

BRIEFING

**THE WATER FRAMEWORK DIRECTIVE
THE FORGOTTEN TOOL TO FIX
EUROPE'S WATER CRISIS**

State of play on implementation and enforcement
of EU's main water law

**The Water Framework Directive, the forgotten tool to fix Europe's water crisis:
State of play on implementation and enforcement of EU's main water law**

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Publication date: 23 October 2023



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.

Summary

*Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.*¹

The Water Framework Directive (WFD) establishes a framework for the protection of waters throughout the European Union (EU) with the overarching objective to achieve good status of Europe's waters by 2015.

Almost 8 years after this deadline and more than 20 years after the adoption of the Directive, Member States are far from delivering on their obligations. More than half of Europe's waters are not in good status and placed under different kinds of exemptions from this objective, such as deadline extensions.

Beyond 2027, there will be very limited scope to justify failure to achieve good status. For this reason, Member States must put in place measures *now* to achieve the legally binding objective of good status by this deadline. However, most Member States are currently not set to achieve this.

Any legislation is only as good as its implementation. Commission President Ursula von der Leyen in her political guidelines for her mandate stated that she intends "to focus on tighter enforcement".² Yet, we are not seeing the needed action from our 'guardian of the treaties' to ensure environmental law is properly implemented. The Commission continues to tolerate non-compliance with the law and does not take adequate enforcement steps.

This briefing has been published alongside a complementary legal briefing authored by ClientEarth which can be found [here](#).

Key recommendations

Member States

- **Increase ambition by assessing, planning and implementing the necessary measures to reach good water status by 2027 at the latest;**
- **Take all necessary steps to comply with WFD's further objectives on time/without further delay;**
- **Improve cooperation between national authorities** to ensure permits are issued in line with water protection objectives;
- **Make available the necessary funding to support measures;**
- **Only apply exemptions exceptionally and with proper legal justification.**

European Commission

- **Step up enforcement** of all relevant environmental legislation to ensure WFD goals are achieved;
- Look beyond the formal delivery of RBMPs, and **start infringement procedures and/or emblematic cases on the necessary content of RBMPs and PoMs**
- **Develop a clear and transparent enforcement strategy** showing how to achieve the objectives by and leading up to 2027 in a linear way;
- **Update and develop (sectoral) policies that work towards achieving the goals of the WFD;**
- **Ensure that key provisions of the WFD are maintained in the ongoing update of priority substances and groundwater pollutants**, including the requirement to phase out priority hazardous substances.

¹ Recital (1.) WFD.

² See von der Leyen's political guidelines, p. 15:

<https://www.europarl.europa.eu/resources/library/media/20190716RES57231/20190716RES57231.pdf>

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1. Objectives and obligations of the WFD

1.1 Environmental objectives

At the heart of the WFD are the environmental objectives set out in Art. 4(1) WFD, all of which are legally binding.³

The ultimate goal of the WFD was to achieve **good status** of Europe's surface waters and groundwater by 2015.⁴ To be in 'good status' a water body must meet certain standards for the ecology, chemistry and quantity of water. Surface waters need to meet ecological and chemical standards and groundwater needs to meet quantitative and chemical standards. A lower ecological standard, which is called good ecological potential, applies to artificial or heavily modified surface water bodies. If any on those standards are not met, the water body is considered not to be in good status - the so called 'one out, all out' principle (see Figure 1).

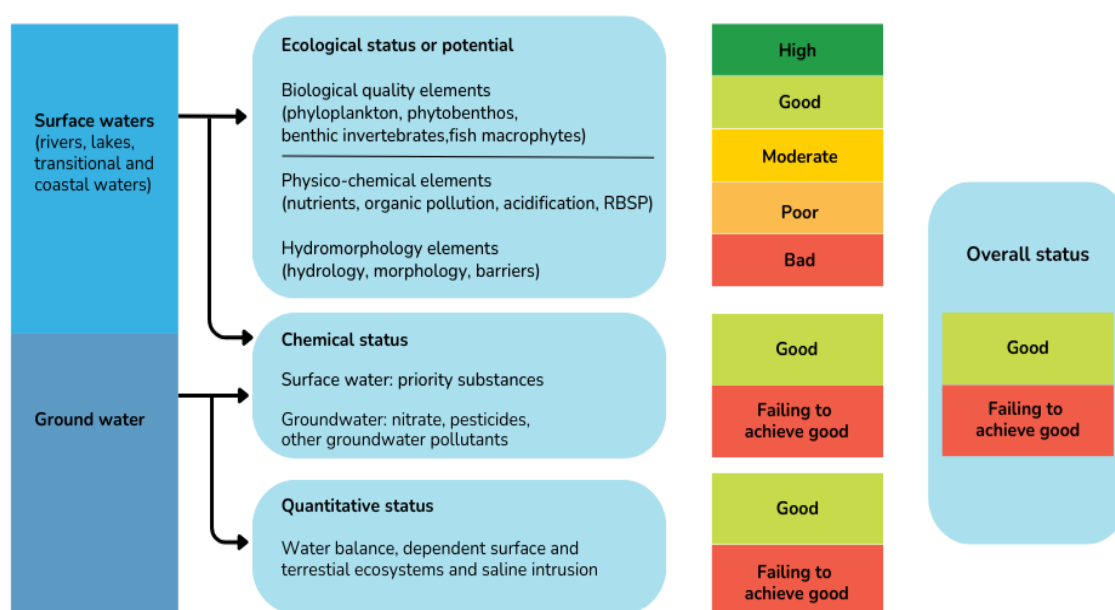


Figure 1: Assessment of “good status” of surface and groundwater under the WFD (adapted from EEA Report No 7/2018, European waters)

