The Water Framework Directive (2000/60/EC) Legal Requirements, Case Law, and the Role of Private Landowners

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18.02.2026.

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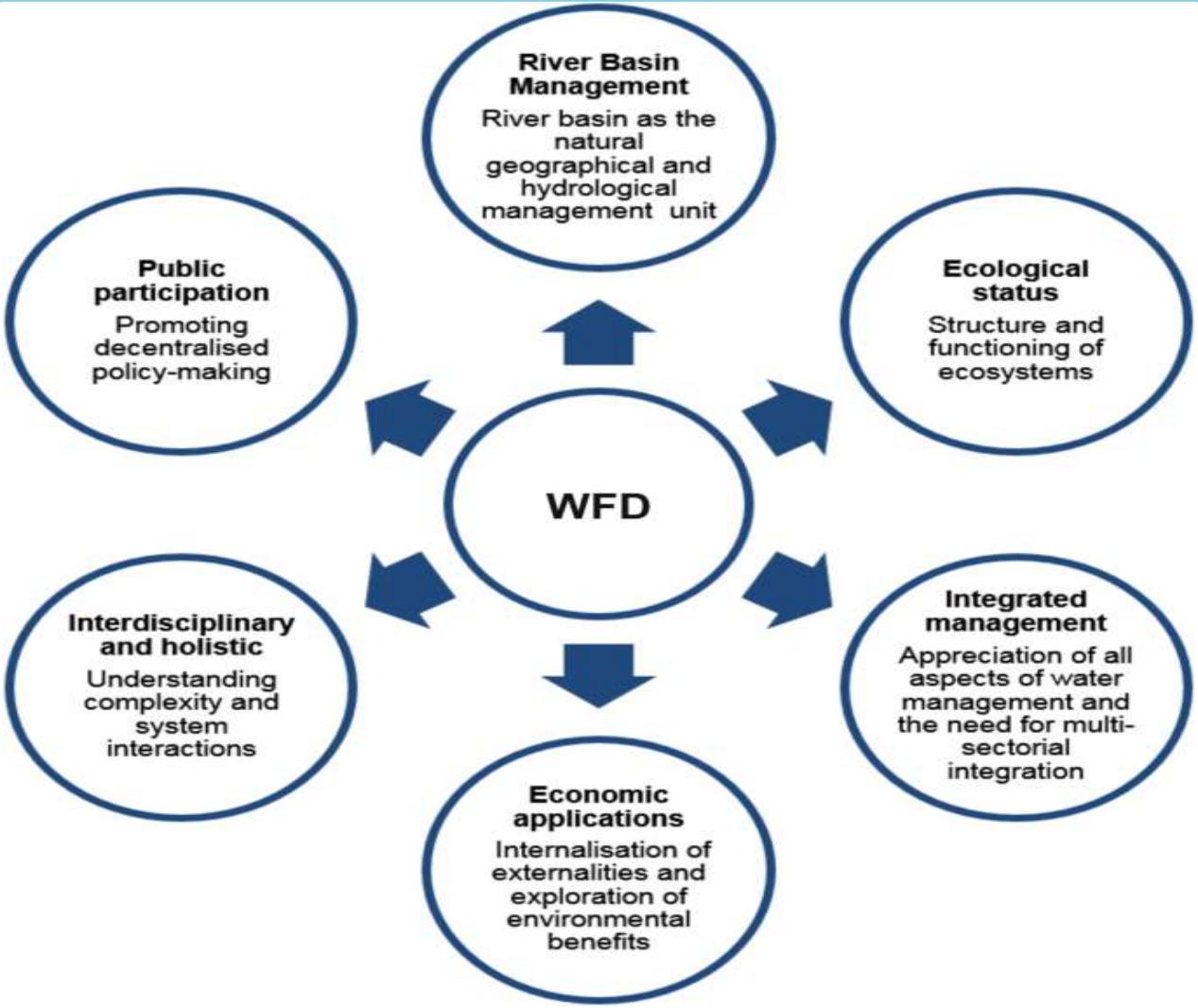
Water is not a commercial product like any other but, rather, **a heritage** which must be protected, defended and treated as such.

