

European Water Law in Transition

New Fundamentals in Fresh Water Regulation

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Prof. mr. dr. Marleen van Rijswick
Universiteit Utrecht
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“Water is not a commercial product,
but rather a heritage
which must be
protected, defended and treated
as such”.

History of EU Fresh Water Law (I)

1975-1980



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Focus:

- prevention of pollution of fresh waters with dangerous substances
- protection based on an adequate protection level
- based on economic (common market) as well as environmental perspectives

Directives:

- *environmental quality standards (EQS)* for specific types of water: drinking water (75/440), bathing water (76/160), water as a habitat for fish (78/659) and shellfish (79/923)
- *emission limit values (ELV)* for specific water uses (Dangerous Substances Directive (76/464) and Groundwater Directive (80/68))

History of EU Fresh Water Law (II)

1980-2000



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Focus:

- Regulation for specific sources of pollution
- Integrated approach
- Environmental protection

Directives:

- Urban Waste Water Treatment Directive (91/271)
- Nitrates Directive (91/676)
- Directive for Integrated Prevention and Pollution Control (IPPC) addressing pollution from large industrial installations (96/91)

History of EU Fresh Water Law (III)

Main instruments



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- Environmental quality standards
- Planning
- Environmental licenses
- Emission standards

History of EU Fresh Water Law (IV)

Characteristics



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- Top down regulation for specific sources of pollution, standards set by the EU
- EU water law offers more or less clarity on the level of protection that is guaranteed to the citizens:

Example: legal meaning and implementation of environmental quality standards which are regarded as obligations of result and that offer rights to individuals (certainly when it comes to public health)

Therefore implementation should ensure the full application of the directive by the national authorities and, where the relevant provision of the directive seeks to create rights for individuals, they should ensure that the legal situation arising from the implementation should be sufficiently precise and clear and have to guarantee that the persons concerned are put in a position to know the full extent of their rights and, where appropriate, are able to rely on them before the national courts

History of EU Fresh Water Law (V)

Lacking elements



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- Little attention for transboundary effects
- Little attention for ecological protection and hydro morphology
- Little attention for the protection of the marine environment
- No attention for fresh water supply
- No attention for flooding
- No attention for adaptation to climate change

A new approach: The Water Framework Directive and afterwards



The WFD: a framework for integrated river basin management based on the following steps:

- Defining the good status for all waters: setting goals and standards (art. 1, 4 and 16)
- Defining the river basins (art. 3)
- Defining the competent authorities (art. 3)
- Assessing the current status of the river basin and its impacts from human activities (art. 5)
- Making strategic river basin management plans (art. 13) including the need to use exemptions
- Making practical programmes of measures (art. 11) including the chosen instruments based on an integrated approach of point sources and diffuse sources of pollution (art. 10)
- Taking care of the recovery of costs for water services (art. 9)
- Taking care of appropriate monitoring (art. 8)
- Taking care of public participation (art. 14)



