set forth in this Declaration. The riverside community of the River Tins in the Municipality of Outes, assumes the following commitments:

"1. To recognise, respect and promote the rights and commitments established in this Declaration.
2. To enjoy and be thankful for the beauty, the multiple presents of nature and the benefits for physical and mental health that the river Tins offers to the community,present and future.
3. To act effectively and immediately in the event of the infringement of the rightsof the Tins River, particularly in the case of polluting discharges, presence of rubbish, damage to cultural and biocultural heritage, appropriation of the banks andimpediment of the right of way, and other aggressions that involve the destruction of ecosystems or the alteration of natural cycles, guaranteeing that these are repairedand that the corresponding responsibilities are demanded.
4. To act against the presence or introduction of invasive exotic species and other organisms or organic or inorganic material that may alter the biological heritage ofthe River Tins.
5. Not to live on the banks of the river, assuming the role of active agents for the renaturalisation, regeneration and recovery of the natural heritage of the river Tinsand its banks.
6. To undertake outreach, awareness-raising, volunteer and environmental education campaigns on the ecosystemic importance of the Tins river, the benefitsof its protection and the threats it faces.
7. To recover spaces for bathing and leisure in a way that respects the integrity of the ecosystem.
8. To promote education and the intergenerational transmission of knowledge and the social and historical memory associated with the river, its spaces, traditional uses and biocultural heritage.
9. To participate in an effective and real way in the governance and decisions adopted on the Tins River and its banks, including the full exercise of the rights established in the Aarhus Convention in the field of the rights of participation, access to environmental information and access to justice in the environmental field.
10. To defend in the institutions the need for the interventions, investments and regulatory modifications that are necessary for the best fulfilment of the Rights of the River Tins, in areas such as sanitation, restoration of the natural and cultural heritage and the control of invasive exotic species.
11- To recover and promote ecological agriculture in the riverside areas, giving value to local varieties and products as the basis of a healthy and quality gastronomylinked to the health of the natural environment."

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

♣ INTEGRATED WATER MANAGEMENT

Questions

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions? We invite you to focus on the most relevant topic in your country.

16. The National River Restoration Strategy 2023 indicates that the current overall statusof surface water bodies for the 12 inter-community hydrographic river basins as a whole, including Ceuta and Melilla, reveals that almost 54% of river type bodies are in good or potential status, while 46% are still below good or potential status. Although the challengeis significant, it is considered that it is possible to achieve a very high degree of compliance with the environmental objectives by 2027. In the case of the intra- Community river basins, the data include a total of 878 surface water bodies of the rivertype, giving a value of good status or potential of more than 60% of them.

17. The loss of river longitudinal continuity is considered to be one of the main hydromorphological alterations resulting from human activity on river systems, and in addition to interrupting the flow of circulating liquid flows, it limits the movement of aquatic organisms and the flow of sediments. Transverse barriers fragment river habitats and unbalance the sediment regime and sediment transport.

18. With regard to the state and trends of wetland ecosystem services in the specific caseof Spanish lakes and wetlands, the trend in the state of the services they provide is described as more or less generalised degradation: up to 67.8% of these services are beingdegraded.

19. According to a 2024 Report on water quality 2010-2022 from the Spanish ministry for the environment, in the year 2022 it is observed that nitrate concentrations are clearlyhigher in groundwater (owing to its cumulative nature), and within these, the greatest problems are concentrated in numerous points of the Spanish geography on the Levante coast (Segura, Júar, River Basin District of Catalonia and the Balearic Islands), as well asin the Guadalquivir and Guadiana river districts. The historical trend is stable, both for surface and groundwater [see case C-576/22, *Commission v. Spain*, regarding the failureto comply with Directive 91/676, concerning the protection of waters against pollution caused by nitrates from agricultural sources; and case C- C-559/19, *Commission v. Spain*(Doñana)].

20. As far as pesticides are concerned, there is a greater number of stations in surface water than in groundwater. Considering the number of stations that exceed the border value, the following percentages are presented: almost 28% for the country as a whole, with the Guadiana (53.37%), Segura (46.30%), Guadalquivir (44.71%), Cataluña River Basin District (37.33%) and Júcar (36.56%) districts standing out above the national average. A certain upward trend can be seen in the surface water pesticide indicator, although this may be related to the exponential increase in the number of analyses available for the study. In groundwater, only 7.48% of the total number of stations exceednon-compliance. For other representative indicators of nutrients, such as ammonium, the data provided by the river basin authorities generally show low percentages of non- compliance, although the following stand out: the Cataluña River Basin District (21.97%), Tinto, Odiel and Piedra (18.87%), Guadalquivir (18.87%), Tinto, Odiel and Piedra (18.87%), Guadalquivir and Odiel (18.87%).

The increase in ammonium concentration in surface waters may be related to the lack of rainfall. In the case of phosphates in rivers, a large number of non-compliances have been obtained, based on the number of stations that exceed the limit value. The data from the basin bodies with more than 16% of stations with values above the border value are Segura (21.28%), Guadalquivir (28.69%), Guadiana (29.10%) and the River Basin District of Catalonia (51.57%). In relation to the biological indicators, the number of analyses of phytobenthosin 2022 is somewhat higher than that of total macroinvertebrates. In general, the numberof stations with phytobenthos and macroinvertebrate data that are above the "good-good" boundary value is higher than those that do not exceed it.

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management? Please focus on the most illustrative example either in relation to the Floods Directive or the Water Reuse Regulation or national/local measures concerning water stress and/or droughts which could inspire a future EU Law framework.

21. As noted supra, a structural problem in Spain is the extremely uneven rainfall and disposal of fresh waters among the several regions. The possibility of transferring fresh, surface waters from one river basin to another has been a permanent hot political issue since the 70', where the transfer (through a permanent channel) from the Tajo river (central Spain) to the Segura river (South east of Spain) was eventually finalised. This is so far the only such transfer in the country, but there are recurrent complaints from the participating regions (Castilla-La Mancha and Murcia) about the right or "wise" amount of water to be transferred periodically, where the "ecological" arguments are getting growing importance.

22. In 2001, the Spanish national parliament approved (by means of an Act) an ambitious and comprehensive "National Waters Plan". It most noticeable feature was that it envisaged the construction of a huge channel to transfer water from the Ebro river to the East and South-East regions. The proposal was very controversial and found the opposition of the ecologist groups. The plan was never implemented because general elections held in 2004 gave the power to another political party, which simply shelved the project.

23. On the other hand, the severe drought affecting various parts of Spain in 2024 raised the possibility of transporting drinking water by boat. For example, in Catalonia, where the regional government is already applying restrictions to 80% of the population, the plan was announced, as an emergency solution, to transport water by ship from a desalination plant in the province of Valencia to the port of Barcelona. Similarly, in Andalusia, which is also suffering a serious drought situation, the regional government agreed with the central government to transport drinking water by ship from a desalination plant in Murcia to several Andalusian ports. In this regard, it was agreed that the central government would cover the cost of desalination and the regional government would cover the cost of transport, as well as the fitting out of the ports of destination. These circumstances and solutions, which will only worsen in the future as a result of climate change, clearly point to the inadequacies of legislation, planning and management of droughts and their effects, which, in my opinion, would make it necessary to design sustainable solutions for a longer time frame.

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

24. According to the main Spanish consumers association (OCU) the first striking thing when comparing water prices is how difficult it is to understand bills and draw conclusions about prices. Bills include the costs of different services in the water cycle, which are not called the same in all cities and do not have the same weight on the bill: "Supply", can also be broken down into "Supply", "Piping", "Distribution", or "Sanitation". According to this information, on average, 54% of the final bill corresponds to supply, 45% to sanitation (sewerage, purification, etc.) and 1% to the metering equipment or meter. It is common for there to be a fixed amount for each concept for having the service and another variable part according to consumption. On these amounts, with some exceptions, VAT is applied at 10% (21% for meter rental). Currently there are huge differences in the price of drinking water: While the inhabitants of Guadalajara pay 164 euros for this consumption, in Barcelona the bill rises to 520 euros, more than three times as much. Also in Murcia, Alicante, Palma, Huelva, Lérida, Tarragona and Cádiz, bills exceed 400 euros per year. The supply difficulties justify the fact that the cities of the Mediterranean basin charge higher prices for the supply, but the high bill also has to do with the increase in the cost of sanitation, something that is difficult to justify given that the work of a water treatment company should not differ much from one place to another. An additional problem is that fixed costs are too high in some cities, a pricing policy that does not encourage water saving. This is because municipalities choose to cover a considerable part of the service costs with the fixed part of the bill. Moreover, this penalises households that are not used all year round. This "fixed cost", which does not depend on water consumption, exceeds 150 euros per year in Vigo, Tarragona, Ceuta and Barcelona, compared to just over 20 euros per year in Valladolid, Guadalajara, Badajoz and Malaga.

25. The amount of the average bill over the last three years shows a slight increase of 2.2%. Overall, 22 cities increased some of the concepts, 10 decreased their prices and 22 municipalities maintained them. Among the most notable increases were in Bilbao with 16%, where all items except sewerage have risen, and in Vigo with 15%. Barcelona has also seen an increase, which means that it currently has the most expensive water in our study. The largest decreases in water prices are recorded in Andalusian cities due to the temporary withdrawal, because of the crisis, of the water canon managed by the autonomous community.

26. Both the Spanish Association of Water Supply and Sanitation Companies (AEAS) and the Spanish Association of Urban Water Services Management Companies (AGA) conclude in a 2022 study that tariffs in Spain do not adequately cover the costs of services, as established by the Water Framework Directive (WFD). The average price of water for domestic use in Spain is 1.97 €/m³ (without VAT), distributed in 1.09 €/m³ (55%) for the supply service and 0.88 €/m³ (45%) for the sanitation service.

