
# Member States' Compliance with European Environmental Directives between Environmental Activism and Institutional Misfits

*A case study on the compliance with 2000/60/EC*

**Master's Thesis**

Rotterdam, August 2014

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**Word Count**
29,170

## Abstract

The compliance of Member States with European Directives is a delicate issue, especially when related to environmental policies. This is indeed the sector with the highest number of infringement cases. A central feature of the causes of non-compliance lies in the misfit that might arise between national policies, national administrative regulatory styles and structures and requirements encompassed in European Union policies, more specifically in directives. While changing the core of national traditions might be influenced by individual Member States' willingness to do so, the presence of environmental awareness and activeness might foster this evolution towards a more efficient compliance. The objective of this case study is to investigate the interaction between national environmental NGOs' activeness, national administrative structures, and the compliance of Member States. We therefore analysed the implementation of the European Water Framework Directive in the United Kingdom, the Netherlands, Italy and Germany. Findings underlined the claim that this is one of the least respected directives in the arena of environmental internal market ones, meaning that its implementation process has been marked by numerous cases of non-compliance. The main argument resulting from this research is that the level of compliance is more dependent on national administrative structures and on national authorities' willingness to reach changes rather than on the mere activeness of environmental NGOs. Indeed, cases in which NGOs actively intervened to foster compliance were those in which Member States already failed to meet requirements. Therefore, compliant behaviour of Member States might not be directly fostered ex-ante by environmental NGOs yet re-established ex-post by those once defection has already occurred. In addition, national environmental NGOs' work heavily depends on national authorities' willingness to make changes in their administrative structures and policies.

## Acknowledgments

I would like to express my deepest gratitude to
My father, an incredible man of wisdom and perseverance, who has made my entire educational career possible and continues to do so now,
My mother, in the wish to become one day at least half as strong as she is,
My sister, to whom I have always looked up to and forever will.

Moreover, I take this opportunity to express my sincere appreciativeness to my supervisor, professor M. Haverland, thanking him for his constant monitoring and encouraging throughout the development of this master's thesis. My gratitude goes also to my second reader, Anna Jüngen.

"An investment in knowledge pays the best interest" – Benjamin Franklin

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## List of Abbreviations

| | |
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| **AWBs** | Artificial Water Bodies |
| **BMU** | Federal Ministry for the Environment, Nature Conservation and Nuclear Safety |
| **CIS** | Common Implementation Strategy |
| **DEFRA** | Department for Environment, Food, and Rural Affairs |
| **DG** | Directorate General |
| **DNR** | Deutscher Naturschutzring |
| **EA** | Environment Agency |
| **EAPs** | European Action Programs |
| **ECJ** | European Court of Justice |
| **ECOS** | European Environmental Citizens Organization for Standardization |
| **EEB** | European Environmental Bureau |
| **EEC** | European Economic Community |
| **EC** | European Commission |
| **EU** | European Union |
| **EP** | European Parliament |
| **GDP** | Gross Domestic Product |
| **HMWBs** | Heavily Modified Water Bodies |
| **IRBDs** | International River Basin District |
| **LEAPs** | Local Environment Agency Plans |
| **NAW** | National Assembly for Wales |
| **NGOs** | Non-Governmental Organizations |
| **OECD** | Organization for Economic Co-operation and Development |
| **OFWAT** | Water Services Regulation Authority |
| **PPP** | Polluters Pay Principle |
| **RBDs** | River Basin Districts |
| **RBMPs** | River Basin Management Plans |
| **RSPB** | Royal Society for the Protection of Birds |
| **RWA** | Regional Water Authority |
| **UKTAG** | UK Technical Advisory Group on the Water Framework Directive |
| **V&M** | Dutch Ministry of Transport, Public Works and Water Management |
| **WF** | Water Footprint |
| **WFD** | Water Framework Directive |
| **WWF** | Wild Wildlife Fund |

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# I. Introduction

## 1.1 Background Information

### 1.1.1 Origins of European Environmental Policies

The original treaties of the European Union lacked specific references to environmental policies since these were seen as implicitly part of the communitarian acquis. However, actors of the European community realised that since pollution and environmental concerns rest on a transnational basis overreaching national borders, communitarian action for coordination was needed. It was in 1972, during its Paris Summit, that the European Economic Community (EEC) set the starting point for European Union (EU) environmental policies as they are currently known. As a result, the European Commission (EC) had been delegated to draft the first Environmental Action Program (EAP), which was adopted one year later in 1973 and incorporated Europe's first environmental policy. Due to this achievement, the Directorate-General (DG) Environment was established as a body of the EC within the EU. As will be further explicated throughout the introductory part, the willingness to sustain a homogenised common market was central in the development of European environmental policies.

### 1.1.2 The European Water Framework Directive in brief

The very first steps towards European water legislation were made in 1975 and dealt with the correct use of rivers and lakes to obtain clean drinking water. Binding targets on the quality of Member States' drinking water were subsequently set in 1980. The second phase of European water legislation covered the 1988-1991 timeframe and was principally concerned with a review of existing legislations to identify improvements to be made and holes to be filled (EC, 2014 [a]). Covering the third and most salient stage of the European water legislation, in 1996 a two-days water conference was hold setting the bases for the current European Water Framework Directive (WFD).

Due to policies becoming increasingly fragmented, European actors recognised that a more integrated water strategy had to be put in place, incorporating water quality, pollution and quantity issues (Howe and White, 2002; 1028). For instance, the EU Environment Agency affirmed in 1998 that after these long waves of EU water legislation "not only was the scientific community demanding more dramatic improvements, but to an ever increasing extent so were Europe's citizens and environmental organizations" (Page and Kaika, 2003; 3). It was ultimately in 2000, that the European Parliament and the Council established a framework for the Community action in the field of water policy (Directive 2000/60/EC), known as the EU *Water Framework Directive (WFD)*. Acknowledging the innovative aspect of this directive, it will be our duty to exhaustively analysis it in subsequent chapters.

## 1.2 Problem Statement

"Complying with European Union Directives opens the largest single market in the world" (Bailey and Bailey, 1997; 43). The European single market shapes directives since these aim at its strengthening in order to harmonise national rules. However, this harmonisation is not always successful since a consistent divergence of compliance rate exists among Member States, in particular when related to environmental legislations. This is supported by the analysis of infringements cases presented by the EC DG Environment. Therefore, which could be the drivers behind observed variations in compliance rates among Member States? Do other actors as NGOs influence Member States during their trade-off analysis between complying with and defecting from EU environmental directives? And moreover, do national administrative structures and national policies influence Member States' compliance? Understanding the role played by third parties and national governments themselves will help to reach conclusions.

Firstly, it is important to highlight that: "the place of Non-Governmental Organizations (NGOs) in international governance seems nowhere more securely established than in the field of environmental action" (Jasanoff, 1997; 579). In addition, scholars see NGOs as having an increasing prominent role in environmental institutions, participating in many activities, traditionally reserved to states (Raustiala, 1997; 719). Though observing that NGOs do have a secured place in environmental politics, one question remains unanswered in the field of policy research, i.e. "the questions of how and under what conditions NGOs matter" (Betsill and Corell, 2001; 65). Recognising the delicate role of NGOs, environmental ones in particular, in shaping environmental policies, it would be interesting to understand whether their social mission influences Member States' compliance, or instead whether national structures play a more predominant role.

To guide the reader through our study, we will first identify both theoretical and societal relevance of the matter and further explicate our research purpose. Literature insights will then shape the ground for expectations and guide us through the identification of suitable research designs and methods to proceed with the analysis of cases as well as lastly the comparative case study analysis and discussions of findings.

## 1.3 Research Purpose

### 1.3.1 Theoretical Relevance

The number of open infringements cases addressed to Member States for non-compliance with environmental directives is high compared to other European policy areas, even if in downturn. Striving to apply theories on compliance that will be further explicated in relevant sections, a clarification would permit the researcher and the reader to better understand the components often responsible for Member States' defection. Moreover, the compliance of Member States with European environmental policies could possibly illustrate the idea that the *principal-agent* problem is generic in society (Stephen A. Ross). The EU – assuming the role of the principal - delegates to each Member State – here defined as the agent - the task of correctly transposing and implementing European environmental directives. Therefore, the outcomes of our research might be further useful to the analysis of best applicable enforcement mechanisms to the area of environmental policies. Indeed, finding relevant foundations to assess the importance of NGOs could lead to governments taking their expertise and views into account when formulating implementation and compliance strategies. The same accounts for a better understanding of states' administrations, through which governments might relate compliance strategies to their regulatory styles. Further understanding drivers of compliance might lead to a more effective implementation of directives in the future if those factors will be accounted for by governments' officials. Lastly, theoretical relevance might be complemented by the possible delineation and introduction of suitable outcome-oriented selecting and controlling mechanisms to regulate more efficiently the implementation stage of the policy process.

### 1.3.2 Research Question

Drawing from the thoughts expressed until this moment, we strive to find sufficient empirical evidence to assess the drivers behind Member States' compliance with European environmental directives. Based on theoretical insights we will use a factor-centric research design to answer the following x-oriented question.

**RQ:** ***To what extent do environmental NGOs and national administrative structures influence Member States' compliance with European Environmental Directives?***

To structure our research, we attempt to estimate the direction and size of a particular causal effect of a set of independent variables $X_1$ (i=1…n) on a dependent variable Y (Gschwend and Schimmelfennig, 2007; 8). Our dependent variable Y is the compliance rate of Member States with European environmental directives, in our specific case the WFD, and our set of independent variables $X_1$ will be composed among others of Environmental NGOs and their influential role exerted on Member States.

Other components of our set of independent variables are national administrative structures. After the identification of the societal relevance as well as the completion of a relevant literature review, we will define and operationalize these variables of interest.

### 1.3.3 Societal Relevance

A research is said to be socially relevant if "it addresses social problems, improves citizens' and policymakers' understanding of the problem and, possibly, offers solutions" (Gschwend & Schimmelfennig, 2007; 3). On environmental matters, Pye et al. (2008) state that social impacts of environmental policy are evident (Ibid. 9). Moreover, the Organization for Economic Co-operation and Development (OECD) (2006), identifies two levels of social concerns with regard to the environmental sector: "those related to how environmental quality is distributed across different members of society, and those related to the distribution of the financial effects of environmental policies" (Ibid. 2).

In addition, curiosities on the issue might arise from concerns on the usefulness and effectiveness of EU environmental policies since "social relevance not only means that people are affected by some phenomenon, but also that they evaluate the various possible consequences differently" (Lehnert et al., 2007; 26). Moreover, NGOs have increasingly more members and donors, and with this increase network their chances to ensure the correct functioning of EU environmental policy-making have risen. To provide citizens with palpable alternative to state-owned organisations and to foster their trust in governments, NGOs might exert the role of consultant and push for more ethic friendly alternatives than those wished by governments. Seeing that NGOs' activities positively influence Member States' governments and in particular their compliance with European policies, could further raise their acceptance among citizens, confirm their importance and provide them with more means to exert their 'watchdog' activities. In order to understand the role that environmental NGOs and national administrations play in making European policies more effectively implemented at the national level, we now begin our study with a literature review, a theoretical framework, an explanation of research designs and methods followed by a case study and a comparative analysis; chapters that will hopefully lead to insightful results.

# II. Literature review

Having completed the introductory part of our research, we will present existing theories and studies that will serve as background to our analysis and will lead to predictions. Numerous are the scholars having dealt or dealing with the issue of Member States' compliance with European law, drawing possible explanations for differences in compliance. Aware of the prominence of these theories and with no presumption of exhaustiveness, this section summarizes the most salient believes in relation to our research purpose.

## 2.1 Approaches to Compliance

### 2.1.1 Genetic and Systemic explanations to compliance

Borzel (2000) recalls the work of Pridham (1996) in distinguishing between *genetic* and *systemic* approaches to incorrect implementation of European directives. The first structural explanation relates to the possible open texture of EU directives and "effective European monitoring and enforcement mechanisms" (Borzel, 2000; 145). The ambiguity of objectives encompassed in European directives is another possible feature of genetic causes to incorrect implementation. It therefore concerns the importance of the structural character of the EU policy-making. The genetic approach can be related to the enforcement approach developed by Talberg (2002) as well as Ross' principal-agent theory. Of more relevance to us is the second group of causes, the systemic one, which refers to aspects of "the political and administrative institutions of the individual member state, such as the fragmentation of the political system, the lack of administrative capacity, (…) and the lack of environmental awareness and political activism" (Borzel, 2000; 146). We bring this quote to the readers' attention since all throughout the study domestic accounts of the systemic approach will play a prevailing role.

### 2.1.2 State-based and Preference-based explanations to compliance

Thomson et al. (2007) distinguish between other approaches behind the explanations of compliance variation among Member States. The *state-based* explanation focuses on intrinsic characteristics as for instance the administrative efficiency and institutional structure of Member States. Instead, a *preference-based* approach puts national governments' policy preferences at the centre stage (Ibid 687). This second approach accounts for divergent rates of compliance of single Member States with different directives, while the state-based approach analyses variation among different countries as such. Considering our ambition to understand the compliance rate variation among Member States by concentrating on one single directive, we will give the state-based approach a central role throughout our literature review and future sections.

## 2.2 Member States and Compliance

### 2.2.1 Policy Misfits and Compliance

The policy misfit theory takes into account *existing* policies and rests on structural explanations. Borzel (2000) affirms in her case study on the implementation of five different EU environmental policies that "non-compliance is most likely if a EU policy causes a significant 'policy misfit'" (Ibid. 141). A policy misfit arises: "if a EU policy challenges existing domestic policies, its implementation imposes considerable costs, which public administration is little inclined to bear" (Borzel, 2000; 142). For instance, the Environmental Impact Assessment (EIA) directive analysed by Borzel is characterised by an integrated cross—media approach. However, Germany has a highly sectorised legislation that therefore didn't fit the requirements of the directive. This policy misfit was also influenced by administrators' unwillingness to implement the directive, considering it as 'unnecessary'. Therefore, "effective implementation is dependent on the extent to which differing national arrangements are adapted to European requirements" (Knill, 1998; 3). Authors as Haverland, (2003), Zhelyazkova and Torenvlied (2011) as well as Knill and Lenschow (2001) have also covered the "goodness of fit approach". The latter assert that: "the pressure felt on domestic level is defined not only by the content of the respective EU legislation but also by already existing national structures" (ibid. 121). The policy misfit concept is therefore to be seen as correlated to national administrative structures.

### 2.2.2 National Administrative Structures and Compliance

Policy misfit as an explanation of non-compliance is to be put in correlation with the characteristics of existing national administrative structures. Indeed, Borzel (2000) affirms that: "the more an EU policy challenges or contradicts the *corresponding* policy at the national level (i.e. policy misfit), the higher the need for a member state to adapt its (...) administrative structures (i.e. institutional misfit) in the implementation process" (Ibid. 148). Falkner et al. (2004) provide additional clarifications, affirming that even in case of a small- or medium-scale misfit, national governments might still encounter incorrect transposition due to 'administrative shortcomings' and interpretation problems (Ibid. 459). The relevance of national administrations is also emphasised in the claim that: "the formal transposition and practical application of supranational policies is influenced by administrative traditions which may differ substantially from country to country" (Knill, 1998 in citing Siedentopf and Hauschild, 1990). Therefore, in assessing compliance, it is important to not exclusively highlight policy misfits yet account for possible institutional misfits. In order to assess the occurrence of institutional misfit we present in the following section Knill and Lenschow (1998) work on regulatory styles and structures of Member States with regard to administrative requirements of EU directives.

#### *2.2.2.a Regulatory styles and regulatory structures*

To relate the institutional misfit with administrative arrangements of a Member State we recall Knill and Lenschow (1998) identification of regulatory styles and structures. While the first is defined by the interaction of administrative and societal actors, the second dimension deals with the "distribution of administrative competencies with the respective patterns of administrative coordination and control" (Ibid. 597). Regulatory styles can be further operationalized into two dimensions and ideal types. Concerning the two dimensions, Knill and Lenschow (1998) define the *mode of state intervention* as legalistic, formal, adversarial and closed, as opposed to the *administrative interest intermediation* that is more pragmatic, informal, consensus-based and transparent. In addition, two ideal types applicable to both dimensions are identified as the *interventionist* and the *mediating regulatory style*. The first illustrates a command and control type regulatory rules, substantive objectives, limited discretion and flexibility, while the second favours self-regulation, procedural requirements, great discretion and flexibility (Knill and Lenshow, 1998). To specify the regulatory structure dimension, authors distinguished between a vertical (centralization/ decentralization) and a horizontal (concentration/ fragmentation) distribution of administrative competencies. Throughout the thesis we will refer to administrative structures as defined by regulatory styles and structures.