Why the WFD Still Matters Today

A binding legal framework

- Since 2000 - Cornerstone of EU water protection law
- Applies to surface waters, groundwater, coastal and transitional waters
- Establishes legally binding environmental objectives
- Confirmed by the CJEU as directly limiting planning and permitting decisions
- WFD in focus in Infringement cases – (Janv.2026 – Lux, DK, IT)

‘Innovations’ - introduced by the WFD



State of Play: WFD Implementation in the EU

Key findings from Commission and EEA assessments

2015,...,...,..... 2026 = 37%

- Majority of EU water bodies do not achieve good ecological status
- Chemical status failures remain widespread
- Diffuse agricultural pollution etc.
- Hydromorphological alterations persist
- Extensive reliance on Art. 4 exemptions, (deadline extensions etc.)

The Legal Core of the WFD: Article 4 – objectives and obligations

- Prevention of deterioration of status
- Protection and enhancement of aquatic and water-dependent ecosystems
- Progressive reduction of priority substances
- Achievement of good status or good ecological potential

Environmental objectives - applicable to *all water bodies*

Art.4 (1) The Non-Deterioration Obligation

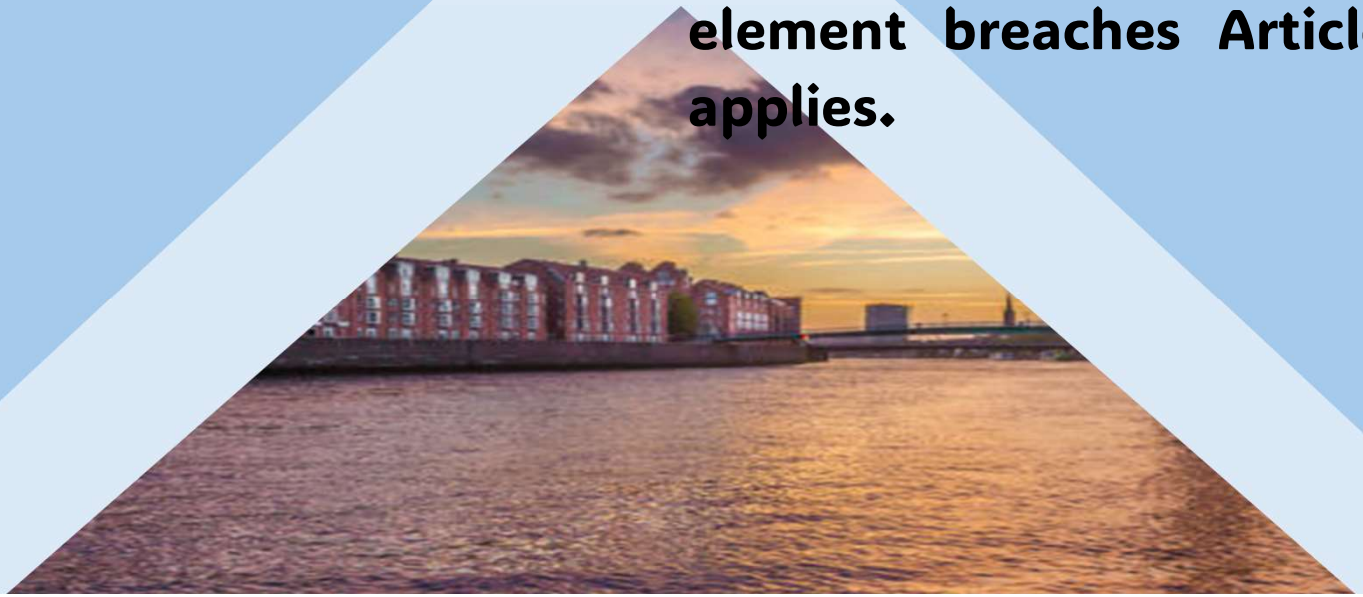
A strict legal threshold

- Any deterioration of status is prohibited
- Applies to individual quality elements

Non-Deteriorati on Obligation

Key case-law: C-461/13 (Weser)

- A river deepening project on the River Weser
- The project would have led to deterioration of certain quality elements without changing the overall class.
- The Court held that any deterioration of a quality element breaches Article 4(1) unless an exception applies.