♣ WATER BIODIVERSITY

Questions

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country? Please provide examples of success / failure of integration in particular cases if relevant.

27. It is difficult to answer to this question in more or less conclusive terms as it involves different sectors of the law (biodiversity and water) not properly linked. However, as far as rivers are concerned, the National Rover Restoration Strategy indicates that the growing problem generated by invasive species in river systems "makes it advisable to review and update the protocols for their treatment, prioritising preventive and physical methods of control and elimination, generally avoiding the use of phytocides". Therefore, it does not seem that this matter is being properly tackled, as the Strategy affirms that despite the significant efforts made in recent years, the number of alien species has continued to grow, and it is therefore necessary to articulate communication channels between managers and scientists and increase the allocation of resources to continue to working on the implementation of legislation regulating trade in IAS, monitoring entry routes, controlling crops by unifying criteria and strengthening control mechanisms.

9-**Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?**

28. As mentioned above, restoration is part of the water law, as it was already enshrined in the wild birds Directive (1979) regarding wetlands and habitats. The Spanish government has adopted a national river restoration strategy. The TRLA establishes the obligation to prevent the deterioration of the status of water bodies and to protect, improve and regenerate them in order to achieve good status. River restoration is thus linked to existing water management plans and strategies, such as the River Basin Management Plans and the Flood Risk Management Plans derived from Directive 2007/60, on the assessment and management of flood risks. In particular, in protected zones no construction of any kind may be carried out unless it is convenient or necessary for the use of the public water domain or for its conservation and restoration (Article 7(3) of Regulation of the water public domain). The same regulation foresees (Article 282) the restoration of wetlands that have been drained by natural or artificial causes. Rehabilitation or restoration may be declared obligatory in any of the following cases: (a) When on the former wetland there is no use at present; (b) b) when, even if there are uses, these are of little importance; and (c) when, in the case of agricultural uses, when the yields initially foreseen and which would have given rise to the draining are not habitually achieved, with significant depreciation. Notwithstanding this latter provision, it seems that it will be difficult to restore wetlands owing to unstoppable climate change effects on these areas.

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn? Please feel free to answer this question only if you have a concrete example (successful or not) to share.

29. By reference to the National River Restoration Strategy 2030 the answer should be no, as it admits that "[t]here is a significant lack of systematic information on the river restoration actions currently being carried out in Spain. The scarce human resources available in the different administrations concentrate their efforts on implementing the actions, with a limited dedication to their documentation, monitoring and evaluation". According to the ministry for the environment, Spain has more than 19,000 transverse barriers, but it is estimated that in reality there are many more, tens of thousands of obstacles - generally in disuse - that do not appear in inventories or official registers. Most of them are low vertical waterfalls, built to allow the diversion or over-elevation of surface water for different human uses. Most of the structures removed are not dams but "azudes", a type of low embankment usually no higher than five metres.

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

Questions

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake ?

Depending on your national context, you may illustrate these conflicts with Agriculture (agricultural irrigation - the controversial case of metabasins for agriculture) or Energy (hydroelectricity - cooling nuclear power stations) or Tourism (increased tourist numbers - development of new tourism infrastructures) or extension of urban areas.

30. Article 60 TRLA sets out a general order of preference of uses. It indicates that it is for the Hydrological Plan of the corresponding river basin district to establish such orderconsidering the requirements for the protection and conservation of the resource and its environment. However, in the absence of such an order of preference, the TRLA sets outthe following order:

1. Water supply for the population, including the necessary supply for industries with lowwater consumption located in population centres and connected to the municipal network.
2. Irrigation and agricultural uses.
3. Hydraulic energy storage.
4. Industrial uses for the production of electrical energy.
5. Other industrial uses not included in the previous sections.
6. Aquaculture.
7. Recreational uses.
8. Navigation and water transport.
9. Other uses.

31. The order of priorities is specifically established in the Hydrological Plan of each river basin. They must respect the supremacy of the use set out in 1 of the above list, andthe priority of the use of hydraulic energy storage over other industrial uses. In the eventof incompatibility of uses, preference is to be given to those which best satisfy the generalinterest, those which have been considered to be of public utility or social interest, thosewhich best achieve the objectives of water planning and the objectives of energy transitionand climate change planning, those which introduce technical improvements resulting inlower water consumption, or in the maintenance or improvement of the status of water bodies. The case law has med it clear that administrative leases on water resources are bound by such order (Spanish Supreme Court judgments of 8 March 2021, appeal, 6558/2008; of 22 March 2021, appeal 2283/2009; of 29 February 2021, appeal 2671/2008)

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

32. The TRLA (Article 81) requires the users of water and other assets of the public waterdomain of the same abstraction or concession to be constituted as “communities of users”.The river basin organisation may, where the general interest so requires, impose the setting up of different types of user communities and central user boards. These user communities are public law corporations, attached to the River Basin Authority, which must ensure compliance with their statutes or byelaws and the good order of the use. TheTRLA lists a series of powers in the hands of these communities: they may enforce unfulfilled agreements that impose an obligation to do by themselves and at the user’s expense; they are also the beneficiaries of compulsory expropriation and of the impositionof easements required for their use and the fulfilment of their purposes. User communitiesare obliged to carry out the works and installations ordered by the public authorities to prevent the misuse of water or the deterioration of the public water domain, and the competent basin authority may suspend the use of water until such time as they are carriedout.

33. In Spain there are interesting River Stewardship initiatives, for example thoseimplemented in the context of the LIFE+SEGURARIVERLINK project (https://www.asociacionanse.org/proyectos/custodia-fluvial-conectividad-rio-segura/). Interesting initiatives to develop new forms of governance are also being carried out inrelation to the salt lagoon of the Mar Menor (https://www.sciencedirect.com/science/article/pii/S2211464522000033?via%3Dihub). However, the granting of legal personality to the Mar Menor through Law 19/2022, of 30September, for the recognition of legal personality to the Mar Menor lagoon and its basindoes not seem to us to be so relevant because, despite the multiple recognitions it hasobtained, its poor technical quality has prevented, until now, any kind of real application.

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation ?

From a regulatory point of view, Spanish water legislation is in line with the WFD in terms of public participation. Thus, the TRLA provides for consultative bodies with broad participation (National Water Council: Articles 19 et seq., Water Council of each river basin: Articles 35 et seq.), as well as participation in the governing bodies of the Hydraulic demarcations (Articles 26 et seq.) and through the user communities (Articles 82 et seq.), especially the irrigation communities. On the other hand, public participation in the procedure for drawing up hydrological plans is regulated in Royal Decree 907/2007 (Articles 72 to 75) with express reference to the legislation on public participation in environmental matters (Law 27/2006, of 18 July, which regulates the rights of access to information, public participation, and access to justice in environmental matters (incorporating Directives 2003/4/EC and 2003/35/EC). Finally, the process of determining environmental flows also includes strongly participatory instruments (Article 18. 3 RD 907/2007 in relation to Articles 49 ter et seq. of Royal Decree 849/1986). In summary, it can be affirmed that Spain complies with the regulatory provisions of the WFD in terms of public participation.

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

Sweden

Jan Darpö

General information about water resources in Sweden

Sweden (europa.eu)

Drinking water in Sweden

(Fresh water resources - Sweden - Climatechangepost.com)

Water quality

Lakes dominate the landscape of Northern Europe: 65,000 lakes in Norway, 95,700 lakes in Sweden and 187,888 lakes in Finland.

Half of Sweden's local water supplies come from surface water, that is, from lakes and running watercourses. The other half come from groundwater. Good quality raw water from these water sources has made purification techniques in Sweden relatively simple. The consequences of climate change for drinking water supply, however, are considerable.

Increased precipitation in a changed climate, and mostly increased frequency of heavy downpours, can lead to more frequent and more widespread sewage overflow discharges. This can lead to increased microbiological burdens with accompanying health risks from raw water. Various studies have shown a correlation between heavy precipitation and waterborne disease outbreaks.

River runoff and water supply

Simulations of the impact of climate change on river discharge suggest a decrease of both the frequency and the height of spring flood peaks, and an increase of autumn and winter runoff for Sweden as a whole. The frequency of high flow events in autumn is also projected to increase. The simulations suggest a decrease of summer runoff in southern Sweden. Annual runoff volumes are projected to decrease in southeastern Sweden and increase in northern Sweden. As an average for the whole of Sweden, temperature increases by 2.5 to 4.6°C, precipitation increases by 7 to 23%, and mean annual runoff increases by 5 to 24%, according to the scenario simulations.

Changes in Sweden’s water resources vary in different climate models. A consistent result is, however, that the greatest increases in water supply occur in Northern Sweden, in the western part of Central Sweden and the western part of Southern Sweden. The circumstances are more varied in other parts of the country.

In the south-east, increasing evaporation contributes to the possibility of a decline in water supply. Overall the water supply increases on average by 5-25% for the whole country, but decreases occur locally.

Water resources may vary across the country due to increased precipitation in some areas and more drought in others. This will lead to differing conditions for agricultural production. There may be a great need for irrigation in some areas, while in others increased precipitation may make it difficult to grow crops.

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law?

Sweden belongs to what we call the group of "private law systems" concerning water rights, see Storbekkrønning G: Does ownership to water still matter? A peek into European models of groundwater resources ownership and some of their implications for public access to water and sustainable use. Retfærd 3/4, 2018; Does+ownership+to+water+rights+matter,+postprint+duo.pdf (uio.no)

Basically, this means that the landowner "owns" (controls) the water resource, irrespective of whether it is surface water or groundwater. According to law, other persons may obtain the control over a water resource for a specific purpose, for example developing hydropower. Thus, Swedish water law contains strong expropriative elements, introduced in the beginning of the 20th century in order to facilitate the industrialization of the country. The WFD has had little impact on this traditional perspective of ownership of water resources.

