

Behind the scenes: The WFD 2000/60 policy making.

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Abstract This research investigates the impact of legislative negotiations in the water policy of European Union and the crucial role of the European Commission as the formal agenda setter. The coordination of EU institutions and other actors -member states, interest groups and especially "Non-Governmental Organisations"- in law-making process of Water Framework Directive (WFD) 2000/60/EC play an important role in water governance. We have demonstrated that the policy complexity in Water Framework Directive 2000/60 legislative procedure between 1996 and 2000, the complicated nature of the legislative proposal, the large number of amendments, and divergent views had significantly delayed procedures. Consequences of policy complexity in the European Union is very important for European integration and decision-making processes. Our research demonstrates that the adoption of WFD is not only a function of political or institutional factors, but it is also shows how important is the design stage of the Directive. While our study focused on the case of water policy, the question of how policy making, and delay of legislative processes affects the efficiency of EU governance.

Keywords: environmental legislation; policy coordination; water management; Water Framework Directive;

1. Introduction

Community law making processes are significantly different from similar processes followed by Member States (Capotorti, F. 1988). In the EU, there is no central actor to plan the agenda and fully coordinate negotiations. The process from drafting the legislative proposal to adoption is complicated and involves constant multi-level cooperation of governmental and non-governmental actors (Zander, M. 2004).

The process of formulating Community environmental policies, and in particular legislation on the protection and management of water resources, implies the active and continuous involvement of national and EU bodies, and usually results in a legislative text, a product of a multi-level process (Oğuz, G. 2020) involving all member states. The specific process entails disputes and conflicts between EU institutions (Jordan A., et al 2012) and Member States as well as among Member States

themselves. Negotiations require achieving a considerable degree of coordination, and, ultimately, producing and adopting an appropriate legislative text.

The management of water resources involves national and European Union bodies due to the complex nature of water management, the need for an integrated approach, and the transboundary nature of water resources (Tsani S. et al, 2020) The analysis that follows is an example of the policy implemented for the coordination of all actors in the law-making process of the Framework Directive 2000/60 / EC.

The Directive 2000/60 / EC (WFD) is virtually the result of a long process ultimately aiming at reforming EU water policy (Kochskämper, E., Newig, J. 2021), which was first included in the Community agenda in 1988. Council on Community water policy. Similarly, the issue was discussed at the European Council in Edinburgh in 1992, while a proposal was made to reform water policy at the initiative of the French and British governments (lobby UK-France) in 1993.

WFD has been regarded as the most comprehensive, sophisticated and multi-layered model of transnational water governance and as a very complex piece of legislation (Prieto 2009). (Baranyai, G. 2020).

The procedures undertaken from the first initiative to the Commission's original proposal for the WFD are shown - in chronological order – in the following table:

Table 1. Title of the table

1988	1st Initiative	Ministerial meeting on water policy
1992	2nd Initiative	European Council in Edinburgh
1993	3rd Initiative	British-French pressure group
1994	First proposal	European Commission
1995	Proposal for a Water Framework Directive	Netherlands / EC / Council
1997	New proposal for a Framework Directive	European Commission

2. Coordination of all actors in the law-making process of Framework Directive 2000/60 / EC

The proposal for a Water Framework Directive was made in 1995. Before submitting its first proposal, the Commission "communicated" with the Council and the European Parliament (EP) and proposed that the current fragmentary water legislation be consolidated into a framework directive (Commission, 1996). On an administrative level, the coordination of the law-making process of the Directive was undertaken by the General Directorate (GD) 11, that is the GD for the Environment, in cooperation with the GD's 1,1A,1B,2,3,4,5,6,7,8,12,14,15,16,17,21,23,24, Eurostat, the Forward Studies Unit, JRC and the Secretariat General. The key components of the proposal (COM (97) 49 final) were:

- establishing a framework for the protection of surface and groundwater in the EU to prevent degradation
- preserving aquatic ecosystems, while trying to prevent and control pollution
- promoting ecologically sustainable water consumption
- ensuring quantity and quality standards of water supply in terms of sustainable development
- dividing EU territory in river basins aiming at establishing a basin management plan, a special management system for transboundary watercourses, under international conventions
- informing and consulting the public on river basin management plans
- setting up pricing policies

On 6 May 1997, the Council consulted the Economic and Social Committee (ESC), on the above-mentioned proposal. During the 348th Plenary Session (1, October 1997), the ESC adopted its Opinion unanimously (Economic and Social Committee EE C 355/83) and made several comments about the effectiveness of water policy. Following the Committee's opinion, the Commission amended its original proposal.