Non-Deterioration Obligation

- The **concept of 'deterioration** of the status' of a body of surface water in Article 4(1)(a)(i)… must be interpreted as **meaning that there is deterioration as soon as the status of at least one of the quality elements**, within the meaning of Annex V to the directive, **falls by one class**, even if that fall does not result in a fall in classification of the body of surface water as a whole.

- The Member States are **required** — unless a derogation is granted — **to refuse authorisation for an individual project where it may cause a deterioration** of the status of a body of surface water or where it jeopardises the attainment of good surface water status

Art. 4
Exceptions: a Closed and Structured System

Exhaustive list of derogations

Article 4(4): Deadline extensions

Article 4(5): Less stringent environmental objectives

Article 4(6): Temporary deterioration

Article 4(7): New modifications or sustainable development

Article 4(4): Deadline Extensions

Postponing achievement of good status

- **Objective remains unchanged (good status)**
- **Extension relates only to timing**
- **Justified by either:**
  - **disproportionate costs,**
  - **technical infeasibility or**
  - **natural conditions**
- **No further deterioration permitted**

Article 4(4): Case-Law

Key case-law: **C-391/25** (pending)

- Originates from litigation challenging the **legality** of deadline extensions
- National court notes:
  - extensions without detailed justifications
  - no realistic timetables

- The CJEU is asked to clarify:
  - requirements of justification
  - legal consequences (if non-compliant)

Article 4(5)
Less Stringent Environmental Objectives

Lowering the objective
(*for «heavily modified water body»*)

- Permanent (or long-term) deviation from «good status»
- Applicable only where good status is infeasible or disproportionately costly
- Highest achievable status must still be pursued
- Must be explicitly justified in RBMPs

Distinguishing
Article 4(4) *v.* Article 4(5)

Timing *versus* ambition

- Article 4(4): temporary delay - same objective
- Article 4(5): long-term or permanent - lower objective

  - Article 4(4) when you reach good status

  - Article 4(5) - how far you are allowed to go

Article 4(6): Temporary Deterioration

Exceptional and unforeseeable events

- Natural causes or *force majeure*
- Floods, droughts, accidental pollution
- Deterioration must be temporary
- Restoration measures required

Temporary Deterioration – case from FR

unforeseeable events *v* systemic scarcity – Art.4(6)?

- **C-525/20** Association France Nature Environnement (ENGO)
- «Temporary» impacts on surface waters
- FR: In assessing and adopting decisions for non-detorioration - no account shall be taken of short-term impacts without lasting consequences…
- CJEU: «Even if the deterioration – temporary in nature - Art.4(7)»

Article 4(7): New Modifications and Development

Balancing water protection and other overriding public interest

- New physical modifications of water bodies
- New sustainable human development activities

Article 4(7): New Modifications and Development

Article 4(6): Temporary Deterioration

Article 4(7): Key Case-Law

C-346/14 – Commission v Austria (Schwarze Sulm)

- a hydropower plant affecting a high-status mountain river.
- justification – «renewable energy» project

- The Court accepted that renewable energy project may constitute overriding public interest, but

- «green light» only if all Article 4(7) conditions are fulfilled.

Article 4(7): requirements / conditions

Water protection v other public interest

Who decides?

- overriding public interest (and benefits outweighed)
- no better alternatives
- all mitigation measures must be taken

«to mitigate the adverse impact on the status »

Article 4(7): New Modifications and Development

Article 4(7): New Modifications and Development

Measures to Achieve Objectives (Arts. 11 & 13)

From plans to action

- Basic measures: implementation of existing EU law
- Supplementary measures: where basic measures are insufficient
- Measures must be effective, binding and financed

Any details on obligations, responsibilities ?

