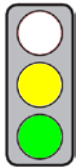


MAIN ISSUES

Objective of the Communication: The Commission evaluates EU policy for safeguarding water resources, identifies deficiencies and proposes possibilities for improvement.

Parties affected: Overall economy.



Pro: (1) Water pricing on the basis of the polluter pays principle leads to the best possible use of this scarce resource.

(2) Limits on industrial emissions based on the best available techniques are important in order to protect EU waters against chemical pollution and to prevent the distortion of competition in the European market.

Contra: EU-wide standards of consumption, such as for taps, which apply both to water-rich and to water-poor regions are misconceived. In water-rich areas, they may even be damaging.

CONTENT

Title

Communication COM(2012) 673 of 14 November 2012: A Blueprint to **Safeguard Europe's Water Resources**

Brief Summary

In the absence of any other indication, page numbers refer to the Communication COM(2012) 673.

► Background and objectives

- In its “Blueprint”, the Commission evaluates EU policy for safeguarding fresh water resources, identifies deficiencies and proposes possibilities for improvement.
- Freshwater resources (rivers, lakes, ground waters, transitional and coastal waters) and their catchment areas are subject to a wide variety of pressures particularly due to pollutant emissions, water over-use, physical changes to water bodies (e.g. dams, reservoirs, river deepening) and increasing climate extremes (flooding, drought).
- EU water protection policy should secure the long term “availability of good-quality water for sustainable and equitable water use” (p. 3), so that freshwater resources
 - fulfil their natural functions (“ecosystem functions”) and
 - can be utilised by people (“ecosystem services”).
- The EU wants to achieve “good status” for freshwater resources (Art. 4 (1) in conjunction with Art. 2 Nos. 18 and 20, Annex V Water Framework Directive 2000/60/EC). “Good status”
 - currently applies to only 43% of freshwater resources,
 - will probably only apply to 53% of freshwater resources by 2015.
- According to the Commission, EU water protection policy must be generally
 - better implemented in the Member States,
 - more effectively integrated into other EU policy areas, particularly the Common Agricultural Policy (CAP), the Cohesion and Structural Policy, the policy to support renewable energies, traffic policy and disaster protection.

► Physical changes to water bodies

- Physical changes to water bodies represent “the most widespread pressure on environmental status”. EU-wide 40% of freshwater resources are affected by it. (p. 4)
- The Commission wants to ensure river continuity in order, for example, to allow for fish migrations.
- River banks, wetlands and floodplains (“green infrastructure”) act as “buffer strips” to retain water, prevent floods and droughts and support biodiversity. The Commission therefore wants to retain or reinstate them and support them by way of the Cohesion and Structural Fund and by way of loans from the European Investment Bank.
- It wants physical changes to water bodies to be considered at the planning stage by way of “Strategic Environmental Assessments” (Directive 2001/42/EC) rather than waiting until the approval of concrete plans before subjecting them to environmental impact assessments (Directive 85/337/EEC).
- The strategy for implementing the Water Framework Directive 2000/60/EC (Common Implementation Strategy, CIS) involves the Member States and “relevant stakeholders”. In this context, the Commission wants to propose guidelines for
 - facilitating natural water retention measures and
 - the protection of shellfish waters.

► **Over-abstraction of water**

- The over-abstraction of water represents the “second most common pressure on EU ecological status” (p. 6).
- In order to prevent the lawful over-abstraction of water under official permits, “ecological flow” (p. 6) should be established so that freshwater resources can fulfil their “ecosystem functions” in the natural environment and provide the “ecosystem services” on which we rely. The Commission proposes developing a CIS guideline for an EU-wide definition and methodology for calculating “ecological flow”.
- In order to prevent illegal over-abstraction of water satellite monitoring schemes should be used (Global Monitoring for Environment and Security, GMES).

► **Water efficiency**

- Since, according to the Commission, 50% of all European river basins will be affected by water scarcity by 2030, water consumption, and possibly also associated energy consumption, should be reduced by “water efficiency measures”.
- Since 2010, Member States have had to ensure (Art. 9 Water Framework Directive 2000/60/EC) that
 - pricing policies provide reasonable “incentive to use water efficiently”,
 - on the basis of the polluter pays principle, the various water users (incl. industry, private households and agriculture) “pay a reasonable contribution towards covering the cost of water services”.
- The Commission criticises (p. 10) the fact that in some Member States
 - there is no transparent “water pricing policy” with price incentives,
 - no metering takes place,
 - failing to put a price on water consumption amounts to an environmentally harmful subsidy.
- For “water-related products” in buildings (e.g. taps, showers) the Commission wants to develop
 - voluntary EU-wide criteria for eco-labelling and green public procurement [s. [cepPolicyBrief](#) No. 25/2012 on COM(2011) 896] and
 - binding EU-wide requirements for water and energy consumption [“Eco-design”; s. [cepPolicyBrief](#) on COM(2008) 399].
- In addition, it wants to encourage the Member States to impose cost-covering prices by making this a condition for payments out of the Rural Development and Cohesion funds.