The Council consulted EP on the proposal and following the amended proposals of the Directive, in a new letter requested the EP's opinion again. The role of Parliamentary Committees is important in the EU law-making process, as they design reports and opinions. The Committee on the Environment, Public Health and Consumer Protection appointed Ian White as rapporteur. His proposals to reform the Water Framework Directive proposal focused on key issues such as "outlining the scope" of public accountability before formulating river basin management plans. Regarding the opinions of the other Committees (Parliamentary document A4 / 1998/261 /):

- i. The Committee on Budgets generally agreed and highlighted the fact that the Community budget cost would be small, in contrast to that of Member States, which would be high (industry and agriculture).
- ii. The Committee on Research, Technological Development and Energy proposed 27 amendments including: a) provision of quantitative policies, b) integrated water management of regions with river basins

c) use of other financial means (incentives and sanctions) in addition to full cost recovery.

iii. The Committee on Fisheries main concerns involved the repeal of Fisheries and Aquaculture Directives (78/659 / EEC on fishery waters, and 79/923 / EEC on shellfish waters).

iv. The Committee on Agriculture and Rural Development highlighted the fact that there wasn't a clear distinction between use and pollution, given that water is used by farmers for irrigation. It was also proposed that full cost recovery for all water-related services would be added to production costs and would cause increase of price for agricultural products.

In addition, the role of the Economic and Social Committee was remarkable, as it made substantive suggestions on both water policy and the individual articles of the Directive in contrast to the Committee of the Regions, which made only general comments on flood and drought prevention.

The EP was consulted by the Council for its opinion at the first reading and proposed 122 amendments for strict restrictions on reducing pollution. The Council was assigned a significant role in the law-making process of the directive, as it attempted to undermine the Commission proposal in terms of a "political agreement" before the EP delivered its opinion and superseded the EP and its role in the "legislative drafting" process. On 16 June 1998, the Council reached a "considerable degree of common understanding" of the proposed directive, under pressure from the British Government to conclude negotiations. The Council wished to reach a fast decision on the Framework Directive and complete the process before implementing the provisions of the Treaty of Amsterdam. The agreement was based on a "broad" consensus and the initiative significantly disrupted the relations between the Council and the European Commission. To reach an agreement, the Member States were forced to make several compromises, which resulted in undermining the Commission's original proposal. The major alterations in the initial proposal involved limiting water protection to groundwater, reducing the main goal of achieving "good status" for water to a simple ambition and including significant exceptions in most environmental goals, significantly reducing the principle of non-degradation of water quality, making a less rigid plan of river basins, limiting the full cost recovery to water services (Lanz, K. and Scheuer, S. 2001).

Reactions to the Council's "political agreement" were immediate and caused an international outcry. Overall, the Commission adopted 88 amendments and added several new recitals (Bulletin of the EC, 6-1999, COM (99) 271) Following the Commission's amended proposal, the EP ratified the first reading. The Council adopted its official common position and the EP adopted the second reading amendments, in accordance with the "co-decision procedure". Finally, a Conciliation Committee adopted Directive 2000/60 / EC establishing an action framework for water policy.

Regarding the role of the Member States, their contribution to the negotiations and the promotion of interests in the final text of the directive is very difficult

to be determined. However, although the discussion about the Council's "political agreement" included information about the positions of the individual Member States to reach the agreement, as regards the final text of the directive, each Member State had focused on specific articles in defense of their own interests. Although the EU member states participating in the negotiations were 15, there was no evidence or information in the relevant literature about the positions and views of all states during the law-making process of the directive. Studying WFD's drafting and adoption phases we can see strong opposition from member states during the negotiations that have weakened some of WFD elements (Kaika 2003).

In detail (Demmke, C. 2001), (Lanz and Scheuer 2001):

The United Kingdom: the negotiations focused mainly on the provisions of Article 3, involving the coordination of administrative arrangements in river basin areas, and Article 16, which included anti-water pollution strategies.

France: although actively participating in the draft directive processes, it focused on Article 3.

Germany: proposed substantial amendments to Articles 3 and 16, as well as to Article 8, about monitoring surface and groundwater and protected areas, and Annex V related to the specific Article. German also disfavoured establishing of independent river basin authorities.

The Netherlands: exerted pressure for both Article 3 and Articles 11 and 13, which were supplementary to the provisions of Article 3 and involved the action plans and river basin management plans, respectively.

