

SEARCHING FOR THE RIGHT TO WATER IN THE LEGISLATION AND CASE LAW OF THE EUROPEAN UNION

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1. Introduction

A right to water contemplates a given quantity of drinking water per individual, often combined with a right to sanitation. The amount in question is a very limited quantity (50 litres per day, although 25 litres is also mentioned) of clean drinking water or water for domestic use.¹³⁷ This is only just enough to survive and obviously not the amount of water what is considered necessary to live in dignity in Western Europe. The right to water is increasingly being recognized in international conventions, but not to such an extent that a binding human right to water exists.¹³⁸ A broader scope of the right to water includes the protection of safety against flooding, sufficient, clean water for domestic use, food production, energy supply, sanitation, recreation and, last but certainly not least, the protection of ecosystems. However, in this contribution on the right to water in the European Union, I will focus on the classical right to water with regard to drinking water and the use of water for domestic use.¹³⁹ This contribution aims to inspire the European and national legislators by providing ideas for legal improvements to guarantee the right to water in the European Union.

2. Elements of the right to water following from the international framework

The right to water can be inferred from various conventions. Article 14(2) of the 1979 Convention on the Elimination of All Forms of Discrimination against Women compels states to ensure “adequate living conditions, particularly in relation to... water supply” for women. The 1989 Convention on the Rights of the Child compels states to combat disease and malnutrition “through the provision of adequate nutritious food and clean drinking water” (Art. 24(2)). The UN’s International Covenant on Economic, Social and Cultural Rights (ICESCR) is based on the Universal Declaration of Human Rights. The ICESCR contains a basis for the right to water in Articles 11 and 12. Under Article 12(1) ICESCR everyone has

¹³⁷ World Health Organization, *Minimum water quantity needed for domestic use in emergencies*, draft revised: 7.1.05, Technical Note N°9. WHO, Technical Notes for Emergencies (2005).

¹³⁸ For example, in the International Covenant on Economic, Social and Cultural Rights (1966) and as a fundamental right recognized by the General Assembly of the United Nations (A/RES/54/175) and defined in General Comment N°15 on the Right to Water, adopted in 2002 by the Committee of Economic, Social and Cultural Rights (UN Doc. E/C.12/2002/11).

¹³⁹ This contribution is based on earlier publications – H.F.M.W. van Rijswick, *The Status of Consumers in European Water Regulation*, in: Ch. Verdure (ed.), *Environmental Law and Consumer Protection*, *European Journal of Consumer Law / Revue Européenne de droit de la consommation*, Larcier, 2011/1, pp. 115-148; H.F.M.W. van Rijswick and A.M. Keessen, *Legal Protection of the Right to Water in the European Union*, in: Sultana, F. and Loftus, A. (eds.), *The Right to Water: Politics, Governance and Social Struggles*, Earthscan, London, 2011 (forthcoming); A.M. Keessen and H.F.M.W. van Rijswick, *The right to sanitation in the Netherlands*, in: H. Smets (ed.), *Le droit à l’assainissement, un droit fondamental, The right to sanitation in national laws*, Académie de l’Eau, Éditions Johanet, Paris, 2010, pp. 299-306. ISBN 978-2-9000-8688-9; H.F.M.W. van Rijswick en H.J.M. Havekes, *Waterrecht in Nederland*, Kluwer, Deventer, 2010; and on the work of Faiq Karim, Jessica Pereboom, Manon van der Velden and Machteld de Vries, students participating in the 2011 master’s degree in Water Law at Utrecht University.

the right to the enjoyment of the highest attainable standard of physical and mental health. Article 12(2) ICESCR stipulates that States Parties to the Covenant must improve all aspects of environmental and industrial hygiene and take steps to achieve the healthy development of the child. According to the General Comment (N°14) of the UN Committee of the ICESCR, Article 12 ICESCR refers not only to health care, but also to all other factors that determine the enjoyment of good health, such as access to clean drinking water, personal hygiene requirements, an adequate supply of safe food, and housing. Article 11(1) ICESCR – the right to an adequate standard of living – also covers the availability of water. A definition of the right to water can be found in General Comment N°15 on the Right to Water, adopted in 2002 by the Committee of Economic, Social and Cultural Rights:

“The Human Right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.”

When we take a closer look at the right to water the following elements are relevant and will be used as the analytical framework to investigate the way in which EU law ensures the right to water:

1. availability: the supply of water for each individual must be adequate and continuous for personal and general use, e.g. drinking, sanitation, washing clothing, preparing food and personal and household hygiene;
2. quality: the water for personal and general use must be safe, and therefore free from micro-organisms, chemical substances and radiological hazards that are a danger to health. The colour, odour and taste of water must also be acceptable;
3. accessibility: water and water facilities must be accessible to everyone, without discrimination. Accessibility comprises:
 - physical accessibility: water and water facilities must be located within a safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within each household, school and workplace;
 - economic accessibility: water must be affordable for everyone;
 - equal accessibility: water must be accessible to all, including the most vulnerable and marginalized sections of society, with no conditions or penalties attached;
 - information accessibility: accessibility also covers the right to seek and receive independent information on water issues.

An important aspect of accessibility is economic accessibility. General Comment N°15 does not require water to be free, but financial obstacles must not be such that they restrict accessibility:

“Any payment for water services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households.”

The General Comment is not binding on the States Parties, although it is regularly referred to. For the actual protection of water rights it is necessary to rely on the right to water as far as it is included in a treaty or agreement from which a right to water can be derived.¹⁴⁰

3. The EU as a supranational organization

The European approach to the protection of the right to water is a combination of a human rights approach and integrated water resource management.¹⁴¹ This is logical in the sense that sufficient and clean water for all requires a sustainable and equitable use and the protection of water as a natural resource. Before we discuss the way in which the European Union protects the right to water in more detail, some remarks on the system of EU law are provided to ensure a proper understanding of the legal regime and the way public participation and access to justice – necessary elements to legally enforce the right to water – are arranged.

The EU is neither a regular international organization nor a federal state. It is a supranational organization made up of 27 Member States and this has consequences for its organization and legal order. The EU legal order can be characterized as an integrated legal order.¹⁴² In the field of water law and policy, this means that the Member States, i.e., France, Germany, Italy, Belgium, Luxembourg, the Netherlands (the six founding states of the European Community in 1951), Denmark, Ireland, the United Kingdom (accession in 1973), Greece (1980), Portugal, Spain (1986), Austria, Finland, Sweden (1995), Estonia, Latvia, Lithuania, Poland, Czech Republic, Hungary, Slovakia, Slovenia, Cyprus, Malta (2005) and Bulgaria (2007), share their responsibility with the EU. The European Union has the power to adopt binding legislation for all Member States and the authority to enter into international agreements. When the EU is a party to an international agreement – for example, a Treaty or Convention in which the right to water is acknowledged – and it fulfills its international obligations by means of European legislation, international obligations become binding obligations for each Member State.

The EU regulates only what is absolutely necessary, which is based on the subsidiarity principle and the proportionality principle.¹⁴³ In environmental policies, the most frequently used legal instrument is the Directive, a piece of EU legislation that has to be implemented in the national legal orders of the different Member States in a way that guarantees that the objectives of the legislation are fully attained, while the choice of the means to realize them is to a large extent left to the Member States.¹⁴⁴ The Member States are

¹⁴⁰ See for the literature on the right to water amongst others: M. Boylan, Clean water, *International Public health and policy and Ethics*, 2008; P.B. Anand, *Right to water and access to water: an assessment*, Journal of International Development, 19, 2007; H. Smets, *The right to water as a human right*, Environmental Policy and Law, 2009, 30/5; Chowdhury, Mustu, St. Dennis and Yap, *The human right to water and the responsibilities of business: an analysis of legal issues*, SOAS School of Law Legal Studies Research Papers Series, N° 03/2011

¹⁴¹ M.R. Anderson, *Human Rights Approaches to Environmental Protection: an overview*, in: M.R Anderson and A.E. Byle, *Human Rights approaches to environmental protection*, Oxford, Clarendon press, 1996; A. Epiney, *Sustainable use of fresh water resources*, Recht und Volkenrecht, 2003; E. Filmer-Wilson, *The human right-based approach to development: the right to water*, Netherlands Quarterly of human rights, 2005 (2), p. 213-241.

¹⁴² J.H. Jans, R. de Lange, S. Prechal and R.J.G.M. Widdershoven, *Europeanisation of public law*, Europa Law Publishing, Groningen, 2009.

¹⁴³ J.H. Jans, R. de Lange, S. Prechal and R.J.G.M. Widdershoven, *Europeanisation of public law*, Europa Law Publishing, Groningen, 2009.

¹⁴⁴ J.H. Jans and H.D. Vedder, *European Environmental Law*, Europa Law Publishing, Groningen, 2008.

accountable to the European Commission for compliance with their European obligations and can be brought before – and even sanctioned by – the European Court of Justice in case of non-compliance.

Because EU environmental directives should be transposed into national law by the Member States, legal protection is based on the national legal systems of the Member States. This follows from the principle of procedural autonomy. The boundary of this procedural autonomy lies in the obligation that legal protection has to be effective, which means that the national legal system has to guarantee that citizens may enjoy the full protection that EU law offers them. This means that when a European directive offers rights to citizens, these rights have to be implemented in binding legislation and it must be assured that citizens can enforce their rights before the national Courts.¹⁴⁵ This approach makes EU law more powerful than international law.