³ For a more detailed description see ClientEarth (2023), [Key deadlines under the Water Framework Directive](#), p. 3-8.

⁴ CJEU, Judgement of 28 May 2020, *IL and Others v Land Nordrhein-Westfalen*, C-535/18, EU:C:2020:39, para. 71; CJEU, Judgement of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland e.V. v Bundesrepublik Deutschland*, C-461/13, EU:C:2015:433, para. 37.

A second water body-related objective of the WFD is to **prevent any deterioration** in the status of water bodies.

In addition, the WFD also contains objectives which are related to dangerous sources of water pollution. For example, Member States must progressively **reduce emissions** of certain water pollutants listed in the WFD as “priority substances” and completely **phase-out** emissions of so-called “priority hazardous substances”.

1.2 Implementation and management cycles

To achieve the aforementioned objectives, the WFD has established a management mechanism⁵, based on so-called **river basin districts** (RBDs) which are composed of one or more natural river basins. For each RBD, Member States must establish at least one **programme of measures** (PoM) and one **river basin management plan** (RBMP). Whereas the RBMP first and foremost takes stock of the current status of the water bodies within the RBD, the PoM specifies the measures planned to be taken to achieve the WFD-objectives within it. Beyond water planning, WFD objectives must be respected in individual permitting processes for projects affecting the status of water bodies.⁶

RBMPs and PoMs must be reviewed and updated **every six years** “at the latest”. This leads to so-called **management cycles**.

For the first management cycle – which started in 2010 - measures had to be implemented by December 2012, at the latest, and in the following cycles within three years of their establishment in the PoM.

These different procedural timelines can be summarized as follows:

Management cycle/ Update	Period	Deadline for publication	Implementation deadline
1 st cycle	2010-2015	22 December 2009	22 December 2012
2 nd cycle/ 1 st update	2016-2021	22 December 2015	22 December 2018
3 rd cycle/ 2 nd update	2022-2027	22 December 2021	22 December 2024
4 th cycle/ 3 rd update	2028-2033	22 December 2027	22 December 2030
5 th cycle/ 4 th update	2034-2039	22 December 2033	22 December 2036
...	

Source: ClientEarth (2023), [Key deadlines under the Water Framework Directive](#)

⁵ For a more detailed description see ClientEarth (2023), [Key deadlines under the Water Framework Directive](#), p. 2-3.

⁶ CJEU in Judgement of 1 July 2015, Bund für Umwelt und Naturschutz Deutschland e.V. v Bundesrepublik Deutschland, C-461/13, EU:C:2015:433, para. 51.

1.3 Deadlines to achieve the WFD's objectives

The WFD does not contain one single deadline which determines when its objectives shall be achieved. This rather depends on the environmental objective in question:⁷

- **Objective to achieve good status of water bodies**

In principle, the WFD required Member States to achieve good status of the water bodies within their territory by 2015.

Subject to further conditions, such as a proper justification in the respective RBMP, the WFD allows this deadline to be extended in three narrowly defined cases: where timely achievement is not possible due to reasons of technical feasibility, or due to the natural conditions in place, or where it would be disproportionately expensive. Under the deadline extension grounds of disproportionate costs and technical feasibility, measures could be stretched over a maximum of two further management cycles after 2015, as long as they were taken in time to achieve good status by the extended deadline, 2027 the latest. In contrast, the deadline extension ground of "natural conditions" can also be applied after 2027. However, natural conditions cannot justify postponing the measures which are necessary to achieve good status but can only justify that they will take longer to take effect.

In sum, Member States must – with their PoMs – plan and implement all **measures as early as necessary** to ensure that good status is achieved by the end of the original 2015 or legally extended deadline. Therefore, the approach taken in Germany, for example, to postpone the necessary measures beyond 2027 due to a lack of technical, human, legal and financial resources has no legal basis in the WFD.

- **Objective to prevent deterioration in the status of water bodies**

The objectives to **prevent deterioration** had to be complied with at the latest when the deadline for the transposition of the WFD ended (22 December 2003). Therefore, Member States must always take the necessary measures to prevent any deterioration in the status of a body of water. A deviation may only be justified under very narrow conditions.