To assess the relation between adaptational pressure and resultant domestic changes, Knill and Lenshow (1998) identified four paths of change. *Confirmation of the core* implies that compliance occurred without changes, i.e. that the EU policy is identifiable as a confirmation of existing national administrative arrangements. *Contradiction of the core* on the other hand occurs when administrative resistance subsist also where EU policies conflict with the national institutional essentials. *Change within a changing core* covers the cases in which traditionally the adaptation pressure would be high, though evolving national reforms alleviate this pressure allowing for a fit between the EU policies and the new core of the Member State (Knill and Lenschow, 2001; 126). *Change within a static core* recalls the moderate level of adaptation in which "EU legislation is demanding only changes within the core of national administrative traditions rather than challenging these core factors themselves" (Knill, 1998; 7). Examples of each path are: (1) Confirmation of the core in the UK with regard to the Environmental Management and Auditing Systems regulation where no changes were needed in the British environmental management systems. (2) Contradiction of the core in Germany with regard to the Environmental Information directive since the countries' access to information was traditionally restricted to parties of interests, while the directive called for open and transparent forms of administrative interest intermediation. (3) The same directive was however an example of Change within a changing core in Britain case since the government already underwent reforms to increase transparency and accountability. (4) Lastly, a Change within a static core occurred in Germany with the requirements of the Drinking Water directive. Some adaptational pressures were required though not challenging the institutional core. These paths will be the essence of our compliance analysis.

#### *2.2.2.b Logic of appropriateness*

As just recalled, compliance with European directives might depend on national administrative structures. We therefore connect the previous paths of change with the so-called logic of appropriateness. Indeed, the degree of change required by supranational directives is also important, and correct implementation of these directives might be enhanced when required adaptations can be performed through changes following the *logic of appropriateness*. Changes must indeed be respectful of the mere structure of existing national administrative institutions. In this aspect, Knill (1998) asserts that effective implementation is dependent on the institutional scope of adaptation that has to remain at a moderate level. Therefore compliance is strengthened when "EU legislation is demanding only changes within the core of national administrative traditions rather than challenging these core factors themselves" (Knill, 1998; 7). However, Knill (1998) highlights also that the administrative adaption is depending on national actors and their support of issues European policies. Therefore we wish to consider also the role played by external actors in ensuring compliance.

## 2.3 External pressure and Compliance

### 2.3.1 Non Governmental Organizations (NGOs)

Authors as Betsill and Corell (2001) assert that NGOs "try to raise public awareness of environmental issues; they lobby state decision-makers hoping to affect domestic and foreign policies related to the environment; (…) they participate in international environmental negotiations; and they help monitor and implement international agreements" (Ibid. 67). Moreover, McLaughlin et al (2007), argue that organisations influence the prospects for compliance *actively* by facilitating intervention, and *passively* by exerting pressure (Ibid. 722). On the active side, authors as Betsill and Corell (2001) identify NGOs' influence as their ability to "intentionally transmit information to negotiators that alters both the negotiating process and outcome from what would have occurred otherwise" (Ibid. 66). Indeed, environmental NGOs "are confident of public support and view public participation as a vehicle not only for making environmental policy more effective, but also for boosting the influence of their own position" (Page and Kaika, 2003; 2).

### 2.3.2 The Pull-and-Push Mechanism

Member States assume a crucial role since national executive and legislative bodies act as *guardians of the status quo*, to protect national legal-administrative traditions with regard to demands exerted by European directives (Falkner et al. 2005; 453). Consequently, "the governance capacity of the EU appears to be rather limited (Treib, 2003; 3) and compliance might be a matter of state choices yet influenced by external factors.

Borzel (2000), in citing Pridham (1994), recalls that the *pull* factor - domestic pressure for adaptation - occurs under different circumstances. Environmental NGOs can act as watchdogs in order to make cases of non-compliance with European directives visible to supranational authorities, and "powerful interest groups can mobilize in favour of compliance with a policy" (Borzel, 2000; 148). Koutalakis (2004) affirms that an apparent weakness of civil environmental activism is often seen as the case of the poor record of compliance with EU environmental. This idea has to be related to the 'coalition theory' that highlights the importance of national actors' support. Indeed, according to Borzel (2000), non-compliance occurs in particular when "there is no mobilization of domestic actors pressurizing public authorities" (Ibid. 141). The coalition theory is therefore an actor-centred one.

On the other hand, the *push* factor recalling the enforcement approach to compliance is best carried out by European Institutions, for instance the European Commission, that have the possibility to open infringement proceedings and therefore push EU policies from above against defecting Member States (Borzel, 2000). The pull-and-push mechanism therefore shows that by being 'sandwiched' by European and domestic actors, EU environmental policies might be better implemented in Member States (Borzel, 2000). While the pull factor is of more importance to us to with regard to our independent variables, the push factor will be recalled during the compliance analysis of Member States only. Therefore, political activism and environmental awareness become variables to influence the correct implementation of European directives, as expressed by Knill (1998): "administrative adaptation to European requirements is depending on the degree to which supranational policies are supported by national actor coalitions" (Ibid. 3).

## 2.4 Summary

On different approaches to compliance we distinguished among genetic and systemic explanations, as well as state-based and preference-based explanations. Moving further to the role played by Member States, we focused on policy misfits and in particular on national administrative structures and institutional misfits as occurrences hindering correct compliance with European directives. It appeared that non-compliance is related to national adjustment duties and administrative limitations of Member States (Tallberg, 2002). Moreover, by recalling the coalition theory, we tried to assess whether or not compliance is only a matter of states' choice or if third parties do have an influential effect. To account for the main independent variable of our research, we introduced theoretical insights on external pressures, focusing on the role of NGOs and domestic actors comprising the pull-and-push model. Having obtained an overview of existing studies, we will relate these to our case study through the theoretical framework that will explicate the main variables of our research as well as our hypothesis that have been formulated as predictions on the research question.

# III. Theoretical Framework

Taking into account the above-introduced findings retrieved from an arrow of scholars, we stress the role played by national environmental NGOs, and Member States' domestic administrative structures in leading to Member States' compliance with European environmental directives. It is the aim of this research to analyse the impact of those two variables on the compliance process. Therefore, to clarify concepts, this section covers the definitions of our indicators and leads to the identification of predictions made according to our research question introduced in section 1.3.2.

## 3.1 Definition of Variables

### 3.1.1 Dependent Variable

#### *European Directives and their Legislative Process*

EU directives can be defined as "the actual laws of the EU" (Bailey and Bailey, 1997; 28). In its delineation of directives, the European Commission might target all Member States or only some of them. Normally, the main aim is to align divergent national laws on matters of the single market. Once addressed by European directives, national authorities are obliged to adapt their legislations to meet set goals, yet without receiving clear indications of the means though only of the due date. It is important to keep in mind that Member States are given sufficient space for manoeuvre in the implementation process of the directive, designed to suit national needs and habits.

#### *Compliance*

The Oxford Dictionaries defines compliance as the state or fact of according with or meeting rules or standards (Oxford Dictionaries, 2014). On directives, non-compliance may be two-fold. If Member States might pre-ante fail to legally transpose directives into their national legislation, they might as well ex-post miss the correct application (implementation) of these (Tallberg, 2002; 624). Thomson et al. (2007) identify non-compliance in "the initiation of infringement proceedings by the Commission against Member States for failure to transpose or implement correctly a particular directive" (Ibid. 691). To specify, according to Knill and Lenschow, (1998) implementation effectiveness can be defined as "the degree to which both the formal transposition and the practical application of supranational measures at the national level correspond to the objectives specified in the European legislation" (Ibid. 595). We will therefore consider both correct transposition and implementation of directives to assess compliance of Member States, and it is worth recalling that while domestic defection is followed by judicial procedures of national courts, international courts cannot rely on the same monopoly of legitimate force to restore compliance (Panke, 2010; 102).

### 3.1.2 Independent Variables

#### *Non-Governmental Organizations (NGOs)*

NGOs are defined by the business dictionary as: "private sector, voluntary organization that contributes to, or participates in, cooperation projects, education, training or other humanitarian, progressive, or watchdog activities" (Business Dictionary, 2014). Important is that governments do not control these organisations (Cambridge Dictionaries, 2014). Environmental NGOs in particular are those organisations keen to environmental issues throughout their business operations.

#### *National Characteristics*

##### Policy Misfit

The variable of departure for our research is the policy misfit. As introduced in the literature review, a policy misfit occurs when "a EU policy challenges existing domestic policies, its implementation imposes considerable costs, which public administration is little inclined to bear" (Borzel, 2000; 142). In accordance with authors as Knill (1998), Knill and Lenschow, (2001), Haverland, (2003), and Zhelyazkova and Torenvlied (2011) one can define the policy misfit as the need to adapt national existing policies due to a challenge between EU policies and corresponding national ones. This implies also a re-definition of national administrative structures and leads to our second phenomena of interests, i.e. institutional misfits.

##### Administrative Structures

Structure, "implies more than changes in policies or preferences, (and) in the most general sense, structures are patterned relationships which are stable over time" (Risse et al. 2001; 4). Knill and Lenschow (2001) proposed that "administrative structures and procedures that are embedded in the member state's respective state, legal, and political traditions constitute the institutional core of national administrative traditions, which in turn represent the 'deterministic' boundaries for adaptation processes" (Ibid. 124). As introduced in our literature review, Knill and Lenschow (1998) connect institutional misfits with administrative structures by differentiating between regulatory styles and structures. Regulatory styles are defined by the interaction of administrative and societal actors, and regulatory structures deal with the "distribution of administrative competencies with the respective patterns of administrative coordination and control" (Ibid. 597). Throughout the thesis the term administrative structure will be used to describe the characteristics of national administrations and might be seen as identical to regulatory structure. Moreover, to assess the occurrence of institutional misfits, we will take into consideration the patterns of administrative transformation that are four-fold: (1) Confirmation of the core, (2) Contradiction of the core, (3) Change within a changing core, (4) Change within a static core. The definition might be recalled from section 2.2.2.a of our literature review.

### 3.1.3 Control Variables

In order to correctly assess the correlation between our dependent variable and our set of independent variables, it is primordial to identify a number of control variables. The identification of those is necessary in order to control for the validity of our study. In particular, we strive to identify an arrow of control variables in order to be able to apply the results obtained from our sample to other most-similar cases. For instance, to other units of analysis (Member States in our case) that share those identified control variables of our sample. These are all other variables that could influence the correct compliance in a given Member State and make the observed correlation between our $X_i$ and Y spurious (see 'fourth hurdle' in Kellstedt & Whitten, 2013). For instance, control variables are those that have both an effect on our independent variables as well as on the level of compliance. A number of those variables has been identified and will be defined hereafter.

#### Power

Borzel et al. (2007) see power as an important variable to explain compliance. We will add power as one of our control variables used in the selection of cases and we will operationalize it both in economical and political terms, accounting for absolute Gross Domestic Product (GDP) and Member States' voting power in the Council of Ministers.

#### Wealth

The variable 'rich countries' as represented by GDP per capita will also be taken into account. We quote Thomson et al. (2007) citing Mbaye, (2001), and asserting that cofounding variables able to influence national administrative constraints to foster deterrence are poverty, government inefficiency and corruption among others (Ibid. 687). Fearing that governmental inefficiency might be too delicate to account for, we confirm 'poverty' indicated in relative terms.

#### Year of accession

To conclude, we control for the 'year of accession' to undermine the divergent patterns in compliance that arise among 'old' and 'new' Member States. This cofounding variable has been retrieved from a 2008 study performed by Falkner and Treib. Authors found that older Member States already had the change to experience the requirements associated to the conditionality of the accession process, while new Member States still struggle in the adaptation process of national legislations. In addition, new Member States might want to prove worthy of the accession and might fear defection fines, while older Member States that already benefit from positive reputation and are aware of defection consequences might be less prone to correctly comply with European requirements.

## 3.2 Predictions

To propose an explanation to our research question (section 1.3.2), we introduce diverse hypotheses defined as: "an educated guess (…) indicating how an independent variable is thought to affect, influence, or alter a dependent variable" (Buttolph Johnson et al., 2008; 70).

**Prediction number 1**: *Environmental NGOs' activeness positively influences Member States' compliance with EU Environmental Directives.*

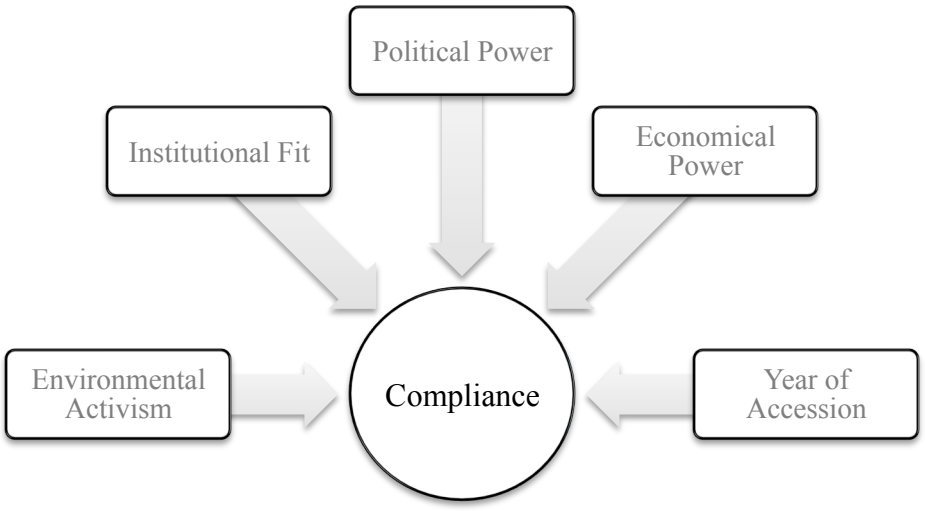
**Prediction number 2:** *Institutional fits positively influence Member States' compliance with EU Environmental Directives.*

Our second prediction will specifically focus on *the aspect of national administrative features and their possible influence on Member States' compliance with EU Environmental Directives.*

The above-expressed hypothesis both imply a 'positive relationship', in which higher values of our independent variable tend to coincide with higher values of the dependent one (Kellstedt & Whitten, 2013; 12). In the identification of these predictions, we strive to meet the characteristics of good hypothesis which imply: an empirical statement which is at the same time general, plausible, specific, and which corresponds to the way in which we intend to test it, assuming the statement as testable (Buttolph Johnson et al., 2008; 71).

Now that predictions have been formulated as answers to our research question and based on literature insights we provide an overview of our causal model in Figure 1.

**Figure 1** Drivers for compliance: causal model




**Source:** Own representation

# IV. Research Design and Methods

In this section we aim at choosing a suitable research design that will allow us to answer our research question, then we will proceed with the operationalisation of variables and finally guide the reader through the process of case selection.

## 4.1 Research Design Selection

Observational studies occur when the researcher does not have control over values of the independent variable, which occur naturally (Kellstedt & Whitten, 2013; 83). In contrast to the experimental design in which the researcher arbitrarily creates a treatment and a control group, the observational study design applies to our case since we are neither able to influence the activeness of NGOs nor the degree of institutional misfit in Member States. Different approaches to observational designs exist, and we distinguish between quantitative and qualitative analysis.

### 4.1.1 Quantitative Cross-Sectional Analysis

Within quantitative designs we might distinguish between cross-sectional and time-series observational studies. In cross-sectional designs one focuses on the variation between individual spatial units and explains changes in the dependent variable across them. In the time-series observational studies however the focus is on the variation within a single spatial unit over multiple time units (Kellstedt & Whitten, 2013; 84). In assessing the correlation between Member States' compliance with European directives and environmental NGOs activeness, we could choose the cross-sectional observation design. We could take as observations European Member States (large N=28) and as variables the number of infringements per Member State and per environmental policy field. We would therefore make a statistical regression comprising the infringements cases registered for each Member State and subsequently link them to the degree of activeness of NGOs, as well as to the national administrative structure of Member States. We would use categorical ordinal variables, i.e. variables for which cases have values that are either different or the same as the values of other cases but for which we can make universally holding ranking distinctions (Kellstedt & Whitten, 2013; 112).

### 4.1.2 Qualitative Co-Variational Analysis

Moving towards a more qualitative approach, case studies can be defined as analyses of persons, events, decisions, periods, projects, policies, institutions, or other systems that are studied holistically by one or more methods (Thomas, 2011). We acknowledge the distinction between co-variational and congruence analysis. In the co-variational analysis, empirical evidence of the existence of co-variation between independent variables X and dependent variable Y to infer causality is sought (Blatter & Haverland, 2012; 33).

In this research design, the author seeks to identify the effect that an independent variable has on a dependent one, and by so doing, he strives to approximate experimental designs. This is why this research is called X-centered, aiming at assessing the effect of a certain independent variable. However, manipulation of the independent variable cannot be performed. Yet, what equates the two designs is that "control is related to case selection" (Blatter & Haverland, 2012; 38). In fact, "observational studies are not experiments, but they seek to emulate them" (Kellstedt & Whitten, 2013; 87). A congruence analysis on the other hand is performed when researchers make use of case studies to find empirical evidence for the explanatory power of certain theoretical approaches. Here, instead of analysing the mere correlation between independent and dependent variables, the researches aims at understanding whether one theory provides better explanations to the phenomena than another theory. Subtypes of congruence analysis are therefore the competing theories approach and the complementary theories approach (Blatter & Haverland, 2012; 145).