4. EU water law and the role of human rights

European water law has been based on a river basin management approach since the year 2000.¹⁴⁶ It offers an integrated approach, with the aim of avoiding pollution, on the one hand, and promoting a sustainable and equitable use of water resources, on the other. These aims are influenced by the following guiding principles in EU environmental laws. Substantive principles that are relevant for all environmental and water legislation are a high level of protection and improving the quality of the environment, sustainable development, the integration principle, the precautionary principle, the principle that preventive action should be taken, the principle that environmental damage should be rectified at the source, and the polluter (or user) pays principle. For consumers this is important, because these principles protect the quality of drinking water resources and ensure that those who pollute or use most water will pay a proportionate part of the costs.¹⁴⁷

EU water law is based on shared responsibilities between the EU and the individual Member States. EU water Law contains goals that Member States should meet, but offers room for policy discretion for the Member States concerning the way these goals can be attained. The EU protects the right to water by a combination of human rights law and water law. When it comes to the protection of human rights and, more specifically, the right to water, international treaties and the European Convention on Human Rights play a more important role than EU environmental and water legislation.¹⁴⁸ However, since the reform of the European Union last year, human rights and environmental protection have been further encapsulated in the EU legal framework, being articulated in the Charter of Fundamental Rights, the EU Treaty and the Treaty on the functioning of the European Union.¹⁴⁹

¹⁴⁵ J.H. Jans, R. de Lange, S. Prechal and R.J.G.M. Widdershoven, *Europeanisation of public law*, Europa Law Publishing, Groningen, 2009.

¹⁴⁶ H.F.M.W. van Rijswijk, H.K. Gilissen and J.J.H. van Kempen, *The need for international and regional transboundary cooperation in European river basin management as a result of a governance approach in water law*, *ERA Forum*, Springer, 2010/1.

¹⁴⁷ M. Kaika, M., The Water Framework Directive: A New Directive for a Changing Social, Political and Economic European Framework, *European Planning Studies*, 2003, Vol. 11, N°3.

¹⁴⁸ Available at www.echr.coe.int/echr.

¹⁴⁹ Consolidated versions of the Charter of Fundamental Rights, the EU Treaty and the Treaty on the functioning of the European Union, OJ 2010 C 83. See also: <http://eurlex.europa.eu/en/treaties/index.htm>.

EU water law also has a procedural component, which ensures that citizens are informed and involved in planning and decision-making. These procedural rights can be found in the international Aarhus Convention and its implementation in European law.¹⁵⁰ Article 14 of the WFD contains more specific obligations with regard to public participation, which relate in particular to informing and consulting the public at large. According to the Court of Justice, these obligations must be implemented in the national law of the member states.¹⁵¹ These procedural rights are important because they give citizens the possibility to check if their interests are well protected, to further them during the decision-making stage and, if necessary, to enforce them before the Courts.

5. Recognition of the right to water by the EU

There is no Article in the EC Treaty or in any EC Water Directive or in the Charter of Fundamental Rights that explicitly recognizes a right to water. Yet its presence can be deduced from EU law; in its relation to international law, of course. A right to water can particularly be deduced from the general principles of EU law, the EU Charter of Fundamental Rights and the European Convention on Human Rights (ECHR). A further elaboration can be found in secondary EC law, more specifically in the water directives.

Below, this multilevel protection of the right to water will be analyzed, starting with the right to water, followed by the water legislation, with its substantive and procedural provisions.

Even the restricted right to drinking water and sanitation is still not yet recognized by many countries.¹⁵² Granted, the European Parliament and the Council of Europe support the right to water, but a legally binding right has yet to be incorporated in a statutory text. This means that not everywhere in Europe is it possible for citizens to ensure their right to water by commencing legal proceedings. On 22 March 2010, the EU took a tougher stance on the fundamental right to water:

“On World water day the EU reaffirms that all States bear human rights obligations regarding access to safe drinking water, which must be available, physically accessible, affordable and acceptable. (...) The EU recognizes that the human rights obligations regarding access to safe drinking water and to sanitation are closely related with individual human rights – as the rights to housing, food and health. But even more than being related to individual rights, access to safe drinking water is a component element of the right to an adequate standard of living and is closely related to human dignity. The principles of participation, non-discrimination and

¹⁵⁰ Aarhus Convention: *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, available at www.unece.org/env/pp/. The EU has acceded to this Convention (Decision 2005/370/EC). Concerning access to information and public participation two Directives have been adopted, Directive 2003/4/EC and Directive 2003/35/EC. Although both contain provisions on access to justice, a proposal for a Directive on access to justice has remained a proposal. A Regulation to apply the provisions of the Directive to EU institutions and bodies was adopted in 2006 (Regulation 1367/2006/EC). <http://ec.europa.eu/environment/aarhus/index.htm#legislation>.

¹⁵¹ ECJ, Case C-32/05 (*Commission/Luxembourg*) ECR 2006, I- 11323.

¹⁵² At a meeting of the United Nations in 2008. Countries that have a fundamental right are Belgium, France, Finland, Germany, Italy, Norway, Portugal, Spain, Sweden, Switzerland, Ukraine, and the United Kingdom. The right to water is also recognized in a number of Latin American and African countries.

accountability are crucial. Water for personal and domestic use must be safe, therefore free from substances constituting a threat to a person's health. Access to adequate and safe sanitation constitutes one of the principal mechanisms for protecting the quality of drinking water."¹⁵³

So the EU sees the fundamental right to water as an essential component of existing human rights and links its realization both to substantive and procedural obligations on the part of member states. There is, however, no separate human right to water embodied in legislation; the right is based on international commitments undertaken by the EU and is detailed in European water directives that have been enacted.

In European law, however, fundamental rights and principles are closely interwoven. On the basis of Article 6 of the Treaty on the Functioning of the EU (TFEU), the EU considers fundamental rights that have been granted on the basis of the ECHR to be general principles of Community law. Of relevance to water rights are both the substantive rights as laid down in Article 2 ECHR, which guarantees the protection of life, and Article 1 of the first Protocol to the ECHR (protection of property) and the procedural rights needed to realize these substantive rights. The latter can be found in Articles 6 and 13 ECHR (right of access to the Courts).¹⁵⁴ Also of importance for the substantive right to water is the London Protocol on Water and Health, as part of the Treaty of Helsinki,¹⁵⁵ and for procedural rights the Aarhus Convention. They are both treaties to which the EU is also a party. With the entry into force of the Lisbon Treaty (amending the Treaty on European Union, and amending and renaming the EC Treaty), the Charter of Fundamental Rights of the European Union has gained importance.

6. Protecting water rights through ordinary legislation

The role of water rights as fundamental rights can – and must – therefore be augmented in the European legal system primarily by legislation enacted by the European Union in order to effectively substantiate water rights and the related interests which the European Union is required to protect.

The right to water is elaborated in European law in the Urban Waste water Treatment Directive, the Nitrates Directive, the Crop Protection Regulation and the Crop Protection Directive, the Dangerous Substances Directive and, above all, in the Water Framework Directive (WFD). None of these directives refers explicitly to a right to water, although one of the objectives of the WFD is to protect the quantity and quality of freshwater resources. The preamble asserts that good water quality will contribute to securing the supply of drinking water. Article 1 WFD mentions as relevant goals a sustainable use of water and contributing to the provision of a sufficient supply of good quality surface water and groundwater as needed for sustainable, balanced and equitable water use. At the same time,

¹⁵³ Brussels, 22 March 2010, 7810/10 (Presse 72) P.12/10.

¹⁵⁴ See, for example, ECHR 20 March 2008 (deaths as a result of mud slides in Russia, violation of Art. 2 ECHR); ECHR 27 January 2009 (violation of Art. 8 ECHR because the government did not provide people living in the neighbourhood with sufficient information about the risks associated with a company where cyanide is used to extract gold); ECHR 12 November 2006 (violation of Art. 8 ECHR); ECHR 30 November 2004 (Oneryildiz, violation of Art. 2 ECHR); ECHR 10 November 2004 (Taskin, violation of Art. 8 ECHR); ECHR 16 November 2004 (Moreno Gomez, violation of Art. 8 ECHR); ECHR 9 June 2005 (Fadeyeva, violation of Art. 8 ECHR).

¹⁵⁵ UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes. The EU is not a signatory or a party to the London Protocol.

on the basis of Article 9 WFD payment should be made for water services provided, including the supply of drinking water.

Besides the substantive component, which fleshes out the scope of water rights, there is also the procedural component, which ensures that citizens – including environmental organisations - are involved in planning and decision-making, and that they can also rely on their water rights in the Courts.¹⁵⁶ These procedural rights can be found in the international Aarhus Convention and its implementation in European law. Article 14 of the Water Framework Directive contains specific obligations with regard to public participation, which according to the Court of Justice must be implemented in the national law of member states.¹⁵⁷ These obligations relate in particular to informing and consulting the public at large. The normal EU and national legal provisions should provide the basis for the protection of these rights.