- **Objectives to reduce emissions of priority substances and phase out priority hazardous substances**

Member States are obliged to specify measures to progressively reduce emissions of priority substances and – at least for their principal sources – phase out priority hazardous substances. While there is no specific timetable for reducing pollution from all priority substances, a deadline for phasing out priority *hazardous* substances can be derived from Art. 16(6) WFD. Even according to the more lenient view of legal experts the deadline for this phase-out is 18.12.2028.

The table below summarises the most important objectives established under the WFD and their respective deadlines:

Objective	Deadline
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⁷ For a more detailed description see ClientEarth (2023), [Key deadlines under the Water Framework Directive](#), p. 3-8.

Prevent deterioration (Art. 4(1)(a)(i) and (b)(i) WFD)	From 22 December 2003 on (at the latest)
Good status	22 December 2015
<ul style="list-style-type: none"> In case of technical infeasibility or disproportionate costs 	22 December 2027
<ul style="list-style-type: none"> Natural conditions prevent timely achievement 	As early as natural conditions allow achievement
Progressive reduction of priority substances	No clear deadline
Phasing-out of priority hazardous substances	18 December 2028 at the latest

Source: ClientEarth (2023), [Key deadlines under the Water Framework Directive](#)

1.4 Further exemptions to deviate from and lower the WFD's objectives

Under certain conditions, Member states may deviate from some of the WFD's environmental objectives. For example, under Art. 4(5), they may aim to achieve less stringent objectives for a certain water body.

However, it is very important to make two general remarks about the use of these exemptions⁸:

Firstly, they do not apply to all objectives under Art. 4 (1) WFD. For example, there is no legal way to derogate from the phase-out requirement of 'priority hazardous substances', such as mercury.⁹

Secondly, it follows from the overarching goal of the WFD – good status by 2015 – and the strict, cumulative conditions under which exemptions are placed that their use should not be the rule, but exceptional.¹⁰ It is settled EU-case law that exceptions must be interpreted strictly so that general rules are not negated.¹¹ Consequently, the exemptions in the WFD must be applied restrictively.

1.5. Member States' water management obligations to achieve good status

In summary, it can be concluded from the provisions of the WFD outlined so far that Member States must organise their water planning and management as follows for each water body, which is not in good status¹²

⁸ Besides the possibility of deadline extensions under Art. 4(4), Art. 4(5), (6) and (7) WFD are considered to be exemptions under the WFD.

⁹ For a more detailed explanation see EEB/ClientEarth (2022), When the exception becomes the rule – Overuse of exemptions from reaching the objectives of the Water Framework Directive due to coal mining and combustion, p. 8-9.

¹⁰ This is also stated in European Commission and Directorate-General for the Environment (2009). Guidance document on exemptions to the environmental objectives. Guidance document No 20, p. 10. See also EEB/ClientEarth (2022) p. 8.

¹¹ See CJEU, Judgement of 26 February 2015, Wucher Helicopter GmbH/Euro-Aviation Versicherungs-AG v Fridolin Santer, C-6/14, EU:C:2015:122, para. 24.

¹² See ClientEarth (2023), [Key deadlines under the Water Framework Directive](#), p. 6.

1. They must identify all measures suitable to achieve good status, quantify and estimate their effect over time and their costs, to be able to determine by what time and with what financial and technical effort it will be possible to achieve good status.
2. Only on this basis, they may consider extending the deadline to achieve good status. A waiver of effective measures due to disproportionate costs and technical feasibility is only permissible with appropriate justification in the RBMP and for the last time in the current management cycle.
3. Other than that, Member States can justify a failure to achieve good status exclusively under the very narrow conditions of Art. 4(5), (6) or (7) WFD, which may also only be applied exceptionally and require a thorough justification in the RBMP.

2. Current status (of implementation)

Member States: Implementation status

More than 20 years after agreeing on the EU's main water law, the WFD, Member States are not on track to deliver on their legal duty to bring Europe's waters to good status. The 2019 fitness check of the EU water legislation - the WFD, the Environmental Quality Standards Directive (2008/105/EC), the Groundwater Directive (2006/118/EC) and the Floods Directive (2007/60/EC) - noted that although the WFD "has been successful in setting up a governance framework for integrated water management for the more than 110,000 water bodies in the EU, slowing down the deterioration of water status and reducing (mainly point source) chemical pollution", the implementation of the Directive has been slow.¹³

Implementation status after 2nd cycle RBMPs

Surface water

- 44% in good ecological status
- 31% in good chemical status

Groundwater

- 75% in good chemical status
- 90% in good quantitative status

Source: EEA Report No 09/2021

Despite some progress, after the 2nd management cycle, at least two thirds of Europe's surface water bodies and one quarter of groundwater bodies were still not in good status.¹⁴ Compared to the 1st (2009-2015) cycle, there was **only improvement to a limited number of water bodies.**¹⁵

In some countries, like Austria, Germany, Luxembourg, Sweden, Slovenia and Belgium, zero or close to no surface water bodies were

reported to be in good chemical status.¹⁶ However, caution should be taken when comparing between Member States due to differences in monitoring and reporting methods.