A new approach: **River basin management**

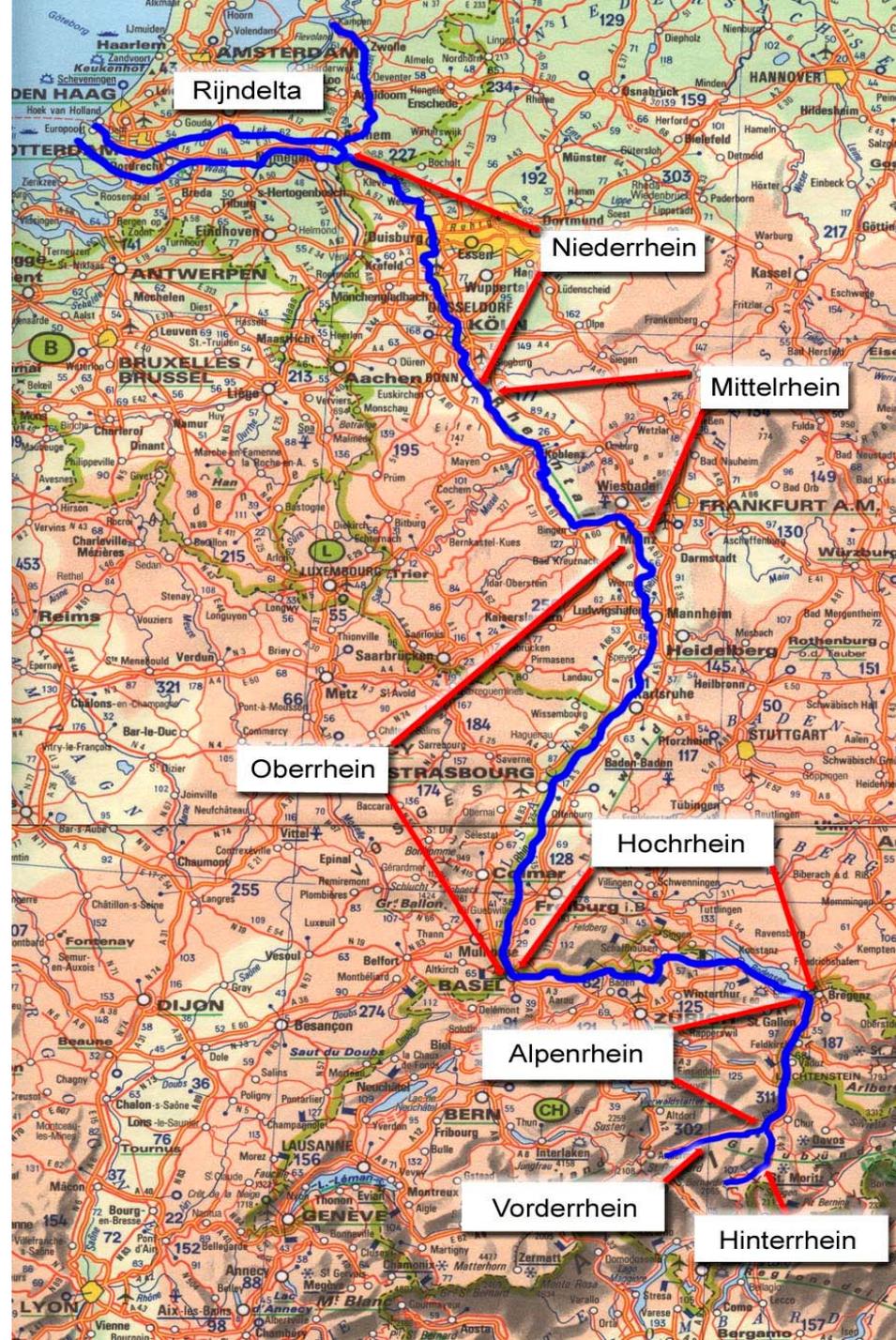
River basin management follows from the Helsinki Treaty Water Framework Directive (2000/60) and Floods Directive (2007/60)

Advantages of a river basin as object of management:

- Natural and rather permanent boundaries
- Sources of pollution and causes for floods mostly inside the river basin
- Relation between upstream and downstream use of land and water
- River basin does justice to the interaction between the use of water and land
- Water use and users can clearly be identified
- River basin is suitable for durable integral approach