Conflicting interests

The various interests which are protected in water management – safety, water of good ecological and chemical status, sufficient freshwater for various needs including drinking water and water for domestic use – can conflict with one another. In that case a balance will have to be sought as to how the different objectives can be combined. Especially in those countries that have so-called water stress, i.e., a substantial shortage of enough fresh water to meet all requests for clean fresh water, this will be one of the greatest challenges in the near future.¹⁵⁸

7. The status of water and the public or private regulation of water services¹⁵⁹

The supply of drinking water occupies an important place in the distribution of freshwater and in certain Member States this is regarded as a public task. Before discussing European water directives and the way they contribute to the right to water it should be noted that in European water law, and especially in the Water Framework Directive,¹⁶⁰ water is not regarded as a commercial product like any other, but must be considered to be a heritage which must be protected, defended and treated as such. It is not completely clear what this means in practice. We can conclude that EU Member States treat water and water services differently and that there is no general way of dealing with the idea of water as a heritage instead of a “commercial product like any other”. There are some Member States which do not see water as a commercial product at all and there are others which see water and water services as a commercial product, which only differs slightly from other commercial products. Some Member States regard water as a public or common good, while others see water rights as property rights. Some Member States choose to focus on public ownership; others focus on the economic regulation of private corporations. In some states water property rights are in the hands of public authorities and in some states they are the responsibility of

¹⁵⁶ Court of first instance EC 28 November 2005, (admissibility of environmental organizations, EC Treaty and Draft Aarhus Regulation); CJEC 15 October 2009 (admissibility of Swedish environmental organizations).

¹⁵⁷ ECJ, Case C-32/05, *ECR* 2006, I- 11323 (*Commission/Luxembourg*).

¹⁵⁸ M.R. Anderson and A.E. Byle, *Human Rights approaches to Environmental Protection*, Oxford, Clarendon Press, 1996.

¹⁵⁹ M.G. Quesada, *Water and Sanitation Services in Europe. Do Legal Frameworks provide for “Good Governance”?* UNESCO Centre for Water Law, Policy and Science, University of Dundee, 2010.

¹⁶⁰ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000, establishing a framework for Community Action in the field of water policy, OJ L327, 22.12.2000, p. 1. Directive as amended by Decision N°2455/2001/EC (OJ L331, 15.12.2001, p. 1).

private companies. A pure private ownership approach can be found in England and Wales, where economic regulation takes care of prices and service standards. The opposite approach is the full and direct public management of water services. In between we can see differences leading to public management which have several possible delegation mechanisms. Regulation is necessary in both cases. All these different approaches in the EU Member States make clear that it is the EU level that should guarantee a minimum level of consumer protection by offering a right to water, by adequate provisions in water directives or by general provisions on consumer protection.

8. Combining the right to water with the protection of water as a natural resource

In the European Union the right to water is combined with the protection of water as a natural resource. Therefore the task of ensuring the supply of drinking water has two components.

In the first place, the drinking water resources, namely groundwater and surface water, must be protected. Adequately protecting the quality of the water resources reduces the necessity for the further purification treatment of groundwater and surface water in order for the water to be used for consumption. The amount of water to be used for the supply of drinking water is also of importance. Freshwater is scarce, so sustainable management of freshwater is necessary. Freshwater has many different functions. More generally, the use of the available water must be economical and sustainable.

The protection of water was one of the first topics to be regulated in the field of environmental law. Water quality in the EU has improved in the last few decades, but not enough. Speaking of water scarcity it is important to realize that a lack of water may lead to a struggle between several functions of water like drinking water, agriculture, energy supplies, shipping, industry and recreation and the increasing costs for water services. For citizens it is important that those who pollute or use the most water will pay a proportionate part of the resulting costs. Therefore not only information on water pollution and water use as well as the way the costs are divided over several stakeholders is of great importance, but also the possibilities to participate in decision-making and, eventually, access to justice.

The protection of drinking water resources forms an integral part of the protection of water in general, which is regulated at the European level under the Water Framework Directive (WFD) and its subsidiary directives.

9. Protection of the right to water in European water directives

In EU water law the protection of those entitled to the right to water can rely on the general provisions in the Lisbon Treaty, the Charter of Fundamental Rights of the European Union and, of course, on the provisions of the European Convention on Human Rights. To really enjoy the right to water important elements must be deduced from EU water directives themselves. The task of ensuring the right to water, the protection of a sufficient amount of freshwater for domestic use, protection against dangerous substances in water, sanitation and the treatment of urban waste water are regulated by several EU water directives. Most of these directives have a twofold scope: protecting human health and protecting the environment.

The most important instruments that are used in EU water directives to ensure the substantive part of the right to water are plans and programmes, environmental quality standards, licences, waste water treatment and other emission control instruments and

monitoring obligations. Although the EU requires effective legal protection against decisions concerning the above-mentioned instruments, a strong position for citizens very much depends on the national legal systems in the Member States.

Besides provisions to reach a good water status, to ensure safe drinking water and to oblige Member States to treat urban waste water, most directives have procedural provisions concerning public participation. These provisions are supplementary to the general obligations in EU law like the provisions on public access to information and to provide for public participation based on Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information¹⁶¹ and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment.¹⁶² These supplementary provisions follow from the ratification by the European Community of the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention).

Furthermore, most directives have reporting obligations towards the European Commission. The Commission publishes these reports on the status of European waters to ensure that citizens are not only informed by their own Member State but also at the EU level. This makes it possible to compare the status of waters within the EU. The Water Framework Directive and the Bathing Water Directive¹⁶³ have the most extensive procedural provisions with regard to information accessibility.

9.1. *The Water Framework Directive*

Community water policy requires a transparent, effective and coherent legislative framework. That was one of the main reasons for adopting a Framework Directive. The preamble states that the success of the Water Framework Directive (WFD) relies on close cooperation and coherent action at Community, Member State and local level as well as on information, consultation and involvement of the public, including users. The supply of water is a service of general interest as defined in the Commission communication on services of general interest in Europe.¹⁶⁴ To ensure the participation of the general public, including users of water, in the establishment and updating of river basin management plans, the preamble states that it is necessary to provide proper information on planned measures and to report on progress with their implementation with a view to the involvement of the general public before final decisions on the necessary measures are adopted.

The purpose of the Directive is, according to Article 1, the establishment of a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems. The WFD should promote sustainable water use based on the long-term protection of available water resources, and aims to realize the enhanced protection and improvement of the aquatic environment. The WFD should further ensure a progressive reduction in the pollution of groundwater and prevent its further

¹⁶¹ OJ L41, 14.2.2003, p. 26.

¹⁶² OJ L156, 25.6.2003, p. 17.

¹⁶³ Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC, OJ L64, 4.3.2006, p. 37.

¹⁶⁴ OJ C281, 26.9.1996, p. 3.

pollution. It should contribute to mitigating the effects of floods and droughts, and thereby contribute to the provision of a sufficient supply of good quality surface water and groundwater. Finally, it aims to achieve the objectives of relevant international agreements.

Organizational provisions

The WFD opts for the co-ordination of administrative arrangements and for the realization of environmental goals by way of a river basin approach. This means that Member States have to divide their territory into districts based on river basins (Article 3).¹⁶⁵ A river basin district is the area of land and sea made up of one or more neighbouring river basins together with their associated groundwater and coastal waters, which is identified as the main unit for the management of river basins. For every river basin, the characteristics of the river basin district, a review of the environmental impact of human activity and an economic analysis of the water use must be drawn up (Article 5). Appropriate administrative arrangements, including the identification of the competent authority, must be made for every river basin district in order to ensure the application of the directive's provisions. In the event that a river basin covers the territory of more than one Member State, the river basin should be assigned to an international river basin district. It must be ensured that the requirements of the directive for the achievement of the environmental objectives, and in particular all programmes of measures, are co-ordinated for the whole of the – eventually international – river basin district.

Substantive provisions

The environmental objectives of the WFD can be found in Article 4. They relate to surface waters, groundwater, and protected areas and oblige a “good water status” to be attained. This can be seen as one of the most important substantial elements of “Quality” as described in Section 2. It should ensure that water for personal and general use must be safe, and therefore free from micro-organisms, chemical substances and radiological hazards that are a danger to health. Within 15 years after the entry into force of the directive, good surface water status¹⁶⁶ must be achieved. “Good surface water status” means that the status achieved by a body of surface water is ecologically¹⁶⁷ and chemically at least “good”. Achieving a good chemical status is mandatory for all waters, including artificial and heavily modified surface water bodies.¹⁶⁸ Groundwater must also have a good status, which means that both the quantitative as well as the chemical status must be good.¹⁶⁹ The balance between the

¹⁶⁵ A river basin is the area of land from which all surface run-off flows through a sequence of streams, rivers and, possibly, lakes into the sea at a single river mouth, estuary or delta.

¹⁶⁶ “Surface water status” is the general term used to denote the condition of a body of surface water, determined by the poorer of its ecological status and its chemical status.

¹⁶⁷ “Ecological status” is an expression of the quality of the structure and functioning of aquatic ecosystems associated with surface waters, classified in accordance with Annex V of the Directive. “Good ecological status” refers to the status of a body of surface water, so classified in accordance with Annex V. It lists several classes of waters, such as rivers, lakes, coastal waters, transitional waters and artificial and heavily modified surface water bodies.

¹⁶⁸ “Good surface water chemical status” refers to the chemical status required to meet the environmental objectives for surface waters established in Article 4(1) (a), that is the chemical status achieved by a body of surface water in which concentrations of pollutants do not exceed the environmental quality standards established in Annex IX and under Article 16(7), and under other relevant Community legislation setting environmental quality standards at Community level.