One example:
Adaptive Management through Permit Review

"Adaptive water management"
- Active infringement procedures

Member States are required:

- to periodically review control measures, including any permits granted,
- to determine the risk of achieving objectives – against current standards
- Update - permits, and other measures, if necessary

COM v MSs - "failing to correctly transpose the WFD"

POL, CY, NL, AT, LT etc. most recently: Lux, It, DK (Janv.2026)

Infringement case v. Denmark

I lack of reviews and
II lack of water abstraction permits:

- not reviewed (term – up to 30y)
- exempts riverbank owners – no need for water abstraction permit for providing river water to their cattle

- no valid abstraction permit - 215 water supply plants

Case against DK Case v. IT Case c. Lux

Infringement case v. Italy

Lack of registration of impoundment permits:

- Lack of registration of water abstraction or impoundment permit
- Concessions – not subject to periodic review

Case against DK **Case v. IT** Case c. Lux

Infringement case v. Luxembourg

no review of older water abstraction and discharge permits:

- no review of legacy permits
  - historic permits are not being reviewed against current environmental standards

Case v. DK

Case v. IT

Case v. Lux

Infringement case v. Lithuania (2025)

COM: «to ensure periodic review of water permits»

- «Member States are required **to periodically review and update these control measures, including any permits granted**, to determine whether they still achieve their objectives.
- incorrectly transposed both for surface water and groundwater

Case v. DK

Case v. IT

Case v. LT

Article 14 WFD:
Public Participation

Active involvement of interested parties

only at the planning stage?

- **Early and meaningful participation**
- **Access to draft RBMPs and background documents**
- **Landowners as key stakeholders**

Article 14 – does it create “rights”?

“Rights” to be involved in permitting procedure?

! Art.14: “the active involvement of all interested parties in the implementation of this Directive, in particular in…. planning

(but not exclusively therein, see C-664/15 Protect)

Para 72: A procedure for the grant of a permit in respect of a particular project that may cause the deterioration of the status of a body of water must be construed as ‘implementation’

Access to Justice and Enforcement

Ensuring effectiveness of WFD obligations

- Judicial review of permits and plans
- NGOs and individuals must have standing

Case law

Case law

C-664/15 (Protect)

C-535/18)

C-664/15 *Protect*

- An environmental NGO challenged a water abstraction permit affecting groundwater status.
- The Court held that ENGOs must have access to courts to enforce Article 4 WFD obligations.

Case law

C-664/15
Protect

C-535/18

C-535/18
Land Nordrhein-Westfalen

- Individuals challenged a motorway drainage permit for failure to assess compliance with Article 4 WFD.
- The Court ruled that persons directly concerned must be able to challenge decisions breaching WFD obligations.

WFD and Landowners '*and/or* water users'?

- is there any connection?
- Who needs to achieve the objectives?

Pressures from land-based activities:

Agriculture
Forestry
Drainage
Abstraction

Landowners - *when water users* - are Central to WFD Compliance

Implementation challenges

- Major pressures originate from private land use
- Agriculture, forestry, drainage and abstraction are key drivers
- Member States must regulate land-based activities
- How far to regulate “normal, daily” usage of water or landowners - for MS to assess/decide
- “faire share” – in protection and sustainable use

How the WFD Relates to Landowners (Legal Reach)

Indirectly through national implementing measures

- Permit conditions for abstraction, drainage, construction and other use of water affecting quality/quantity

- Land-use restrictions - linked to water protection.
- Mandatory compliance through national implementing law.

Limits

- Measures must respect proportionality and legal certainty.
- Compensation may be required under national constitutional/property law.

Take-away

The WFD does not override property rights, but it justifies their regulation.

Types of measures

- Regulatory
- Incentives
- Cooperation, voulantary agreements

Regulatory Instruments (Binding Tools)

Tools/examples

- Mandatory riparian buffer strips

- Fertiliser and pesticide restrictions / fee to limit usage

- Water abstraction permits and caps
- Drainage and river modification permits

- Spatial planning restrictions - linked to RBMPs – municipalities are crucial “players”

Economic & Incentive-Based Instruments

Tools

- CAP conditionality and eco-schemes
- Agri-environment-climate measures (AECMs)
- Result-based payments
- Compensation for land-use restrictions

Pros

- Higher acceptance among landowners
- Flexibility in implementation
- Can support long-term behavioural change

Legal risk

! Voluntary incentives cannot replace binding measures where good status is not achieved.