Between the quantitative design and the case study design we strive to base our analysis on the latter and carry out an intensive study of one specific environmental directive, as well as of the drivers behind its implementation in four Member States. Considering that our research question is x-oriented and strives to explain the drivers behind effective implementation, a co-variational comparative case study is assessed to be the most appropriate design. This since it allows for replication and has therefore a higher explanatory power than a quantitative design could have. In addition, even though we do not have control over values of our independent variables, some degree of variability in independent variables as well as in the dependent one is needed (Kellstedt & Whitten, 2013; 87). This will be sought through the case selection performed in section 4.3. In this co-variational approach we choose the cross-sectional comparison mode since we don't have a specific temporal variation but instead a spatial variation is observable (different Member States) (Blatter & Haverland, 2012). It is due to the limited time available for this research that our case study will be constructed of four countries: the United Kingdom, the Netherlands, Italy and Germany. Here we will analyse their compliance with the EU Water Framework Directive (choices will be further explained in section 4.3). The wish is to reach strong basis fro 'most similar cases'.

## 4.2 Operationalisation of Variables

Variables of interests introduced in section 3.1 will be operationalized to find fitting measurement instruments as well as possibly specify how these instruments will be scored on. This section is of utmost importance for the correct understanding of the problem and for the core parts of analysis and discussion of findings. To facilitate the reader, the same order of variables will be used from now on: dependent variable: compliance, independent variables: environmental NGOs and national administrative structures.

### 4.2.1 Dependent Variable

#### *Compliance*

##### Implementation Records

Considering the delicate task of capturing the actual application of European rules once implemented in single Member States, we firstly focus on the first requirement of correct compliance and therefore concentrate on the failure to correctly *transpose* directives. In fact, "taking the year 2000 as a point of reference, approximately two thirds of all 'reasoned opinions' and almost the same proportion of all referrals to the European Court of Justice (ECJ) concerned cases of belated or incorrect transposition of Directives" (Treib, 2003; 2). We will follow the example of Borzel (2000) who used the annual implementation reports issued by the EC to account for the important variation in compliance rates among European Member States. We recall from our theoretical framework that implementation effectiveness might be defined as "the degree to which both the formal transposition and the practical application of supranational measures at the national level correspond to the objectives specified in the European legislation" (Knill and Lenschow, 1998; 595).

##### Infringements Proceedings

However, transposing directives into national law does not automatically result in Member States' compliance of these. Therefore, the compliance of Member States has to be further assessed through the analysis of infringement cases brought before the ECJ. Even though we can observe some limitations in its validity – validity being respected if the indicator accurately represents the concept that it is supposed to measure (Kellstedt & Whitten, 2013; 101), this indicator can be measured with a high probability in a reliable way – reliability being expressed as the indicator's aptitude to be repeatable or consistent (Kellstedt & Whitten, 2013; 99). On the validity, Thomson et al. (2007) remember that infringement proceedings are composed of both cases detected by the EC and by those on which the EC will actually take action. Therefore, it might occur that "other cases of non-compliance that do not show up in data on infringement proceedings" (Ibid. 686) yet did exist. However, since the number of infringements can be measured and statistical evidence is available, we will assume that the rate of compliance is correlated with the number of infringements cases: the higher the number of infringements, the lower the compliance rate. To help the reader in the clarification of the different stages of non-compliance proceedings that the EC can start we provide Figure 2. These stages will represent our indicators of non-compliance and will be retrieved from sources as transposition and implementation records issued by the EC as well as infringement proceedings presented by the ECJ.

**Figure 2** Non-compliance procedures as initiated by the European Commission


**Source:** Own representation from: http://ec.europa.eu/eu_law/infringements/infringements_en.htm

### 4.2.2 Independent Variable

#### *Non-Governmental Organizations (NGOs)*

First we thought of taking into account the mere number of NGOs, this being a measurable indicator with face-validity (Kellstedt & Whitten, 2013; 102). Nevertheless, a bigger number should not be automatically intended as a driver for higher compliance of Member States. The activeness of NGOs might be seen as correlated to their power and we could operationalize this through indicators as: number, contact with national ministries, number of organized campaigns and available funds. However, these are absolute indicators and more fitting relative indicators might exist. For instance, the percentage of the population that is member of an environmental group could incorporate a fitting proxy for us. In this aspect we put forward Dalton (2005) quote, "we think that activism requires that we count individual membership" (ibid. 443). Moreover, of utmost interest to us are their lobby activities as for instance petitions, letters of complain, judicial reviews, surveys and all other means (both in number and in scope) able to affect the compliance of governments with EU directives.

#### *National Characteristics*

##### Institutional Misfit

We define the degree of institutional misfit based on the distance between the Member State's current administrative traditions and the subsequent requirements encompassed in issued European directives. Intuitively, the probability of correct implementation and further compliance will be higher the smaller the distance between the Member State' 'position' and the policy outcome of the European directive; this taking into account the level of discretion accorded to Member States, defined as discretionary bounding (Thomson et al, 2007; 689). We recall that in this research we associate misfits not only with national policies yet in particular with the administrative structure of Member States. Further operationalisation for national characteristics is therefore needed and we will from now on use 'misfit' or 'fit' taking the institutional prefix as implicit.

#### Administrative structure

In relation to the misfit we introduce the importance of national coordination as presented by Kassim (2003) policy space. Distinguishing between level of centralization and decentralization, it results that national coordination systems might be a cause underneath the misfit. Being the misfit aspect more difficult to account for, it will be clarified during the case selection section that different types of national coordination might reflect in diverse levels of compliance with European directives. Therefore, when assessing the characteristics of our Member States' administrative structure during the analysis part, we first retrieve information from Kassim (2003) policy space. Subsequently, we will stress one again the importance of Member States' regulatory styles and structures as introduced both during the literature review and theoretical framework sections, and we will relate it to the adaptation pressure exerted by EU policies. To this extent we recall section 2.2.2.a on different paths of domestic change and we will use those patterns of administrative traditions as operationalisation for our institutional misfit concept especially in the comparative analysis chapter.

### 4.2.3 Control Variables

As explicated in section 3.1.3, we will keep as constant the following variables: power, both economical and political, operationalized through GDP and voting power in the Council; wealth, defined by GDP per capita; and the accession year to the EU. No further explanation on the operationalisation of these control variables needs to be covered in this section, and the reader is invited to look at Table 4 in section 4.3.3.a for the complete overview on our cofounding variables.

### 4.2.4 Summary

The integrity of section 4.2 on the operationalisation of variables is of utmost importance for the understanding of the case selection and analysis part. It is to strengthen this understanding that we include Table 1, recapitulative of the operationalisation of variables.

**Table 1** Operationalisation of variables, general overview

| Category | Variable | Indicator |
|---|---|---|
| **Dependent** | **Compliance** | • Formal letters<br>• Reasoned opinions<br>• ECJ referrals and rulings |
| **Independent** | **NGOs' activeness** | • Percentage member of environmental groups<br>• Number and extent of activities carried out to foster compliance (petitions, judicial reviews, surveys, letters of complaint) |
| | **Institutional fit** | • Policy space based on Kassim (2003) scheme<br>• Regulatory styles/ structures – Knill and Lenschow<br>• Paths of domestic change – Knill and Lenschow (1998) |
| **Control** | **Power** | *Economic:*<br>• GDP<br>*Political:*<br>• Voting share in the Council |
| | **Wealth** | GDP per capita |
| | **Accession** | Year of EU accession |

**Source:** Own representation

## 4.3 Case Selection

The selection of appropriate cases is a crucial element of this co-variational, cross sectional analysis. It is challenging due to the limited validity associated with this approach.

### 4.3.1 Introduction to the Case Selection

Section 4.1 was concluded with the identification of the qualitative co-variational case study as the most appropriate design for our research aim. Concerning the selection of cases, we found ourselves confronted with two possible choices. On the one hand we could choose two countries where NGOs are active, and two in which they are not; the same divergence would be respected for the institutional fit. Here we could analyse the compliance of these four countries with one specific directive. On the other hand, it might have been interesting to analyse two directives and different countries that either complied with one of the two directives, with none or with both. The difference between the two possibilities lies in the identification of the subject. While the first possible case analysis focuses on intrinsic characteristics of Member States and their relation to compliance, the second considers primarily directives per se as drivers for compliance. Based on our research aim, and the focus on national characteristics and external pressures, we progress with the first option. We choose a small N; we identify a specific European environmental directive and suitable Member States. Once this exercise has been exhausted, we proceed with the comparative case study of the causes of compliance.

### 4.3.2 European Union Environmental Directive

Having narrowed European directives to the environmental field, we proceed with an analysis of the infringements per environmental sector to collect information on the most controversial sectors. Figures of the EC DG Environment show 'water' as historically the sector with the second highest share of registered infringement cases (after 'nature' and before 'waste'). For instance, at the end of 2013, 23% of all environmental infringement cases registered were associated to 'water', i.e. 80 cases out of 353 (DG Environment). Interesting is also an historical evolution of infringements per environmental sector (Table 2). The category 'others' has been omitted.

**Table 2** Infringements per environmental sector, 2006 – 2012 timeframe

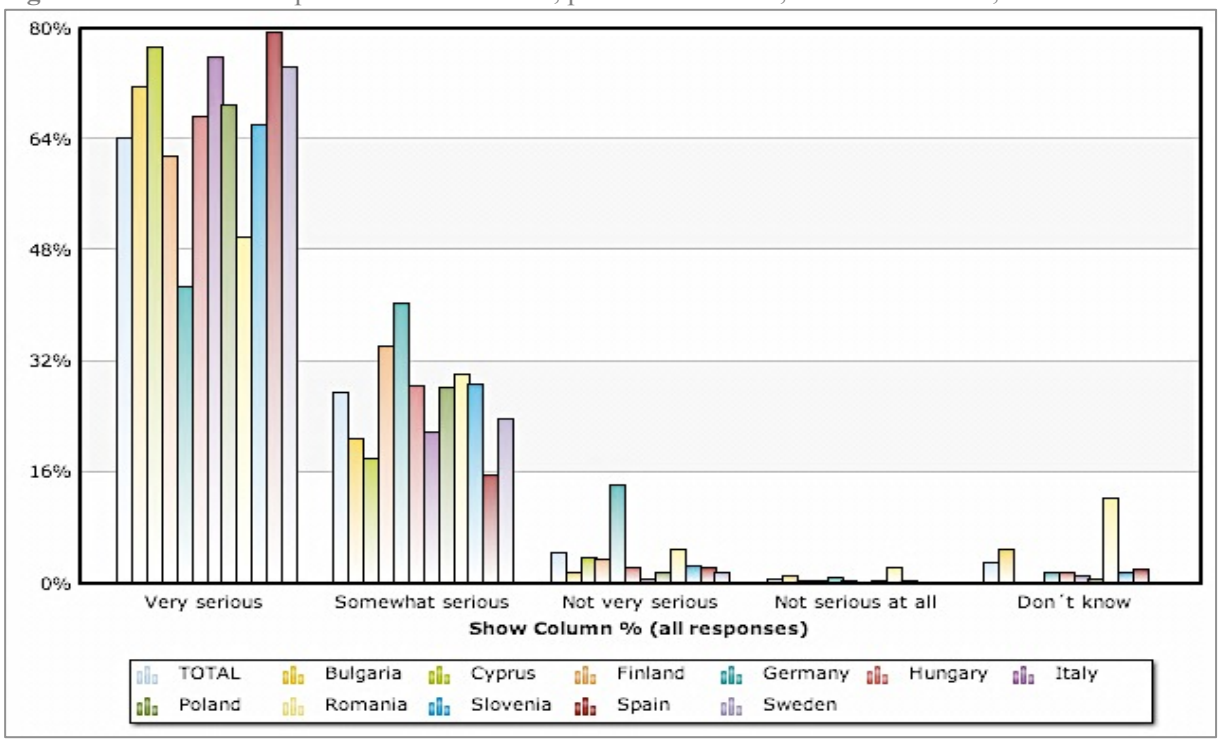
| | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | Average |
|---|---|---|---|---|---|---|---|---|
| **Waste** | 73 | 99 | 111 | 90 | 65 | 76 | 56 | 19,5% |
| **Air** | 66 | 83 | 65 | 72 | 56 | 35 | 37 | 13,98% |
| **Impact** | 63 | 57 | 50 | 50 | 42 | 43 | 34 | 11,71% |
| **Nature** | 117 | 121 | 105 | 92 | 89 | 76 | 69 | 23% |
| **Water** | 77 | 74 | 95 | 90 | 136 | 80 | 79 | 22,04% |

**Source:** EC DG Environment website

This table lead us to choose the water sector, which is both historically relevant and variable. In addition, data retrieved from the World Values Survey gave us an overview of the importance that citizens associate to water management and in particular to the pollution of waters. Figure 3 deals with the issue of environmental problems in the world, specifically for the pollution of rivers, lakes and oceans, and has been retrieved from the '2005-2009' wave of surveys.

As already states in our introductory chapter, the European WFD combines the core policy goals of the EU with regard to water management in its Member States and will be chosen as the only directive for our comparative case study analysis, also due to the fact that it has been identified as "one of the least implemented of all environmental internal market directives" (Boscheck, 2006).

**Figure 3** Environmental problems in the world, pollution of rivers, lakes and oceans; 2005-2009




**Source:** World Values Survey

*Data have been retrieved with the tool of the following question: "Now let's consider environmental problems in the world as a whole. Please, tell me how serious you consider each of the following to be for the world as a whole. Is it very serious, somewhat serious, not very serious or not serious at all?"*

### 4.3.3 European Union Member States

To fulfil the two criteria for case selection (Blatter & Haverland, 2012; 42) it is important to choose cases differing with regard to values of our independent variables but with similar values for important control variables. Performing a cross-selection of cases based on our independent variables as well as on our cofounding variables will allow for the identification of interesting cases. In our small-N analysis, four Member States will be chosen based on considerations resulting from the cross-comparison between our independent and cofounding variables.

On the cross-comparison of independent variables, Table 3 summarizes the main aspects to be respected during the choice of Member States.

**Table 3** Cross-identification of independent variables in the selection of cases

| | **High** | **Activeness of NGOs** | |
|---|---|---|---|
| **Institutional Fit** | | High | Low |
| | | Case 1 | Case 3 |
| | Low | Case 2 | Case 4 |

**Source:** Own representation

The choice of countries will be done essentially on the 'high' and 'low' activeness of NGOs, identifiable, among others, through the percentage of the population being part of an environmental group. We combine the activeness degree with *expectations* on possible misfits. Being this variable to complicated to observe before an in-depth analysis of the cases, our expectations will be based on diverse claims retrieved from relevant studies performed by scholars. The more specific identification of an institutional misfit will be carried out for each member state during section V.

With regard to our control variables, we present a number of possible Member States (Table 4) that will lead to the identification of final four cases in combination with the cross-identification of independent variables. This table has been created by choosing founding Member States as a starting point, with the addition of the United Kingdom (UK). This last country has been included due to its promptly assent to the EU, which occurred during the first wave of accession in 1973.

#### *4.3.3.a Control variables*

For each member state, data on the cofounding variables have been researched for and retrieved from European statistical institutions. Primary conclusions on the choice of countries based on similarities/ differences will follow after the summarizing Table 4.

**Table 4** Control variables in the selection of cases

| | **Accession** | **Poverty (GDP per capita)*** | **Power (GDP** and voting power in the Council***)** | |
|---|---|---|---|---|
| **Belgium** | 1952 | 120 | 34,300 | 12 |
| **France** | 1952 | 109 | 31,300 | 29 |
| **Germany** | 1952 | 123 | 33,300 | 29 |
| **Italy** | 1952 | 101 | 25,600 | 29 |
| ~~**Luxembourg**~~ | 1952 | 263 | 83,400 | 4 |
| **Netherlands** | 1952 | 128 | 35,900 | 13 |
| **United Kingdom** | 1973 | 106 | 29,800 | 29 |

* GDP per capita in Purchasing Power Standards Y2012 – source Eurostat, EU28=100
** GDP at market prices Y2013, unit: Euro per inhabitant – source Eurostat
*** Member States' Voting Power – source Council of the European Union

Based on the results, we take the freedom to exclude 'Luxembourg' from our possible choices due to the obvious divergence with regard to all other presented cases. However, further restrictions have to be made to identify four countries only. In this aspect, Table 3 and Table 4 will be jointly analysed to simultaneously account for a cross-variation in our independent variables and a similarity in our cofounding variables.

#### *4.3.3.b Independent variable 1: Non-Governmental Organizations (NGOs)*

This section deals with the activeness of NGOs, operationalized in Table 1. The data have been retrieved from World Values Survey, and Belgium has not been included due to a lack of suitable data for the analysed timeframe. First we present data on the membership of environmental organizations in selected Member States.