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

No such debate has occurred in Sweden as the system has strong support in industry and among the landowners. There has been a political debate on groundwater extraction issues, but mostly concerning the possibility to introduce a stricter permit regime (see below).

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

Questions

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

In Sweden, there is no specific recognition of a fundamental right to water and sanitation. The requirements in the Directive 2020/2184 are implemented in several pieces of administrative law, such as the Food Safety Act (2006:804), the Environmental Code (1998:808) and the Planning and Building Act (2010:900). It is for the Water District Authorities under WFD to undertake a risk assessment of the catchment areas according to Article 7 of Directive 2020/2184, which shall be reported to the drinking water producers. Here, it may be noted that Sweden's supply of drinking water comes of equal shares from surface waters and groundwaters.

Even if there is no explicit fundamental right to water in the Swedish legal system, there has during the last year been a couple of very interesting liability cases concerning the quality of drinking water. In the first case, the Supreme Court declared that a municipality is responsible according to Product

Liability Act (1992:18) for having delivered drinking water with high contents of PFAS to the consumers (HD 2023-12-05; T 586-23). As that contaminant originates from the Defence Forces' use of fire foam in adjacent areas, there will be a follow-up suit from the municipality against the polluter. In the other case, the Environmental Court of Appeal found the Defence Forces liable according to the Environmental Code for having contaminated the drinking water of Uppsala with PFAS from similar purposes (MÖD 2024-04-09; M 13145-21).

4- How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?

I am not sure what you are getting at with this question more precisely. The aim of the WFD is to "*establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater*". As in many Member States, Sweden has for this purpose introduced a special administrative structure with five separate water districts based on the borders of the major sea basins and catchment areas. In each water district one of the county administrative boards is appointed by the government to act as Water District Authority. Each such authority has an office which prepares cases for decision-making, coordinates the County Administrative Boards producing documentation, and collaborates with affected parties at all levels from local to international.

For every Water District Authority there is a special water district board – the Water Delegation. Their task is deciding on environmental quality standards, programme of measures and management plans. The delegation comprises expert members appointed by the government for a fixed term. The members each have a personal mandate based on their expertise in different areas, hence they are not representatives of the organisations by which they are employed. The delegation is chaired by the county governor at the County Administrative Board that constitutes the water district authority. The water authorities manage the quality of the aquatic environment within each water district. Among other things, this means that the water authorities:

- Prepares management plan and action program for the water district
- Decides on environmental quality standards…
- Coordinates water management work on County Administrative Boards and municipalities in the district…
- Collaborates nationally, regionally and locally with other interested parties who work in various ways on water issues…
- Monitors how other countries in the European Union work on different issues under the WFD and exchange knowledge and experience…
- Submits information to the Swedish Agency for Marine and Water Authority (HaV) for further reporting to the European Commission…

There have been some initiatives from the RoN community to declare major lakes to "have rights of their own", but these moves have been mostly symbolic and without any significance in the public debate on environmental issues (or in real life for that matter).

In contrast, we have had quite a lot of court cases brought by members of the public concerning water quality and the environmental status of the water bodies. In one such example, an ENGO unsuccessfully challenged the government's decisions to allow the Defence Forces to use the Lake

Vänern – partly a Natura 2000 site – as a shooting range for heavy artillery practices. In the wake of becoming member of NATO, major relaxations on environmental requirements have been undertaken for all kinds of activities performed by the Swedish army, the navy, and the air forces. In fact, some of these relaxations will also apply to the US-american armed forces by way of the DCA agreement that will be decided by the Parliament in June. In addition, all decisions concerning activities by the Defence Forces are made by the government and may only by challenged by way of judicial review in the Supreme Administrative Court (thus, not in the ordinary line of appeal, that is to the land and environmental courts). Without any real tradition of an intense review in such cases –not even in relation to binding EU law – the playing field is left rather open for the government to decide rather freely on those matters.

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

♣ INTEGRATED WATER MANAGEMENT

Questions

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions? We invite you to focus on the most relevant topic in your country.

Sweden has a huge number of hydropower installations with (very) old permits, issued long before the introduction of modern environmental law. In fact, most permits date back to the Water Act of 1918 and have never been updated. The most pressing environmental effects of these installations are the drastically impoverished conditions for the watercourses' original species composition and biological diversity, erosion, and sedimentation. Because of the inflexibility of the Swedish permit system, the EU Commission in 2007 initiated an infringement case about the poor implementation of the WFD. In order to deal with this and to modernize the water permits, Sweden undertook an ambitious scheme for the updating of all permits issued before the introduction of the 1999 Environmental Code. The hydropower installations were classified in different review groups and time limits were set for the renewal of the conditions in their permits. Even so, the procedure involves many thousands of hydropower installations and dams and is expected to take more than 20 years. However, this scheme was met with strong opposition from industry, and it was put on hold with the arrival the European energy crises in 2022. Since then, the updating scheme has been "paused" three times and is not expected to be restarted until June 2025. In addition, the government has announced that new legislation is on its in order to make wider use of the derogation possibilities in the WFD and to the streamline the procedure for evaluating the status of the water bodies. So far, no reaction has come from Brussels.

Another major water quality problem is the existence of chemicals (heavy metals such as mercury, cadmium, etc) and other environmental toxins (such as brominated flame retardents, PBDE) in the groundwater. In most water bodies, the chemical status therefore is classified as poor.

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management? Please focus on the most illustrative example either in relation to the Floods Directive or the Water Reuse Regulation or national/local measures concerning water stress and/or droughts which could inspire a future EU Law framework.

Drought and water scarcity is a rather new phenomenon in Sweden. Major problems in this respect have occurred in the Southeastern parts of the country and on the Baltic islands only during the last 10-15 years. As the landowners control the groundwater resources, the level of conflict is consequently raised – there is no limit to the amounts that may be extracted from a well, and overextraction effects the neighbours' possibilities in using the resource. Against this background, there has been a political debate to strengthen the permit regime for extraction, so far with little progress. We also have a debate on how to use "grey water" – that is wastewater generated in households or office buildings from streams without fecal contamination – for irrigation and the introduction of "two pipe systems" for waste waters (one for grey water and another for toilet water), but little has come out of this in practical use. However, as the drought situation develops in these regions, this debate will continue, and experiments will be undertaken.

It may also be mentioned that one region – the Baltic island Gotland – has invested in a desalination plant for the production of drinking water. Although the profitability is questionable, we will see more such examples in the years to come.

Finally, Mörbylånga, one of the municipalities on Öland – the other big island in the Baltic Sea – organised a rain dance in the summer of 2016. The effects thereof however remain uncertain.

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

Commonly, drinking water is produced and delivered by municipal companies. Thus, the pricing is regulated in the Municipal Act (2917:725) and set at the "cost price" level. Further, as the water is "privately owned" there is no price setting for water services such as extraction of groundwater. Some years ago, the Commission brought up this issue in an EU Pilot, but it was closed after the government's response on the matter.

♣ WATER BIODIVERSITY

Questions

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country? Please provide examples of success / failure of integration in particular cases if relevant.

In my view, EU law on the environmental is today the safeguard against the strong national tendencies of deregulation and the "lessening of administrative burdens" in this field of law. The efforts in Sweden to combat climate change is strongly focusing on the introduction of nuclear power and "green industrialization". Energy saving in line with the requirements of EU law is not on the political agenda. In addition, great efforts are made to make EU understand that Swedish forestry

must be allowed to operate in its traditional form with clear cuttings of large areas of land and a national understanding of the requirements under the EU nature directives. The governmental initiatives on this field will probably focus on barring the public concerned from challenging the decision-making (or omissions rather) of the Forestry Agency in court, as the ENGOs have had a success rate on over 75% in such cases recent years. Biodiversity simply is not on the table at the political level, not even among the liberals in the government who traditionally have been advocating nature conservation and species protection. To put it mildly, nature conservation and environmental protection in Sweden today faces a dire situation…

9-**Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?**

One effect of the procedure to update old water permits recent years is that quite a few owners to hydropower stations have been willing to sell their installations. This way, it has been possible for specialized ENGOs such as the "Älvräddarna" (the River Keepers) to buy and demolish these installations in order to arrange for a free fauna passage in the streams and waterways; New agreement brings large-scale dam removal a step closer in Sweden | Rewilding Europe

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn? Please feel free to answer this question only if you have a concrete example (successful or not) to share.

Today, the implementation of "existing law" is entirely dependent on whether the Commission will take action or not. From the dominant parties of the government, there is little interest in environmental law, the focus is strongly on "green industrialization" at any cost. As already noted, biodiversity is not on the political agenda in today's Sweden and almost no efforts are made in order to deal with those issues. In contrast, the budget for the Environmental Protection Agency (NV) has been cut quite drastically recent years with important effects for the work, for example combating invasive alien species in our waters.

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

Questions

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake ?

Depending on your national context, you may illustrate these conflicts with Agriculture (agricultural irrigation - the controversial case of metabasins for agriculture) or Energy (hydroelectricity - cooling nuclear power stations) or Tourism (increased tourist numbers - development of new tourism infrastructures) or extension of urban areas.

There are of course many pressing conflicts in relation to water, out of which many concern hydropower. One example is the conflict between the regulatory permit regime for such installations and the need for water extraction downstream. The main problem here is the old water permits and the meagre possibilities to undertake a balancing of interests in the updating procedure. The "legal force" of traditional permits are very strong and alternative uses have little weight in that

competition. In some of these situations, this strong prioritization of hydropower is also a barrier to the green transition. Many of these conflicts are dealt with by the Land and Environmental Courts or the Administrative Courts, but of course they are bound by the legislation and, as we all know, "the courts cannot run the country".