While the number for groundwater bodies in good chemical status is higher than for surface water, there are large regional differences. For example, 80% of groundwater area in Luxembourg, close to 50% in Czech Republic and 27% in Belgium in poor status due to contamination of pesticides and biocides.¹⁷

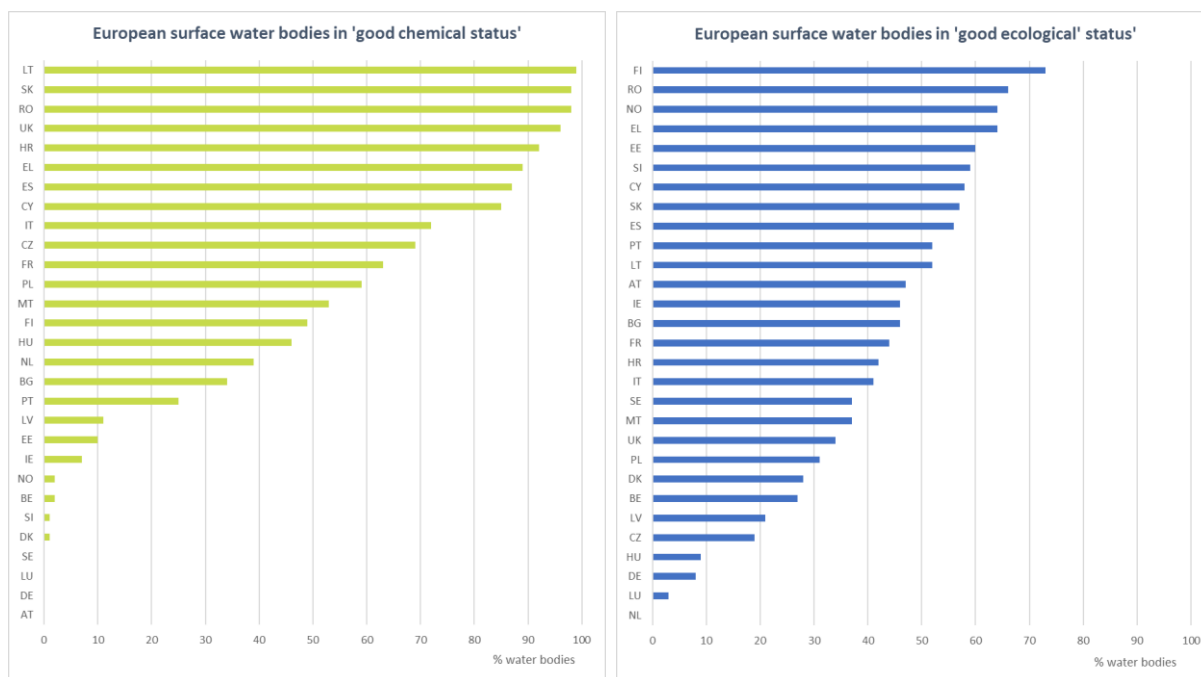
¹³ European Commission Directorate-General for Environment (2019). [Evaluation of EU water legislation concludes that it is broadly fit for purpose but implementation needs to speed up](#). News Article.

¹⁴ EEA (2021). Report No 09/2021, Drivers of and pressures arising from selected key water management challenges: A European overview. (EEA 2021)

¹⁵ European Commission (2019). Report from the Commission to the European parliament and the Council on the implementation of the Water Framework Directive (2000/60/EC) and the Floods Directive (2007/60/EC): Second River Basin Management Plans: First Flood Risk Management Plans. COM(2019) 95 final.

¹⁶ EEA, Dashboard (tableau): [Chemical status of surface water bodies](#)

¹⁷ EEA, [Pesticides in European rivers, lakes and groundwaters – Data assessment](#) (EEA, 2020)



Number of surface water bodies in good ecological status (right) and good chemical status (left) after 2nd RBMP (Source: EEA)

Only 44% of European surface waters are in good ecological status, but in some Member States, like the Netherlands, Luxemburg, Germany and Hungary, that number is less than 10%.¹⁸ In practice, that means that many aquatic animals and plants are in danger of disappearing from streams, lakes and rivers.¹⁹

A main pressure on ecological status is structural changes that affect the flow, quantity, and continuity, such as dams, canalisation of rivers as well as over-use of water. More than 7 600 (7%) of Europe's surface water bodies are affected by significant water abstraction pressures and 16% of the area of groundwater bodies is affected by over-abstraction.²⁰ Generally, water scarcity is more common in southern Europe, where approximately 30 % of its population living in areas with permanent water stress.²¹

An assessment of selected third draft RBMPs did not give a promising picture: out of 21 RBMPs analysed, only two (both in Finland) were set to achieve the required status by 2027.²² In Belgian Flanders, the objective for the 2022-2027 RBMP is to increase the number of the total 195 surface water bodies from currently 1 to 15 being in good condition by 2027.²³