**Table 5** Membership of environmental organizations; wave 2006-2009 in percentage

| | **France** | **Germany** | **Italy** | **Netherlands** | **Great Britain** |
|---|---|---|---|---|---|
| **Not a member** | 85,1% | 93,9% | 91,2% | 82,1% | 82,8% |
| **Inactive member** | 8,5% | 3,5% | 6,3% | 11,4% | 9,9% |
| **Active member** | **6,3%** | **1,5%** | **1,4%** | **3,9%** | **5,9%** |
| **Missing** | 0,0% | 0,0% | 0,0% | 2,0% | 0,6% |
| **No answer** | 0,0% | 1,0% | 1,1% | 0,6% | 0,3% |
| **Don´t know** | 0,2% | 0,1% | 0,0% | 0,0% | 0,5% |
| **(N)** | 1001 | 2064 | 1012 | 1050 | 1041 |

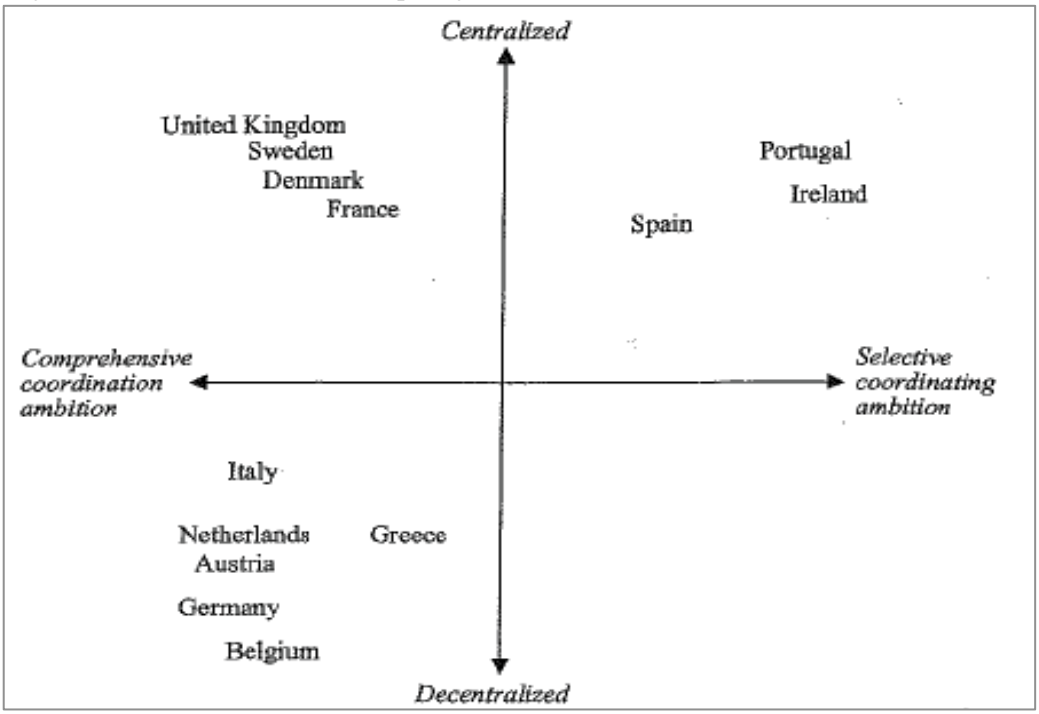
**Source:** World Values Survey
Notes: *Selected samples are of Italy, the Netherlands and the UK 2005, France and Germany 2006. Data have been retrieved with the tool of the following question: "Now I am going to read off a list of voluntary organizations. For each one, could you tell me whether you are an active member, an inactive member or not a member of that type of organization?" The types of voluntary organizations were conservation, environmental and animal rights groups.*

It results that as a percentage of the respondents, France, the Netherlands and the UK had a higher share of membership of environmental organizations (active and non active) than Italy or Germany. For the analysed period, 15,8% of UK respondents was part of an environmental organization (15,3% for the Netherlands and 14,8% for France). However, only 5% of German and 7,7% of Italian respondents were part of an environmental organization, actively or non-actively. We estimate that France, the Netherlands and the UK are the top three countries with active NGOs.

### *4.3.3.c Independent variable 2: Institutional misfit and administrative structures*

It appears that "member states in which great authority is vested in central government find it easier to comply (…) than decentralized political systems" (Thomson et al, 2007; 687). Moreover, as introduced by Pridham (1996) and recalled by Borzel (2000), the *reactive* policy-making style of certain Member States may be in contradiction to a more *proactive* approach of the EU. This distinction would possibly explain the existence of a misfit between national regulatory styles and requirements of European directives. The reader will discover in future sections that this distinction will prove useful in the identification of misfits with regard to their relations to ideal types of regulatory styles identified by Knill and Lenschow (1998). We thus introduce the original scheme by Kassim (2003), in which Member States of our interest had already been positioned by degree of centralization and coordination ambition (Figure 4). Based on Thomson et al. (2007) above-introduced claim as well as on Kassim's (2003) insights, Italy, the Netherlands, and Germany would be less prone to comply with European directives compared to France and the United Kingdom, experiencing therefore a higher probability of misfit.

**Figure 4** Systems for coordination of EU policy




**Source:** Kassim (2003)

### 4.3.4. Summary

One last step in the identification of our cases is the cross-comparison between our findings on the activeness of environmental NGOs and the estimated institutional misfits based on theoretical insights. With regard to the possibility of a misfit, section *4.3.3.c* showed that France and the UK are expected to experience a low misfit, while the opposite should occur for Italy, Germany and the Netherlands. On the activeness of NGOs, the UK showed a significant share of respondents as being part of an environmental organization, and the main wave of 2005-2006 has been characterized by the Netherlands having the lowest percentage of respondents not being a member. Germany however initially lacked extremely behind on the active participation in environmental groups. Italy moreover had the lowest score of active members. Having to drop one Member State, we decide to respect our initial choice and analyse cases that have different values for their independent variables. Italy appeared to be the least 'decentralized' country among the ones positioned by Kassim in the comprehensive-decentralised quadrant. Due to the slowly ageing of his research (data retrieved from the '90s), we decided to position Italy as part of the 'medium estimate fit'. In the choice between France and the UK, the second is more centralised and had a higher share of members of environmental organisations. Therefore, France will be left aside. Keeping in mind that limitations on this selection will be further expressed in chapter VII, the identification of cases has been performed and the cross-analysis between the independent variables can be looked at in Table 6 (Member States in bold are the one that will be extensively analysed in the following sections).

**Table 6** Representation of analysed cased for the comparative country study

| | | **Activeness of NGOs** • *Historical* | | |
|---|---|---|---|---|
| | | **High** | **Medium** | **Low** |
| **Institutional Fit** • *Estimated* | **High** | **UK**; France | | |
| | **Medium** | | | **Italy** |
| | **Low** | **Netherlands** | **Germany** | |

## 4.4 Data Collection

Concerning the sources used in our comparison we will first identify the available documentation as well as archival records (Yin, 2003; 86) issued by the European Institutions, in particular the European Commission as well as the European Court of Justice. Moreover, we proceed with targeted research directed towards national environmental NGOs as well as Brussels-based umbrella organisations; mainly focusing on their daily lobby activities and their achievements in influencing policy implementation. This will be carried out through an analysis of websites, newspaper articles, journals, position papers and reports. Initially, NGOs comprising the European Environmental Citizens Organization for Standardization (ECOS) might be of interest to us. As indicated by the ECOS itself, "in 2014, ECOS members include 33 well respected environmental organizations of which seven European umbrella organizations and 26 national organizations from 21 European countries" (ECOS 2014 [a]), such as the European Environmental Bureau (EEB) as well as the World Wildlife Fund (WWF) European Policy Office and Greenpeace Europe. It is the EEB and the WWF that will reveal of utmost importance to us. In addition, a broad arrow of theoretical and empirical papers has proved useful in the delineation of a targeted literature review. Due to the policy implications of our research, theoretical and empirical studies will prove useful also in the case study analysis as well as in the discussion of findings.

# V. Analysis: Directive 2000/60/EC

After the introductory chapters on literature, theoretical framework and methodology, this core section of the research will provide specific insights on our directive of interest, i.e. directive *2000/60/EC* also known as the Water Framework Directive. First we will provide a general overview, then highlight some important aspects of its decision-making process, explicate its main targets and tasks to be fulfilled by Member States and lastly assess the administrative implications of this 'new generation' directive.

## 5.1 The WFD: Overview

This first section of our analysis chapter aims at briefly explaining the WFD and collocate it in the vast arrow of European environmental law. In order to understand the following sections it is important to have a general overview of the main characteristics of our directive analysis, this is what will be performed hereafter.

With statistics showing that approximately "20% of all surface water in Europe is seriously threatened" (food&waterwatch, 2014), the WFD introduced "a new legislative approach to managing and protecting water, based not on national or political boundaries but on natural geographical and hydrological formations: river basins" (EC, 2010). This choice has been made since since water is a crossing border issue with "about 60% of the EU's surface area (lying) in river basins that cross at least one national border" (EC, 2008 Water Note 1). In addition, all EU Member States but two share waters with their neighbouring countries and contain sections of at least one International River Basin District (IRBD). In addition to the pollution aspect, the directive covers also economic factors focusing on: water users to pay for the full costs of the water services used and Member States to perform cost-effectiveness and benefit analysis in managing their water resources (EC, 2008; Water Note 5). Its link to other European policies is visible through a number of directives[1] and European bodies call for integration (EC, 2010) and "regard the implementation of these other directives as a minimum requirement" (EC, 2008; Water Note 9) for the success of our WFD. It is interesting to say that the WFD is called a 'new-generation' directive since "it offers a framework for other, partly pre-existing regulations, but does not contain many detailed prescriptions or fixed environmental standards itself" (Liefferink et al., 2011; 713). Once it will become fully operational, it will replace all the water directives previously in place (Kaika, 2003). To assess its importance we present Table 7 indicating common measures used in European directives to protect water quality. We will come back to measures in Table 7 to assess possible misfits between the WFD and Member States' national policies.

[1] Urban Wastewater Directive and Nitrates Directive (1991), Drinking Water Directive (1998), new Bathing Water Directive and Groundwater Directive (2006), Floods Directive (2007) as well as Environmental Quality Standards Directive and Marine Strategy Framework Directive (2008)

**Table 7** Common measures used in EU directives to protect water quality

| Directives: / Measure | Bathing Water | Drinking Water | Nitrates | UWWT | Water Frame-work Directive |
|---|---|---|---|---|---|
| Quality standards in water | ✓ | ✓ | | | ✓ |
| Identification of risks | ✓ | | ✓ | ✓ | ✓ |
| Classification of water bodies | ✓ | | | | ✓ |
| Management plan | ✓ | | ✓ | | ✓ |
| Emission limit values | | | | ✓ | |
| Information to the public | ✓ | ✓ | | | ✓ |
| Public participation | ✓ | | | | ✓ |
| Monitoring | ✓ | ✓ | ✓ | ✓ | ✓ |

**Source:** EC DG Environment 2008 Water Note 9
**Notes:** Not only does the WFD use nearly all the measures, but it also follows a combined approach

## 5.2 The WFD: The Decision-Making Process

After having introduced the main characteristics of the WFD per se and its innovative aspects with regard to previous EU environmental directives, we will analyse the decision-making process that lead to the publication of 2000/60/EC. In addition, we will also shortly present the preferences of main European actors as the EC, the Parliament and the Council of Ministers as well as those of NGOs.

According to the EC, the "need for developing a more comprehensive European water legislation was already identified by the Council in 1988" (EC, 2014 [b]). However, it was not until 1997 that the EC presented its first proposal and until 2000 that the directive was published and entered into force. In Table 8 we present the main key dates of the decision-making process.

**Table 8** WFD: the decision-making process

| Date | Actor | Action |
|---|---|---|
| **1997/1998** | EC | Proposal |
| **1999** | | |
| February | EP | First Reading (under the treaty of Amsterdam) |
| October | Council | Common Position |
| **2000** | | |
| February | EP | Second Reading |
| October | EP + Council | Final Adoption of the WFD (under co-decision procedure and following a conciliation procedure) |
| December (22nd) | | Publication and entry into force |

**Source:** European Commission, (2014 b)

The policy process of the WFD was regulated under the 'co-decision procedure II', that modified in 1999 (Treaty of Amsterdam) the 'co-decision procedure' (Treaty of Maastricht). It was mainly centred on the questions of deadlines, possibilities to exemptions and conditions for specific articles. The Council and the EP were required to conduct readings and provide the EC with suggested amendments (Kaika, 2003). In the first readings in general, the EP and the Council did not consider "the views of special interests, particularly environmental NGOs, that the Commission had decided to informally involve" (Broscheck, 2006; 3). During the decision-making process, the EP made a strategic move by deciding to not consider the WFD before the entry into force of the Amsterdam Treaty. This treaty indeed provided the Parliament with a greater position of force with regard to the Council. After this political touring point the Parliament re-introduced revisions that had been previously rejected by the Council (Broscheck, 2006). However, further Council amendments did undermine the Commission's and Parliament's work and conciliation committees entered the scenario (Kaika, 2003).

On the positioning of key players, the decision-making process was marked by an intense confrontation among stakeholders (Broscheck, 2006). The EC's first legislative proposal aimed at fundamentally reviewing the Community water policies and had a stricter timetable than the one adopted. The Parliament showed throughout the decision-making process the willingness to shorten deadlines and ensure a more ambitious directive. For instance, it called for more stringent restrictions to be applied to those Member States already ahead of the Community (EP, 2014). This since the EP is "more detached from, and therefore more resilient to national networks of influence" (Kaika, 2003; 19). On the other hand, the more lenient approach of the Council of Ministers with softer regulations, more exemptions and laxer deadlines, might be explained by its composition of national representatives. Indeed, while the Parliament acts on the basis of its direct mandate, the Council represents Member States' governments and producers' interests (Broscheck, 2006). A number of environmental NGOs involved in the decision-making process sought to push for stricter implementation deadlines and focused on the full cost of pricing of water use. In addition they aimed at including some points of interest as those encompassed in the Esbjerg declaration and the OSPAR treaty (Kaika, 2003).

## 5.3 The WFD: Main Target of Reaching Good Status

Even though we will assess all tasks to be performed by Member States to comply with the WFD in following sections, we first would like to highlight the most important aim of the directive: reaching the good status of all water bodies by 2015. Due to space limitations we provide in Annex 1 a list of main terms encompassed in the official 2000/60/EC document that will be quoted in the analysis.

The main aim of this directive as expressed under article 4(1), is *the achievement of 'good status' in all bodies of surface water and groundwater by 2015*. Good status refers to the ecological and chemical status of our waters and ecological status is assessed through a five category scale: high, good, moderate, poor, and bad, with 'high' status identifying "no or very low human pressure" (EC, 2010). It is important to draw a line between 'good' and 'moderate' status since this distinction defines if a water body will achieve the 2015 target or not (EC, 2008; Water Note 7). The EU introduced the so-called 'intercalibration exercise' to harmonise the understanding of the status assessments among Member States. Indeed, "the purpose of intercalibration is not to harmonise assessment systems, but only their results" (EC, 2014 [d]). It was the first time that such an "intercalibration" across the EU had been attempted (UKTAG, 2007).

The directive sets less stringent targets for artificial (AWBs) and heavily modified waters (HMWBs) not able to meet the 2015 requirements (regulated under article 4(3)). These bodies will have to meet 'good ecological potential' rather than 'good ecological status'. The achievement of good chemical status however remains unchanged. To specify, artificial relates to bodies of water created by human activities, while modified implies that man-made alterations substantially changed their character (EC, 2008; Water Note 4). For example, the UK identified parts of the river Thames flowing through London as HMWBs due to embankments and other public works.

An important feature of the good status requirement is the so-called 'one out all out approach'. This implies that in case water bodies fail to meet all the criteria established for the achievement of good status, then the water body in question will automatically fail to meet requirements and loose good status (Parliament.UK, 2012).

One last essential point is that the directive gives Member States the possibility to extend the 2015 deadline to further stages of the RBMPs (2021; 2027) if the achievement of good status would be 'disproportionately expensive' to Member States (EC, 2008; Water Note 5). This disproportion is met if assessed through a cost-benefit analysis specified under article 4(4) of the WFD.

## 5.4 The WFD: Main Responsibilities for Member States

Now that we have briefly introduced the main target of the WFD as the need to achieve good status of all water bodies by 2015, we wish to highlight additional main milestones of the directive and assess the responsibilities for Member States. Numbering all the introduced tasks will strengthen the reader's understanding of the directive and this section will also permit us to identify a clear timeframe to be followed during our analysis of cases. Moreover, we highlight these milestones since they will represent the essence of our case study on the implementation of and compliance with the WFD.

The first general aspect that needs to be kept in mind is the European WFD's focus on citizens and interest groups. As expressed by the EC itself, "public participation is a fundamental principle, so European citizens are playing an influential role in planning and implementing the WFD measures" (EC, 2010). With regard to our directive, it is article 14 that covers this matter and lies on the *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Aarhus Convention). Thanks to this convention applicable to the WFD, the rights given to the public are the right to:

- Have access to information on the environment held by government authorities
- Participate in the decision taken by these authorities that affect the environment, and
- Review and legally challenge such decisions (EC, 2008; Water Note 12).