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

Not to my knowledge, apart from the water delegations mentioned above. In these advisory bodies, the public concerned and their organisations are represented by different associations; local, cultural, environmental…

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation?

The PP provisions of WFD are implemented in line with a strong tradition of openness in Swedish administrative procedure, also present in environmental law. Political attempts to weaken these possibilities have been ongoing for some years, but have become serious only with the conservative government since 2022. Several governmental commissions have been assigned with this task and their proposals will be presented late this year or in the first half of 2025.

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

No such cases to my knowledge, but as I don't take part in social media I may be unaware of what comes out from the troll factories. However, what seems more problematic in a Swedish perspective is the strong drive against suggested "activist authorities", namely those which represent environmental protection and biodiversity (Environmental Protection Agency, the Water Authorities, the County Administrative Boards, the Land and Environmental Courts, etc.). This populistic drive has an impact on some sectors of the society, such as the farmers and foresters, the owner of small hydro power plants, etc.

Academic works on Swedish water law in a wide sense

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Josefsson, H: *Groundwater*. In The Routledge Handbook on Water and Development. Eds. Sofie Hellberg, Fredrik Söderbaum, Ashok Swain, Joakim Öjendal, London: Routledge, 2023

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Switzerland

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law?

Not being a member of the European Union, Switzerland has not implemented the Water Framework Directive. When the current Federal Act on the Protection of Waters (Water Protection Act; WPA) was prepared (1987), decided upon (1991) and put into force (November 1992) the conformity with the legal framework of the European Union was not yet on the agenda. The more recent amendments to the Act have systematically taken into consideration the legal requirements according to EU law, **but full conformity has not been established**. However, as Switzerland is a member of the European Environment Agency, it is under an obligation to report to the agency and has for that reason proceeded to some adaptation, namely with regard to the identification of groundwater bodies in order to be able to provide adequate information.

With regard to the **development of the legal framework** in the field of water protection in the Swiss context the following stages could be observed: First (end of the 19th, beginning of the 20th century), water law fulfilled the task of protecting the population from the risks of water; then (beginning of the 20th century) water law was concerned with the use of hydro-power and finally the protection of water – apart from the protection of fishing waters, which was dealt with already previously – became an additional focus of legislation (hesitantly starting with the constitutional provision foreseeing federal powers in this respect in 1953).

With regard to stages two and three of the legal development, the involvement of the citizens via popular initiatives was of major importance. Thus, the law has been strongly influenced by **direct democratic participation**. The first popular initiatives on the use of water focused on hydropower: An initiative discussed in 1907/1908 was at the origin of the first (federal) constitutional provision on hydopower (the provision having been adopted as a counter-proposal to the initiative) and another popular proposal demanded a direct democratic participation with regard to hydropower concessions, but was rejected by both a majority of the cantons and of the population in 1956.

Following the entry into force of the first Water Protection Act in 1955, a **popular initiative** drafted by the Fishery Association, handed in in 1967 (Federal Popular Initiative for the "Protection of Waters against pollution") asked for a stricter protection of water bodies, both under and above ground. The proposal for a new constitutional provision was finally withdrawn in favour of an ameliorated WPA put into force in 1971. Again, in the 1980ies a Federal Popular Initiative "for saving our waters" handed in in 1984 demanded – amongst others – the limitation of interventions in water bodies, the restoration of water courses and the increase of residual water quantities in relation with hydropower projects. The initiative was again rejected, but as an indirect counter-proposal a fully overhauled version of the WPA was decided upon. Later on, an initiative asking for the renaturation

of water bodies was handed in in 2006 and withdrawn in 2010 when an amendment of the WPA taking up the main demands of the initiative was put into force.

In more recent times two popular initiatives directed on the one hand at a **complete ban of synthetic pesticides** and on the other hand at the **protection of drinking water** through a general exclusion of agriculture practices using pesticides or prophylactic antibiotics from federal subsidies were rejected by the majority of the people and the cantons in 2021. However, these proposals were met with quite some sympathy by the population and thus influenced the federal legislation in the sense that the government adopted more stringent strategies in order to reduce the use of pesticides in agriculture.

Currently there is a collection of signatures ongoing for yet another popular initiative in this field, the "Initiative for food security – by means of enhancing a sustainable domestic production, an increase of plant-based food and clean drinking water (**food initiative**)". The proposal demands (amongst others) a strict respect of limit values with regard to nitrite and phosphorous concentration in water bodies and an objective of a net self-sufficiency rate in food production of at least 70 percent, mainly though a change towards plant-based farming.

To sum up, it can be said that the development of the Swiss legal framework regarding water protection was significantly influenced by popular initiatives in the last decades and that the concerns and visions of the population in this field thus constituted an **important driver** for the development of the legal provisions.

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

According to Swiss law, springs of limited size and local groundwater resources are governed by civil law (art. 704 Civil Code). Any other water resources, whether under or above ground, can be qualified as **public water bodies**. This applies even for privately owned bodies of water. Therefore, the use of these bodies is governed by (cantonal) public law. This legal framework usually provides that so called simple common use ("schlichter Gemeingebrauch") such as taking a bath, swimming or navigation is permissible without any permit and free of cost. For so called increased common use ("gesteigerter Gemeingebrauch"), such as water extraction, extraction of heat or the positioning of a buoy, a permit requirement can be put in place by the municipality or the canton and it is permissible to levy a fee. For so called special use ("Sondernutzung"), such as the extraction of water as drinking water or its use for irrigation or for cooling purposes, a concession and hence the payment of a levy may be required.

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

Questions

3-Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?

The fundamental "Right to assistance when in need" enshrined in art. 12 of the Federal Constitution comprises the right to basic food, cloths, protection from the cold, hygiene and fundamental medical

assistance and care and therefore entails a right to water for drinking and washing. As water is generally not a (very) scarce resource in Switzerland this requirement hardly poses any problems.

In the international context, Switzerland regards access to drinking water and sanitation as a human right and has established a cooperation program ("Global Programme Water") endowed with around 30 Mio. Euros per year in order to promote these interests in selected regions of the world.

4- How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?

Switzerland has given itself the label of being "Europe's water castle" ("Wasserschloss Europas") due to the fact that water is ever since abundantly available. Despite the labelling, water scarcity is nevertheless quite a serious problem, when it comes to the water needs for ecosystems (art. 1 lit. c WPA) in the context of **hydropower installations**. To illustrate that this challenge is much more than a selective one, it has to be pointed to the fact that water for hydropower purposes is withdrawn at more than 1400 spots in the entire country.

In order to ensure the objective of securing sufficient residual water in this context, the law requires permits for withdrawals of water from a water course with permanent flow as well as for withdrawals from lakes or groundwater resources in a way as to substantially affect the discharge rate of a water course with permanent flow (art. 29 WPA). One of the conditions for a permit for the withdrawal of water from water courses, is the fulfillment of **minimum residual flow requirements** (art. 31 et seq. WPA). The calculation of the required flow includes the minimal residual flow adapted by possible exceptions and mandatory increases under given circumstances. Despite the preexisting constitutional basis, these provisions have only been formulated and enacted with the "new" WPA in 1992 following the political demands voiced by the Federal Popular Initiative "for saving our waters" (cf. answer to question 1).

When these requirements entered into force, more than 1000 existing cases of water withdrawal had to be brought into conformity with the new law. The legislator thus foresaw an obligation to remediate such excessive withdrawal. However, this legal duty reserved existing water use rights and hence constellations, in which claims for compensation could be raised (art. 80 et seq. WPA). As the concessions for water use mostly run for 80 years, the **remediation** will take a long time to be entirely put into action. Below the level of required compensation, remediation has to take place as long as it is economically viable (cf. decision 139 II 28 by the Federal Tribunal).

On June 9th, 2024 the Swiss population will have to decide on a **popular referendum** concerning a series of legal provisions with regard to the increase of electricity production from renewable sources, which also include a legal basis for the government to temporarily oblige producers of hydropower in the context of a situation of electricity shortage to reduce the residual flow to the strict legal minimum (without any increases possible as foreseen by the general legal requirements [art. 2*a* Energy Act]).

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

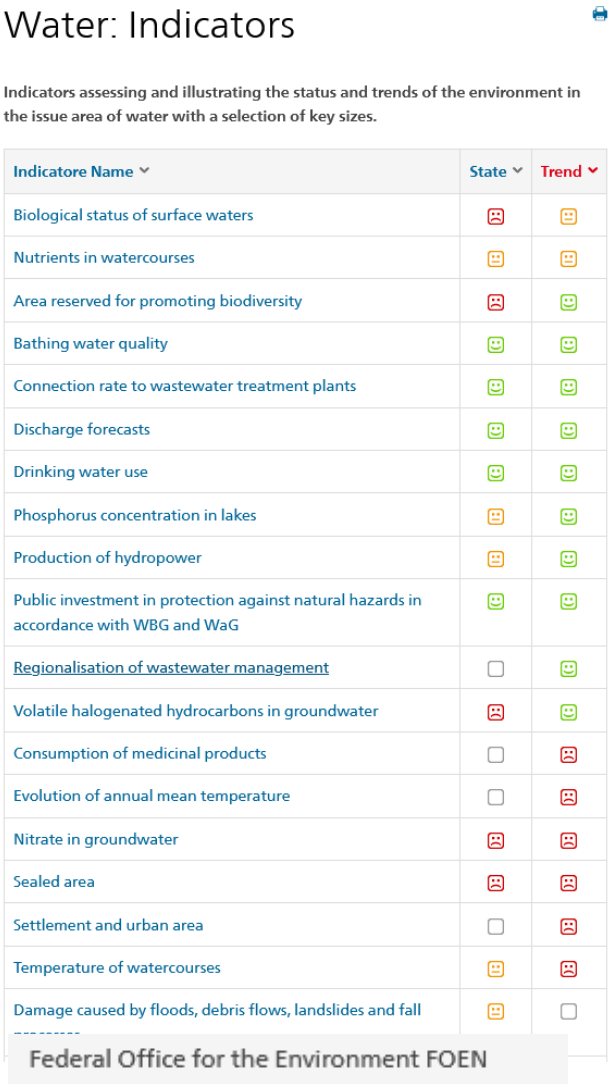
♣ INTEGRATED WATER MANAGEMENT

Questions

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions? We invite you to focus on the most relevant topic in your country.