¹⁶⁹ The general term “groundwater status” is used to denote the status of a body of groundwater, determined by the poorer of its quantitative status and its chemical status. It refers to the status achieved by a body of groundwater when both its quantitative status and its chemical status are at least ‘good’.

abstraction and recharging of groundwater must be ensured, which contributes to the element of availability as part of the right to water (Section 2).

The directive requires the establishment of a register of all areas lying within each river basin district which have been designated as requiring special protection under specific Community legislation for the protection of their surface water and groundwater, or for the conservation of habitats and species directly depending on water (Art. 6). The register or registers shall include all bodies of water identified as waters used for the abstraction of drinking water (Art. 7). The summary of the register required as part of the river basin management plan shall include maps indicating the location of each protected area. The obligation is to guarantee that the objectives of the WFD will be achieved for all waters in these protected areas. The WFD itself does not contain more stringent rules for waters within the protected areas.

The objectives of the WFD must be achieved within 15 years after its date of entry into force (i.e., by 2015) (Art. 4(1)). This time limit may be extended subject to the conditions mentioned in the directive (Art. 4(4)). One of these conditions is that no further deterioration of the status of the water bodies occurs. It is also possible for Member States to pursue less stringent environmental objectives if waters are so profoundly affected by human activity, or their natural condition is such that the achievement of the general objectives would be unfeasible or disproportionately expensive (Art. 4(5)). This is only possible under certain circumstances. Article 4(6) offers the possibility of an exception in case of temporary deterioration only, while Article 4(7) mentions several grounds for an exception in case of new modifications to the physical characteristics, or when the failure to fulfil obligations is the result of new sustainable human development activities.

Most environmental objectives in Article 4 are further elaborated in environmental quality standards. The water quality standards aim to give substance to the notion of the “good status” of water. At the Community level, environmental quality standards are based on Article 16(7) of the WFD (for concentrations of priority substances in surface water), and on its Annex IX. At Member State level, environmental quality standards are based on Annex V (for substances which are not on the list of priority substances) or on Article 16(8) (for priority substances from the Community list for which, in the absence of a Community agreement, no Community environmental quality standards are yet available).

Where monitoring or other data indicate that the environmental objectives for the body of water are unlikely to be met, Member States must ensure that the causes of failure are investigated. In that case, relevant permits and authorizations must be examined and reviewed as appropriate, monitoring programmes reviewed and adjusted as appropriate, and additional measures may be necessary to achieve those objectives established, including, as appropriate, the establishment of stricter environmental quality standards.

9.2. *Instruments of the Water Framework Directive*

The directive lists several instruments for the achievement of the directive’s objectives.

Every six years, a river basin management plan must be produced for each river basin district within the territory of a Member State. A river basin management plan should in the first place contain a (summary) of the programme of measures which are necessary to achieve the objectives of the directive. In addition to this programme of measures, Annex VII

of the directive contains the substantive requirements for river basin management plans like a general description of the characteristics of the river basin district, summaries of significant pressures and the impact of human activity on the status of surface water and groundwater, economic analysis of water use, programmes of measures according to Articles 4 and 7, the abstraction and impoundment of water and the public information and consultation measures taken. Also an identification and mapping of protected areas and a map of the monitoring networks are required as well as a report on the practical steps and measures taken to apply the principle of the recovery of the costs of water use.

Member States have to establish a programme of measures which are necessary to achieve the objectives of the directive. The measures arising from the directive amount to a combined approach for point and diffuse sources (Art. 10). This combined approach involves the emission controls¹⁷⁰ based on best available techniques, or relevant emission limit values, or, in the case of diffuse impacts, controls including, as appropriate, best environmental practices set out in several existing environmental directives.¹⁷¹ Article 10 states that the combined approach concerns all types of discharges, i.e. point sources and diffuse sources.

Measures consist of both fundamental measures and supplementary measures. Fundamental measures are minimum requirements, and should be able to satisfy, among other things, the requirements of Community legislation concerning the protection of water. A combined approach is required for the emission of polluting substances. Member States must prevent or control the input of pollutants, and establish emission limit values and quality objectives for both point sources and diffuse sources. Among the fundamental measures are also measures to manage water quantity, which may also contribute to the realization of the right to water. Article 11(2) (e) refers to measures regarding the abstraction of fresh surface water and groundwater and the impoundment of fresh surface water. For groundwater, measures are compulsory in the event of artificial recharge or augmentation.

If the fundamental measures do not suffice to meet the environmental objectives of the directive, Member States must take “supplementary measures”. Annex VI, part B, contains a non-exhaustive list of supplementary measures, ranging from legislation to educational projects, economic or fiscal instruments and desalination projects. Supplementary measures may also be adopted in order to provide for the additional protection or improvement of water.

Article 8 of the Water Framework Directive requires the monitoring of surface water status, groundwater status and protected areas. Member States must ensure the establishment of programmes for the monitoring of water status in order to establish a coherent and comprehensive overview of water status within each river basin district. For surface waters, such programmes must cover the volume and level or rate of flow, to the extent relevant for ecological and chemical status, and ecological potential. For groundwater, such programmes must cover the monitoring of the chemical and quantitative status.

¹⁷⁰ ‘Emissions controls’ are controls requiring a specific emission limit, for instance an emission limit value, or other specific limits or conditions relating to the effects, nature or other characteristics of an emission or operating conditions that affect emissions. The use of the term ‘emission control’ in the Water Framework Directive in relation to provisions of any other Directive shall not be held as reinterpreting those provisions in any respect.

¹⁷¹ Council Directive 96/61/EC on integrated pollution prevention and control [1996] OJ L257/26 (19), Council Directive 91/271/EEC on urban waste water treatment [1991] OJ L135/40 (20), Council

Member States must take account of the principle of the recovery of the costs of water services, including environmental and resource costs, having regard to the economic analysis and in accordance with the polluter pays principle. It should be ensured that water-pricing policies provide adequate incentives for users to use water resources efficiently, and thereby contribute to the environmental objectives of the directive. An adequate contribution towards the recovery of the costs of water services, based on an economic analysis and taking account of the polluter pays principle, must come from different water uses, including industry, households and agriculture. It is permitted to take into account the social, environmental and economic effects of such recovery, as well as the geographic and climatic conditions of the region. Member States may, in accordance with established practices, decide to exempt a given water use from this principle, where this does not compromise the purposes and the achievement of the objectives of the directive, although the reasons for not fully complying must be reported.

Procedural provisions

Public participation is nowadays a very important element in water management. The WFD has specific provisions on public information and consultation in Article 14. These obligations contribute to the element of the “Information accessibility” of the right to water as described in Section 2. Member States have to encourage the active involvement of all interested parties in the implementation of the Water Framework Directive, in particular in the production, review and updating of the river basin management plans. Member States shall ensure that, for each river basin district, they publish and make available for comments to the public, including users:

- a) a timetable and work programme for the production of the plan, including a statement of the consultation measures to be taken, at least three years before the beginning of the period to which the plan refers;
- b) an interim overview of the significant water management issues identified in the river basin, at least two years before the beginning of the period to which the plan refers;
- c) draft copies of the river basin management plan, at least one year before the beginning of the period to which the plan refers.

On request, access shall be given to background documents and information used for the development of the draft river basin management plan. Member States shall allow at least six months to comment in writing on those documents in order to allow active involvement and consultation. These obligations equally apply to updated river basin management plans.

It must be noted that since public participation focuses mainly on the river basin management plans, it is of the utmost importance that these plans give all necessary information in a clear and detailed way. If plans are vague as to the consequences of the choices made in the field of water management, citizens have hardly any possibility to check if their interests are well protected. To have successful access to the Courts citizens must be able to prove that their interests are harmed.

Directive 91/676/EEC, N°53 above (21), the Directives adopted pursuant to Article 16 of this Directive, the Directives listed in Annex IX, and any other relevant Community legislation.

Article 15 contains requirements concerning the manner of reporting. Member States must send copies of the river basin management plans and all subsequent updates to the Commission and to any other Member State concerned within three months of their publication. Summary reports of the analyses required under Article 5 and the monitoring programmes undertaken for the purposes of the first river basin management plan are also mandatory. Finally, the directive requires an interim report describing progress in the implementation of the planned programme of measures. Although reporting obligations may appear to be formal, ECJ case law shows that Member States should take them seriously; this improves the position of citizens.¹⁷²

Case Law

In *Commission versus Luxembourg*, the Court decided that Article 14 of the Water Framework Directive contains specific obligations with regard to public participation, which, according to the Court of Justice, must be implemented in the national law of the member states.¹⁷³ In the same case the Court held that Article 4 WFD and the requirements regarding the drinking water produced are obligations of result: the obligations under Article 7(2) WFD are formulated in a clear and unequivocal manner in order to ensure, in particular, that the water bodies of Member States meet the specific objectives laid down under Article 4 of the directive.¹⁷⁴ This provision thus imposes, according to the Court, obligations as to the results to be achieved and must be transposed by means of measures having binding force. Just as under the regime of the former Drinking Water Directive, in case of non-compliance with the directive, third parties harmed by this non-compliance have to be able to rely on mandatory rules in order to enforce their rights.