► **Chemical status of EU waters**

- 38% of EU freshwater resources are subject to pressure from diffuse sources (e.g. agriculture) and 22% from point source pollution (e.g. industrial plants).
- The chemical status of approx. 40% of EU waters is unknown due to insufficient monitoring by Member States.
- To counter the pressure from chemical water pollution, the Commission wants
 - to ensure that industrial emissions permits provide for Emission Limit Values that are in line with Best Available Techniques (BAT) and take account of relevant water protection objectives (Directive 2010/75/EU),
 - to amend the Environmental Quality Standards Directive (2008/105/EC) and the Water Framework Directive (2000/60/EC) [s. Amendment Proposal COM(2011) 876], to add 15 substances to the list of water pollutants (“priority substances”, Art. 16 (2) in conjunction with Annex X Water Framework Directive 2000/60/EC) – including three pharmaceuticals,
 - to make compliance with the Directive on the Use of Pesticides (2009/128/EC) a condition for direct payments to farmers (“cross-compliance mechanism”),
 - extend nitrate vulnerable zones (Directive 91/676/EEC).

► **Other proposals**

- In order to improve knowledge about EU waters and their use and protection, the Water Information System for Europe (WISE) should be extended.
- Re-use of “waste water” is currently limited because of a lack of EU-wide environmental and health standards. This is also an obstacle to cross-border trade in agricultural products irrigated with re-used water. The Commission is therefore considering EU-wide standards on waste water.

Statement on Subsidiarity by the Commission

Since the conditions regarding water resources (“aquatic environments”) differ greatly across the EU, the Commission, in line with the principle of subsidiarity, is not proposing a one-size-fits-all solution (p. 2).

Policy Context

Since the 1970s, numerous Directives have been issued for the protection of EU waters. Whilst the first regulatory phase protected specific uses (e.g. drinking and bathing water), a second regulatory phase focussed on specific types of water pollution (e.g. waste water, Nitrate). In 2000, in order to overcome the fragmentation and inconsistencies of European water protection law, the Water Framework Directive (2000/60/EC) created a “regulatory framework” for water protection measures in which older legislation, such as the Abstraction of

Drinking Water Directive (75/440/EEC) and the Ground Water Directive (80/68/EEC), was repealed, replaced and extended. Other water protection legislation remained in place, such as the Bathing Water Directive (76/160/EEC), the Drinking Water Directive (80/778/EEC) and the Nitrate Directive (91/678/EEC).

The Water Framework Directive establishes an ambitious and complex regulatory programme for the EU and its Member States for the continuous development and updating of EU water protection law: by 2015 a “good status” in terms of both quality and quantity should be achieved for surface and ground water (Art. 4). Thus, using the framework of – both national and cross-border – “river basin districts” (Art. 3), which are orientated according to the ecological conditions of river basins, the Member States had to carry out a comprehensive review of the water status by 2004 (Art. 5), on the basis of which they had, by 2009, to develop a programme of measures specific to the river basin district (Art. 11) and management plans (Art. 13). The implementation of the Water Framework Directive is a major challenge for all Member States, as the numerous treaty violation proceedings testify (cf. e.g. ECJ Case C-525/12 – European Commission / Federal Republic of Germany). On the basis of the Assessment of the River Basin Management Plans [COM(2012) 670], the Review of EU Policy to Combat Water Scarcity and Drought [COM(2012) 672] and the Fitness Check of European Fresh Water Policy [SWD(2012) 393], the Commission has reached the conclusion that “major additional action” is necessary (p. 3), in order to achieve the aim of “good status” for EU waters by 2015.

Options for Influencing the Political Process

Leading Directorate General:	DG Environment
Committees of the European Parliament:	Environment, Health and Food Safety (leading), Rapporteur: N.N.
Federal Ministry:	Environment (leading)
Committees of the German Bundestag:	Environment (leading)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

Market forces alone cannot guarantee the sustainable use of water resources because economic players often have little or no incentive to refrain voluntarily from activities which place a strain on the water supply. The protection of EU waters is therefore a regulatory task. The objective of EU water protection policy, as highlighted by the Commission, that “a sufficient amount of high-quality water” should be available throughout Europe, is to be welcomed since water is a scarce resource which is important for people, industry and the environment.

In the EU, water protection policy differs substantially from region to region. Some Member States do not even record consumption in all areas thus ruling out consumption-based pricing. The Commission’s insistence on the implementation of the Water Framework Directive in all Member States, particularly **pricing based on the polluter pays principle**, is appropriate: the abstraction, treatment and supply of water involves costs. Only a pricing policy which takes account of these costs **will result** in the appropriate level of demand and thus **in the most efficient use of this scarce resource**. At the same time, the parameters in the individual Member States will be brought into line to allow competition between countries to take place which is not influenced by subsidised, or otherwise distorted, water prices. Remarkably, water prices in water-rich Germany are over five times higher than in water-poor Portugal [Impact Assessment SWD(2012) 382, Part 2, p. 71].