Around the 1960ies, water quality in many Swiss rivers and lakes was very problematic. Swimming was forbidden in many water bodies. However, the expansion of wastewater treatment since the 1960ies, the ban on phosphate in textile detergents in 1985 and the (partial) greening of agricultures have led to a decline in pollution levels: Since the 1970ies the quality in watercourses has improved significantly in terms of nutrient pollution and since the 1980ies also the water quality of Swiss lakes has increased considerably, especially when it comes to phosphorus content. Yet, some smaller lakes are still eutrophic and suffer from oxygen depletion and thus oxygen is added artificially. Therefore, both in watercourses and lakes bathing is generally possible, as bathing water quality is excellent almost everywhere (in 2021 it was qualified as “excellent” in 90 % and as “good” in 5 % of the cases). Thus, bathing in rivers and lakes constitutes a highly popular pastime of the Swiss population in summer – and (for some) in winter ; -).

However, this is not to say that there are not major problems to be observed when it comes to water quality: Currently the most threatening problem are **micropollutants** such as *pesticides* and *pharmaceuticals* in small and middle-sized waterbodies. In a study conducted in 2020, in only five of 33 watercourses the ecotoxicological limit values defined in the applicable regulation were respected. As for those forms of micropollutants where no such values are defined, the authors of the study found that out of 120 pesticides which were analysed, 20 were found to be at levels, where impairment of aquatic life cannot be ruled out. In Lake Geneva there is a measuring system of micropollutants in sediments in place since over 30 years. In this context, similar substances as those measured in river sediments are measured: heavy metals, persistent pesticides or other organic pollutants (such as corrosives). Additionally, comparing results in the long run it is possible to draw conclusions for substances which are banned since a long



Water: Indicators

Indicators assessing and illustrating the status and trends of the environment in the issue area of water with a selection of key sizes.

Indicatore Name	State	Trend
Biological status of surface waters	☹	😐
Nutrients in watercourses	😐	😐
Area reserved for promoting biodiversity	☹	🙂
Bathing water quality	🙂	🙂
Connection rate to wastewater treatment plants	🙂	🙂
Discharge forecasts	🙂	🙂
Drinking water use	🙂	🙂
Phosphorus concentration in lakes	😐	🙂
Production of hydropower	😐	🙂
Public investment in protection against natural hazards in accordance with WBG and WaG	🙂	🙂
Regionalisation of wastewater management	☐	🙂
Volatile halogenated hydrocarbons in groundwater	☹	🙂
Consumption of medicinal products	☐	☹
Evolution of annual mean temperature	☐	☹
Nitrate in groundwater	☹	☹
Sealed area	☹	☹
Settlement and urban area	☐	☹
Temperature of watercourses	😐	☹
Damage caused by floods, debris flows, landslides and fall	😐	☐

Federal Office for the Environment FOEN

time such as mercury, PCB and DDT. With regard to these substances, a significant decrease of concentrations can be observed.

When it comes to **ground water**, the (stricter) limit values regarding pesticides are only rarely exceeded. At the same time, in many places the values regarding pesticide metabolites are quite high. Currently there is a virulent debate about Chlorothalonil metabolites (a fungicide used since the 1970ies in agriculture and banned in 2020) in ground water. The values measured are high (in some cases more than 1 µg/l), but there is an ongoing debate whether theses metabolites actually have a detrimental effect with regard to the drinking water quality of the ground water.

As for **nutrients** (dissolved organic carbon, nitrogen in the form of ammonium, nitrite and phosphorus) the levels have decreased significantly, but in 5-30 % of the cases still exceed limit values in watercourses. In addition, 60 % of the lakes do not match the level of 4 milligram of oxygen per liter due to an excess of phosphorus. Finally, Switzerland is also an excessive exporter of nitrite (a compound of nitrogen and oxygen) to the sea, where high levels of nitrogen are problematic. As for the river Rhine in Basel, the load of nitrogen was reduced by about 30 % in the 1990ies, but the level has not decreased any further since. Thus, the reduction objective for the protection of the North Sea could not be achieved.

In order to reduce of problem of micropollutants, the legislator established a financing- and subsidy-mechanism for **measures to remove organic trace substances from waste water** (art. 61*a* WPA). For this purpose, the Confederation collects a charge from the persons responsible for central waste water treatment plants (art. 60*b* WPA). The charge may be passed on to the final user and shall not exceed 9 francs per resident. The payments may amount to 75 % of the attributable costs of such installations. Under this program around 100 waste water treatment plants shall be enhanced – with the result that about 60 % of the waste water in Switzerland would be treated by these means until 2034.

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management? Please focus on the most illustrative example either in relation to the Floods Directive or the Water Reuse Regulation or national/local measures concerning water stress and/or droughts which could inspire a future EU Law framework.

With the exception of residual water requirements (cf. answer to question 4) **quantitative water management** is less of a concern in Switzerland. But of course, the requirement to obtain a permit for the withdrawal of water (art. 29 WPA) should ensure that the use of water can be balanced between the different stakeholders and the water needs of ecosystems.

Floods, debris flows and landslides constitute risks to which the population in Switzerland has been confronted ever since and there is the expectation that such events may increase in the future due to climate change. Currently it is assumed that about a fifth of the population is confronted with the risk of flooding. On average damage due to floods and landslides amount to around 270 Mio. Euros annually. When it comes to the protection from floods (and other natural disasters) it is mainly the cantons and municipalities, which are in charge of protection. The Confederation assumes its strategic leadership and provides financial and technical support to the cantons. Protection from

natural disasters is thus conceived as a joint task of the different authorities (and private actors). Overall, the strategy includes:

- measures of spatial planning
- technical and organizational measures such as the maintenance of water bodies and protection infrastructure
- monitoring

protective measures in the context of priority cases, which are subsidized by federal means. The largest of those projects is the "Third Rhone correction" in the canton of Valais (and Vaud). It consists of early measures such as the enhancement of dams and of priority measures, which shall not only avoid the breaking of dams but also the flooding of dams and thus consist in the enlargement of the riverbed. The total cost of the measures required are estimated around 3.6 billion Euros and the time required for their implementation around thirty years.

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

Both the infrastructure for freshwater and sewage water is mostly owned either by the municipalities or by associations of municipalities. The respective **charges** are determined by its owners in the context of some general requirements of federal law and more detailed cantonal provisions. The collection of fees is **regulated by public law** and the charges are thus qualified as public levies, which have to comply with the principles of cost coverage and equivalence, two standards limiting the level of charges to the actual costs and/or the value of the service for the user. Additionally, the Federal Price Supervisor controls the charges and may pronounce recommendations, which – even though not legally binding in this context – have a considerable degree of publicity and are often followed.

Originally, the cost for the **installation and establishment of the waste water system** was heavily subsidized by the Confederation. It can be characterized as a true success story of an infrastructure significantly contributing to environmental protection. In 1997, a provision was enshrined in the WPA (art. 60*a* para. 1), which implemented a general change in the system by foreseeing the **polluter-pays-principle** in this field. Hence, the cantons are obliged to pass the costs of the wastewater system on to consumers through charges. When it comes to the *connection fee* for the (mandatory) linkage to the waste water system, the charges can be bound to the insurance value of the building, its volume or its gross floor space. As far as *periodic user charges* are concerned however, the (rather elaborate) case law of the Federal Tribunal demands that their amount depends on parameters such as the use of fresh water, the number of apartments in the building or the number of people residing in the building. A charge depending solely on the building insurance value is thus qualified as a violation of the polluter-pays-principle (e.g. decision 128 I 46 by the Federal Tribunal). A combination of a *usage fee* (depending on the amount of sewage water) and a *basic fee* in order to cover the costs of the infrastructure, possibly tied to the building insurance value or the volume of the building is however permissible under this case law, as overall the charge remains to be (partially) depending on waste water produced.

♣ WATER BIODIVERSITY

Questions

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country? Please provide examples of success / failure of integration in particular cases if relevant.

The potential influence of these directives/regulations is difficult to assess as Switzerland is not directly bound by these acts.

9-**Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?**

When it comes to measures touching **ecosystems in general**, the Swiss law (art. 18 para. 1bis and 1ter Federal Act on the Protection of Nature and Cultural Heritage) provides for the following cascade:

- 1. *Protective measures*: Reduction of the project, different approach (tunnel, bypass etc.), adaptation of the perimeter of the project or adaptation regarding the time-line.
- 2. *Restoration measures*: In case of temporary interventions in ecosystems worthy of protection, these systems have to be restored on site to the same area and value once the construction is complete.
- 3. *Substitute measures*: In case of permanent interventions in habitats worthy of protection, substitute measures have to be taken in other, close-by locations.