Member States should have finalised their latest RBMP updates by December 2021 and reported to the Commission by March 2022. By end of 2022, half of them had still not reported. This has led the

¹⁸ EEA Dashboard (tableau): [Ecological status of surface water bodies](#)

¹⁹ Natuurmonumenten, [Natuurmonumenten waarschuwt: watercrisis lijkt onvermijdelijk](#)

²⁰ European Commission (2019). Commission Staff Working Document: European Overview - River Basin Management Plans. SWD(2019) 30 final

²¹ EEA Water scarcity conditions in Europe (Water exploitation index plus) - 8th EAP

²² Living Rivers Europe (2021), [The final sprint for Europe's rivers: An NGO analysis of 2022-2027 draft River Basin Management Plans](#)

²³ Coördinatiecommissie Integraal Waterbeleid, [Stroomgebiedbeheerplannen](#)

Commission to open infringement cases towards half of Member States, sending a letter of formal notice to 16 Member States regarding their water plans.²⁴ However, in late July 2023, Bulgaria and Greece have still not finished the public consultations of their RBMP updates.²⁵

How the Commission is dealing with the WFD deadlines

Ensuring that RBMPs are delivered (on time) is an important step – but this is not enough to ‘guard the treaties’, which implies ensuring that EU environmental law is complied with. Despite ongoing failures to achieve good status and the continuous deterioration of water bodies which flies in the face of the Directive’s objectives, the Commission has taken limited enforcement action against Member States. Most of its infringement steps relating to the WFD appear to have focused on inadequate transposition or formal failures, such as delayed updates of RBMPs, rather than the insufficiency of the measures planned and implemented by Member States.²⁶

Unfortunately, poor environmental law enforcement by the Commission has become somewhat of a standard practice (due to lacking political prioritisation and relatedly insufficient staff and resources for enforcement),²⁷ but it appears that despite the WFD’s clear deadlines coupled with clear data on non-compliance, the Commission has been particularly slow or unwilling to enforce the WFD.

For example, in 2017, the German NGOs BUND and NABU filed a complaint to the Commission on different provisions of the WFD.²⁸ The complaint, amongst others, showed that the measures foreseen in the PoMs of several German regions were not sufficient to achieve the overall objective of a good water status. While the Commission opened at least one pilot procedure on the WFD in late 2020²⁹ (the pilot procedures are not public), by autumn 2023 there have still not been concrete steps in response to the complaint. This means 6 years of inaction, instead of timely action to facilitate that the 2027 deadline is met.

As explained above, there is dispute amongst legal scholars around the deadline for the obligation to phase-out priority hazardous substances. Instead of clarifying the deadline for phasing-out priority hazardous substances, the Commission chose to propose to delete the relevant article of the WFD as part of the ongoing update of surface water and groundwater pollutants.³⁰ However, a clear deadline is essential to ensure that Member States take the necessary steps to comply with this objective of the WFD.

²⁴ European Commission, February Infringement package: https://ec.europa.eu/commission/presscorner/detail/EN/inf_23_525

²⁵ European Commission, [Water Framework Directive: State of play of 3rd RBMP adoption in EU 27](#) (data retrieved 19 Oct 2023)

²⁶ See for example September infringement package: [September infringement package: key decisions \(europa.eu\)](#) and overview of infringement procedures under Cf. https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/

²⁷ For more details on the poor state of environmental law enforcement, see: EEB/BirdLife ‘Stepping up enforcement’ 2022: <https://eeb.org/library/stepping-up-enforcement/>. (EEB/BirdLife 2022)

²⁸ BUND/NABU complaint on the WFD (in German): <https://www.nabu.de/imperia/md/content/nabude/lebendige/fluessse/170810-nabu-eu-beschwerde-wrml.pdf>

²⁹ See reference to ‘Pilotverfahren’ here: https://www.bundesrat.de/SharedDocs/drucksachen/2021/0001-0100/27-1-21.pdf?__blob=publicationFile&v=1

³⁰ European Commission, (2022), [Proposal for a Directive amending the Water Framework Directive, the Groundwater Directive and the Environmental Quality Standards Directive](#)

3. Consequences of poor implementation

Clean and sufficient freshwater is essential for both nature and our society. Freshwater systems are home to a wide range of species and represent our main source of drinking water but are under pressure from anthropogenic impact. The decades since 1970 have seen an 84% collapse in freshwater species populations due to habitat loss and pollution.³¹ Scientists and conservation organisations list restoration of rivers, pollution reduction and protection of wetland habitats among key priorities to halt **freshwater biodiversity loss**.³²

Although the **polluter pays principle**³³ is enshrined in the EU treaties, **the cost of pollution** is often still born by the environment and the public.³⁴ The cost of water pollution in the EU is estimated to be €22 billion a year, but this only considers the costs related to excess nutrients (nitrogen and phosphorus).³⁵ If the cost related to chemical pollution were added, the numbers would be much higher.