Therefore, all the tasks that will be hereafter explicated should be achieved in collaboration with citizen and environmental interest groups, and it is worth stating that in the WFD, participation actually means consultation (Kaika, 2003). For this reason we saw the establishment of a Europe-wide Strategic Coordination Group. This group was decided upon in 2001 under the Common Implementation Strategy (CIS) and is formed by participants of all 27 EU Member States, EFTA and candidate countries as well as NGOs and other stakeholders (EC, 2008; Water Note 12). Regarding environmental NGOs, national governments as the British one tried to strengthen their role by urging the EC to "enhance the CIS discussions with non-Governmental input" (Parliament.UK, 2012). Nowadays the WWF and the EEB are the only two involved (WWF NO, 2010). In addition to public involvement, the CIS deals with "the need to ensure coherence between the implementation of the WFD and other sectoral and structural policies" (EC, 2001; 3).

An overview of tasks to be performed by Member States, instrumental for the achievement and harmonisation of the 2015 goal, is provided in Table 9, and bold dates indicate our timeframe of interest to be used throughout the analysis. A brief explanation of each relevant milestone will follow.

**Table 9** Member States tasks under the WFD

| Deadline | Related Article | Task to fulfil |
|---|---|---|
| **2000** | *25* | Entry into force of the WFD |
| **2003** | *23* | Transposition into national legislation |
| | *3(4)* | Geographical definition of RBDs (Annex 2)<br>Identification of responsible authorities for water management |
| **2004** | *5* | Joint economic and environmental analysis for the identification of water bodies at risk of not meeting the 2015 target<br>Annex 3, 4 |
| **2006** | *8* | Launch of water monitoring networks |
| | *14* | Start public consultation (at the latest) |

| | | |
|---|---|---|
| **2009** | *13*<br>*11* | Drawing of RBMPs for the protection of afore-identified RBDs<br>Inclusion of 'programmes of measures' to meet the directives objectives |
| **2010** | *9(1)* | Water pricing policies: The principles of cost recovery and 'polluter pays' should be applied to all water services. |
| 2012 | *11* | Make operational programmes of measures |
| 2015 | *4* | Meet environmental objectives<br>First management cycle ends<br>Second RBMPs and first flood risk management plan |
| 2021 | *4*<br>*13* | Second management cycle ends |
| 2027 | *4*<br>*13* | Third management cycle ends<br>Final deadline for meeting objectives |

**Source:** Own representation

(1) *Entry into force*: On the 22nd of December 2000 the 'Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy was published in the Official Journal' and entered into force as part of the greater arrow of European environmental legislations.

(2) *Transposition into national law*: three years after the entry into force of the directive, national legislators are required to transpose the directive and align national law with European requirements. This occurs with 'transposing acts' or 'national implementing measures' (EP, 2014[b]).

(3) *Define RBDs*: under article 3 WFD Member States are required to define river basin districts grouping water bodies in their territory. Where international RBDs are defined, trans-national co-ordination and bilateral agreements are welcomed.

(4) *Identify water management authorities*: Member States are required to appoint responsible authorities for water management within their RBDs. It is interesting to notice that only national authorities have been made responsible while international river basin commission remained coordinating structures (EC, 2008; Water Note 1).

(5) *Joint analysis of water bodies at risk*: the 'joint' aspect is important with regard to the willingness to bridge national traditions (EC, 2008, Water Note 1). Between the economic and environmental analysis and the establishment of RBMPs in 2009 Member States were also demanded to establish threshold values by 2008 (EC, 2008; Water Note 3).

(6) *Launch water monitoring networks*: that allow Member States to keep track of the effectiveness of measures needed to clean up water bodies and achieve good status. (EC, 2008; Water Note 6). For guidance, the directive allows for three types of monitoring to be classified in: surveillance, operational and investigative.

(7) *Start public consultation*: as introduced at the beginning of this section, public participation or consultation in this case is the basic principle underlying this new generation directive. The EC, confident about beneficial impacts of a flexible governance strategy, always put particular emphasis on public participation and in particular on the "successful cooperation under the CIS" (EC, 2007; 11).

(8) *Draw RBMPs and programmes of measures*: specifying the measures to take in order to reach good status. These have been centred on the water bodies at risk (EC, 2008; Water Note 2). Since the directive is implemented through six-year recurring cycles – first of which covering the 2009-2015 timeframe (EC, 2010) – subsequent management plans must be prepared every six years (EC, 2008; Water Note 4).

(9) *Apply water-pricing policies*: the directive calls on water users to pay for the full costs of the water services used and requires Member States to perform cost-effectiveness and cost-benefit analysis in managing their water resources (EC, 2008; Water Note 5). By 2010 these principles should be applied for all water bodies.

(10) *Meet good status*: the goal of achieving good ecological and chemical status by 2015 has been extensively presented in section 5.3.

## 5.5 The WFD: Administrative Implications of the Policy

After having introduced the directive, presented the decision-making process and underlined the main set targets to be achieved by Member States we strive to identify the administrative implications of the WFD. The resulting features will help us to identify the objective institutional fit between the WFD and national administrative structures, and will prove useful during our case study. This analysis is based on Knill and Lenschow (1998) and their identification of analytical categories to characterise administrative arrangements.

As already introduced in previous sections, the holistic approach of 2000/60/EC leaves the Member States with a considerable degree of discretion in their decisions. Indeed, in the official document, the only milestones explicitly stated are those of the planning process. However, by reading between the lines, other important principles are laid down in the planning process. These are "the basic principles of integration, of public participation, the application of the polluter-pays principle, the objective of good status, and the use of economic analysis " (Hartje and Klaphake, 2006; 16).

In the identification of the regulatory style and structure of 2000/60/EC, a case study by Theesfeld and Schleyer (2011) delineates the two regulatory styles that compose the WFD: a *command-and-control approach* and an *interactive negotiation approach*. The command-and-control aspect is represented by all specifications on the content of RBMPs and most importantly by the strict reporting duties (Ibid. 5).

However, flexibility still remains in the core aim of a European directive regarding the means by which to achieve the goals. Having an intervention types that combines aspects of command-and-control and flexibility, the WFD presents a strong interest intermediation type. For instance, public involvement and transparency are main features as introduced by the Aarhus Convention. On the regulatory structure of the directive, coordination of administrative competencies and national policies is however required both nationally and internationally since the RBDs don't follow a border logic yet a water status one. And even though in a country specific way, the directive might call for the establishment of new administrative structures to meet requirements. Table 10 summarises the administrative implications of the WFD.

**Table 10** Administrative implications of the Water Framework Directive

| | Regulatory Style | Regulatory Structure |
|---|---|---|
| **2000/60/EC** | Intervention type:<br>Flexibility (on certain domains)<br>Command-and-control<br><br>Interest intermediation:<br>High public participation,<br>Transparent, Pragmatic bargaining | - Coordination of administrative competencies<br>- Co-ordination of policies<br>- Possible building up of new administrative structures |

**Source:** Inspired from Knill and Lenschow (1998); Moss (2004)

## 5.6 Conclusions

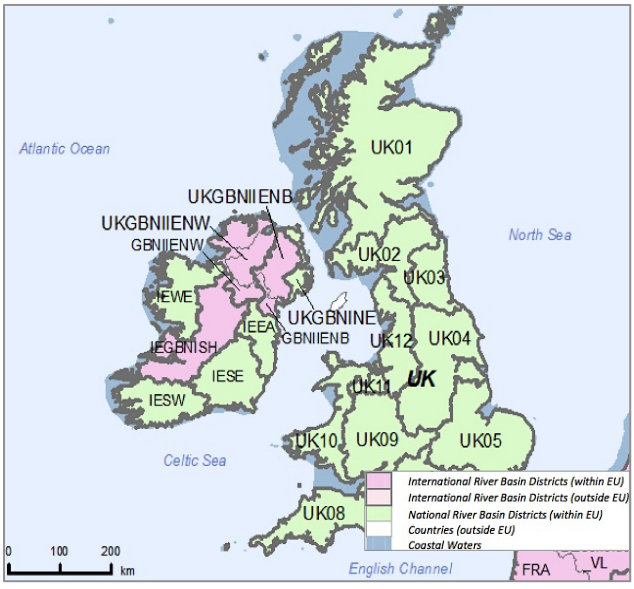
Throughout this chapter we have highlighted the most important aspects of the Water Framework Directive in order to be able to assess in following sections the degree of correct implementation and compliance of our Member States under analysis in respect to this framework directive. After having provided an overview, delineated the stages of the decision-making process and presented the main aim of the directive, we turned our attention towards the responsibilities for Member States and in particular towards the administrative requirements of 2000/60/EC. The introductory part highlighted the innovative aspects of the WFD and related it to previous environmental directives. What has been salient for our purpose has been to clarify that this new generation directive has challenging insights for Member States that are being accorded sufficient autonomy in their implementation duty. Indeed, having space to manoeuvre, Member States have to adapt the requirements to their national traditions and ambitions, therefore possibly resulting in different levels of compliance. Requirements specified in section 5.1.4 will be analysed individually in chapter 6 to assess whether or not Member States correctly complied with those. Administrative requirements of section 5.1.5 will moreover prove useful in the identification of institutional misfits.

# VI. Analysis: Member States

Now that the reader has gained a better understanding of the directive per se, we will proceed with our case study on the implementation and compliance of the WFD in our four Member States of interest. Each case will be analysed following the same structure: we fill first provide an introductory part concentrated on Member States' general geographical characteristics and water related statistics; afterwards we will present their national administrative structures, concentrating on the water management style and in particular on their regulatory styles and structures to assess the presence of institutional misfits to hamper compliance Here we will also take under analysis Member States' national environmental activism as possible driver for compliance. Lastly, we will proceed per tasks (milestones to be achieved by Member States) and identify for each the implementation aspects and the possible occurrence of defection. Once this chapter completed, we will carry out a comparative analysis in part VII to confirm or reject our hypothesis. To be covered more extensively in the limitations, the reader has to be aware that due to time and space constraints, not every aspect of single Member States has been covered.

## 6.1 United Kingdom

On the characteristics of the water system in the UK we observe a consistent geographical variation. While the eastern-side to the UK is densely populated, heart of economic activities and prone to coastal flooding, the north and west is characterized by agriculture (Hitchen, Defra). The UK experienced two severe flooding in 1998 and 2000 raising awareness for a new turn in water management. In the UK the internal share of the water footprint (WF) from domestic resources is of 38% while trans boundary waters account for 62% (Chapagain and Orr, 2008). In general terms, UK's water footprint per capita is considered as at low compared to that of other industrialised countries (Mekonnen and Hoekstra, 2011). On the virtual water trade the UK is ranked 5th water importer in the world after Italy and Germany (WWF IT, 2014). Distinct figures arise for gross virtual water imports in which the UK ranks 7th after Germany and Italy yet closely before the Netherlands (Mekonnen and Hoekstra, 2011).



### 6.1.1 National Administrative Structure

In the UK, the Prime Minister, principal government figure in the House of Commons and ultimately responsible for policies and decisions, leads the government (Gov.uk, 2014 [a]). On European governance coordination, we stress the importance of the European Secretariat, the Foreign Office, Ministerial Departments and the Permanent Representation. It is the first that deals with the interdepartmental coordination of European policies (Kassim, 2003; 90). Lastly, UK's Permanent Representation links the national government to the EU institutions and other Member States – upstream function – and provides necessary information to national bodies – downstream function – (Kassim, 2003; 91). On the national coordination, the UK is associated with a strong positive conception of coordination embodied by the Cabinet Office and shows an ambitious strategy, willing to intervene timely into EU policy process, being therefore proactive instead of reactive (Kassim, 2003; 106). This feature might be relevant for both implementation and compliance since by intervening actively in the decision-making process, the Member State might be able to align part of the policies to its national ambitions and therefore better respect requirements once established.

Concerning water management in the UK, in 1973 Regional Water Authorities (RWAs) were established based on river basins. Later on, in 1989, the National Rivers Authority (NRA) replaced RWAs, and in 1995 the Environment Agency (EA) was created substituting the NRA. The EA is constituted by the Department of the Environment and Rural Affairs (Defra) and the National Assembly for Wales (NAW) (Uitenboogaart and Crabbé, n.d.). It is Defra that manages policies. The economic aspect is delegated to the Water Services Regulation Authority (OFWAT). Competencies are shared between Defra and the EA in England, while the NAW covers jointly the administrative arrangements with the EA (EC 29/30, 2012).

### 6.1.2 Occurrence of Misfits?

"The history of the governance of UK water management is one of incremental developments punctuated by periodic 'revolutions' bringing significant changes" (RGS, 2012; 13). Related to Kassim (2003) scheme, the UK is assessed as comprehensive in its coordination ambition. It is argued that its proactive approach to European policies is a strategy for preserving its national sovereignty and ensuring that national interests are not disregarded. Borzel (2000) expressed concerns about the contradictions that might arise between a *reactive* policy-making style of Member States and a *proactive* approach of the EU. Moreover, we introduced Thomson et al (2007) argument that when great authority is vested in central government, Member States find it easier to comply. UK's proactive role in the European policy-making process and the coordination embodied by the Cabinet Office would testify a high fit between national administrative arrangements and European policies.

The same evidence can be drawn from Howe and White (2002), who imply a fit between EU water policies and national traditions. The UK already possessed a well-developed environmental sector with divergent agencies being responsible for water. Lastly, the UK government was "a forerunner in undertaking consultation over the Directive and broadly supports the aims of the Directive". The same support came from the EA viewing the WFD as "major opportunity to improve the management of the water environment" (Howe and White, 2002; 1030-31).

Recalling Knill and Lenshow's (1998), Britain is said to have a *mediating ideal* regulatory style. The state intervention allows for self-regulation and high flexibility, while the administrative interest intermediation is informal, pragmatic, and consensual yet closed (Ibid. 598). Indeed, Knill and Lenshow (2001) recalled that the UK was historically characterised by a secretive and closed patterns of administrative interest intermediation, yet showed since mid-1970s and in specific with respect to the Environmental Impact Assessment Directive a more proactive provision of environmental information to stimulate public interest in environmental matters (Ibid. 135). On its regulatory structure, the UK presents a sectoral decentralisation and fragmentation, and lacks of hierarchical co-ordination of local activities (Knill and Lenschow, 1998; 598). Relating these administrative patterns in environmental policy with the administrative implications of the WFD testifies at first sight a high institutional fit.

### 6.1.3 National Environmental Activism

As already introduced previously, public participation and environmental activism are given an important place in the WFD. For instance, the EC stressed that: "without popular backing regulatory measures will not succeed. European citizens have a key role to play in implementation of the WFD" (EC, 2010). It is the aim of this section to present some of the most active national environmental NGOs in the UK, and to assess whether their work has to some extent possibly influenced the implementation or compliance process of the Member States with regard to our directive of interest.

Historically active national NGOs are Natural England, Royal Society for the Protection of Birds (RSPB), English Heritage, National Trust, and World Wildlife Fund (WWF–UK). It is WWF for instance that appears as one of the biggest and most influential organizations, and describes itself as the "world's leading independent conservation body" (WWF UK, 2014 [a]). Not only do they support national water policies, but also most importantly they actively intervened with regard to the 2000/60/EC. After the government's submission of the first RBMP in 2009, WWF – UK joint forces with the Angling Trust Organization and launched a legal challenge to judicially review the plans and make them more ambitious. This resulted in a close collaboration with the EA and Defra (WWF UK, 2014 [b]). Defra's Statement of Position on the future direction of WFD implementation was published in 2011 as a response to the legal action. WWF – UK chief executive David Nussbaum affirmed that:

"the EU's Water Framework Directive, which we've been working on for over 15 years, is the most important piece of environmental legislation ever passed for our rivers" (WWF UK, 2010). Important aspects of this judicial review concerned timescales identified by the government in its 2009 RBMP concerning the achievement of good status by 2015. Indeed, authorities expected only a minimal increase in percentage of waters meeting good status between 2009 and 2015, claiming that the directive allowed for open interpretation of deadlines. The WWF and other organisations sought judicial review feeling that those timescales had been abused (Parliament.UK, 2012). In this view, WWF – UK works on a local level with the Rivers Trusts and RSPB, the country's largest nature conservation charity, to "produce catchment plans that put healthy rivers at the heart of communities and make achieving WFD commitments sustainable for the future" (WWF UK, 2014 [c]).

In addition, WWF – UK drafted a position paper concentrated on Article 4.1.a.i and 4.1.b.i of 2000/60/EC. Article 4 states that "Member States shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water" (Official Journal, 2000). Aim of this position paper was to collect information supporting WWF view: i.e. make the "prevention of water deterioration" immediately binding on Member States as from the date of entry into force of the Directive, or at the latest as from the deadline for transposition into national legislation (WWF, 2003). It was based on the assertion that this clause prevents repetitions of errors and precedes the objective of achieving good status (WWF, 2003; 12). NGO's activism in this matter might be important since the principle was not present in UK's legislation before the WFD (Uitenboogaart and Crabbé, n.d.).