More specifically with regard to **water bodies**, the current legal framework contains a series of obligations aiming at the restoration of water bodies:

- About 25 % of the water courses in Switzerland are artificially reinforced, straightened and narrowed. This has severe detrimental effects when it comes to the protection from floods, but also with regard to biodiversity, the structure of landscapes and the migration of fish. The WPA thus contains a general obligation to preserve and restore the natural course of the bodies of water as well as to ensure the **rehabilitation of waters** (art. 37 and 38*a* WPA). Such measures to be taken by the cantons are covered by federal subsidies amounting to 35-80 % of the costs (art. 62*b* WPA). The task of rehabilitation of around 4000 km of water courses is estimated to take around 80 years.
- **Reduction of the negative consequences of hydropeaking**: The persons responsible for hydropower plants are under an obligation to eliminate short-term artificial changes in the water flow on a body of water (so called hydropeaking) causing serious harm to the indigenous flora and fauna as well as their habitats by means of civil engineering measures (art. 39*a* WPA). Again, the Confederation may grant compensatory payments for such measures (art. 63a and 83*a* WPA). According to current estimates, interventions are required in about 100 hydropower plants and they have to be implemented by 2030.
- Then, the **bed load budget** of the water body may not be changed by installations to the extent that they cause serious harm to the indigenous flora and fauna, their habitats, the groundwater regimen and flood protection. The persons responsible for the installations shall take suitable measures to this end. The Confederation may financially support such measures (art. 62*c* and 83*a* WPA) and owners of hydropower plants are compensated for

such steps (art. 34 Energy Act). According to an inventory, about 500 installations (140 hydropower plants; 340 other installation) cause such changes of the bed load budget and hence corrective measures have to be taken until 2030.

- Finally, the Water Protection Act and the Federal Act on Fisheries (art. 9 and 10) also require the **restoration of the free migration of fish** in Swiss rivers. According to an inventory established by the cantons and the Federal Office for the Environment, around 1000 transverse structures at power plants need to be renovated in order to restore the free migration of fish. The costs of such measures are born by the Confederation (art. 34 Energy Act).

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn? Please feel free to answer this question only if you have a concrete example (successful or not) to share.

Cf. answer to question 10.

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

Questions

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake ?
Depending on your national context, you may illustrate these conflicts with Agriculture (agricultural irrigation - the controversial case of metabasins for agriculture) or Energy (hydroelectricity - cooling nuclear power stations) or Tourism (increased tourist numbers - development of new tourism infrastructures) or extension of urban areas.

As water resources in general are not very scarce in Switzerland, such **conflicts usually are not very acute**. Given that the withdrawal of water normally requires a permit, the resolution of potential conflict is done through the permit procedure and thus by means of an administrative procedure by administrative authorities, which enjoy a certain margin of appreciation. Sometimes the decision may include one or another form of balancing of interests.

Maybe the best example for such conflicts is the debate on **minimum residual flow** regarding the withdrawal of water from a permanently flowing watercourse, mainly for purposes of the generation of hydropower. In this case the conciliation is established by a detailed legal framework enshrined in a federal act (art. 31 et seq. WPA). As any federal act is subject to a (possible) referendum, the majority of the citizens may thus influence the resolution of the conflict. However, the legal framework also leaves room for a balancing mechanism (art. 33 WPA).

Another approach consists in **defusing conflicts by the use of financial means**. As an example in this respect, remedial measures regarding hydropower plants may be cited. If such measures lead to a reduction or a postponement of energy production, the costs arising from the measures are generally covered by the Confederation.

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders

(including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

I would not be aware of such innovative forms of governance in the Swiss context.

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation ?

With regard to the public influence on legislation cf. answer to question 1.

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

Not that I would be aware of.

United Kingdom

SESSION 1 WATER AS COMMONS & RIGHT TO WATER

♣ WATER AS COMMONS: THE COMPLEX LEGAL STATUS OF WATER AT STAKE

Questions

1-Has the Water Framework Directive led to a broadening and/or modification of the legal definition of water in your domestic Law ?

No. The regulation of water and water services in the UK is spread over many pieces of complex, and often highly technical legislation, across the four devolved administrations. This body of law covers: water pollution offences and permitting of discharges; economic regulation of the sector; water supply regulation; regulation of draining and sewerage services; maintaining drinking water quality; setting environmental standards; flood and drought protection and adaptation. (An example of the complexity is shown here, with the Drinking Water Inspectorate outlining the legislation applying to water companies in England and Wales.) Where relevant, those different statutes define the extent of the water within their regulatory scope. Thus, for example, the Water Act 2014, which regulates the water industry, water resources and imposes some environmental controls, applies to 'regulated waters', defined as—

(a) inland waters in England and Wales,
(b) the waters of so much of the River Esk and its tributary streams up to their source as is mentioned in subsection (11)(b), and
(c) waters adjoining the coast of England and Wales to a distance of six nautical miles measured from the baselines from which the breadth of the territorial sea is measured;

The definitions of surface water and groundwater in the WFD are directly incorporated into The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (England and Wales), which introduced water quality standards through the regulation of river basin districts, simply added another layer to this domestic water law regime. Notably the WFD definitions of 'surface water' and 'transitional waters' are not as wide as in the Water Act 2014 outlined above, albeit that the statutes are not coincident in their regulatory scope. Some interesting case law has developed around the WFD's exclusion of transitional waters and coastal waters from the definition of 'surface water' (except in respect of chemical status), with a successful challenge to a Ministerial decision to classify some stretches of estuarine rivers as 'coastal'. This was found to be inappropriate as it allowed lower levels of treatment and was improperly driven by costs (*R v Secretary of State for the Environment, ex parte Kingston upon Hull City Council* [1996] Env LR 248).

The Environment Act 2021 (UK/England) confirmed that, to the extent that this legislation introduced powers to amend these transposing regulations post-Brexit, the definitions of groundwater and surface water remained the same as in the Water Framework Directive.

2-Have there been any recent legal debates on Water as Common(s) that could lead to a change in your domestic legal framework and/or be promoted at the European level?

No recent legal debates although the UK has an ancient system of 'common land' – privately owned land with 'rights of common' shared by the commoners. This common land can include ponds, streams and rivers, and is a legal framework that has a strong focus on sustainability of land, in order to maintain the viability of 'commoner rights', including e.g. the right to fish. This historical approach to land use in England has led to a strong conservation ethic in commons areas.

In relation to the point that water should remain in public hands, the picture in the UK is complex. Whilst there are no common law property rights in water itself (*Canal and River Trust v Thames Water Utilities Ltd* [2018] EWCA Civ 342), private ownership of water can be created by statute (as for water in reservoirs). Adjacent landowners use own rights in the water rather than owning the water itself, such as rights of fishing. Interference with these rights can form the basis of private, civil actions. Furthermore, the UK's water services are privatized, which has led to major political turmoil in recent years, with large scale pollution (particularly through uncontrolled sewage overflows) and lack of investment in water infrastructure being attributed to the private sector financing model of water utilities. The water industry regulator – OfWat – has been investigating this issue and its Chief Executive has recently summarized the position as follows (24/7/23):

Put simply, the sector has borrowed to fund new investment. For most companies, debt has been a prudent low-cost source of finance with low interest rates fixed for the long-term. However, some companies borrowed too much, most obviously Thames Water. The risk for this – and for correcting this – belongs to the company and its shareholders.

Looking ahead, the sector faces big challenges that need significant investment – to finance new reservoirs and water transfers, and to cut sewage discharges and nutrient pollution.

Companies will need to borrow to make this investment. As they do so, they need to learn the lessons of the past and consider the role of equity as well as debt, to make sure they are resilient financially. And companies might do well to consider different routes, beyond private investment, including whether funding might be raised publicly through the listed route, or by championing other models, as happened with the Thames Tideway so-called super sewer.

It should be noted, though, that some have criticized Ofwat itself for failing to intervene sufficiently and allowed companies to borrow too much while giving out too generous dividends to shareholders.

♣ RIGHT TO WATER & ECOSYSTEM'S WATER NEEDS

Questions

3-**Does your legal system explicitly recognize the fundamental right to water and sanitation and how does it take account of the challenge of water poverty and insecurity, in particular to comply with the Drinking Water Directive 2020/2184/EU?**

There is no explicit recognition of the right to water or sanitation in the United Kingdom, although there are statutory guarantees for the provision of water and sanitation through the planning system.

The challenge of water poverty and insecurity

As noted above, in England and Wales water services are provided by private companies which are regional monopolies. They are regulated by the Water Services Regulation Authority (OfWat) to ensure 'high standards' and 'fair' pricing.[549] Nevertheless, water poverty is rarely discussed directly in law and policy. For example, the 2023 Plan for Water, developed as part of the 25-Year Environment Plan, does not mention problems with access at all and focuses on reducing demand for water instead. The Water Industry Act 1991 simply requires OfWat to 'have regard to the interests of … individuals with low incomes'.[550] Similarly, in its publications OfWat tend to frame any problems as ones of 'affordability'.[551] The measures that the regulator deploys to address these are price controls and provision of support for low-income households.[552]

One explicit discussion of water poverty is in the Digital Economy Act 2017, which defines water poverty as 'living on a lower income in a home which— (a) cannot be supplied with water at a reasonable cost, or (b)cannot be supplied with sewerage services at a reasonable cost' (s 38(10). Though this provision does mean that water poverty is now becoming legally recognised, its effect is only to grant a public authority the power to disclose information about people living in water poverty to water and sewerage undertakers so that they can provide some assistance.