Rhine

river
basin



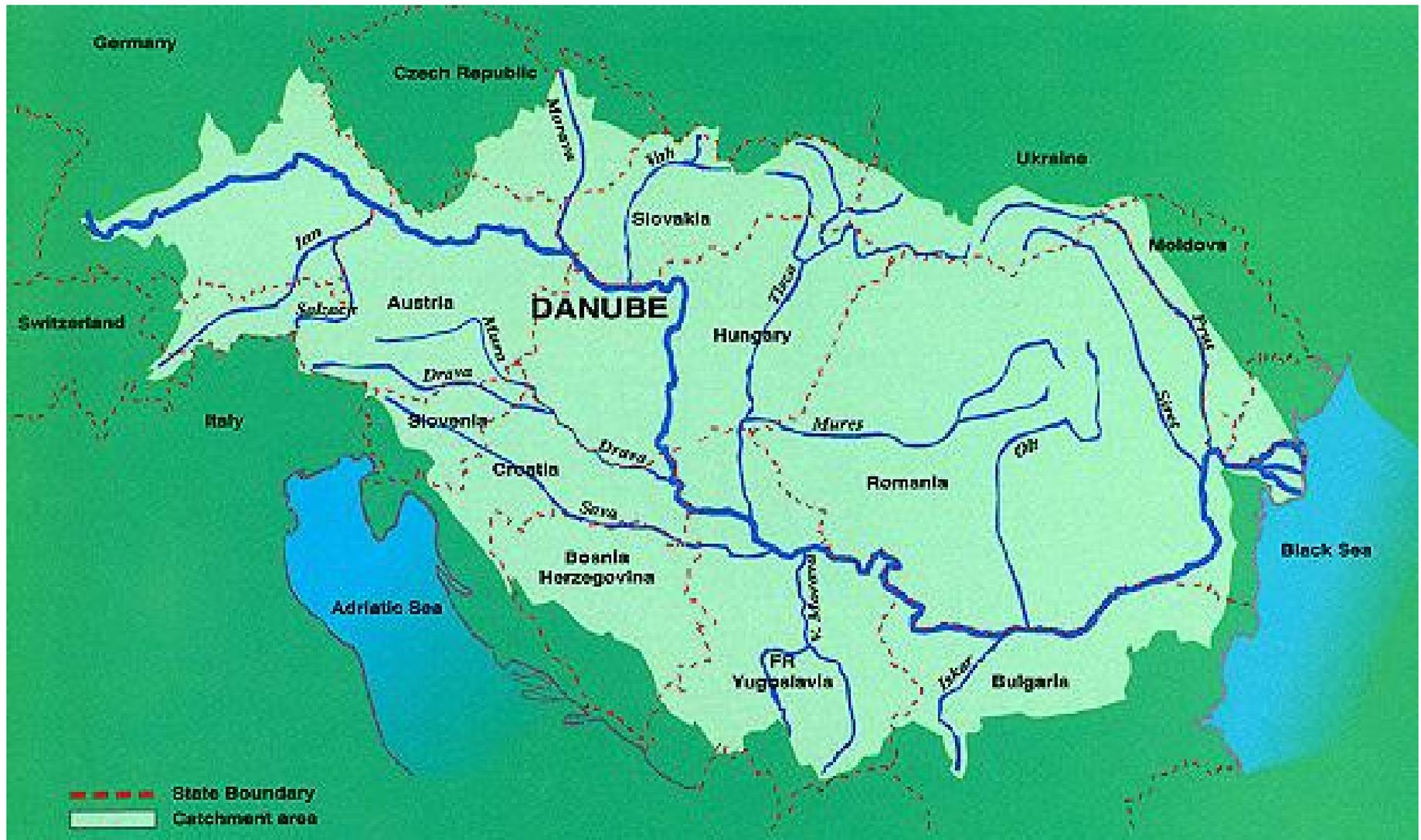
Maas river basin



Danube river basin



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Transitions due to river basin management: **Organizational changes**



