



The EU Water Framework Directive: A multi-dimensional analysis of implementation and domestic impact

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ABSTRACT

This paper tries to answer two questions related to the implementation of one of Europe's most influential EU-directives, the Water Framework Directive. First, it describes how three Member States, Denmark, the Netherlands and France, actually struggle and cope with this ambitious Directive. Second, it discusses existing theories of EU implementation and questions whether they are able to deal with the overwhelming diversity in national responses to this open-ended and flexible 'new generation' EU-directive. Denmark, the Netherlands and France were selected because they represent a fair degree of diversity. Denmark started out the implementation process with high ambitions and a relatively formal approach, whereas the Netherlands from the outset chose to follow a more pragmatic course. France is an interesting case because this country already had a mature system of river basin management in place before the WFD came into force. Compared to existing implementation theories, the paper offers a more differentiated way of describing and structuring the implementation processes that contemporary EU-directives are producing in a world coloured by multi-actor, multi-level and multi-sector governance.

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Introduction

The Water Framework Directive (WFD) (EU, 2000) is one of the most ambitious and encompassing pieces of environmental legislation in the European Union (EU). It requires the Member States to rethink their entire domestic water policies, regarding qualitative as well as quantitative aspects and covering substantive policy goals as well as the institutional set-up of the policy field. Particularly the ideational centrepiece of the Directive, the establishment of integrated water basin management, constitutes a considerable challenge to almost all Member States. At the same time, the WFD is one of the most outspoken examples of a new generation of EU environmental legislation. By formulating general, long-term goals and leaving many choices open to the Member States, it offers much more flexibility than previous directives which focused on the harmonisation of, for instance, emissions standards or product norms (cf. Knill and Lenschow, 2000; Jordan et al., 2003; Knill and Liefverink, 2007).

This raises two basic questions. The first, primarily political question is to what extent Member States actually manage to implement the Directive. The evidence collected so far (e.g.

Crabbé, 2008; Howarth, 2009; Liefverink et al., 2011; Meijerink and Wiering, 2009; Kaika and Page, 2003; Petersen et al., 2009; Steyaert and Ollivier, 2007; Uitenboogaart et al., 2009) suggests that Member States accommodate the ambitions and requirements of the WFD in very different ways and in different phases of the implementation process, e.g. high ambitions initially but flexible implementation in practice, or the other way round. This makes countries not only very difficult to compare, but also opens up the possibility that seemingly very different countries eventually reach more or less the same goals (cf. Lundqvist, 1980).

The second question is of a more academic kind: to what extent are existing theories of EU implementation able to deal with the overwhelming diversity in national responses to this open-ended and flexible 'new generation' directive. The widespread notion that the quality of compliance depends on the degree of 'fit', resp. 'misfit', between EU requirements and existing domestic policies and institutions (Duina, 1997; Knill and Lenschow, 1998, among others), for instance, may well be too static to capture the process of matching malleable EU requirements on the one hand and evolving domestic insights and institutional arrangements on the other.

This paper will reflect on both questions on the basis of empirical evidence of the ongoing process of implementation of the WFD in Denmark, the Netherlands and France, derived from a broader empirical study of WFD implementation in five Member States, including one regional case study in each Member State (Uitenboogaart et al., 2009). Denmark, the Netherlands and France

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were selected for this purpose because they represent to a fair degree the diversity just hinted at. Denmark started out the implementation process with high ambitions and a relatively formal approach, whereas the Netherlands from the outset chose to follow a more pragmatic course. France is an interesting case because this country already had a mature system of river basin management in place before the WFD came into force.

The empirical core of the paper (“Case studies”) is preceded by a brief overview of the WFD’s main characteristics and requirements (“The Water Framework Directive”) and a critical discussion of key theoretical approaches to EU implementation (“Analysing implementation”). The final section (“Conclusions”) will wrap up the argument.

The Water Framework Directive

The WFD provides a common framework for water management and protection in the European Union. The Directive applies to surface water, e.g. rivers, lakes, coastal waters and transition waters, as well as ground water. The WFD obliges Member States to set up policy plans for river basins and to write programmes of measures to improve the chemical and ecological status of surface waters and the quantitative and chemical status of ground waters (EU, 2000).