Even if not directly connected to the WFD per se, it seems worth saying that WWF – UK was the recipient of funds under the EU Environmental LIFE + programme of funding for 2014 – 2020. WWF – UK was one of the five receiver under the LIFE + Environment Policy and Governance £29.7 million. Called *WaterLIFE*, the project aims at actively engaging by 2021 both civil society and the private sector in the delivery of the WFD (EC, 2014 [e]). This is important to assess the goal of WWF-UK to foster public participation as requested by the WFD and welcomed by European institutions.

In addition, to strengthen the participation and consultation requirements, WWF UK, the Angling Trust and the Salmon and Trout Association launched the "Our Rivers campaign" shortly before the due-date of first RBMPs. The campaign invited the public to express views on how much their local river meant to them, providing empirical support to demand the government to draw up effective RBMPs (WWF UK, 2009).

We can affirm with a certain degree of certainty that environmental activism in the UK is indeed high and proactive in terms of European policy-making. While some actions directly aim at fostering the governments' compliance with the WFD, other show a positive involvement with regard to European requirements and a willingness to adjust national stances to higher standards of water management.

### 6.1.4 Power, Wealth, and Accession

Introduced during our theoretical framework section and recalled under the case selection part, three are the control variables that we wish to account for in our study. The United Kingdom, with a high proportion of population in the EU, has a voting power of 29 in the Council of Ministers equivalent to that of Germany and Italy. Its importance is underlined by the early accession to the EU in the first wave of 1973. Concerning its economical power, the UK had historically a GDP at market prices higher than the EU27 average. The same can be said for its GDP per capita in PPS, indicator of wealth. Table 11 presents an evolution of UK's GDP in line with the timeframe of our directive.

**Table 11** UK's historical evolution of GDP and GDP per capita

| | **2000** | **2003** | **2009** | **2013** |
|---|---|---|---|---|
| **GDP*** | 27,500 | 27,900 | 25,700 | 29,600 |
| **GDP per capita*** | 121 | 123 | 112 | 106 |

**Source:** Eurostat
* GDP at market prices, unit euro per inhabitant
** GDP per capita in PPS, EU27=100

### 6.1.5 Directive 2000/60/EC

After having introduced aspects of national relevance with regard to our independent variables of interest, we turn our attention to the Member State's compliance with the WFD, and will therefore concentrate on our dependent variable. This section will be structured per tasks, meaning that for relevant milestones identified in section 5.1.4, we will provide information on their implementation and whether or not the United Kingdom respected these steps of the compliance process.

*Transposition into national law*: The WFD was transposed into national law by three legal instruments. The 'Water Environment (Water Framework Directive) (England and Wales) Regulations 2003', second the 'Water Environment and Water Services (WEWS Act of 2003)' and finally the 'Water Environment (Water Framework Directive) Regulations (Northern Ireland) of 2003'. On compliance, a case for non-communication of transposition into national law was opened against the UK. With the due date for transposition being the 22nd December 2003, the UK notified legal transposition only in the first half of 2004, with the exception for Gibraltar (EC, 2004). However the case 2004/0152 had been closed the same year it had been filed.

*Geographical identification of RBDs and of responsible authorities for water management*: The UK identified 13 RBDs all national ones, with some international RBDs inside the EU (Table 12). The EA has been designated responsible for England and Wales; the Scottish Environment Protection Agency for Scotland; and the Environment and Heritage Service in Northern Ireland (Parliament.UK, 2012). Overall the UK received positive scores for the first RBD analyses and characterisation (EEB and WWF, 2005) and these approaches were part of UK's traditions (Uitenboogaart and Crabbé, n.d.).

**Table 12** River Basin Districts in the UK (Ireland excluded)

| Area | Number | District |
|---|---|---|
| **Scotland** | 2 | Scotland (UK01), Solway Tweed (UK02) |
| **England** | 9 | Northumbria (UK03), Humber (UK04), Anglian (UK05), Thames (UK06), South East (UK07), South West (UK08), Severn (UK09), North West (UK12), |
| **Wales** | 2 | Western Wales (UK10), DEE (UK11) |

**Source:** EC (2012), Report from the Commission to the EP and the Council, Member State: UK, on the Implementation of the WFD, River Basin Management Plans**; Notes**: The codes between brackets represent the identified RBDs to be observed at the beginning of the section: United Kingdom

*Joint analysis for the identification of waters at risk*: in a preliminary assessment of 2005 the UK had estimated that "about 60% of their groundwater bodies were at risk" (EC, 2008; Water Note 3). The UK identified in 2005 around 37% of HMWBs as requested under Article 5. However, with the 2009 RBMPs this lowered to 31%. For example, only parts of the Thames were identified as HMWBs, distinguishing between the upper stretches, in their natural state, and the lower ones flowing through London (EC, 2008; Water Note 4).

As of 2009, "22% of rivers, 40% of lakes, 15% of transnational waters and 40% of coastal waters meet the requirements of 'good potential'" (EC 29/30, 2012). The EA provided data on the percentage of waters that achieved 'good status' by 2009 and on Member States ambitions for 2015. For the UK the 2009 figure was 24%, and a rise to 37% was planned for 2015. In the government's 2011 Water White Paper, this figure of fully functioning ecosystems amounted at 27% (Parliament.UK, 2012).

*Launch of water monitoring networks*: overall, the EC assessed that the highest number of networks had been identified in the UK with 12,807 stations. On monitoring networks, the European Commission praised the Member State's ambitions (EC, 2009).

*Public consultation*: for the WFD, the main sources of information were the media, Internet, printed material and invitations to any interested parties (EC 29/30, 2012). For instance, the Defra, the EA and the Water Services Regulation Authority jointly organize "Water Stakeholder Forums" occurring two to three times a year and serving the purpose of informing on how water policy is developing (Gov.uk, 2014[b]). However, members of the Blueprint for Water Coalition affirmed that "the water industry tends to work in isolation and joint working with local communities, NGOs or other businesses is rare" (Blueprint for Water, 2012; 3).

*Drawing of RBMPs*: in UK's first RBMPs, extensive monitoring networks, detailed programme of measures, and a good level of coordination between UK and Ireland have been praised by the EC (EC, 2009). However, more information on the methodology to identify pressures and more transparency with the intercalibration process was advised (EC 29/30, 2012). It seems that these more democratic RBMPs should have a greater chance of achieving if implemented correctly than Local Environment Agency Plans (LEAPs) previously issued by the EA (Howe and White, 2002; 1032).

*Water pricing policies*: On economical requirements, the UK might have experienced greater institutional misfit since in 2000, "many households (did) not have meters and payment for water consumption (were) not tied to the level of use" (EC, 2008; Water Note 5). However, in 2008, when around 33% of households had meters, the government foresaw an increase in metering to promote more efficient use of water (OFWAT, 2008). Government authorities agreed that: "metering makes it easier for customers to understand their water use and to use water wisely" (Water UK, 2011) and in their *Future Water* vision the necessity to introduce near universal metering before 2030, especially in water stressed areas, is recognised. Concerning the polluters-pays-principle (PPP), problems did arise since before the entry into force of the directive, the principle had never been formally transposed into legislations, yet only included in the 1999 Strategy for Sustainable Development (Uitenboogaart and Crabbé, n.d). Government officials claimed that: "the PPP is difficult to apply in practice, particularly in the case of agriculture where farmers' activities have both positive and negative effects" (Defra, 2008). A conformity assessment by the EC identified missing elements for UK's transposition of Article 9 on recovery of costs for water sources and case 2007/2241 was opened against the UK for non-conformity with article 2(38) on water services of the WFD.

*On efforts to respect the non-deterioration clause*: the principle was not stated in the transposition law (EEB and WWF, 2005). However in April 2011 Defra announced a £110 million plan "to kick start restoration worth at least £600 million to improve the health of lakes, streams and other water bodies" (Gov.uk, 2011). Head of land and water at the EA, Ian Barker, announced that "there is still more to be done and we have plans to transform a further 9,500 miles of rivers in England and Wales by 2015" (BBC, 2011 [a]). Our Rivers campaigners promptly reacted to the EA report claiming that for many hundreds of other rivers crossing England and Wales the situation is critical (BBC, 2011 [b]). To confirm the compliance difficulties, a conformity assessment carried out by the EC concluded that UK did not transpose Article 4 on environmental objectives satisfactorily (EC, 2007[b]). Yet it was "not clear whether this non-conformity applies to England and Wales or only to other countries in the UK" (Uitenboogaart and Crabbé, n.d.).

*Concerning the evolution of administrative structures to adapt to requirements of the WFD*: the UK established a Technical Advisory Group (UKTAG) on the WFD that aims at providing technical advice to government administrations and to the agencies (UKTAG, 2007). In addition, an UK Administrations Policy Group has been established. Moreover, Defra assumed the role of chair of the National WWF Stakeholder Forum previously introduced, as well as of the Inter-Departmental Government Steering Groups to discuss the national implementation of 2000/60/EC. Lastly, at the regional level we saw a renewed focus on integrated water management and in particular on the establishment by mid 2006 of Regional Liaison Panels per RBD (Hitchen Defra). Therefore, recalling the adaptational pressure on domestic administrative structures and systems exerted by a possible misfit we believe the establishment of UKTAG and others to represent a positive aspect of UK's reactiveness to European demands.

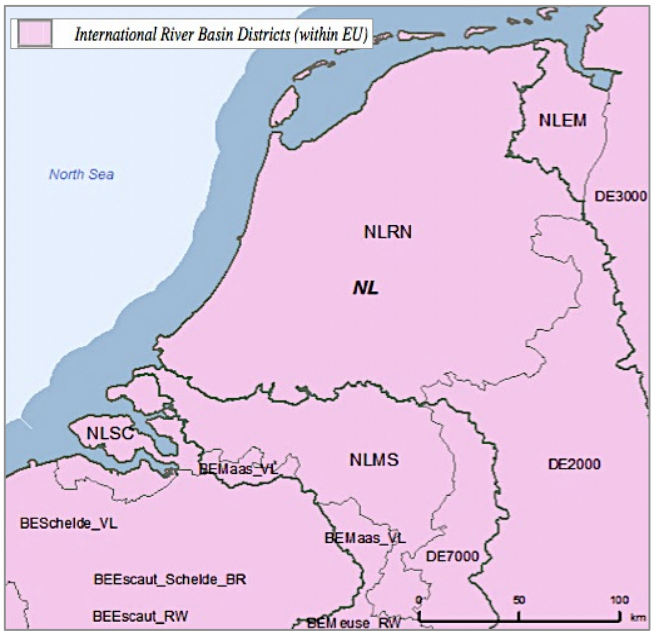
### 6.1.6 Conclusions

Even though a high share of WFD provisions was already contained in England and Wales' water legislations (Boscheck, 2006), UK faced difficulties related to the way the directive had to be implemented. Indeed, it is important to highlight that OFWAT spoke of the need for EU directives to allow for greater flexibility to take account of local circumstances, and expressed its wish to see the 'one out all out' approach taken out from the provisions (Parliament.UK, 2012). Indeed, high flexibility is one of Britain's features that position it in the state intervention, mediating ideal as seen in section 5.2.2. Organisations affirm that even though "the WFD was structured around the English approach to catchment and river basin management (…) the rigidity of the periodic review has thus far prevented the necessary spend being made at the right time" (Blueprint for Water, 2012; 2). It might have been the lack of flexibility in Britain's view that led to a couple of infringement cases opened against the Member State.

With regard to independent variables of interest, we found evidence to stress that environmental activism does *promote* UK's compliance with the WFD (in particular with actions lead by WWF), and that traditional administrative structures might suffer from adaptation pressure, yet with the process of change they don't represent a misfit and we can position changes due to requirements from above as 'confirmation of the core'.

To conclude, UK's visions for 2030 is characterized by a "continuous adaptation to climate change and other pressures embedded across the water sector, resulting in sustainable delivery of secure water supplies, and an improved and protected water environment" (Defra, 2008). Therefore, with mainly national RBDs (Annex 2), and a high geographical diversity in RBDs for waters not at risk (Annex 3, 4), the UK complies efficiently with the WFD per se, with minor adaptations pressures.

## 6.2 The Netherlands




The Netherlands has around 40% of its territory below sea level, and is therefore assessed as artificial since hand-made constructions created habitable cities (Ligtvoet et al., 2008; 13). With the only natural water body being the coastal zone, the Netherlands defined over 90% of its water bodies as either HMWBs or AWBs (EC, 2008; Water Note 4) and became Europe's Member State with the highest percentage of these on total surface bodies (EC 22/30, 2012). In the Netherlands, about 11% of the WF is internal and as much as 89% is external. Of this external water footprint, around 48% is located mainly in Germany, France and Belgium. Moreover, the total WF per capita of the Netherlands[2] is estimated to be nearly double the water footprint of an average world citizen (Van Oel et al., 2009; 89). In addition, on the virtual water trade, the Netherlands was the 8th gross water importer worldwide[3] (Mekonnen and Hoekstra, 2011). Due to the fact that the Netherlands is Europe's most densely populated and industrialised country, the Member State might usually be required to undertake measures more tighten than others to meet environmental quality standards (Ligtvoet et al., 2008; 14). Indeed, it seems that its major challenge for the implementation of the WFD was the hydro-morphological situation of its water bodies (Junier and Mostert, 2012; 6).

### 6.2.1 National Administrative Structure

The Netherlands is a unitary decentralised state in which three divergent political hierarchical levels co-ordinate policies. These are the state, the provinces and the municipalities (Wiering and Keessen, n.d.). Defined also as comprehensive, (Kassim, 2003; 95), the Netherlands is composed of 12 provinces subdivided into municipalities and water boards. On water policy, designation and implementation occurs both at the national and at the level of provinces and water boards. This testimonies a model of cooperation between the central government that is the initiating body, and the decentralised authorities that deal with implementation. It appears that the Netherlands operates through own functional agencies on two governmental levels, and that its planning and implementation activities function on a "top-down/ bottom-up process, supported mainly by soft administrative structures" (Liefferink et al., 2011; 716).

[2] 2300$m^3$/year/cap
[3] 71$Gm^3$/yr

Described as a 'highly consensus-based community', water policies are coordinated at the central level by the central government and the Ministry of Transport, Public Works and Water Management (V&M) (Kuks, 2002; 3). The V&M Ministry works closely with the functional water authorities *Rijkswaterstaat* (Ministry's Directorate-General for Public Works and Water Management) and with the more decentralised water bodies. Ministries have formal responsibility; yet daily tasks are decentralised to provinces that successively delegate to water boards (Wiering and Keessen, n.d.). However, by assigning responsibilities to different authorities, concerns on coordination arose between national interests and regional administrative bodies. Scholars that historically thought that the complex water management in the Netherlands leads to slowed down and burred processes[4], are recently being pulled alongside by those claiming that the WFD succeeded in incrementing the level of coordination among water management organisations (De Bruin et al., 2005; Junier and Mostert, 2012). The following sections on the possible fit and misfit, as well as on the national environmental activism and the degree of compliance will further elucidate the previous points.

### 6.2.2 Occurrence of Misfits?

In order to sensitise EU institutions to national policy stances, the Netherlands designated specific liaison officers and showed an increased interest in the European Parliament. However it historically acted more reluctantly and lobbied the Commission at a later stage of the process, or only on policies of interest (Kassim, 2003; 100). Dutch experiences with water management date back to the thirteenth century (Wiering and Keessen, n.d.) and since the early drafting stages of the WFD, water policy officials pursued the goal of uploading domestic practices. For instance, uncertainty about the impact of deviations "contributed to domestic resistance towards too much legally binding restrictions" (Santbergen, 2013). Even though the resulting policy text comprised ambiguous objectives and practices, it seems that no significant rules changes in the Netherlands has resulted from the WFD's implementation process. Though the Netherlands historically pushed European policies towards more sound directives for the protection of water quality, recently the country is experiencing troubles in coping with EU standards for groundwater protection. This forces EU policies to push the Member State to speed up with the implementation of policies (Kuks, 2002; 5).

Based on Knill and Lenschow (1998) and most importantly on the analysis of Dutch traditions in water management we assume that the regulatory style of the Netherlands is defined by an administrative interest intermediation that is consensual and formal and a state intervention that doesn't accord for high flexibility. The regulatory structure on the other hand is characterized by a hierarchical co-ordination of local activities and a sectoral decentralisation. With regard to the administrative features of the WFD as laid down in section 5.1.5, we would expect a low institutional fit; however the following sections will elucidate some points.

[4] "The way the Dutch water management is organised creates complex situations that tremendously slow down and blur the process" (Beunen et al., 2009; 62).

### 6.2.3 National Environmental Activism

The Netherlands was the first Member State in 1989 to present an integrated national environmental policy plan, and its activeness with regard to government consultation of various groups in society is well known since the beginning of the 20th century (Kuks, 2002; 4). Indeed, water companies established themselves as 'environmental watchdogs' (Wiering and Keessen, n.d.). Recalling the World Value Surveys, 15,3% of Dutch respondents affirmed being part of an environmental group, of which around 25,5% 'active' ones. Among the most important Environmental NGOs in the Netherlands we cite Milieudefensie, Milieukontakt International, Greenpeace, Stichting Natuur en Milieu, as well as WWF NL.