Although there is more case law on the Water Framework Directive, these judgements only deal with the incorrect implementation of the directive in the national law of the Member States.¹⁷⁵ In none of the cases is there a direct reference to the right to water.

10. Drinking water: resources and water used for human consumption

The protection of drinking water has two components. In the first place, the drinking water resources, namely groundwater and surface water, must be protected. Adequate protection of the quality of water resources reduces the necessity for further purification treatment of groundwater and surface water in order for the water to be used for consumption. The amount of water to be used for the supply of drinking water is also of importance. Freshwater is scarce, so a sustainable management of freshwater is necessary. Freshwater has many different functions. Despite the fact that some European states, compared to other countries, have a large amount of freshwater, the use of the water which is available must be sustainable. The supply of drinking water occupies an important place in the distribution of freshwater. The protection of drinking water resources forms an integral part of the protection

¹⁷² ECJ, Case C-435/99, *Commission v. Portugal*.

¹⁷³ ECJ, Case C-32/05, *ECR* 2006, I- 11323 (*Commission v. Luxembourg*).

¹⁷⁴ This also follows from Court decisions regarding environmental quality standards in earlier water directives: ECJ, Case C-60/01, *Jur.* 2002, p. I-05679 (*Commission v. France*); ECJ, Case C-316/00, *Jur.* 2002, p. I-10527 (*Commission v. Ireland*); ECJ, Case C-266/99, *Jur.* 2001, p. I-01981 (*Commission v. France*); ECJ, Case C- 92/96, *Jur.* 1998, p. I-00505, (*Commission v. Spain*); ECJ, Case C-56/90, *Jur.* 1993, p. I-04109 (*Commission v. United Kingdom and Ireland*); ECJ, Case C-337/89, *Jur.* 1992, p. I-06103 (*Commission v. United Kingdom*).

¹⁷⁵ ECJ, Case C-351/09, *OJ C* 63, p. 7-8 (*Commission v. Malta*); ECJ, case C-516/07, *Jur.* 2009, p. I-00076; ECJ, Case C-264/07, *Jur.* 2008, p. I-00022 (*Commission v. Greece*); ECJ, Case C-85/07, *Jur.* 2007, pp. I-00194 (*Commission v. Italy*).

of water in general, which is regulated at the European level under the WFD. Besides the protection and distribution of freshwater, drinking water as such is also regulated at the European level. The Drinking Water Directive (Directive 98/83/EC) establishes certain requirements for drinking water.

10.1. Protection of drinking water resources in European law

At the European level, for a long time a Drinking Water Directive (Directive 75/440/EC),¹⁷⁶ which established the protection of drinking water resources, was in force. The Drinking Water Directive was one of Europe's first environmental directives and established quality requirements for the quality of fresh surface water which, after appropriate treatment, was used for the production of drinking water. This directive has now been integrated into the WFD and lapsed as of 22 December 2007. However, the case law of the Court of Justice relating to the Drinking Water Directive 75/440/EEC is still of relevance for a correct interpretation and understanding of the WFD.

Substantive provisions and case law

The directive set up a system of European and national quality standards by establishing limit values and target values. Member States had to take all necessary measures to ensure that the water was in conformity with these values and the directive was to be applied without distinction to national waters and waters crossing the frontiers of Member States. The approach of the Drinking Water Directive 75/440/EEC was programmatic. In order to achieve the objectives, Member States were to draw up systematic action plans, including a timetable for the improvement of the quality of surface water. If the quality of the surface water fell short of the mandatory limit values, it was, in principle, not be used for the production of drinking water. The Member States were allowed to set stricter requirements, and the directive also included a standstill principle. The various quality standards had to be transposed into binding legal rules. In case of non-compliance with the directive, any third parties harmed by this non-compliance had to be able to rely on mandatory rules in order to enforce their rights.¹⁷⁷

As of 22 December 2007, the system for the protection of drinking water resources has been fully implemented in the WFD. The WFD establishes a general system for the protection for groundwater and surface water - the resources for the abstraction of drinking water. This has been described in the previous section. Furthermore, the quantity of groundwater is protected by the obligation that Member States shall protect, enhance and restore all bodies of groundwater, ensuring a balance between the abstraction and recharge of groundwater. Nonetheless, the WFD also contains specific provisions regarding drinking water resources. Under Article 6 WFD, all water bodies used for the abstraction of water intended for human consumption shall be included in a register of protected areas. These water bodies shall also be explicitly identified and monitored (Art. 7 WFD). Meeting the requirements of the WFD is extremely important for the protection of drinking water resources. For each water body used for the abstraction of water intended for human

¹⁷⁶ Council Directive 75/440, 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States, OJ 1975, L194/34, amended by Directive 79/869.

¹⁷⁷ ECJ Case C-60/01, ECR 2002, I-05679; ECJ, Case C-266/99, ECR 2001, I-01981; ECJ, Case C-56/90, ECR 1993, I-04109; ECJ, Case C-92/96, ECR 1998, I-00505; ECJ, Case C-337/89, ECR 1992, I-06103; ECJ, Case C-316/00, ECR 2002, I-10527, ECJ, Case C-147/07; ECJ, Case C 58/89, ECR 1991, I-4983 [02607].

consumption, compliance with the environmental requirements of the WFD must be ensured. Questions arise with regard to determining the necessary standards. For instance, the standards for drinking water resources traditionally focus on the protection of human health. However, the standards in the WFD can be characterized by their emphasis on the chemical and, particularly, the ecological status of water. Research has shown that the standards based on the WFD are not entirely in line with the desired standards for drinking water.¹⁷⁸

Water obtained through the application of water treatment must meet the quality requirements under Article 4 WFD and the requirements regarding the drinking water produced. It is evident from the judgment of the Court of Justice in Case C-32/05 that these are obligations of result: the obligations under Article 7(2) WFD are formulated in a clear and unequivocal manner in order to ensure, in particular, that the water bodies of the Member States meet the specific objectives laid down under Article 4 of the directive. This provision thus imposes, according to the Court, obligations as to the results to be achieved and must be transposed by means of measures having binding force. Just as under the regime of the former Drinking Water Directive, in case of non-compliance with the directive, any third parties harmed by this non-compliance have to be able to rely on mandatory rules in order to enforce their rights. Member States must ensure the protection of the identified water bodies with the aim of avoiding any deterioration in their quality, in order to reduce the level of purification treatment required in the production of drinking water. Member States may establish safeguard zones for those bodies of water.

10.2. *European legislation on water used for human consumption*

Besides the protection of drinking water resources under the WFD, Directive 98/83/EC – also known as the Drinking Water Directive – establishes requirements for the quality of water intended for human consumption.¹⁷⁹ The objective of the directive is to protect human health from the adverse effects of any contamination of water intended for human consumption by ensuring that it is “wholesome and clean”.

Substantive provisions

The Member States must take the necessary measures to achieve drinking water that is wholesome and clean. In accordance with the minimum requirements of the Directive, water intended for human consumption is wholesome and clean if it is – among other things - free from any micro-organisms and parasites and any other substances in numbers or concentrations which constitute a potential danger to human health. This meets the requirements of “Quality” that is part of the right to water (Section 2). The measures taken to implement the Directive may in no circumstances have the effect of allowing, directly or indirectly, either any deterioration of the present quality of water intended for human consumption so far as that is relevant for the protection of human health, or any increase in the pollution of waters used for the production of drinking water.

¹⁷⁸ H.F.M.W. van Rijswijk en S. Wuijts, *Drinkwateraspecten en de Kaderrichtlijn water, Criteria voor de bescherming van drinkwaterbronnen en kwaliteitsdoelstellingen*, RIVM-rapport 734301028/2007, ISBN-10: 90-6960-160-5, ISBN-13: 978-90-6960-160-1, 2007, 92 p., with a summary in English. www.centrumvooromgevingsrecht.nl.

¹⁷⁹ Council Directive 98/83/EC, 3 November 1998, on the quality of water intended for human consumption, OJ 1998, L330/32-54.

Here, too, quality requirements and corresponding monitoring must be established. Member States must adopt values which are applicable to water intended for human consumption for the parameters (limit values) set out in Annex I. Member States must set values for other additional parameters where this is necessary for the protection of human health within their territories.

Water supplied from a distribution network must comply with the parametric values as set out in the Directive, at the point, within premises or an establishment, at which the water emerges from the taps that are normally used for human consumption. In the case of water supplied from a tanker, it must comply with the parametric values at the point at which it emerges from the tanker; in the case of water put into bottles or containers intended for sale, at the point at which the water is put into the bottles or containers; and in the case of water used in a food production undertaking, at the point where the water is used in the undertaking.

Strict rules apply if the requirements are not met. In the case of water supplied from a distribution network, Member States are deemed to have fulfilled their obligations where it can be established that non-compliance with the quality requirements is due to the domestic distribution system or the maintenance thereof. This is different when it concerns premises and establishments where water is supplied to the public, such as schools, hospitals and restaurants. In such a situation and if there is a risk that water supplied from a distribution network might not comply with the quality requirements, Member States must nevertheless ensure that appropriate measures are taken to reduce or eliminate the risks, such as advising property owners of any possible remedial action they could take.

Member States must ensure appropriate treatment techniques, installation and materials and the methods used to analyse the quality of water intended for human consumption should be such as to ensure that the results obtained are reliable and comparable.