Water pricing which incorporates “ecosystem services” can contribute to the protection of the natural “ecosystem functions” of freshwater resources and at the same time maintain market functionality because the true cost of water usage is then taken into account. A precise determination of these costs is, however, impossible so there is a danger of allowing too much room for political discretion when it comes to pricing (s. [cepPolicyBrief](#) on Resource Efficiency).

In the EU there are both water-poor and water-rich regions. It is therefore appropriate that the Commission is not proposing a uniform and therefore indiscriminate water policy for the whole of the EU. All the more incomprehensible, therefore, is its proposal, by way of the Ecodesign Directive (Directive 2009/125/EC; s. [cepPolicyBrief](#)), for a uniform, and therefore indiscriminate, EU regulation to reduce the water consumption of “water-related” products – e.g. taps and showers. Although uniform EU legislation on water consumption would, by comparison with national laws, strengthen the internal market, the Ecodesign Directive represents major interference with product design and the production process irrespective of whether water consumption in a region is harmful to the environment or not. **In water-rich regions, excessive conservation of water can cause technical and hygiene problems** because the volume of flow water in the drainage system falls too low, which leads to costs and additional water consumption, e.g. to flush out drainage pipes. **The Ecodesign Directive should not therefore be extended to cover “water-related products”.** Eco-labelling indicating the water efficiency of “water-related products” improves the information available for purchasing decisions. However, eco-labelling should be for information purposes only and not imply any judgement, since water conservation may or may not be appropriate depending on the region.

Regulatory **limits on industrial emissions** and restrictions and bans on the use of materials which are hazardous to health and the environment, **are essential to protect EU waters against chemical pollution**. It is therefore appropriate that the Common Agricultural Policy (CAP) also takes account of environmentally harmful water pollution from pharmaceutical residues and includes provisions from the Pesticide Directive. **Requiring national authorities to use the best available techniques** when setting the limits **for industrial emissions permits prevents distortion of competition** because permit requirements based on differing techniques in the Member States may lead to differing limits on emissions.

Impact on Efficiency and Individual Freedom of Choice

As the Commission itself has found, a great deal of water-related data, such as that relating to the chemical status of EU waters, is not available. Developing the Water Information System for Europe (WISE) will improve the availability of data and, as a result, may promote innovation as well as leading to better political decisions. The development of EU-wide standards for water re-use, initiated by the Commission, will create clarity about the conditions under which waste water can be reused and may therefore result in this becoming more widely practised with no damage to health or the environment.

Impact on Growth and Employment

Insignificant.

Impact on Europe as Business Location

Insignificant.

Legal Assessment

Competency

On the basis of its general competency in environmental matters (Art. 192 (1) TFEU), the Commission is also empowered to pass measures for the protection of water by way of the ordinary legislative procedure (Art. 294 TFEU) with a qualified majority. Although measures affecting the quantitative management of water resources is generally subject to a special legislative procedure (Art. 192 (2) b TFEU) which requires unanimity, this gives way to the ordinary legislative procedure if the provision concerned “materially” serves the protection and improvement of water quality (ECJ, Case C-36/98, paragraph 60 et seq.). This is generally true in the case of EU waters simply on account of the ecological interdependency of qualitative and quantitative factors.

Subsidiarity

Since the river basin districts of European freshwater resources are largely international (p. 3), the provisions of water protection legislation at EU level do not constitute any infringement of the principle of subsidiarity (Art. 5 (3) TEU).

The Commission’s plans to introduce water efficiency measures for “water-related products” (e.g. taps, showers), however, are not compatible with the principle of subsidiarity to the extent that they are aimed at water conservation. Since not all regions in Europe are subject to a scarcity of water, such provisions would be inconsistent with the Commission’s announcement that, in line with the principle of subsidiarity, it was not looking for a “one-size-fits-all” solution (p. 2).

Proportionality

Unproblematic.

Compatibility with EU Law

Unproblematic.

Compatibility with German law

Possible legislative proposals at EU level would have to be implemented in Germany – in line with concurrent legislation between the Federation and Bundesländer (Art. 74 (1) No. 32 GG) – at federal level within the framework of the Water Resources Act and at Länder level in the respective Länder statutes.

Conclusion

Water pricing based on the polluter pays principle will result in the most efficient use of this scarce resource. EU-wide uniform standards of water consumption for “water-related” products are misconceived because the EU has both water-poor and water-rich regions and because excessive conservation of water can cause hygiene problems in water-rich regions. Limits on industrial emissions based on the best available techniques are important in order to protect EU waters against chemical pollution and to prevent the distortion of competition in the European market.