It was for instance Stichting Natuur en Milieu, in cooperation with Stichting Reinwater and other 15 national environmental organisations that submitted in 2006 a complaint to the EC. This complaint was coordinated by the EEB and the WWF to ensure compliance with the PPP (Article 5 WFD). In specific, the complaint focused on the correct interpretation of water services under article 5§1 and was addressed against eleven Member States comprising among others Germany and the Netherlands itself. These countries were accused to apply a considerably narrow interpretation of water services (EEB and WWF, 2006). The areas under accusation in the Netherlands were the Meuse and Rhine Delta RBDs. As said by Sergey Moroz, at the time Water Policy Officer at WWF, "it is the first time that we submit a complaint of such scale" (WWF, 2006).

In addition, a representative of Stichting Reinwater stated in the EEB and WWF 2005 snapshot survey that a new role for NGOs was expected, especially concerning their ability to point out how regulations work and their aptitude to check both the national ambition level as well as the quality of the implementation (EEB and WWF, 2005). However no more information on the activeness of Dutch environmental NGOs has been retrieved.

### 6.2.4 Power, Wealth and Accession

The Netherlands, having as smaller proportion of population in the EU, has a voting power of 13 in the Council of Ministers. It is one of the cofounding Members of the EU in 1952. Concerning its economical power, the Netherlands shows a GDP at market prices much higher than the EU27 average. The same can be said for its GDP per capita in PPS, indicator of considerable wealth.

**Table 13** The Netherlands' historical evolution of GDP and GDP per capita

| | 2000 | 2003 | 2009 | 2013 |
|---|---|---|---|---|
| **GDP*** | 26,300 | 29,400 | 34,700 | 35,900 |
| **GDP per capita*** | 135 | 130 | 132 | 127 |

**Source:** Eurostat
* GDP at market prices, unit euro per inhabitant
** GDP per capita in PPS, EU27=100

### 6.2.5 Directive 2000/60/EC

After having introduced aspects of national relevance with regard to our independent variables of interest, we turn our attention to the Member State's compliance with the WFD. In particular, we turn our attention to our dependent variable, i.e. the compliance degree, by analysing all those steps that constitute the totality of the compliance process. This section will be structured per tasks, meaning that for relevant milestones identified in section 5.1.4, (steps of the compliance process), we will provide information on their implementation and whether or not the Netherlands was actually in a compliant position with these requirements.

*Transposition into national law*: The government formulated a 'pragmatic implementation strategy' in 2004 and one year later it used *the Implementation Strategy EG Water Framework Directive* by altering the *National Water Management* and the *National Environmental Management Law* (Beunen et al., 2009; 62). The Netherlands first used the WFD Implementation Act to transpose the directive into national legislation. Later on, in 2009, it adopted the *Waterwet*, i.e. a Water Management Act that largely integrated 2000/60/EC. However, environmental quality standards and monitoring are being regulated under the *Wet Milieubeheer*, i.e. the Environmental Management Act. Case 2004/0086 was filed against the Netherlands for non-communication of transposition into national law. Indeed, the due date for transposition being the 22nd December 2003, by the end of May 2004 the Netherlands was one of the Member States that had not notified any information on the transposition yet (EC, 2004).

*Geographical identification of RBDs and of responsible authorities for water management*: We provide Table 14 on the RBDs present in the Netherlands as identified by the Member State and reported by the EC in 2012. It is interesting to notice that all are IRBDs within the EU. The competencies for each of the RBDs are settled within the central level and the responsible authority was identified in the V&M (Lieffering et al., 2011; 715-719).

**Table 14** River Basin Districts in the Netherlands

| RBD | Name | % NL territory | % International RBD | Countries sharing RBD |
|---|---|---|---|---|
| **NLRN** | Rhine | 69 | 17.1 | AT, BE, CH, DE, FR, IT, LI, LU |
| **NLSC** | Scheldt | 8 | 5.5 | BE, FR |
| **NLMS** | Meuse | 18 | 21.8 | BE, DE, FR, LU |
| **NLEM** | Ems | 6 | 13 | DE |

**Source:** EC (2012), Report from the Commission to the European Parliament and the Council, Member State: The Netherlands, on the Implementation of the Water Framework Directive, River Basin Management Plans **Notes**: The codes represent the identified RBDs to be observed in the map.

*Joint analysis for the identification of waters at risk*: In 2005, more than 95% of surface water bodies were considered at risk (EC, 2008; Water Note 2). Recalling that the EA provided data on the percentage of waters that achieved 'good status' by 2009 and on Member States ambitions for 2015, figures for the Netherlands were at 4% with an expected improvement to 20% (Parliament.UK, 2012).

It is true that the Netherlands "identified over 90% of its water bodies as either heavily modified or artificial (aiming at achieving) good chemical status and good ecological potential (EC, 2008; Water Note 4). This division is to be seen in 42% of HMWBs and 53% as AWBs, and makes the Netherlands one of the top three countries with AWBs (Beunen et al., 2009; 62). Though the numbers seem shocking, diverse can be the explanations. The Netherlands might have used a precautionary approach without considering existing programs able of positively influencing the status of waters. In addition, "authorities in the Netherlands seem to fear that designating water bodies as 'natural' will saddle them with very ambitious goals and standards with a high risk of failure" (Liefferink et al., 2011; 718). Recalling article 4(4) and 4(5) of 2000/60/EC on reasons for extension to the due date of achieving good status, the Netherlands identified around 86% of its water bodies as subject fitting these requirements (EC 22/30, 2012). Therefore, it has been estimated that no more than 30 to 50% of the ecological targets underlined in the WFD could be achieved in 2027 (Ligtvoet et al., 2008; 6; Junier and Mostert, 2012; 8). Therefore, during the conformity assessment carried out by the EC after the implementation deadline, the Netherlands obtained an overall negative result since the initial transposition showed either missing elements or major non-conformity issues (EC, 2007[b]). The key provisions obtaining this negative assessment were article 4 on environmental objectives, and 4(7) on conditions under which Member States will not be in violation of the WFD. It is therefore interesting to state that the final transposition law of the WFD does not mention at all the main aim to achieve good ecological status (EEB and WWF, 2005).

*Launch of water monitoring networks*: These networks primarily concern groundwater (2185 sites), followed by river monitoring stations in the inner side of the country and lake monitoring stations close to the coastal areas. The monitoring programmes are co-shared with Germany, Switzerland, Belgium and France (EC 22/30, 2012).

*Public consultation*: The Netherlands has a judicial system that offers quite easy formal access to different types of societal actors as environmental NGOs and local grassroots organisations. These groups are also involved in an informal way in the regional planning process through *gebiedsproces*, i.e. integrated regional planning. The representation of interests is traditionally highly developed in water boards (Wiering and Keessen, n.d). Therefore, the Netherlands is listed among the examples of good practice with regard to public participation since the provisions are laid down in the transposition law and include the active involvement of interested parties, for instance, through workshops (EEB and WWF, 2005). On RBMPs, consultation is organised through the Dutch Law that safeguarded information supply prior to the WFD and the Aarhus Convention. For instance, consultation has been carried out principally through media, Internet, printed material and sent information to relevant stakeholder groups (EC 22/30, 2012). However, on the coordination with organised stakeholders some problems arose since the process of choosing adequate measures was marked by a high level of technicality and complexity, and the meetings were too numerous to be attended all (Junier and Mostert, 2012; 7).

Luitzen Bijlsma, General Director at Rijkwaterstaat, Centre for Water Management did claim that: "it would be practical if the parties involved could share an unequivocal body of knowledge and a vocabulary that everybody understands" (Rijkwaterstaat, 2011; 7). Therefore, "although the Dutch normally take interest in forms of public participation, on the case of the WFD it was only gradually built in the implementation process (Wiering and Keessen, n.d.; 10).

*Drawing of RBMPs*: RBMPs were adopted in November 2009, and a *Nationaal Waterplan* is since then being periodically produced (Lieffering et al., 2011). Following the publication of the first RBMPs, a Ministry of Infrastructure and the Environment was created in October 2010 taking over the competencies previously assigned to the V&M (EC 22/30, 2012). On the division of competencies, regional offices, provinces and municipalities are respectively in charge of national waters, regional waters and water boards. Relating to the EC 2012 report on the implementation of the WFD, the main strengths of RBMPs are the in depth account of water management, the clear and illustrative structure facilitating public consultation, the extensiveness of surveillance monitoring networks and the good structure of Programmes of Measures. The Commission, with regard to monitoring programmes, affirmed that: "clear and comprehensive reporting is a pre-requisite to enable (it) to carry out a proper analysis of the implementation", and in this view praised the Netherlands for good practice of clear reporting (EC, 2009). On the other hand, weaknesses have been identified in the large number of plans and strategies at different levels, causes of coordination ambivalences among different authorities and fears of regional differentiation. Thus, the EC called for an improved transparency and communication of the coordination mechanisms as well as of the application of exemptions (EC 22/30, 2012).

*Water pricing policies*: During the conformity assessment carried out by the EC after the implementation deadline, missing elements or non-conformity issues were identified partly also in key provisions 9 on the recovery of costs for water services (EC, 2007[b]). The Commission investigated the Netherlands with regard to the application of the principle of cost recovery for water services with case 2006/4644 (Europa.eu, 2012[b]). However, On the PPP and cost recovery principles, even though they were not part of the formal transposition of the WFD, no great adaptational pressure has been exerted on the Netherlands since the Dutch system already built on these, in particular on the PPP (Wiering and Keessen, n.d).

*On efforts to respect the non-deterioration clause*: Over the legal qualification of Article 4 on environmental objectives and the non-deterioration clause some differences in interpretation arose. Differentiating between 'obligation of best efforts' and 'obligation of results', the first calls for all reasonable measures and targeted actions but does leave discretion on whether results are eventually being achieved or not. The second interpretation does not leave space for reasonableness but calls for achieved results within the deadline (van Kempen, 2011). Therefore, to comply with the WFD, water management in the Netherlands needs to evolve from a 'best effort' spirit to a 'obligations of results' within a specific time frame, meaning that quality goals need to be translated through targeted legislations at the national level into quality standards (Wiering and Keessen, n.d.).

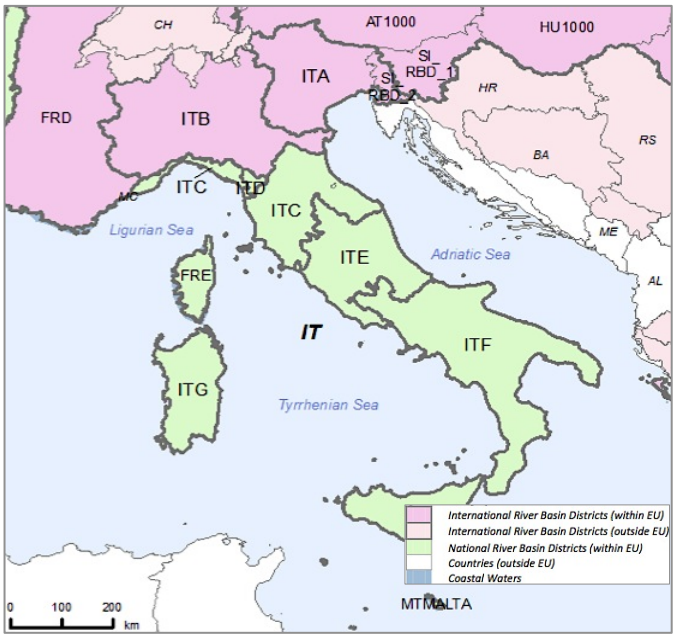
*Concerning the evolution of administrative structures to adapt to requirements of the WFD*: it is interesting to notice that no new RBDs authorities or administrative structures were created in the Dutch case to respond to WFD requirements. Indeed, existing institutions in water management became the appointed authorities for 2000/60/EC and only one additional coordinating structure lacking legal competencies was added at the river basin level, i.e. a river basin platform gathering political representatives of each river basin units (Junier and Mostert, 2012; 8). Still, scholars suggest that on long term, Dutch water legislation was reframed with an inclusion of stricter and mandatory environmental water quality obligations, becoming more integrated (Wiering and Keessen, n.d.).

### 6.2.6 Conclusions

A brief of the V&M Minister of April 2004 expressed the government's willingness to follow a 'pragmatic' or 'realistic' approach to the implementation of the WFD; meaning that the Netherlands would do what was 'reasonable' yet without "going to the very limit to achieve a good status for all waters" (Junier and Mostert, 2012; 4). This feasibility and pragmatic approach seems to prevail over high ambitions due to the fact that water boards are hold responsible for the goal setting and measure formulation as well as for the subsequent implementation of measures (Liefferink et al., 2011; 719). In any case, scholars believe that Netherlands "will not put itself in a position that it can be defaulted by the EC" (Wiering and Keessen, n.d.; 10).

With regard to our independent variables of interest, we did not found sufficient evidence to stress that environmental activism does foster compliance per se in the Netherlands. However, when backed by umbrella organisations, Dutch national environmental NGOs might be able to exert pressures and shed importance on requirements of the directive that had already been defected from. Concerning our second independent variable, it appears that national administrative structures fit the requirements of the WFD, and that some minor co-ordination issues position the Member States among the pattern of 'change within a static core'.

## 6.3 Italy




The peninsula Italy is particularly heterogeneous with regard to precipitations and other environmental characteristics (Viaggi et al., 2010). With the north having a more continental climate, the south of the country has fewer water resources due to high temperatures. In general, Italy is composed of all types of water bodies as rivers, lakes, and transitional as well as coastal waters. On absolute numbers, Italy's WF is the highest in Europe and 66% above world average (WWF IT, 2014; 52). Italy has a WF that is for 37% internal and 63% external. Moreover, the country has been ranked as the 3rd net virtual water importer in the world[5] after Japan and Mexico, and closely before Germany and the UK (WWF IT, 2014; 45). Distinct figures –probably due to the different years of analysis– arise for gross virtual water imports in which Italy with ranks 6th after for instance Germany and before the UK and the Netherlands (Mekonnen and Hoekstra, 2011).

### 6.3.1 National Administrative Structure

Italy is a democratic republic with a perfectly bicameral Parliament and its local level is composed of regions -20 of which five autonomous-, provinces and towns and is therefore said to be decentralised (United Nations, 2006). Also called a "comprehensive decentralised system" (Kassim, 2003; 95), Italy has mechanisms especially established to regulate interdepartmental coordination, for instance its Department for the Coordination of European Community Policies. Nowadays the responsibility of coordination is shared between the foreign ministry and the Prime Minister's department. This because the influence exerted by the Ministry of Foreign Affairs declined, especially after the creation of the above-introduced Department for the Coordination of European Community Policies. Therefore, "no single actor, even the head of government, has the power routinely to impose solutions" (Kassim, 2003; 95). Italy's lobbing activities have always been minimal, without aiming at setting the EU policy agenda; maybe due to the fact their Italy's administration is fragmented. To summarise, the EU coordination system in Italy is comprehensive, decentralised, and the traditional EU policy is characterised by favouritisms towards stronger integration.

[5] 62,157 $Mm^3$/year

Related to the water management, regions deal with implementing, monitoring, and planning, in co-ordination with the Ministry of Environment, Land and Sea that leads policy issues and is in charge of the implementation of the WFD. Therefore, regions are in charge of the water monitoring activities while the central government plays the role of supervisor and coordinator of regulatory tasks. Monitoring environmental matters has therefore been delegated form the national level to the regions (Premazzi et al., 2003). Before the adoption on the WFD, basin authorities were already in charge of the conservation management yet nowadays they are properly acting as District authorities (Share, 2010). One problematic aspect however is that national authorities had been provisionally named responsible for identified RBDs, and so had been institutional committees of national interest (EC 17/30, 2012). In addition, one of the main problems concerning water management is the "lack of distinct hierarchy between the multiple levels of authority" (Viaggi et al., 2011). Future sections will elucidate whether those characteristics of Italy's administrative structure imply an institutional misfit regarding requirements embedded in the WFD.

### 6.3.2 Occurrence of Misfits?

Italy is part of the so-called 'latecomers' characterised by a poorly developed regulatory structure and a weak capacity for implementation. Moreover, with a low degree of acceptance of more stringent measures, Italy was conferred the surname of 'laggard' in environmental policy. Indeed, figures show that Italy is the Member State with historically the highest number of ECJ referrals and the second highest number of judgements. Scholars assert that it comes without surprises that Italy consents to EU policies despite its awareness of not having sufficient action capacity to further comply by implementing these correctly (Borzel, 2002).

Basing findings on Knill and Lenschow (1998) regulatory styles and structures, Italy is supposed to have an inflexible state interventionist style and an informal and closed interest intermediation regulatory style. On the regulatory structure we identified a lack of hierarchical co-ordination and a comprehensive de-centralised configuration. Therefore, Italy might be defined as a "regionalised state with highly fragmented vertical and horizontal policy making structures" (Koutalakis, 2004; 758). According to the WFD requirements and its administrative implications identified in Table 10, Italy is assumed to experience a high misfit in particular with regard to the interest intermediation regulatory style and the regulatory structure per se. Future sections will highlight if this lead to low level of compliance with 2000/60/EC.