Contractual & Cooperative Instruments

es

tools	pros	cons/risks

Contractual & Cooperative Instruments

tools

- Catchment-level agreements
- Land stewardship contracts
- Voluntary nutrient reduction schemes

pros

cons/risks

Contractual & Cooperative Instruments

tools

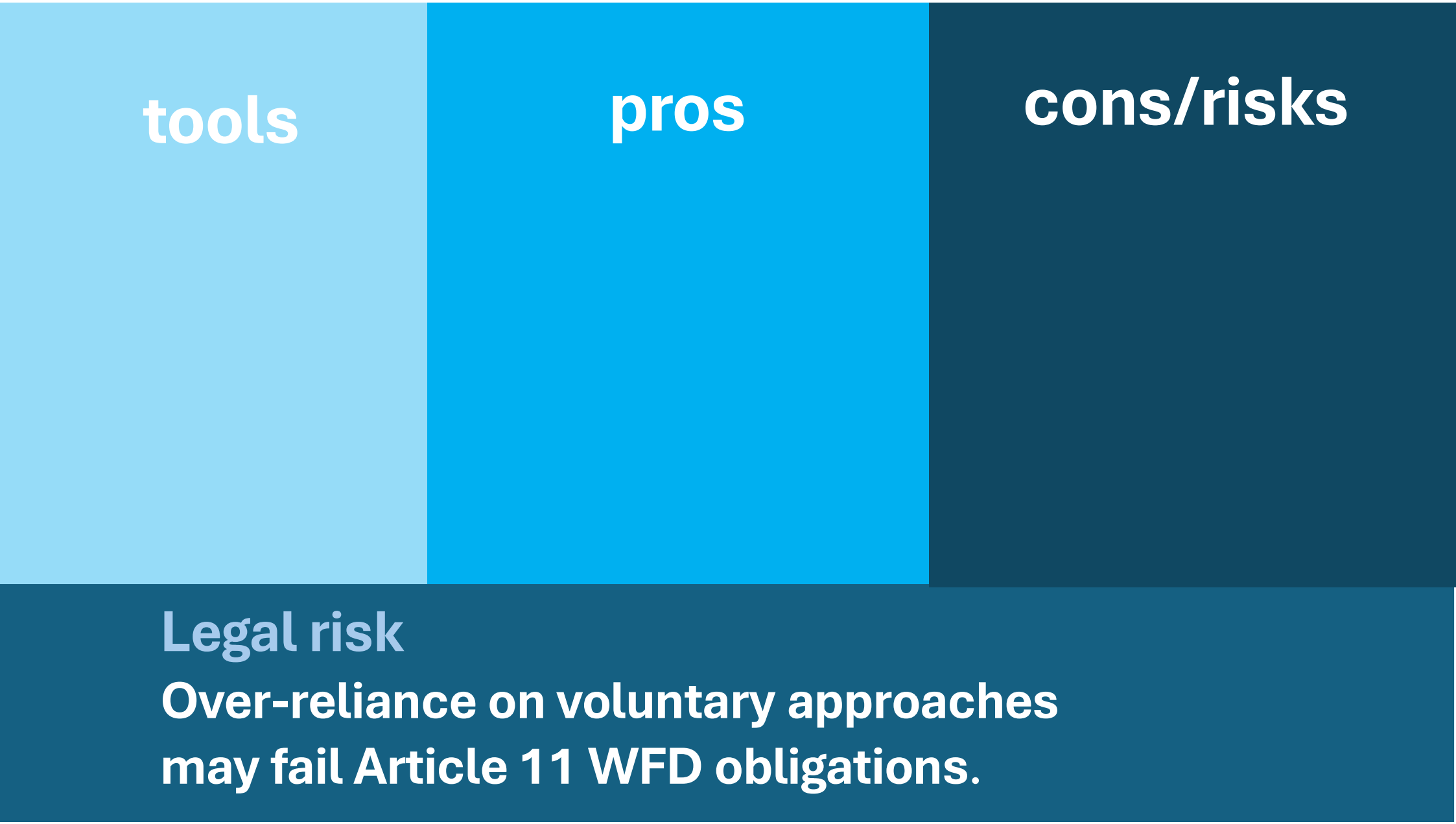
pros

- Builds trust and ownership
- Adaptable to local conditions
- Reduces enforcement conflicts