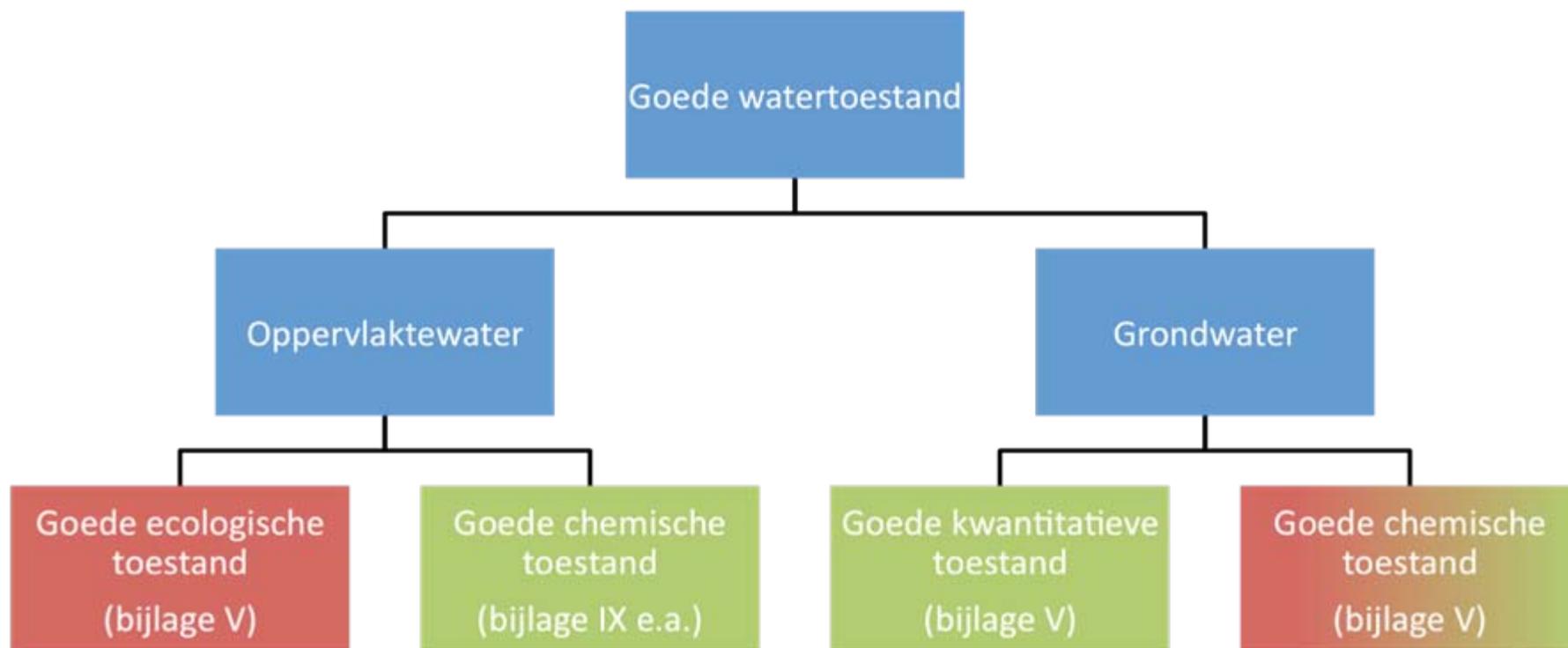
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- Competent authorities per (sub) river basin
- Shared responsibilities of several competent authorities within one river basin:
 - Transboundary cooperation obliged:
 - ECJ: Under Article 3(4) [WFD], Member States are to ensure that the requirements of the directive for the achievement of the environmental objectives established under Article 4 [WFD], and in particular all programmes of measures, are **coordinated for the whole of a river basin district**. (...) The obligations differ according to whether the river basin district in question is **national or international** (...). For international river basin districts, the Member States concerned are to ensure such coordination together and may, for that purpose, use existing structures stemming from international agreements (C-32/05)

Transitions

due to a governance approach (I):

Goals and standards at several levels
(Red: EU, Green: Member State)



Transitions

due to a governance approach (II):

The role for planning and procedures



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Plans and programmes in the WFD and the Floods directive

- River basin management plans (WFD)
- Programme of measures (WFD)
- Flood risk management plans (Floods directive)

Transitions

due to a governance approach (II): **Planning and procedures**



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Example: Floods directive (2007/60)

- No European protection level
- No norms
- No safety standards
- Only risk assessment and planning:
Preliminary flood risk assessment (art. 4), Flood hazard maps and flood risk maps (art. 6), Flood risk management plans (art. 7)

Reasons:

- Subsidiarity principle
- Geographical differences between the several Member States
- Strong relation with spatial planning (no competence of the EU)

Transitions towards natural resource management

Why? Key Facts about the European Water Situation:

- 20% of all surface water in the European Union is seriously threatened with pollution.
- Groundwater supplies around 65% of all Europe's drinking water.
- 60% of European cities overexploit their groundwater resources.
- 50% of wetlands have "endangered status" due to groundwater over-exploitation.
- The area of irrigated land in Southern Europe has increased by 20% since 1985.