For example, the French environmental ministry has estimated that the cost to clean up one kilogram of pesticides from a drinking water source to be between €60 000 and €200 000.³⁶ At the same time, 22 % of Europe's surface water bodies and 28 % of the groundwater area are significantly affected by diffuse pollution from agriculture, both by nutrients and pesticides.³⁷

Emergency recovery plan according to scientists and policy experts

1. Allow rivers to flow more naturally
2. Reduce pollution
3. Protect critical wetlands habitats
4. End overfishing and unsustainable sand mining
5. Control invasive species
6. Safeguard and restore freshwater connectivity

Source: Tickner et al., BioScience 70:4, (2020), doi.org/10.1093/biosci/biaa002

Climate change is felt via the water cycle, with more intense rain and drought events. But years of water mismanagement, including illegal, excessive and/or uncontrolled water abstraction for agriculture, has left Europe ill-prepared as freshwater ecosystems and the landscape have lost their capacity to naturally store and regulate water.³⁸ Although advances have been made in irrigation

³¹ WWF, (2020), [84% collapse in Freshwater species populations since 1970](#)

³² Tickner et al., (2020) Bending the Curve of Global Freshwater Biodiversity Loss: An Emergency Recovery Plan, BioScience, Vol. 70:4, pp. 330–342, <https://doi.org/10.1093/biosci/biaa002>

³³ Art. 191(2) of the Treaty of the Functioning of the European Union.

³⁴ European Court of Auditors (2021). Special Report 12/2021: The Polluter Pays Principle: Inconsistent application across EU environmental policies and actions, <https://www.eca.europa.eu/en/publications?did=58811>

³⁵ European Commission (2021), Green taxation and other economic instruments

³⁶ Ministry of Environment, France Plan micropolluants 2016 - 2021 pour préserver la qualité des eaux et la biodiversité, https://www.ecologie.gouv.fr/sites/default/files/Plan_micropolluants_def_light.pdf

³⁷ EEA 2021 [Pollution and barriers are key problems for Europe's waters](#). News,

³⁸ WWF, 2023, [Water for Nature, Water for life: Adapting to Europe's water scarcity challenge](#)

efficiency, they have not resulted in environmental protection, and any efficiency gains have been cancelled out by new irrigation systems. In fact, southern Europe has seen a net increase in water use by the agricultural sector between 2010 and 2015.³⁹

Water scarcity and water pollution are two sides of the same coin. In the summer of 2023, 161 villages in Spain were left without potable water as the sources were too contaminated with pesticides.⁴⁰ In Wallonia, 16% of the water abstracted for human consumption is not fit to drink, again due to pesticide contamination.⁴¹ This leaves three options: dilute it with freshwater down to legal drinking water standards, treat it or abandon the well. None of these options are a good or cost-efficient one, in particular in light of the ongoing climate crisis that is putting even more pressures on freshwater bodies.

Beyond the clear environmental and health need to comply with environmental law, ensuring the compliance with democratically established laws is also a fundamental pillar of the the rule of law in democratic states. By tolerating continuous non-compliance with the WFD, the Commission sends the signal that compliance with environmental law is a 'nice to have' rather than the baseline of a union that is built on the rule of law and democratic values. It further undermines people's trust in the EU and its ability to deliver on its promises.

Timely and direct action on non-compliance also help to address problems from the outset instead of allowing them to exacerbate. If insufficient action to reach the targets or the overuse of exemptions had already been the subject of infringement proceedings ahead of the 2015 deadline, it would have been cheaper to course-correct, easier to spread out the necessary steps over time with more certainty for affected parties.

Timely infringement action, fines, and the costs of handling the infringement procedures should work as an incentive to ensure prompt and proper action. Otherwise, people are left with poor water quality *and* have to pay for measures that are more expensive due to their government's delays and failure to take appropriate action. Taxpayers should be able to expect their governments to spend their money effectively on measures to improve water quality, making polluters pay instead of leaving it to the public to mop up their government's failure to act.

³⁹ EEA, Water abstraction by sector, EU, https://www.eea.europa.eu/data-and-maps/daviz/water-abstraction-by-sector-eu-2#tab-chart_1

⁴⁰ El País, 5 August 2023, [El exceso de plaguicidas deja sin agua para beber a 161 pueblos de Salamanca y Zamora: "Nadie informa de nada"](#).

⁴¹ Canopea, 2022, [Questions \(im\)pertinentes sur les pesticides dans l'eau wallonne](#)

4. Why such slow progress?

The fitness check concluded that the water directives are largely fit for purpose and that the reason that the WFD objectives have not yet been fully reached is **not due to a deficiency in the legislation**, but “largely due to **insufficient funding, insufficient implementation [...] and insufficient integration of environmental objectives in sectoral policies**”.⁴²

From a legal perspective, lack of money is in most cases not an accepted excuse not to comply with legal obligations. Although the WFD framework allows exemptions based on ‘disproportionate cost’, corresponding guidance from the Commission states that “[W]hen **affordability** arguments are used to extend the deadline, the possibility to use relevant alternative financing mechanisms should be fully considered.”⁴³ Yet, lack of finances was cited in the second RBMPs as one of the most common hurdles to the implementation of the PoMs.⁴⁴ At the same time, Member States have generally not fully used the economic instruments that the WFD offers, such as proper implementation of Art. 9 on cost recovery, although the adoption of the WFD entails obligations for Member States to make available the necessary means for its implementation.⁴⁵