Nevertheless, water poverty should be a much more significant concern. Water services in England and Wales are among the most expensive in Europe, even if they are not currently priced to allow sufficient investment in infrastructure.[553] While disconnections may be illegal and households unable to pay will not lose access to water, defaulting on payments for these services puts them in debt. The Consumer Council for Water, who define water poverty as a household having to spending more than 5 per cent of its disposable income on water services, have found that this was a problem for 1.5 million households in England and Wales in 2021.[554] They also warn against raising water charges any further.[555] Similarly, Sylvester, Hutchings, and Mdee estimate that water poverty 'affected approximately 20% of households in England and Wales in 2020'. [556] They also show that water poverty is a 'structurally-produced problem'. This is all the more worrying in light of the financial structure of water companies where 'their methods of profit maximization are often not in the public interest'.[557] For many years, Ofwat has not engaged in comprehensive efforts to address water poverty or the extractive practices of water companies. However, in 2023, Ofwat announced that water companies will have to link divided payments to good performance, which was made possible by the new powers created by the Environment Act 2021.[558]

Northern Ireland has a wholly different, non-privatized system. Domestic users do not pay any specific charges for water (though costs of water and sewerage services were assimilated with

[549] https://www.ofwat.gov.uk/regulated-companies/ofwat-industry-overview/
[550] Section 2(2C)
[551] E.g., https://www.ofwat.gov.uk/wp-content/uploads/2016/01/prs_inf_afford.pdf
[552] https://www.ofwat.gov.uk/regulated-companies/price-review/; https://www.ofwat.gov.uk/households/customer-assistance/; There is a number of different types of support for low-income households, such as social tariffs or the WaterSure scheme. However, not all water companies provide these.
[553] D Helm, 'Thirty years after water privatization—is the English model the envy of the world?' (2020) 36 Oxford Review of Economic Policy 69.
[554] https://www.ccw.org.uk/our-work/affordability-and-vulnerability/affordability-review/
[555] https://www.ccw.org.uk/publication/ccws-review-of-water-companies-2025-30-business-plans/
[556] R Sylvester, P Hutchings and A Mdee, 'Defining and Acting on Water Poverty in England and Wales' (2023) 25 Water Policy 492.
[557] K Bayliss, G Mattioli and J Steingerber, 'Inequality, Poverty and the Privatization of Essential Services: A "Systems of Provision" Study of Water, Energy and Local Buses in the UK' (2021) 25 Competition & Change 478.
[558] https://www.ofwat.gov.uk/ofwat-announces-new-regulatory-controls-on-water-company-dividends/

general rates) and NI Water, the public body supplying water, is subsidized by Government grant. In 2005, the Government proposed introducing water charges to make NI Water self-financing, but the plans were abandoned two years later following widespread political protest.

4- **How are the Water needs of ecosystems (art 1 WFD) taken into account in your legal system and is the issue of Rights of Rivers & aquatic ecosystems debated in your country or has it given rise to citizen experiments or even legal recognition?**

Water needs of ecosystems in English water law and policy

The water needs of ecosystems are primarily taken into account (beyond the regulations that directly transpose the WFD) in the following policy documents:

- National Framework for Water Resources 2020 (exploring England's long-term water needs, and the scale of action required to ensure resilient supplies and an improved water environment).
- UK Government's Plan for Water 2023 (a plan for delivering the water goals and targets in the Environmental Improvement Plan 2023, one element of the post-Brexit environmental governance regime in England under the Environment Act 2021). This plan is the primary policy document on water in England, with extensive initiatives and plans (for new legislation, funding, improved enforcement etc) on three themes:
    - Transforming management of the whole water system
    - Securing a plentiful supply of clean water
    - *Delivering a clean water environment – for people and nature*. Here the needs of ecosystems are most directly addressed through:
        - plans to launch a *Water Restoration Fund* (with money from water company environmental fines and penalties which come from water company profits, additional to the money water companies must already pay to clean up the impact of pollution incidents that breach their permit conditions);
        - improving the regulatory system to *minimize pollution* from wastewater, urban areas and transport (with a focus on storm overflow discharges, which are a huge concern); and
        - incentivizing *better farming practices* through post-Brexit land management schemes, including ELMS noted below (pursuing a legally binding target to reduce nitrogen, phosphorus, and sediment from agriculture entering the water environment by 40% by 2038: Environment Act 2021).

Notably, the government also plans to streamline England's policy and legal framework, with greater join-up between water and flood planning, and better alignment with Local Nature Recovery Strategies. Watch this space.

Rights of rivers debates

A few different organisations are raising this issue vocally in the UK, such as Greenpeace, Lawyers for Nature or Environmental Law Foundation, Friends of the Earth. Pieces on rights of rivers/rights of nature have also been published in national media. Politically, the UK Green Party calls for the recognition of rights of nature. Within academia, the KCL Legal Clinic has published a Rights of Nature Toolkit.

Examples of experiments and recognition of rights of rivers:

- River Roding Inter-species Council:
- A policy experiment to bring more-than-human voices into deliberative governance.
- Participants: Moral Imaginations Project Policy Lab, DEFRA, local residents, local orgs (such as River Roding Trust).
- Each person represents the interests of one more-than-human entity, such as: Tufted Duck, Reeds, Soil, European Eel, Mycelium and more.
- Lewes: local-level recognition
- The Lewes District Council passed a Rights of Rivers Motion for the river Ouse and will aim to develop a 'Declaration on the Rights of the River Ouse' within 2 years.
- The Environmental Law Foundation, who worked on the motion with the local group Love Our Ouse and Councillor Bird, hope that 'locally tailored initiatives like the Lewes case could set precedents and gradually alter legal frameworks'.
- Love Our Ouse organised a Rights of Nature Summit to facilitate the development of the Declaration in November 2023.

SESSION 2 INTEGRATED WATER MANAGEMENT & WATER BIODIVERSITY

♣ *INTEGRATED WATER MANAGEMENT*

Questions

5-What are the most acute water quality problems your country faces in achieving the objective of good status of water bodies (including the obligation of non-deterioration) and what are the current main legal responses in particular to reduce reliance on WFD exemptions? We invite you to focus on the most relevant topic in your country.

In early May this year, England's Office for Environmental Protection reported on the Implementation of the WFD Regulations and River Basin Management Planning in England. The report found that 'most of England's water bodies are in an unsatisfactory state.[559] While levels of some individual pollutants have been reduced over the years… [t]he pace of change has stalled and only 16% of surface waters currently meet the WFD Regulations' objectives of 'Good Ecological Status' or 'Good Ecological Potential'. Not only has there been little overall positive change in the state of water bodies in recent years, there has also been some apparent regression.' The key environmental objectives in England are those to be met by 2027 (using the WFD extension) – good ecological status or potential for surface waters, and good quantitative status for groundwater. The report attributes this poor picture to the fact that there are 'not enough specific, time-bound and certain measures in the RBMPs' to achieve the Environmental Objectives. In addition, it lists the following factors as the key factors holding back progress (quoting from p 11):

[559] **Across the UK**, England has the poorest quality water bodies. It has the lowest proportion of surface water bodies at Good Ecological Status or better (16%). Scotland has the highest percentage (54%) followed by Wales (42%) and Northern Ireland (31%). England also has the lowest percentage of groundwater bodies at Good Quantitative Status (73%). Wales has the highest percentage (100%) followed by Scotland and Northern Ireland (both at 95%).
Across the EU, the performance of the UK is similar to that of countries with broadly similar river systems, physical geography and pressures from agriculture, urbanisation and industrialisation. It exceeds that of nine EU member states. However, the overall UK figures are positively affected by the more favourable status of surface water bodies in Scotland, Wales and Northern Ireland compared to England. If taken alone, England's performance exceeds that of only four EU countries (Netherlands, Luxembourg, Germany and Hungary). [OEP report, p 57]

Insufficient investment in measures to address all major pressures. The [English Environment Agency] has calculated a cost of £51 billion to achieve the Environmental Objectives, providing £64 billion in monetisable benefits. However, confirmed funding of only £6.2 billion is just 12% of that required. Significant further investment in the water industry is expected, to implement the storm overflows discharge reduction plan and through the 2025-2030 price review. However, the amount, pace and contribution of these investments towards the Environmental Objectives are not fully yet known. Moreover, other major sources of pressure, such as agriculture and transport, are not receiving the same resources or attention. Overall, we do not yet see a picture of the necessary resources being directed to all major pressures to meet the Environmental Objectives. In the meantime, the benefits or avoided costs that additional investments could deliver are not being realised.

Measures contained in the RBMPs are too generic. There is little explanation of how it is expected that they will address pressures and achieve the Environmental Objectives at the RBD and water body levels. There are also significant gaps in the tools and resources that are being deployed, leaving them insufficient to achieve Government's intended outcomes and commitments.

Lack of pace and certainty. The timing to apply some measures appears drawn out, or in certain instances unknown or open ended. Slow progress with [agricultural] Environmental Land Management schemes and Diffuse Water Pollution Plans illustrates where action needs to be stepped up to improve the pace and likelihood of meeting objectives.

Lack of clear governance arrangements for practical delivery. Our assessment highlights a lack of clear governance arrangements to implement RBMPs and concern that adequate mechanisms to ensure their application are not always in place.

Gaps in monitoring. There is not currently a monitoring and evaluation framework that considers progress towards the Environmental Objectives and other related Government goals and targets in an integrated way. There is also a need to consider how to monitor and set standards for emerging substances of concern.

On WFD exemptions in particular, the OEP report found that exemptions are not clearly and robustly justified in RBMPs, to the point where the WFD regulations are being breached in some cases. There is currently legal response to reduce reliance on exemptions, although the OEP recommends that Defra (the UK Department for Environment, Food and Rural Affairs) and the Environment Agency 'review and improve how exemptions are justified and presented in the RBMPs to ensure they are appropriate, clear and transparent. We recommend specifically that RBMPs should include at least an outline of the substantive justifications for individual exemptions at the water body level. The approach to how exemptions are determined, justified and presented should also be subject to greater oversight by Defra before the RBMPs are approved by the Secretary of State'. In the current (3rd) cycle of RBMPs, which set environmental objectives for 2027, exemptions have been applied for 23% of surface water bodies and 10% of groundwater bodies, equating to 22% of all water bodies overall.