In the context of the WFD, Member States must follow specific requirements and procedures. Already by the end of 2003, a number of goals and principles had to be incorporated into national legislation, to be followed in a later stage by specific policy plans, norms and standards. Among other things, Member States had to define River Basin Districts (RBDs), possibly implying cross-border co-operation, and competent authorities. Furthermore, they had to designate their water bodies as ‘artificial water bodies’ (AWBs), ‘heavily modified water bodies’ (HMWBs) or – by default – ‘natural water bodies’. The latter are supposed to reach a ‘good status’, whereas for AWBs and HMWBs a ‘good potential’ suffices. The overall deadline for the implementation of the WFD is 2015, but exemptions are possible, either by postponing the deadline by six or even twelve years or by the relaxation of goals (EU, 2000). The WFD connects to a number of pre-existing EU directives, including the Urban Wastewater Directive, the Birds Directive, the Habitats Directive, the Bathing Water Directive, the Nitrates Directive and the Directive on Integrated Pollution Prevention and Control (IPPC) (see Uitenboogaart et al., 2009; van Rijswijk and van Weeren, 2008 for an overview). This implies that the WFD implementation process must be linked to policy fields such as agriculture, land use planning, nature conservation and industrial pollution.

The WFD is what may be called a ‘new generation’ directive (Knill and Lenschow, 2000; Jordan et al., 2003; Knill and Liefferink, 2007, 162ff). It offers a framework for other, partly pre-existing regulations, but does not contain many detailed prescriptions or fixed environmental standards itself. Although parts of the WFD, especially the chemical status of water bodies and the so-called priority substances, do not tolerate much discretion, and although there are calibration mechanisms at the European level, the ecological goal-setting process allows member states considerable freedom regarding both policy process and policy output, e.g. targets and end goals for water bodies. Implementation may thus seem flexible in many senses. Nevertheless, the task of dealing with the WFD’s key requirements must not be underestimated.

Taking a closer look at these requirements, we can identify a number of specific ‘degrees of freedom’ or ‘pathways’:

(a) Member States are asked to adopt a river basin approach, but are relatively free to do so within a more *centralised* or a more *decentralised* organisational framework.

- (b) They can organise the *participation* of stakeholders and the wider public, required in the WFD only in general terms, in their own way.
- (c) They have considerable freedom in dealing with the *integration* of the WFD’s requirements into other policy fields.
- (d) They have to *designate* their own water bodies as either natural, heavily modified or artificial. As mentioned, this has ‘real’ consequences as regards the end targets to be reached (‘good status’ vs. ‘good potential’).
- (e) They can choose to *formalise* the process of goal setting and environmental standards setting in a strict or in a more open and flexible way.
- (f) Finally, Member States can choose to make use of *exemptions* (in time or through the lowering of goals) or not.

It must be noted that the former three ‘pathways’ (centralisation/decentralisation, participation, integration) correspond with the notions of multi-level, multi-actor and multi-sector governance, respectively, which are considered to be characteristic of ‘new generation’ directives (Moss, 2004; Kastens and Newig, 2007) and new modes of environmental governance in general (Kaika and Page, 2003; Kaika, 2003), whereas the latter three focus on more substantive aspects of the Directive. An obvious addition to the second part of the list would have been the actual *measures* taken by the Member States for implementing the WFD. With regard to both the choice of instruments and the precise level of standards, charges, etc., Member States have a considerable degree of freedom too. However, at the time of collecting the underlying research data packages of measures in most Member States were still very much under discussion at the various administrative levels involved. The specific measures taken by the Member States to reach ‘good status’ or ‘good potential’, respectively, are therefore not considered separately in this study (see also below).

How do Member States deal with the freedom offered by these ‘pathways’? Which choices do they make and why? Before turning to these questions empirically, we will first review the existing theoretical literature on implementation and, on the basis of that, establish our own framework for empirical analysis.

Analysing implementation

Recent literature on the implementation of EU legislation can be divided into three strands: theories starting from the degree of ‘fit’ between EU requirements and the existing domestic context, an alternative perspective stressing differences in the national culture of compliance, and various approaches focusing entirely on domestic politics. We will now briefly review these strands and, at the end of the section, try to combine their respective strengths.

The ‘fit/misfit’ hypothesis

A well-established starting point in implementation studies is the so-called ‘fit/misfit’ hypothesis (Duina, 1997; Börzel, 2000; Knill and Lenschow, 1998, 2000). In this hypothesis, implementation effectiveness depends on ‘the level of correspondence between national regulatory patterns and those implied in European legislation’ (Knill and Lenschow, 1998, p. 602). If there is a considerable ‘misfit’ or ‘mismatch’ between EU requirements and existing institutional arrangements at the domestic level, the need for institutional adaptation is high and implementation effectiveness is likely to be low. If there is a high degree of ‘fit’, adaptation pressure will be low and implementation may be expected to be smooth. The emphasis on adaptation pressure builds upon the central assumption of historical institutionalism that institutions tend to resist

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