Instead of action, there has been a **continuous reliance on exemptions**, such as time extensions, from achieving the objectives. Although the legal framework allows the use of exemptions under certain conditions, their extensive use beyond the legal prerequisites can result in a breach of law.⁴⁶ Yet, Member States have placed more than half of Europe’s water bodies under different kinds of exemptions.⁴⁷ In its assessment of the 2nd RBMPs, the Commission recommended that Member States should reduce the reliance on exemptions and improve transparency in relation to the justifications used.⁴⁸

Member States also continue to make laws that risk leading to breaches of the WFD for the benefit of business interests. For example, the Water Law in **Croatia** in some cases still allows projects for exploitation of gravel and sand by extraction from renewable deposits in watercourses, and other surface water bodies are excluded from requirements for assessing the environmental impacts of such exploitation, including on surface waters.⁴⁹

In 2020, **Sweden** started a legal process to balance the need for improved ecological status to the need of hydropower by a systemic update of environmental permits for hydropower plants. However, a political goal limiting energy production losses to 2-3 % risks to influence the process. This goal could lead to a general application of WFD exemptions for hydropower, leading to breaches of the WFD requirements for a case-by-case justification of exemptions and all practical steps being taken

⁴² European Commission (2019). Commission Staff Working Document: Executive summary of the Fitness Check of the Water Framework Directive, Groundwater Directive, Environmental Quality Standards Directive and Floods Directive. SWD(2019) 440 final.

⁴³ European Commission and Directorate-General for the Environment (2009). Guidance document on exemptions to the environmental objectives. Guidance document No 20.

⁴⁴ European Commission, 2019, SWD(2019) 30 final, p. 182

⁴⁵ Reese (2018). Die Wasserrahmenrichtlinie in der Umsetzungsphase - Fortbestehende Umsetzungsdefizite und rechtlicher Handlungsbedarf zur ökologischen Gewässerentwicklung, Neue Zeitschrift für Verwaltungsrecht, 1592, p. 1596.

⁴⁶ EEB/ClientEarth 2022

⁴⁷ European Commission (2019). Fitness Check of the Water Framework Directive, Groundwater Directive, Environmental Quality Standards Directive and Floods Directive, p. 50.

⁴⁸ European Commission (2019). COM/2019/95 final

⁴⁹ Zakon o vodama (2019). Official Gazette, 66/19, https://narodne-novine.nn.hr/clanci/sluzbeni/2019_07_66_1285.html

to mitigate the adverse impacts of the project on the water.⁵⁰ The process has been currently put on hold by the government.

EEA highlights to meet EU water management challenges

1. Improve coherence between the objectives and management responses of relevant EU directives and policies;
2. Enhance the use of multi-benefit measures, such as water retention measures, nature-based solutions and land use change measures;
3. Water-using sectors (such as agriculture, energy and mining) should adopt management practices that keep ecosystems healthy and resilient;

Source: EEA Report No 09/2021

While a lot more ambition could be wished for from governments, other EU instruments are sometimes steering decisions in the wrong direction. The **need for improved coherence** has been lifted in the WFD fitness check, by the EEA⁵¹ as well as by the European Court of Auditors.

For example, the EU's largest expenditure, the Common Agricultural Policy (CAP), is skewed heavily towards intensive farming, encouraging unsustainable water use which not only counters the aims of the WFD, but it also traps farmers in a vicious cycle of unsustainable overexploitation of water sources. A 2021 European Court of Auditors report concluded that agricultural policies are not consistently aligned with the WFD and recommended that Member States improve the justification of exemptions linked to agriculture.⁵² It is yet to be seen how this plays out in the updated CAP.

Another example is that the EU has set a goal (in the Biodiversity Strategy, the Farm to Fork Strategy and the Zero Pollution Action Plan) to cut nutrient losses in half by 2030. Modelling by the Commission's own science and knowledge service, the Joint Research Centre, shows that measures under existing legislation and policies, even if fully implemented, will not be sufficient to reach this goal, but larger fertiliser cuts than the 20% foreseen in the Commission strategies are needed to reach sustainable nutrient flows.⁵³ The Commission has quietly delayed its announced integrated nutrient Action Plan that should set the path for how the Union should achieve the objective to cut nutrient losses. Instead, it has published a Communication on ensuring availability and affordability of fertilisers which mainly lists support to farmers and fertiliser producers to maintain business-as-usual. Following that, the EU saw a 50% increase in urea (a nitrogen-based fertiliser) imports in 2023 compared to the year before and doubled compared to 2020-2021.⁵⁴

Scientists have sounded the alarm that recovery of freshwater biodiversity has come to a halt in the past decade and call for additional mitigation measures to phase new and persistent pressures,