cons/risks

Contractual & Cooperative Instruments

tools	pros	cons/risks
		• Non-binding nature • Uneven participation • Weak enforceability


tools
pros
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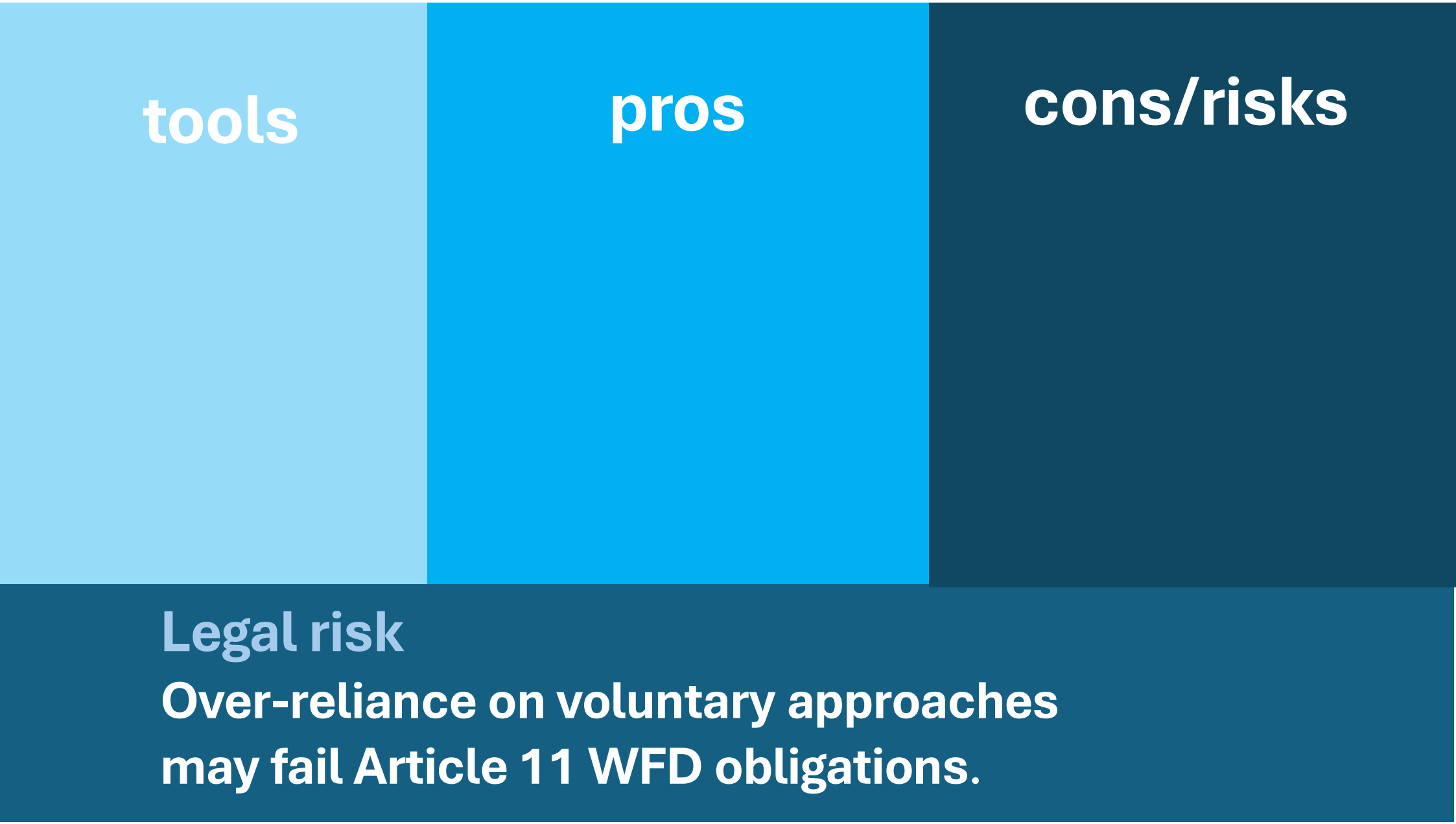
Legal risk
Over-reliance on voluntary approaches may fail Article 11 WFD obligations.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Closing Message