Procedural provisions

The preamble states that consumers should be adequately and appropriately informed of the quality of water intended for human consumption, of any derogations granted by the Member States and of any remedial action taken by the competent authorities; furthermore, consideration should be given both to the technical and statistical needs of the Commission, and to the rights of the individual to obtain adequate information concerning the quality of water intended for human consumption.

Article 13 deals with information and reporting. Member States must take the measures necessary to ensure that adequate and up-to-date information on the quality of water intended for human consumption is available to consumers. Without prejudice to Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment, each Member State shall publish a report every three years on the quality of water intended for human consumption with the objective of informing consumers. Each report must include all individual supplies of water exceeding 1 000 m³ a day as an average or serving more than 5 000 persons and it shall cover three calendar years and be published within one calendar year of the end of the reporting period. The national reports must also be sent to the Commission within two months of their publication.

The Commission publishes every three years a synthesis report on the quality of water intended for human consumption in the Community. Since the system for protecting the “raw material” for drinking water (surface water and groundwater) is included in the WFD, and the Drinking Water Directive contains a responsibility for administrative authorities as well as for drinking water companies, it is becoming clear that the task of ensuring the supply of drinking water also requires an integrated approach. A responsibility for the supply of drinking water “from the resource to the tap” can only imply a shared responsibility between the government, drinking water companies and consumers of drinking water, as each of these parties possesses a part of the competences necessary to ensure the sustainability of the supply of drinking water and to ensure that drinking water is wholesome and clean.

Case law

Most of the Case Law concerning the Drinking Water Directive deals with the Directive having been implemented too late.¹⁸⁰ Only one Court decision deals with the chemical parameters of Annex I part B of the Directive, which is of course an important quality element of the right to water.¹⁸¹ However, the Court does not refer to the right to water.

10.3. *The protection of water for domestic use and food production: fresh water supply*

The protection of water for food production and economic activities is also based on the WFD. The urge to guarantee a fresh water supply is becoming increasingly clear. Therefore we have to look at the European policy and legal instruments for the supply of fresh water. The supply of fresh water is an important aspect of water management. Climate change can result in an increasing shortage of water, with consequences for water safety, drinking water supply, agriculture, forestry, fisheries, tourism, health care, buildings, industrial and transport infrastructure, the energy sector,¹⁸² the environment and nature. A fair allocation of scarce water among the various functions within a river basin is becoming more and more important and contributes to the element of the availability of the right to water. Various policy initiatives have been developed for that purpose. Sustainable and balanced use of natural resources is one of the objectives of EU environmental policy, and dealing with droughts and the prevention of water scarcity is further elaborated in the WFD.¹⁸³ In that context, the emphasis is on the protection and improvement of water quality. Climate policy, including climate adaptation policy, is in itself not an EU policy objective, but must be integrated into the whole range of EU policies, including EU water policy. In addition to a Climate change adaptation strategy¹⁸⁴ at the European level, a strategy for water scarcity and droughts has been developed.¹⁸⁵

¹⁸⁰ ECJ, Case C- 29/02, Jur. 2003, p. I-00811; ECJ Case C-63/02, Jur. 2003, p. I-00821 (Commission v. United Kingdom and Ireland); Case C-122/02, Jur. 2003, p. I-00833.

¹⁸¹ ECJ Case C-147/07, Jur. 2008, p. I-00020 (Commission v. France).

¹⁸² Including the energy infrastructure.

¹⁸³ A drought is a temporary reduction in the availability of water, for instance as a result of insufficient rainfall. Water scarcity indicates a situation where the demand for water is greater than the amount of water that can be extracted from reserves in a sustainable manner.

¹⁸⁴ Green Paper - *Adapting to climate change in Europe* – options for EU Action, Brussels 29 June 2007, COM(2007) 354 final, p. 3 and White Paper - *Adapting to climate change: towards a European framework for Action* {SEC(2009) 386} {SEC(2009) 387} {SEC(2009) 388} COM(2009)0147 final.

¹⁸⁵ European Commission, *Communication Addressing the challenge of water scarcity and droughts in the European Union*, Brussels, 18 July 2007, COM(2007)414 final, p. 2.

The strategy for water scarcity and droughts aims to achieve greater water efficiency and a better management of the demand for water. This is considered to be a task of the Member States, and should be carried out by measures of adaptation, sustainable practices, more water savings, fiscal instruments, monitoring systems and adapted risk management tools. The most important elements in this strategy for water scarcity and drought are:

- Improving land-use planning as a driver for water use, since many economic activities take place in areas where there is insufficient available water. The influence of European policy on national spatial planning will therefore increase.
- Integration of water-related concerns in other policy areas.
- Active promotion of the use of market-based instruments¹⁸⁶ in combination with a complete implementation of the WFD. *All users of water must pay, but there is a special position for private households, which – regardless of their financial resources – must be provided with water, because the public provision of drinking water must always have the highest priority.*
- The development of a water hierarchy in order to realize water savings.
- Amendment of river basin management plans to identify areas with water scarcity and including drought risk management plans, with observatories, warning systems, and civil protection (Art. 13 para. 5 WFD).
- Compulsory measures on water saving and water efficiency if problems are not solved.
- Establishing drought thresholds and drought mapping.
- If, and only if, the above-mentioned policy intentions have been met, and where demand still exceeds water availability, additional water supply infrastructure can be developed, such as the storage of surface or ground waters, water transfers, or the use of alternative sources, such as the desalination of brackish or saltwater. Construction of reservoirs, water supply dams and water transfers must take into account the demand and supply of water, and the status of the water in the rest of the river basin. Adverse effects linked to water supply infrastructure must be fully taken into account in the environmental assessment.
- The development of water-efficient technologies and practices in order to prevent water wastage as a result of leakages in public water supply networks and irrigation networks, and the construction of buildings which use water inefficiently.
- Legislative proposals are being made in the area of water-saving, such as the development of standards for water-using devices, including water efficiency criteria in performance standards for buildings and the use of certification systems.

The choice is for legislation at the level of the Member States and not at EU level. The EU is no more than a stimulus for the Member States to adopt legislation or to make voluntary agreements with the relevant economic sectors.

¹⁸⁶ Commission Communication on *Pricing policies for enhancing the sustainability of water resources*, Brussels, 26 July 2000, COM(2000) 477 final.

Substantive provisions and case law

EU law aspects of the fresh water supply focus on the protection, improvement and allocation of the available amount of water. The public task of protecting scarce water and regulating its use is elaborated in EU water law in principles and general (regulatory) objectives, such as the objectives of the 'sustainable management' of water, and achieving “good water status” (both in the WFD, where the environmental objective of achieving good water status is a further elaboration of the general objective) and the provision of “wholesome and clean” drinking water (Drinking Water Directive).

It follows from the case law of the Court of Justice that even though these general regulatory objectives are not completely unconditional and sufficiently detailed, they do indicate the limits of the discretion of the competent authorities.¹⁸⁷ The limits of discretion are directly effective, and individuals must be able to rely on these before the courts. If water is not sustainably managed, or if good water status is not achieved, or no clean drinking water is available, then the limits have been exceeded. By means of these regulatory objectives, which are often further elaborated in specific quality requirements or threshold values – as the European Commission also proposes for water scarcity and droughts – a link can be made between policy intentions in the Climate Change Adaptation strategy and the policy for water scarcity and droughts, on the one hand, and the legal protection which individuals enjoy in a democratic state governed by the rule of law, on the other – whereby enforcement, a review by an independent court, and accountability to democratically elected bodies are all important.

The European policy on water scarcity and droughts sees the complete implementation of the WFD as the most important tool. It is not clear whether the general objective also has direct effect in relation to the limits on discretion. This is indeed necessary for an effective adaptation policy in times of water scarcity, as will be apparent in the following. The integrated approach and protection of water in Europe (Art. 3) requires international cooperation. In order to understand the European rules on water scarcity and drought, it is necessary to examine the instruments of the WFD to see what possibilities it offers to regulate water use.

In order to achieve an equitable allocation of scarce water, the various claims on water can be ranked, and water interests or rights can be prioritised, to form the so-called water hierarchy which the European Commission advocates. This should be based on the most urgent needs. Drinking water must be available for everyone, but not to an unlimited extent. Water for the natural environment must be guaranteed, but only to the extent that no irreversible damage is done. Water for economic activity is necessary, but not in unlimited quantities and everywhere for all activities.

The allocation of scarce water is – for the time being – not included in the WFD in the shape of legal rules for water use when there is a water shortage or threshold values in times of drought, but is shaped with the help of the general instruments as described above, such as environmental objectives (Art. 4), the river basin management plans (Art. 13), the programmes of measures (Art. 11) and the principle of the recovery of the costs of water services (Art. 9).

The general aims of the WFD are further elaborated in the environmental objectives in Article 4. For surface water, the environmental objectives focus on the quality of the water, with a distinction being made between chemical and ecological quality (Art. 4, para. 1 under (a)). Good surface water status is an important element in relation to the availability of sufficient surface water. In periods of drought and water shortage, the concentrations of

¹⁸⁷ Case C-72/95, *Kraaijeveld* [1996] ECR I-5403; and Case C-435/97, *Bozen* [1999] ECR I-5613.

polluting substances will of course increase, and ecological status could deteriorate. For the adequate protection of scarce surface water, an expansion of the environmental objectives is, however, advisable, because many of the implementing instruments are aimed above all at achieving the environmental objectives, and not so much at the general objectives in Article 1 WFD, including the realization of the right to water.