⁵⁰ See Art. 4(7) WFD; WSP Advisory (2022). Legal study of the abusive use of exemptions to the Water Framework Directive in Sweden, <https://www.wfse.cdn.triggerfish.cloud/uploads/2022/06/report-on-abusive-use-of-wfd-exemption-wsp-2022.pdf>

⁵¹ EEA Report No 09/2021

⁵² European Court of Auditors, (2021), [Special Report 20/2021: Sustainable water use in agriculture: CAP funds more likely to promote greater rather than more efficient water use](#)

⁵³ Joint Research Centre, (2023), Knowledge for Integrated Nutrient Management Action Plan (INMAP)

⁵⁴ Politico, October 6, 2023, PRO Newsletter: Agriculture and Food <https://pro.politico.eu/news/169689>

including emerging pollutants, climate change and invasive species.⁵⁵ Currently, chemical status under the WFD is only assessed against a small fraction of environmental contaminants meaning that the effect of harmful substances, including the combined effects of chemical mixtures, on aquatic life can go overlooked. The ongoing – several years overdue – update of surface water and groundwater pollutants, should rectify this to some extent. But for substances like **PFAS**, where the substances are both highly mobile and hard to break down, there is limited action that Member States can take within the PoMs. A ban of the substances is needed. Delaying this ban, and in the meanwhile allowing more PFAS to be put to the market is in itself working against the goals of the WFD.

Lacking political will and oversight for a real enforcement agenda appear to be the reasons behind the slow action on enforcement by the Commission. As a result, there is insufficient staff capacity for enforcement, leading to delays in the process, and an overall lack of transparency that could improve accountability. To overcome this, a broad governance reform that prioritises implementation, compliance and enforcement, a revised enforcement strategy and supporting legislation are needed.⁵⁶

⁵⁵ Haase, P., Bowler, D.E., Baker, N.J. et al. The recovery of European freshwater biodiversity has come to a halt. *Nature* 620, 582–588 (2023). <https://doi.org/10.1038/s41586-023-06400-1>

⁵⁶ For an analysis of the problems of the current enforcement approach and recommendations on how to improve it, see: EEB/BirdLife 2022

5. Conclusion

Sufficient and clean water is crucial for both nature and our society, but this is not a given in Europe today. Water is polluted, there is often insufficient water to maintain healthy ecosystems and we are ill-prepared for climate change as landscapes have been deprived of their ability to retain water.

The EU has a water law that mandated that all European waters should be in “good status” by 2015. No Member State has achieved this and instead twice over requested postponements or lowered the environmental objectives, often without convincing legal justification. Yet, this widespread and ongoing breach of law has passed largely without retaliation from the European Commission, which should act as ‘a Guardian of the Treaties’ and ensure that EU law is followed.

2027 is a crucial deadline for EU Member States to achieve the legally binding target of good status and to reverse the trend of freshwater biodiversity loss, water pollution and dried up aquatic and terrestrial habitats.

It is essential to step up the ambition to tackle the pressures on freshwater ecosystems by putting in place policies and measures that protect water quality, retain water in the landscape and aquatic ecosystems, and put to a halt excessive water abstraction.

For the European Commission it is necessary to stop looking through the fingers at rule of law breaches and start procedures against the many Member States that are not following agreed-on rules.

6. Recommendations

Member States

- **Increase ambition by assessing, planning and implementing the necessary measures to reach good water status by 2027 at the latest:** as a first step, implement, without delay, the country-specific recommendations given by the Commission after each management cycle;
- Take all necessary steps to **comply with the WFD's** further objectives, such as the phase-out of priority hazardous substances and the obligation of avoid further deterioration in the status of water bodies, **on time or without further delay;**
- **Improve cooperation between national authorities** to ensure permits, including for emissions and abstractions, are issued in line with water protection objectives;
- **Make available the necessary funding to support measures,** by making, among others, full use of the economic instruments in the WFD and implementing the polluter pays principle;
- **Only apply exemptions exceptionally and with proper legal justification.** Pay less attention to which exemptions can be applied post-2027 (or other possible excuses that mask lack of action), and instead commit to deliver concrete actions and measures to achieve good status by 2027. Such excuses are often not in line with the prerequisites of the WFD, but another breach of law.

European Commission

- **Step up enforcement action** of all relevant environmental legislation to ensure the WFD goals are achieved as soon as possible and by 2027 at the latest;
- Look beyond (ongoing infringements) on the formal delivery of RBMPs, and **start infringement procedures and/or emblematic cases on the necessary content of RBMPs and PoMs**
- **Develop a clear and transparent enforcement strategy** showing how to achieve the objectives by and leading up to 2027 in a linear way;
- **Update and develop (sectoral) policies that work towards achieving the goals of the WFD,** including a phase-out of PFAS;
- **Ensure that key provisions of the WFD are maintained in the ongoing update of priority substances and groundwater pollutants,** including the requirement to phase out priority hazardous substances.