6-What are the main difficulties and/or the main success stories in your country related to quantitative water management? Please focus on the most illustrative example either in relation to the Floods Directive or the Water Reuse Regulation or national/local measures concerning water stress and/or droughts which could inspire a future EU Law framework.

The UK Met Office has recognised that there is an increased drought risk in the UK with rising global temperatures. This risk is primarily addressed in the UK's climate change adaptation plan. In relation to water management, two approaches are the current prime focus: Defra 'working with' the

Drinking Water Inspectorate to continue meeting high water quality standards, and Defra reviewing the drought plans of the water companies.

In England, statutory water companies develop 'drought plans', linked to their water resources management plans (outlining how water companies will ensure there is enough water to meet the future needs of people, businesses and the environment). These drought plans, updated every five years, outline how water companies will manage water supply during periods of drought, setting out measures to reduce demand, increase efficiency, and manage water resources to maintain supplies.

7- What are the main difficulties in your country to comply with the principle of recovery of the costs of water services and are there (or at least discussions of) legal mechanisms related to social water pricing?

The primary difficulty here seems to be that England's economic analysis required to deliver the WFD's principle of recovery of the costs is woefully out of date. The Secretary of State is responsible for carrying out the economic analysis of water use in RBDs. This is required to be reviewed and, where appropriate, updated every six years. The most recent review was due in December 2019.

♣ WATER BIODIVERSITY

Questions

8-Has EU Law (WFD, Birds & Habitats Directive, Regulation on Invasive Alien Species (…)) helped in strengthening the integration of water law and ecosystems and species protection law in your country ? Please provide examples of success / failure of integration in particular cases if relevant.

EU law has helped indirectly with integration, in that it has created a strong foundation for regimes on ecosystems/species protection that are being increasingly identified as important regimes for ensuring healthy water systems. Thus, for example, England's Plan for Water recognizes the significant impact of invasive non-native species (INNS) on the health of water bodies and proposes to bolster enforcement to prevent the introduction of INNS through the newly formed *GB Non-native Species Inspectorate*, developing 'pathway action plans' to address highest risk routes for INNS to spread, and promoting removal of INNS through innovative methods.

[ES to add points on interaction between SACs and Plan for Water]

9-**Is there any legislation or provisions in your domestic law concerning the restoration of water ecosystems and/or nature-based solutions in favor of freshwater ecosystems? What would be changed in your law in the light of the future regulation on nature restoration?**

There are a few innovative legal developments concerned with restoration of water ecosystems and nature-based solutions in favour of freshwater ecosystems.

- The Environment Act 2021
  - S.8 environmental improvement plans. As noted above, the 25-Year Environment Plan and the Plan for Water were adopted under this provision.
  - S.98 and Schedule 14: Biodiversity net gain as a new condition of planning permission.
  - S.102 modifies the duty to conserve biodiversity, which is now a duty to conserve and enhance biodiversity.

- S.104: Local nature recovery strategies for England are to be introduced, and the policy ambition is to coordinate these with water system issues.
- + OEP's ability to scrutinise, e.g. s.28(1)(a): 'The OEP must monitor progress in improving the natural environment in accordance with the current environmental improvement plan'.

- Environmental Land Management Schemes (ELMS)
  - Post-Brexit subsidy scheme to finance farmers' 'provision of environmental goods and services',[560] which aims to improve farming practices, and consequently, reduce diffuse nutrient and chemical pollution of rivers and other waterbodies.

11- Has the implementation of existing Law been sufficient to maintain or restore green infrastructure and free-flowing rivers, and more generally what lessons can be drawn ? Please feel free to answer this question only if you have a concrete example (successful or not) to share.

In short, no. In England, as noted above, 16% of surface water bodies currently achieve good ecological status, and 64% of water bodies are at moderate ecological status. The chronic issues with meeting WFD water quality standards across England, and the extensive plans to improve things (noted in several questions above – see UK Plan for Water), show that existing law has not been sufficient, even if some of the problems have been associated with poor implementation of existing laws on pollution control. Here is an interesting example of how different pieces of existing law are both inadequate but can nonetheless be used to effect change when conditions deteriorate significantly and interested groups put pressure on the government and regulator:

Case study: the river Wye

The river of Wye was designated a special area of conservation along its whole length, however now its status is classed as overall unfavourable and declining. There have been a number of interesting legal developments to aid its restoration.

- The Friends of River Wye tried to intervene. They applied to have the river designated as having bathing status, as this would require the govt to improve the quality of its waters. This was rejected by the Welsh government due to the risk that bathers would pose to the river considering that it is a site of special scientific interest.[561]
- Another example is River Action's suit against the Environment Agency. The organisation allege that the agency has not enforced the law adequately to prevent the river's pollution.[562] River Action are also suing the poultry company Avara, who operate in the catchment area of the river, and generate agricultural pollution through industrial scale chicken farming.[563]

[560] https://www.gov.uk/government/publications/environmental-land-management-update-how-government-will-pay-for-land-based-environment-and-climate-goods-and-services/environmental-land-management-elm-update-how-government-will-pay-for-land-based-environment-and-climate-goods-and-services

[561] https://www.theguardian.com/commentisfree/2024/may/01/protect-river-wye-pollution-swimming-catch-22

[562] https://www.bbc.co.uk/news/science-environment-68221223#:~:text=Campaigners%20are%20taking%20the%20Environment,healthy%20have%20not%20been%20enforced

[563] https://www.bbc.co.uk/news/articles/c06l7e0edx2o

- Against this background, the government has now announced a plan to restore the Wye with £35m of funding.[564]

SESSION 3 WATER CONFLICTS & ADAPTIVE WATER GOVERNANCE

Context

Questions

12- What kind of expertise, criteria, [notions] [concepts] and techniques (including the hierarchy of uses, carrying capacity of aquatic ecosystems, imperative reasons of overriding public interest…) are used to resolve these conflicts, conciliate and balance interests at stake ?

Depending on your national context, you may illustrate these conflicts with Agriculture (agricultural irrigation - the controversial case of metabasins for agriculture) or Energy (hydroelectricity - cooling nuclear power stations) or Tourism (increased tourist numbers - development of new tourism infrastructures) or extension of urban areas.

This is beyond my expertise and research undertaken.

13- In your country, are there any debates and experimentations on new forms of water governance (adaptive, participative, inclusive, territorialized (...) with multiple stakeholders (including those representing/translating the voice of natural entities) that could inspire the EU and other countries?

Not as far as the desk research exercise for this task could reveal.

14-Has your country implemented the public participation provisions of the WFD and has it gone further in implementing the right to public participation?

The public participation provisions of the WFD have been given effect through the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. There is a number of public participation provisions, which confer very wide discretion on the Environment Agency in regards to how it shall facilitate public involvement. The UK Government has also published guidance on public participation in water management planning, as part of its general River Basin Planning Guidance to the Environment Agency.[565]

In practice, the aspects related to direct consultations are facilitated through the establishment of a forum – the Water Leaders Group – with representatives of industries and organisations who are consulted in relation to state-wide measures and plans.[566] Until 2016, consultations occurred at two scales: at the national level with the National Liaison Panel (the membership and function of which corresponded to the Water Leaders Group) and at the river basin district level with river basin district liaison panels, made up of representatives of different sectors that play a role in managing the water

[564] https://www.bbc.com/news/articles/c51nj1qnvg5o

[565] E.g., https://assets.publishing.service.gov.uk/media/614b35f3d3bf7f718faab64e/River_basin_management_planning_ministerial_guidance.pdf

[566] https://www.gov.uk/government/publications/river-basin-management-plans-updated-2022-record-of-consultation-and-engagement/river-basin-management-plans-updated-2022-record-of-consultation-and-engagement

environment in the area (such as industry, local government, or NGOs).[567] The effectiveness of these participation mechanisms was much criticized in the literature, with the general public being excluded by the process,[568] the approach being too state-centred and not collaborative,[569] and farmers and water companies being overrepresented in Liaison Panels.[570]

Since 2013, the public can also become engaged by forming informal catchment partnerships.[571] There is a 'Catchment Based Approach' framework and catchment partnerships have proliferated across England – the Rivers Trust has reported that this approach has notably improved participation.[572] However, there are still some issues. The Rivers Trust found that the catchment groups do not have the tools to truly function as resource governance regimes. To do this, catchment partnerships need more funding and a stronger mandate. The OEP's WFD report also notes that 'we and other stakeholders have found the RBMPs complex and hard to navigate. This is a barrier to public participation and could be making it more difficult for public bodies to meet their duty to 'have regard to' the RBMPs' [OEP report, p 12]. Furthermore, in the end, decisions are made by the Environment Agency – the consultees only provide information and advice.

15-Have the rights and freedoms of water defenders been violated in the course of such mobilizations, and if so, how have public authorities and/or the courts dealt with the issue?

Not as far as we are aware.

[567] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/790568/River_basin_planning_2021-_working_together_consultation_response_report_for_England.pdf

[568] W Howarth, 'Aspirations and Realities under the Water Framework Directive: Proceduralisation, Participation and Practicalities' (2009) 21 Journal of Environmental Law 391.

[569] N Watson, 'Adaptation through Collaboration: Evaluating the Emergence of Institutional Arrangements for Catchment Management and Governance in England' (2015) 3 International Journal of Water Governance 55.

[570] O Fritsch, 'Integrated and Adaptive Water Resources Management: Exploring Public Participation in the UK' (2017) 17 Regional Environmental Change 1933.

[571] https://www.gov.uk/government/publications/river-basin-management-plans-updated-2022-record-of-consultation-and-engagement/river-basin-management-plans-updated-2022-record-of-consultation-and-engagement

[572] Rivers Trust, State of Our Rivers (2024) - https://theriverstrust.org/rivers-report-2024.