For groundwater, the WFD does contain explicit quantitative aims: good quantitative groundwater status (Art. 4 para. 1 under (b) (ii) WFD). The measures to be taken by the Member States must ensure that all bodies of groundwater are protected, enhanced and restored; that there is a balance between abstraction and recharge of groundwater; that the groundwater resource does not decrease and is managed sustainably. These environmental objectives are further made explicit in environmental quality standards and threshold values, but these are only of indirect importance for the allocation of scarce water in times of shortage. Annex V of the WFD does contain criteria for the allocation and protection of the amount of scarce water.

Member States must draw up a policy to prevent water shortage in the river basin management plans (Art. 13 WFD). In order to be able to take the appropriate measures, it must first be clear what the present status of the water bodies is, what environmental effects there are as a result of human activities, and what use is made of water. For that reason, Article 5 lays down the obligation to analyse the characteristics of each river basin, to review the impact of human activity on the status of the water and to make an economic analysis of water use. Article 7 includes a special protective regime for waters used for the abstraction of drinking water. The river basin management plans can be supplemented by more detailed programmes and management plans for each sub-basin, sector, issue, or water type, in which the consequences of water scarcity and droughts are taken into account (Art. 13 para. 5). At the same time, monitoring programmes should be developed, whereby the volume and level or rate of flow of surface water should be monitored, and for groundwater the programmes should cover, inter alia, the monitoring of the quantitative status (Art. 8). Article 14 regulates information to the public and consultation in relation to drawing up the plans and the programmes of measures.

The actual allocation of scarce water between the different functions is set out in the plans and programmes. The plans thus provide the link between the normative and instrumental aspects of the range of legal instruments.

The mandatory measures in the programme of measures (Art. 11 para 3) include, in any event, measures resulting from existing directives; particularly relevant in the context of water scarcity and droughts are the EIA Directive (Environmental Impact Assessment), the Habitats Directive and the Birds Directive, and the Bathing Water Directive. Other mandatory elements are the means of recovering the costs of water services, and the measures needed for the promotion of sustainable and efficient water use. In order to ensure that the right amount of water is in the right place, there is also an obligation to include measures concerning the abstraction of freshwater and the impoundment of fresh surface water, including registers of water abstractions and a requirement of prior authorization for abstraction and impoundment (Art. 11, para 3 under (e)). Prior authorization is also required for the artificial recharge or augmentation of groundwater bodies (Art. 11, para. 3 under (f)). Given all the predictions concerning climate change, it will be less and less possible to consider a prolonged drought to be unforeseeable, and in the future the circumstances will have to be very exceptional for the failure to take supplementary measures to be justified.

If the failure to achieve the objectives is caused by problems which cannot be solved at the level of the Member States – for instance, if other states take measures within a river basin which obstruct sustainable and efficient water use in the whole river basin, or take measures as a result of which there is not enough water within a river basin for other states – then a Member State can bring the problem to the Commission (Art. 12). Notwithstanding the Commission's recommendations in the strategy for water scarcity and droughts, it is unclear to what extent Member States may impose far-reaching requirements for saving water on products, buildings and infrastructure without coming into conflict with the EU internal market requirements.

An important aspect of ensuring an adequate amount of fresh water for all interests, including drinking water and water for domestic use both being elements of the right to water, is the use of a pricing policy and market-based instruments. The WFD requires the recovery of the costs of water services (Art. 9), taking account of the economic analysis of water use (Art. 5). By 2010, water-pricing policies were supposed to provide adequate incentives for users to use water resources efficiently. Article 9 does not obstruct the funding of preventive or remedial measures from state resources, and account may also be taken of the social effects of recovery, which enables Member States to guarantee a minimum amount of water to all individuals as is required for the right to water. The WFD does not prohibit the use of economic and financial instruments, and their use is recommended in the Commission Communication on water scarcity and droughts. The principle of “the user pays” plays a complementary role, in this context to the role played by the principle of “the polluter pays”.

The use of water can be restricted by a pricing policy – which also provides the necessary state funds in order to ensure that water is managed in a sustainable fashion and that everyone has enough clean water at their disposal. A certain solidarity is the point of departure for this. Financial incentives usually take the form of a price or a tax. A realistic price for drinking water ensures that people do not waste water needlessly.

Recent research into the allocation of scarce water shows that a system of tradable water rights can – from an economic point of view – form a good supplement to the existing administrative law instruments, but that legislation is more suitable for the guarantee of primary use needs – safety, utilities such as drinking water supply, and its vulnerable nature.¹⁸⁸

The WFD offers enough instruments to facilitate the protection of freshwater resources and to prevent water shortages. In order to achieve an actual and effective use of the existing instruments, however, it is to be recommended that the environmental objectives in Article 4 are expanded so as to include the objective 'to limit water shortage by ensuring a “good quantitative surface water status”'. This is necessary because many of the instruments in the WFD are formulated in such a way that they should contribute to achieving the environmental objectives; the sustainable use of scarce surface water in order to prevent water shortage and to guarantee a right to water for all is one of the general objectives.

¹⁸⁸ J. Berbel et. al., *Water Pricing and Irrigation: A Review of the European Experience* – CAB International 2007; W. Howarth, *Cost recovery for water services and the polluter pays principle* – Springer 11-11-2009 (ERA-Forum); H. Unnerstall, *The principle of full cost recovery in the EU-water framework directive – genesis and content*, Journal Environmental Law 29-42 (2007); J. Martin-Ortega et al., *Environmental and Resource Costs Under Water Scarcity Conditions: An Estimation in the Context of the European Water Framework Directive*, Published online Springer (January 18, 2011); A. Jolink, *Legal implications of introducing Economic Instruments in the Field of European and Dutch Water Management*, Utrecht University, 2010.

11. Sanitation: urban waste water treatment

The obligation to ensure proper sanitation is based on the Urban Waste water Treatment Directive (Directive 91/271).¹⁸⁹ The preamble to the Directive states that it is important to ensure that information on the disposal of waste water and sludge is made available to the public in the form of periodic reports.

Substantive provisions

Member States have to ensure that urban waste water entering collecting systems shall before discharge be subject to secondary treatment or an equivalent treatment (Art. 4). Urban waste water entering collecting systems shall, before discharge into sensitive areas, be subject to more stringent treatment (Art. 5). Competent authorities or appropriate bodies shall ensure that the disposal of waste water from urban waste water treatment plants is subject to prior regulations and/or specific authorization. Regulations and/or authorization shall be reviewed and, if necessary, adapted at regular intervals (Arts 11 and 12). Furthermore, there is a monitoring obligation (Art. 15).

Procedural provisions

Article 16 is important as far as information to the public is concerned: without prejudice to the implementation of the provisions of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment,¹⁹⁰ Member States shall ensure that every two years the relevant authorities or bodies publish situation reports on the disposal of urban waste water and sludge in their areas. These reports shall be transmitted to the Commission by the Member States as soon as they are published. Article 18 gives more clarity on the way standards and measures will be elaborated and it introduces a Committee composed of the representatives of the Member States and chaired by the representative of the Commission.

Case law

Most case law with respect to the Urban Waste water Directive deals with the delayed implementation of the directive.¹⁹¹ Most relevant are the judgements on non-compliance with environmental quality standards, which are part of the quality element of the right to water.¹⁹² The amount of case law suggests that compliance with the urban waste water directive is considered to be of great importance for the improvement of water quality. However, also in these cases any reference to the right to water is lacking.

¹⁸⁹ Council Directive 91/271/EEC, 21 May 1991, concerning urban waste-water treatment, OJ L135, 30.5.1991, p. 40. Directive as last amended by Regulation (EC) N°1882/2003 of the European Parliament and of the Council (OJ L284, 31.10.2003, p. 1).

¹⁹⁰ OJ N°L158, 23. 6. 1990, p. 56.

¹⁹¹ ECJ Case C-161/95, Jur. 1996, p. I-01979; ECJ Case C-236/99, Jur. 2000, p. I-05657.

¹⁹² ECJ Case C-335/07, Jur. 1996, p. I-09459; ECJ Case C-530/07, Jur. 2009, p. I-00078; ECJ Case C-316/06, Jur. 2008, p. I-00124; ECJ Case C-233/07, Jur. 2008, p. I-00070; ECJ Case C-440/06, Jur. 2007, p. I-00145; ECJ Case C-219/05/05, Jur. 2007, p. I-00056; ECJ Case C-405/05, Jur. 2007, p. I-00010; ECJ Case C-293/05, Jur. 2006/, p. I-00122; ECJ Case C-452/05, Jur. 2006, p. I-00120; ECJ Case C-280/02, Jur. 2004, p. I-08573.

12. Analysis of the right to water in EU law

When we take a look at the relevant provisions of EU water law which are related to the right to water, we can see a strong focus on substantive provisions and environmental quality standards. These are meant to guarantee a certain level of protection for citizens.

Several instruments are used in European water law to realize the right to water. The focus lies on the protection of water resources, setting environmental quality standards, making plans and programmes, emission control instruments, monitoring and reporting obligations and the obligation to recover the costs for water services.

