



When the exception becomes the rule

How governments avoid taking action to achieve EU water law objectives

In the year 2000, the EU governments committed to bring all EU waters to good status by 2015. Unfortunately, today still more than half of EU rivers, lakes and groundwater are under exemption from the environmental objectives. The thirsty and toxic coal industry should be among the first sectors to comply with the strict rules to protect Europe's waters, but often is assigned exemptions instead.

Under the Water Framework Directive (WFD), the principal deadline for EU governments to bring Europe's water bodies to good status was 2015, but there are certain provisions allowing Member States to apply exemptions from the environmental objectives, for example by extending a deadline. Exemptions should only be applied in a limited number of well justified cases, but more than 20 years after the adoption of the Water Framework Directive, it is clear that not only the state of Europe's waters is far from good, but also that exemptions from the WFD environmental objectives have been used extensively instead of exceptionally. In coal regions, many of the exemptions are linked to coal mining and combustion.

CURRENT STATUS

The Water Framework Directive is implemented via 6-year management cycles. After two cycles of River Basin Management Plans, two thirds of Europe's surface water bodies and one quarter of groundwater bodies are still not in good status.

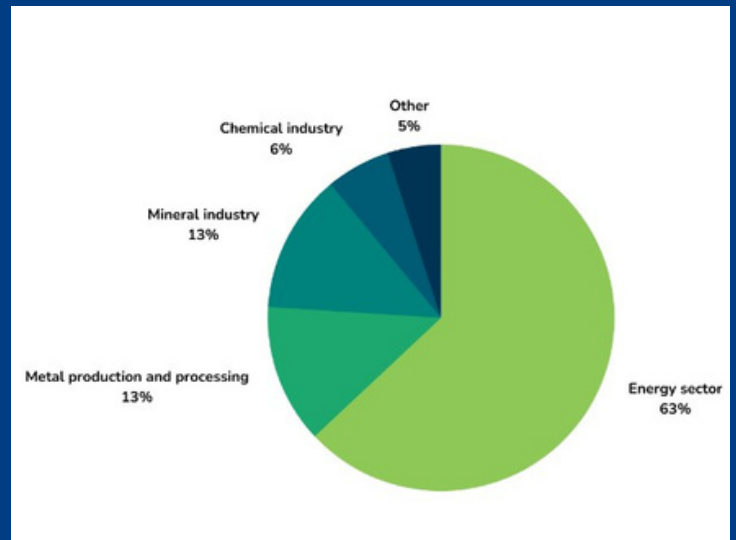
After 2027 a deviation from the objective to bring all of Europe's rivers, lakes, ground and coastal waters to good health will be even more limited. Instead of making full effort to achieve this legally binding target, authorities have placed more than half of Europe's water bodies under exemptions from the environmental objectives, by, for example, extending the deadline or by setting lower environmental objectives.

The Commission has recommended that Member States reduce the reliance on exemptions and improve transparency in relation to the justifications used.



FACTS

- EU governments are largely overdue to bring surface and groundwater to good status
- Two thirds of Europe's surface water bodies and one quarter of groundwater bodies are not in good status
- More than half of water bodies in the EU are under exemption from the environmental objectives of EU water law
- Atmospheric deposition of mercury is the main reason 30% of EU surface water are not in good chemical status
- Thermal combustion plants are responsible for more than 60% of mercury emissions to air in the EU, the largest part coming from coal



CASE STUDIES

Mercury pollution of surface water

In the German part of the Elbe river basin, none of the surface water bodies is expected to achieve good chemical status by 2027, with mercury as main cause for failure. Extended deadline (Article 4(4) exemption) has therefore been applied. However, in the River Basin Management Plan the mercury pollution is not linked to coal combustion, but is described as "ubiquitous", despite the fact that three of the EU's top-10 mercury-emitting facilities are located in the river basin.

The Water Framework Directive requires that measures have been taken before a timeline extension is applied, but Germany does not yet require coal combustion plants to adhere to the strictest range of technically feasible mercury-control techniques. Even if the 2030 coal exit is achieved, the deadline to phase out mercury emissions will be surpassed by at least two years.






Groundwaters in poor status

In Germany and Poland, all lignite mines are impacting groundwater bodies to such an extent that lower environmental objectives (Article 4(5) exemption) have been applied. It is argued that lignite mining is an overriding public interest and that it's not technically feasible to bring the groundwater to good status.

A condition for applying lower environmental objectives is that human and societal needs cannot be achieved by other means, but this reasoning doesn't hold for coal mining as renewable energy sources are a better environmental option and does not come at a disproportionate cost.

Recommendations

Member States should make full use of the measures that the Water Framework Directive and other EU rules provide to bring EU waters to good status as soon as possible and by 2027 at the latest. This includes for coal sector:

-  Do not approve new coal projects and close existing mines and plants
-  Require large combustion plants to abate mercury emissions as much as technically possible and take further measures if WFD objectives are at risk
-  Establish clear measures to reduce all priority substances and phase out emissions of mercury and other priority hazardous substances
-  Do proper cost benefit analysis before applying exemptions and include the long-term costs related to climate change in the decision-making
-  Do proper economic analysis and put in place economic instruments for cost recovery for the coal sector, including mine drainage fees and adequate fees for cooling water abstraction that account for the external costs of operation. Earmark the revenues for restoration measures

Read our full briefing [here](#)



With the support of
the LIFE Programme of
the European Union

ClientEarth[®]

Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or CINEA. Neither the European Union nor CINEA can be held responsible for them

Nothing in this document constitutes legal advice. The contents of this document are for general information purposes only. Specialist legal advice should be taken in relation to specific circumstances. ClientEarth endeavours to ensure that the information it provides is correct, but no warranty, express or implied, is given as to its accuracy