Spain: engaged almost exclusively in the environmental objectives of the new directive, set out in Article 4 and, additionally, in cost recovery of water supply services, namely, Article 9 of the Directive. Spain also insisted on a generic terminology in relation to efficient water use.

Finland: contributed significantly to the provisions of Article 11 for measures.

Portugal: contributed to formulating Articles 3 and 13.

Austria: was particularly interested in the environmental objectives set out in Article 4 and introduced the special status for 'heavily modified waters'.

According to the official position of the EU, hundreds of technicians were used to draft Directive 2000/60 / EC establishing a framework for action in Community water policy, representing: a) the agricultural and industrial sectors, b) environmental organisations, c) consumer organisations and d) national and local authorities. This cooperation has been fundamental, as, over a long and open consultation period, a broad agreement had been reached on the objectives and measures of the Directive.

The Commission, a body of a legislative initiative, was the first to attempt a dialogue with all "stakeholders" in the framework of the process (Spence, D. 1994) that followed to formulate its original proposal. Thus, an open invitation was made to all interested parties, but also a special invitation was made to industrial, agricultural, chemical organisations, water companies and NGOs (Kaika, M. 2003). The specific efforts made by the Commission were based on the operation methods

applied by the Directorate-General for the Environment, relying on the principle of "shared responsibility" proposed by the 5th Environment Action Programme. Within the Commission's internal organisation, the principle is implemented via establishing "networks" and organising public debates aimed at translating environmental strategies into environmental practices (Cini, M. 2000).

The consultations were significantly supported by about 30 organisations and also citizens, who endorsed a new framework directive on water policy. Later, the Commission organised a two-day Conference (28/29 May 1996), attended by a total of 250 representatives from Member States, local authorities, water suppliers and users, consumers, and agricultural and manufacturing industries.

NGO had an increasing influence in the negotiations (Kaika and Page 2003) and a major support and intervention in the law-making process of the WFD was offered by the environmental organisation World Wildlife Fund - an active member of the environmental pressure group - which contributed to drafting the EC position at second reading. WWF addressed five priority areas (timetable for implementation of the Directive, water pricing policies, groundwater protection, control of hazardous substances, and binding objectives of the Directive), about which there were significant diverging views among members of the EP and the Council.

During that stage, WWF also worked closely with Bird Life International, with technical support from Greenpeace, the Scottish Wildlife Trust, and the European Environmental Bureau, which, since 1997, has been instrumental in revising Community water policy through its water campaign.

The involvement of non-state actors in water policy is not limited to NGOs. Private companies can also play a role, particularly in the implementation of water-related projects. However, there are concerns about the potential conflicts of interest that may arise when private companies are involved in policy-making or project implementation. To address these concerns, it is important to ensure transparency and accountability in the decision-making process.

3. Conclusions

The final text of the directive was the outcome of intense political negotiations characterised as a hybrid political construct and as one of the most complicated and hard to interpret environmental directives (Lanz and Scheuer 2001). Findings reveal that several issues were considered crucial to hampering negotiations and different interpretations on the Directive's objectives left unresolved at the procedure such as :

- the long period between submitting the Commission proposal and adopting the Directive
- the Council and the EP's contradictory views on the "political agreement" of the Council aimed at relegating the role of the EP (cooperation process)
- disagreement between the Council 's common position and the final directive

- the EP's determination as regards views and positions
- the various Reports of Parliamentary Committees
- attempts to reconcile the interests of various national, local, and regional NGOs.

Although the Commission had been initially a powerful negotiator, following the political compromises of 1998, its role was mediating rather than influential. The Committee on the Environment, Public Health and Consumer Protection, and, more specifically, the rapporteur, Ian White, the British and German Presidencies and the various working groups played a key role in the negotiations of the law-making process of the Framework Directive. The influential role of the two Presidencies of the Council and the EP was particularly powerful, especially during the co-decision procedure. The EP supported a more ambitious interpretation of the goals, while member state governments expressed concerns about the impact on industries and the agricultural sector.

The conclusion to be drawn by the contribution and the role of Member States, to the negotiations highlights the fact that all states had a considerable contribution to the law-making process of the directive, thus, the new directive eventually was a text representative of the full positions of individual Member States (Liberatore, A. 1997). In addition, the fact that most of the Member States were interested in the provisions of Article 3 demonstrates that the design and management of river basins were a crucial innovative component of the new directive.

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