The WFD is strict by design – implementation and success depends on governance choices

Overall Take-away

- **Effective WFD implementation requires a calibrated mix of regulation, incentives and cooperation.**
- **Landowners must be involved early, treated fairly, and regulated clearly**
- **The WFD does not override property rights, but it justifies their regulation.**

- **“Common heritage” – determination of obligations alongside possibility of using water ‘sustainably’**

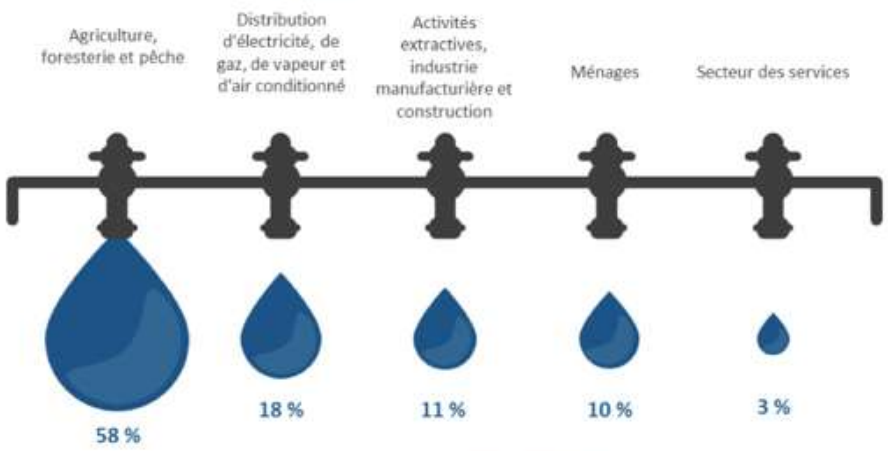
«Water users» according to the WFD

- **Main categories:**
  - The primary water users e.g. households (domestic), agriculture (irrigation), and industry.
- **Cost recovery obligation – based on PPP:**
  - Member States are mandated to ensure that **water users participate effectively and proportionately in the cost recovery of water services**, including the "environmental and resource costs" of using water.
  - ECoA in 2021: “the polluters do not bear the full cost for water pollution”.
  - «**households usually pay for most of the cost** of water supply and sanitation services, even though they **consume only 10% of water** (…) and the cost recovery principle is **difficult to apply to pollution originating from diffuse sources**, for example from **agriculture**, where it is difficult to identify the polluters”
- **«Incentive» pricing:**
  - Water-pricing mechanisms should be established to encourage water users to improve efficiency in their usage.
- **Polluter Pays Principle –** requires that water users, particularly those discharging pollutants (e.g., industry, agriculture), **are subject to the PPP, bearing the costs of environmental damage caused**.

«Water users»

«an **adequate contribution of the different water uses**, disaggregated into **at least** industry, households and agriculture, to the recovery of the costs of water services,...» Art.9

Figure 8 – Utilisation de l'eau par secteur économique en Europe en 2017



Source: Cour des comptes européenne, sur la base des données de l'AEE pour les pays membres de l'Agence européenne pour l'environnement et les pays coopérants.

MS – in the economic analysis: «make judgements about the most cost-effective combination of measures in respect of water uses to be included in the programme of measures under Article 11 based on estimates of the potential costs of such measures.»(Ann III)

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