In the case law of the Court of Justice no references to the right to water can be found. The case law does however show that meeting quality standards by the Member States is obligatory and these standards should be implemented in the national law of the Member States in such a way those citizens can rely on these quality standards before the Courts.

**Table 10. SUBSTANTIVE PROVISIONS OF THE RIGHT TO WATER
IN EU WATER LAW**

	<i>WFD 2000/60</i>	<i>Drinking water 98/83</i>	<i>Sanitation 91/271</i>	<i>Fresh water supply 2000/60</i>
Water quality				
<i>Plans</i>	+ : Art. 13	-	-	+ : Art. 13
<i>Programmes</i>	+ : Art. 11			+ : Art. 11
<i>Quality standards</i>	+ : Art. 4 & 16	+ : Art. 4 & 5	+	-
<i>Emissions control</i>	+ : Art. 10 /11	-	+ : Art. 12	-
<i>Treatment</i>	+ : Art. 11	+	+ : Art. 3 & 4	-
<i>Monitoring</i>	+ : Art. 8	+ : Art. 10	+ : Art. 15	-
<i>Protected areas</i>	+ : Art. 6 & 7	+ : Art. 7	+ : Art. 5	-
Accessibility				
<i>Physical</i>	+/- (Art. 1)	-	-	+/- : Art. 1
<i>Equal</i>	-	-	-	-
Availability				
<i>Sustainable</i>	+/- : Art. 1	-	-	+/- : Art. 1
<i>Equitable use</i>	+/- : Art. 1	+/-	-	+/- : Art. 1
<i>Affordability</i>	+ : Art. 1 & 9	-	-	+ : Art. 1 & 9
+ = meets the requirements to fulfill this element of the right to water as described in par. 2. +/- = does not fully the requirements to fulfill this element of the right to water as described in par. 2. - = no regulation provided and does not meet requirements to fulfill this element of the right to water as described in par. 2.				

It must however be concluded that important elements of the right to water as discussed in Section 2 are not fully guaranteed in EU water directives like physical and equal accessibility for all and especially for socially disadvantaged groups like poorer households, homeless people and travelling people as well as provisions with regard to price setting (Table 10). Also the enforcement of a right to water is a weak element in EU law.

EU law and the European Court of Justice offer citizens a fair amount of legal protection. EU law requires effective legal protection and the Court of Justice has decided that environmental quality standards as well as plans and programmes¹⁹³ give rights to citizens on which they have to be able to rely on before the Courts.

**Table 11. PROCEDURAL PROVISIONS FOR CONSUMER PROTECTION
IN EU WATER LAW**

	<i>WFD 2000/60 Art. 13 & 14</i>	<i>Drinking water 98/83</i>	<i>Sanitation 91/271 Art. 16</i>	<i>Fresh water supply 2000/60 Art. 13 & 14</i>
<i>Accessibility of information</i>				
<i>State and improvement of environment</i>	+	+	+	+
<i>Drinking water quality</i>		+		
<i>Plans</i>	+	-	-	+
<i>Programmes (measures)</i>	+	+	+/-	+
<i>Price setting</i>	+/-	-	-	+/-
<i>Availability</i>	+/-	+/-	+	+/-
<i>Fair distribution</i>	+/-	-	+/-	+/-
<i>Transparency</i>	+	+/-	+/-	+/-
<i>Participation in decision making</i>	+	-	-	+
<i>Accountability</i>	+/-	+/-	+/-	+/-
<i>Access to justice</i>	<i>EU & national laws</i>	<i>EU & national laws</i>	<i>EU & national laws</i>	<i>EU & national laws</i>

+ = meets the requirements to fulfill this element of the right to water as described in par. 2.

+/- = does not fully the requirements to fulfill this element of the right to water as described in par.2.

- = no regulation provided and does not meet requirements to fulfill this element of the right to water as described in par. 2.

However, some remarks have to be made. Mandatory obligations are of course easier to rely on before the Courts than voluntary measures. Besides, it is most important that plans and programmes provide full information on citizens' rights and obligations. If plans and programmes are vague on the equitable distribution of profits and burdens, the distribution of water between all interested parties, the way the recovery of costs is regulated, the measures

¹⁹³ ECJ Case C-237/07, *Dieter Janecek v. Freistaat Bayern* [2008] I-06221.

that will be taken to comply with quality standards as well as the costs and time that are needed, then it will be difficult to enforce connected rights before the Courts. Furthermore, competent authorities have room for policy discretion when it comes to choices as to what measures will be taken and when. It is not up to judges to decide on these matters. The accountability of these kinds of decisions will have to take place in a more political arena. We have seen that EU water directives give special attention to the accessibility of information and public participation in decision making, but some problems still remain to be solved and the procedural elements of the right to water in EU law can be improved (Table 11).

It may be a problem when there is an overkill of information, plans, programmes, monitoring results and reports. Individuals as well as consumer and environmental organizations need time, knowledge and money to participate properly in all foreseen procedures. Furthermore, it is difficult to participate in standard setting, price setting and prioritising the measures that will be taken to comply with all the obligations that follow from the water directives. It is doubtful whether river basin management plans and programmes of measures provide a full insight into the way competent authorities deal with the need for equal access to water resources at a reasonable and fair price. It is also unclear whether all relevant information can be received from all competent authorities and private drinking water companies like information on price setting, dangerous substances in drinking water or surface or groundwater, and the effects of accidents and so on.

Procedural provisions like the right to information gain importance when individuals have access to the Courts to ensure their rights. Access to the Courts is only useful when the Courts have enough detailed information, based on plans and programmes, to determine if individuals are properly protected and if the right to water can be enjoyed. It is clear that EU legislation is not designed to guarantee the right to water and this leads to legislation with severe gaps in the level of protection. The right to water is in a certain way well established in EU law, but can certainly be improved.

12.1. Possible improvements in the way the EU can protect the right to water

We have concluded that important elements of the right to water as discussed in Section 2 are not fully guaranteed in EU law and its water directives. The physical and equal accessibility for all and especially for socially disadvantaged groups like poorer households, homeless people and people travelling as well as provisions with regard to price setting are lacking.

Also the enforcement of a right to water is a weak element in EU law. This leads to the question of how the right to water can be improved in EU law.

First of all, the right to water can be included in the Charter of Fundamental Rights. Although this would be a clear step in the legal recognition of the right to water, unfortunately it will not be enough to really guarantee the right to water for all. Therefore it is first required that there is enough good quality water anyway, and, secondly, that it is available to all. This still has to be further elaborated in normal legislation and by taking practical measures. The EU approach to combine the right to water with the protection of water as a natural resource is in our opinion the right approach.

Secondly, when water directives are being revised, it should be explicitly mentioned in the preamble to the directive which provisions of that directive are also meant to implement the right to water in EU law. This is particularly important when revising the

Drinking Water Directive, the Urban Waste water Directive and the Water Framework Directive. Furthermore, provisions should be included in the directives that also guarantee the still lacking elements of the right to water. At this moment it is a search for elements of the right to water and it requires a creative explanation of the provisions to find where and how the right to water can be derived.

Thirdly, in case of a conflict between the right to water and sanitation and other important goals of the European Union like the protections of ecosystems, nature conservation, and the free market and so on, it should be clear that the supply of drinking water and the supply of water for domestic use must be regarded as an overriding public interest. In addition to this, it is advisable to characterize drinking water not only as different from ‘other commercial goods’ like in the Water Framework Directive but to regard it as a public good. This does not mean that drinking water or freshwater should be free of charge.

Fourthly, also in cases where the supply of drinking water is organised completely privately, citizens should be able to enjoy the right to water: enough and clean water being available, accessible and affordable at a reasonable price. All necessary information as well as legal protection to enforce these rights must be available and guaranteed. Inspiration can be found in Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal services and users’ rights to electronic communication networks and services.¹⁹⁴ This directive follows from the Community police for consumer protection and defines universal service obligations and establishes rules for its costing and financing. Universal services concern the provision of a defined minimum set of services of a certain quality to all end-users in the territory of a Member State, irrespective of their geographical location and at an affordable price while respecting the principles of objectivity, transparency, non-discrimination and proportionality.

The concept of a universal service can also be of value to implement the right to water in EU law. Public service obligations that rest on private water companies are only possible when a Member State chooses proportionate obligations, in the interest of legitimate public policy considerations and the obligations must be in conformity with Community law, proportionate, transparent and subject to periodical review. The universal services directive pays special attention to weak groups in society, like the elderly, the disabled and people with special social needs. This does not mean that services should be delivered free of charge, special requests can be prescribed and except in cases of persistent late payment or non-payment of bills, consumers should be protected from an immediate disconnection of the service and should retain access to essential services, which for the right to water could mean a minimum amount of drinking water. The directive also provides rules for clear contract terms, tariff transparency and dispute resolution, all being elements that are also relevant for the right to water.

Many of the above-mentioned suggestions for improvement can be found in several – but not all – of the national legislation of the Member States, is it in their constitution, or in legislation concerning the protection of water resources and the supply of drinking water, freshwater for domestic use and waste water treatment services. To ensure the right to water throughout the European Union and for all individuals, it is in the end the European legislation itself that has to be improved. This contribution aims to inspire the European and national legislators by providing ideas for improvement.

¹⁹⁴ OJ L108/51-77, 24 April 2002.