Transitions towards natural resource management

Purpose WFD: Article 1

- To establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:
 - (a) 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;
 - (b) promotes **sustainable water use** based on a long-term **protection of available water resources**;
 - (c) aims at enhanced protection and improvement of the aquatic environment, inter alia, through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances;
 - (d) ensures the progressive reduction of pollution of groundwater and prevents its further pollution, and
 - (e) contributes to mitigating **the effects of floods and droughts**
- and thereby contributes to:
 - the provision of the sufficient supply of good quality surface water and groundwater as needed for **sustainable, balanced and equitable water use**,
 - a significant reduction in pollution of groundwater,
 - the protection of territorial and marine waters, and
 - achieving the objectives of relevant international agreements (...).

Transitions towards a fair price for water (services)

One part of each river basin management plan is that an economic analysis of water use within the river basin must be carried out. This is to enable a rational discussion on the cost-effectiveness of the various possible measures and how the recovery of costs should take place.

Recovery of costs for water services (art. 9 WFD)

- Member States shall take account of the principle of recovery of the costs of water services, **including environmental and resource costs (...)** in accordance in particular with the polluter pays principle.
- Member States shall that water-pricing policies provide adequate incentives for users to use water resources efficiently (...)
and shall ensure that an adequate contribution of the different water uses, disaggregated into at least **industry, households and agriculture (...)** **will be paid**
- Social, environmental and economic effects of the recovery as well as the geographic and climatic conditions of the region or regions may be taken into account

Transitions towards **more attention for the effects of climate change**

Climate change is a new problem where the Member States have to deal with. It can lead to:

- Floods and
- Water shortages

Community action:

- A directive on the management of floods (2007/60)
- A strategy how to deal with water scarcity. Legally to be implemented by the instruments given in the Water Framework Directive (2000/60)

Transitions towards more attention for public participation

Two main reasons for *public participation*:

- Decisions on the most appropriate measures to achieve the objectives in the river basin management will involve *balancing the interests of various groups*. The rational basis is the economic analysis, but it is essential that the process is open to the scrutiny of those who will be affected.
- *Enforceability*. The greater the transparency in the establishment of objectives, the imposition of measures and the reporting of standards, the greater care Member States will take to implement the legislation in good faith, and the greater the power of citizens will be to influence the direction of environmental protection.

Transitions towards more attention for public participation

Public information and consultation (art. 14 WFD)

Member States shall encourage the active involvement of all interested parties in the implementation of this 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.

Transitions regarding conflict management

- The river basin approach leads to shared responsibilities for the status of waters within transboundary river basins.
- The regular system in European law is that each Member State is responsible for reaching the goals on its own territory

How can this be combined?

The WFD knows the following solution for issues which can not be dealt with at Member State level in article 12:

1. Where a Member State identifies an issue which has an impact on the management of its water but cannot be resolved by that Member State, it **may report the issue to the Commission** and any other Member State concerned and may **make recommendations** for the resolution of it.
2. The Commission shall **respond** (?) to any report or recommendations from Member States within a period of six months.

Is this enough for a proper legal system for dispute management?

Questions to solve in the near future

- **Are the rights of individual citizens to enough and clean water sufficiently protected and how can citizens enforce their rights before the courts?**

On the one hand the growing attention for public participation in planning and decision making is a positive new element. On the other hand, due to the mainly procedural obligations for the Member States the individual rights may be diminished.

- **Does shared responsibility for transboundary river basins ask for new instruments?**

How to integrate shared responsibilities in the European system in which each Member State is held responsible for reaching the goals on his own territory? Is cooperation in making river basin management plans and programmes of measures enough or does the EU need new instruments for conflict settlement between Member States?

- **Is the current legal framework for adaptation to climate change adequate to solve problems of floods and water scarcity?**