### 6.3.3 National Environmental Activism

"Italy has no significant tradition in non-state actors' involvement in environmental policies" (Koutalakis, 2004; 759) yet still considers the EU as the most appropriate level of environmental governance.

Environmental NGOs with special status are granted with special rights as for instance the right to legal actions in administrative courts. However those without special status are only allowed to initiate judicial proceedings as citizens are (Koutalakis, 2004). According to findings, Greenpeace Italia, WWF Italia, Italia nostra, Amici della Terra and Legambiente are some of the most influential national environmental NGOs.

As a reaction to the infringement cases opened by the EC against Italy (see relevant sections), in particular for failure to communicate transposition into national law, WWF Italia drafted a petition signed by over 780 researchers and technicians to foster the Italian government to comply with the WFD. At the time of the petition, WWF Italia claimed that their country was the only of the 25 Member States that didn't undergo processes to implement the directive (Unimondo.org, 2006).

Activeness of WWF Italia is also underlined by its agreement with Spinning Club Italia on the measures to safeguard Italian rivers. In the words of WWF Italia's President, Stefano Leoni, every institutions needs to stronger commit itself to guarantee the achievement of good ecological status by 2015 (GreenMe, 2011). In addition, WWF Italia timely opposed the government for its non-respect of the non-deterioration clause, basic principle of 2000/60/EC, emphasising that the time had come to stop the 'slaughter'. This has been performed through conventions, letters of proposal to the government, seminars and documents (WWF IT, 2014[b]).

Legambiente, another Italian environmental organisation that founded its mission on scientific environmentalism, claimed the urgency to start a serious and concrete environmental policy in Italy. This since the defection from the WFD is not only hampering the preservation of the environment, yet puts the Member State in a delicate position due to the monetary fines that the ECJ might impose for incorrect compliance (Legambiente, 2014). Concrete measures are identified among others in the harmonisation and coordination of different levels of planning (Asca, 2014).

According to the above-presented findings, national environmental NGOs' activeness in Italy has not directly enabled the government to better comply with the WFD. However, we see some aspects of activeness that might reduce defection or re-institute the correct application of specific requirements encompassed in the WFD.

### 6.3.4 Power, Wealth and Accession

Italy has a voting power of 29 in the Council of Ministers having a share of population similar to that of Germany and the United Kingdom. Sign of political power, Italy is also one of the cofounding Members of the EU in 1952. Concerning its economical power, Italy shows a GDP at market prices higher than the EU27 average (a part for 2013 with 25,600 as compared to 25,900). Concerning the GDP per capita in PPS, indicator of wealth, Italy was historically above EU average, once again apart for 2013 with 98 compared to EU28=100. Indeed, its GDP per capita is slowly decreasing in decades.

**Table 15** Italy's historical evolution of GDP and GDP per capita

| | 2000 | 2003 | 2009 | 2013 |
|---|---|---|---|---|
| **GDP*** | 21,000 | 23,300 | 25,200 | 25,600 |
| **GDP per capita*** | 118 | 111 | 104 | 98 |

**Source:** Eurostat
* GDP at market prices, unit euro per inhabitant
** GDP per capita in PPS, EU27=100

### 6.3.5 Directive 2000/60/EC

After having introduced aspects of national relevance with regard to our independent variables of interest, we turn our attention to the Member State's compliance with the WFD and therefore to our dependent variable. This section will be structured per tasks, meaning that for relevant milestones identified in section 5.1.4, (which represent the steps of the compliance process), we will provide information on their implementation and whether or not Italy defected from those.

*Transposition into national law*: Italy transposed the WFD into national legislation with the Legislative decree 03/04/2006 n°152. However, as will be stressed during the compliance section, this first transposition was insufficient and three other decrees followed the first one: decree n°131 of 2008, n°56 of 2009, and n°260 in 2010 (Share, 2010). With case C85/05, the ECJ ruled against Italy for not communicating transposition of the WFD (EC, 2007). Indeed, the transposition date in Italy was assessed to be 2006 by the EC that defined the overall results of the initial conformity analysis as negative, especially with regard to the transposition of key provisions 4 and 4.7 (EC, 2007[b]). Specificities of the infringement procedure were as follows: on 12 January 2006 the ECJ condemned Italy for failing to transpose the directive; in May 2006, Italy send a legislative decree aiming at transposing the WFD, however, according to the Commission, the decree did not achieve full transposition and therefore a first warning was sent to the Italian government in December 2006. In June 2007, the Commission sent a final warning on Italy's probability to face renewed court action and possible fines (Europa.eu, 2007). For this non-communication of transposition into national law the case 2004/0059 was closed on the 18th of September 2008.

*Geographical identification of RBDs and of responsible authorities for water management*: Italy identified eight RBDs (Table 16). Though they are mainly national ones, in $km^2$ around 63% of waters is part of IRBDs within the EU. Information first obtained by the EC stated that in February 2010, Italy adopted RBDs by the 'permanent institutional conference' before passing them on to the 'State-Regions conference' for opinions, and finally to the President of the Council of Ministers for approval and submission of legal status. However, later claims presented a different scenario: the Institutional Committees of national river basin authorities, assisted by district regions, were those adopting RBDs (EC 17/30, 2012).

**Table 16** River Basin Districts in Italy

| RBD | Name | Size ($km^2$) | Countries sharing RBD |
|---|---|---|---|
| **ITA** | Eastern Alps | 40851 | AT, CH, SI |
| **ITB** | Po Basin | 74000 | CH, FR |
| **ITC** | Northern Apennines | 38131 | FR |
| **ITD** | Serchio | 1565 | |
| **ITE** | Middle Apennines | 36302 | |
| **ITF** | Southern Apennines | 68200 | |
| **ITG** | Sardinia | 24000 | |
| **ITH** | Sicily | 26000 | |

**Source:** EC (2012), Report from the Commission to the European Parliament and the Council, Member State: Italy, on the Implementation of the Water Framework Directive, River Basin Management Plans **Notes**: The codes represent the identified RBDs to be observed in the map. However inconsistencies arise with 'ITC' that is assessed both as national and as international RBD.

With case C85/07 on 'bad application and non-reporting', Italy failed to submit reports required under Article 5(1) and 15(2) of 2000/60/EC on "characterisation of the River Basin Districts, review of the environmental impacts of human activity and economic analysis of water use", but finally complied and the case was closed (EC 17/30, 2012; EC, 2012). In addition, Italy needed to revise initial identified RBDs since they didn't cover the territory of the Lagoon of Venice (EC, 2007[b]; 62).

*Joint analysis for the identification of waters at risk*: Even if important variations occur amongst regions, "almost one quarter of all surface bodies have been assessed as being at good ecological status; and 1% are at high status" (EC 17/30, 2012; 19). However one needs to be aware that chemical status is unknown for 78% of surface waters and ecological status for 56% (Greenreport, 2014). On groundwater, over 52% were assessed at good quantitative status (32% unknown) (EC 17/30, 2012). Concerning HMWBs, unclear data have been provided by Italy, however ITA, ITB, ITC and ITD should have the highest proportion of HMWBs (EC 17/30, 2012). Aware that Italy transposed the directive since ECJ's ruling C85/05, the Commission however carried out a conformity check in 2009 that didn't obtain positive results, and thereafter sent in May 2010 a letter of formal notice to the Italian government. Obtaining no positive changes, a further reasoned opinion was issued (Europa.eu 2012[a]). Indeed, on 22 March 2012, the Commission affirmed that Italy was still failing to comply with the European WFD. Of particular concern were the articles on the establishment of measures to achieve the good status objectives, as well as Annex II and partly V of 2000/60/EC.

*Launch of water monitoring networks*: In the second implementation report drawn by the EC, Italy was identified among the Member States with the highest number of monitoring networks, amounting at 8,311 (EC, 2009). In 2009 the Ministry of Environment issued decree 56 of 2009 identifying an extensive approach for monitoring. The same year, the government transposed directive 2006/118/EC on groundwater and updated methods for monitoring of groundwater through a Legislative Decree (EC 17/30, 2012).

*Public consultation*: Active involvement of concerned parties for the creation of RBMPs is stated in the Italian legislation. In 2004, the Italian Institute of Health jointly organised with WWF Italia a workshop on the role of public participation. The main problems concerning data have been identified in their availability and traceability, as well as in their reliability. Among the suggested solutions was the establishment of a permanent forum on water management (Istituto di Sanità, 2004). However, once again the initial defection from EC deadlines triggered the consultation process. The EC provided the Italian government with an extension of the due date for RBMPs to allow for a correct time of public participation (Balzarolo et al., 2011). This exercise characterised by websites, public meetings, and written comments among others was of particular success and comments brought additional knowledge to the RBMPs (EC 17/30, 2012). However, the picture is obfuscated according to a respondent of WWF Italy, asserting "the government has not provided any information and official documents were only made available on request (EEB and WWF, 2005; 22). Public participation has been of utmost importance since the "delay in the identification of water districts and in the attribution of the related competences forced the Italian Government to introduce a specific administrative procedure for the active participation of all involved stakeholders (Balzarolo et al., 2011; 156). Concerning RBMPs, measures stated are almost entirely based on regional Water Protection Plans called *Piani di Tutela delle Acque*, which were in place prior to Italy's transposition of the WFD. Other sources for RBMPs draw on Plans of hydrological assets, i.e. the *Piani di asetto idrogeologico* (EC 17/30, 2012).

*Drawing of RBMPs*: The Commission, though appraising the fact that all RBMPs underwent strategic environmental assessments, identified numerous weaknesses. For instance diverse approaches for monitoring between different regions, an incomplete classification of water bodies as well as of exemptions that are fragmentary, a lack of common approach to tackle the economic constraints of the directives, and an inconsistencies between data provided in the RBMPs and those reported to WISE (EC 17/30, 2012). For instance, on the methodology for the identification of HMWB, the designation methodology is not explained or the information given is unclear (EC, 2012). Recommendations for the Italian case were more than extensive. Of more interest to us concerning institutional misfits and administrative structures are: the need to transform provisional RBD authorities into permanent systems covering the entire area of the relevant RBD. In addition the EC suggested an increase in transparency, use WFD compliant assessment methods in accord to the intercalibration work, transparently present the cost recovery mechanisms for all user and completing Programmes of Measures (EC 17/30, 2012).

*Water pricing policies*: With regard to the economic requirements of the WFD, Italy was experiencing difficulties to correctly define the concepts of water cost recovery and complete an in depth economic analysis (Balzarolo et al., 2011). Indeed, the achievement of a monetary evaluation of water status is one of the two issues of particular challenge to Italy's WFD implementation (Viaggi et al., 2010).

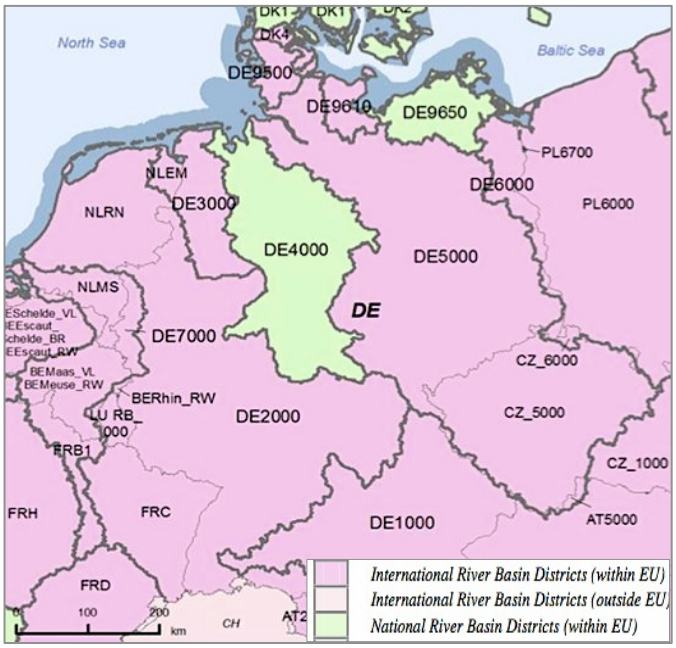
For instance, in the EC's second implementation report of 2007, Italy scored "zero" points in the performance assessment of Article 5, indicating that information on the level of cost recovery was had not been provided, an overview of socio-economic importance of water uses in relation to pressures was missing, and a baseline scenario had not been established (EC, 2007[b]; 40).

### 6.3.6 Conclusions

Even though Italy is a Member State with a long history of water legislation, in general, the Italian case "is characterised by a delay in the application of the WFD and only a partial implementation of its principles" (Viaggi et al., 2011). With the entry into force of the WFD the necessity arose to timely adapt national laws to new requirements to reach environmental targets. Already in the last 20 years, Italy's water management underwent important reforms (Balzarolo et al., 2011). We have seen that the Italian case however is one of heavy defection from requirements, squeezed between national inertia and environmental NGOs' strive to change the status quo. Maybe, at the edge of the 2015 good ecological status target and 15 years after the entry into force of the directive the situation might be in process of changing. Indeed, according to government officials, "progress should enable Italy to make up for the previous delays in WFD implementation and bring the country in line with the pace of implementation of other EU countries" (Viaggi et al., 2011).

However, on our two independent variables of interests, it appeared that national environmental NGOs did not consistently foster the government to comply with the WFD. Moreover, Italy experienced a high institutional misfit with regard to the WFD and its administrative requirements. Since we observed a low environmental activism and low institutional fit we affirm that it is not surprising to see that Italy has a low degree of compliance of with the directive, and that a high number of infringement proceedings were opened against the Member State. However, seeing that the government strived to adapt national administrative structures to European requirements, we position Italy within the path of change within a changing core.

## 6.4 Germany




Population density in Germany is relatively high and follows the one of the Netherlands and the UK (Uitenboogaart, n.d.). Indeed, in 2012, the population density per people per sq. km of land area was of 231 (World Bank, 2014). The share between domestic and global WF in Germany is around 50-50% (WWF DE, 2009). This means that Germany is currently covering by the means of national resources around half of its water consumption, indicating that its water resources are plenty. Concerning virtual water trade, Germany ranked 4th virtual water importer in the world after Italy, and immediately before the UK (WWF IT, 2014). Figures though differ in 2011 when scholars assessed that Germany was the 5th virtual water importer[6] before Italy, the UK and NL (Mekonnen and Hoekstra, 2011).

### 6.4.1 National Administrative Structure

Germany's federal structure is the proof of a decentralised system that divides competencies amongst the federal level in which the policy formulation occurs and the regional level that deals with implementation. In addition, administrative tasks are divided among structures based on their environmental area of belonging (Knill and Lenshow, 1998). Therefore, the regulatory structure in Germany, in particular in the environmental field, is characterized by a high degree of decentralisation and fragmentation. Moreover, in Kassim's (2003) words, Germany has a 'twin-track system' in which the division of responsibilities generally occurs between the foreign and finance ministries and the policy formulation occurs within sectoral networks of specialists around Bonn, Brussels and the sixteen Länder (Ibid. 95-96). Since Länder have their own 'foreign relations systems', further coordination problems might arise and power might be dispersed (Kassim, 2003). In addition, the Member States' federal structure does lead to a rigid and comprehensive administrative structure, which makes 'invasive' structural reforms pushed from above (from the European level) more difficult to succeed. To inform EU policies of national views, Germany delegates this 'routine responsibility' to its desk officers (Kassim, 2003).

[6] 125Gm$^3$/yr

In the context of the WFD, water management responsibilities rested with a three-tier administrative structure in each Federal State: the State Ministry, the district administration, and the municipality (Parliament.UK, 2012). The latters might delegate to *Wasserverbaende*, i.e. water boards/ associations (Uitenboogaart, n.d.). State ministries play a significant role in implementing the WFD since they represent the supreme authority in all states except for the city-states of Berlin, Bremen and Hamburg (Neumann, n.d.). In this aspect, "the federal government only enacts framework laws while the federal states are free to determine the actual structure and substance of water management" (Theesfeld and Schleyer, 2011; 5). Indeed, "water management is one area where the competence of the Länder is pronounced" (Uitenboogaart, n.d.). It is the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU) that holds the main accountability for water management. Further subdivided into authorities, the BMU is composed of the Federal Environmental Agency (UBA) that has the role of water resource manager at the national level (Neumann, n.d.). Since federal states are hold responsible for the legal and the organisational implementation of the WFD (Theesfeld and Schleyer, 2011), different approaches to co-ordination exist and might render implementation information more difficult to assess.

### 6.4.2 Occurrence of Misfits?

Hereafter we may connect the above-introduced findings on Germany's national administrative structure with the two ideal types of the regulatory styles according to Knill and Lenschow (1998). Approaching the interventionist ideal type, "Germany is a European leader in terms of command-and control environmental regulation" (Ibid. 597). The regulatory structure is depicted by high sectoral fragmentation, hierarchical co-ordination and functional decentralisation. The regulatory style has a hierarchical, substantive and inflexible state intervention dimension and a formal, legalistic, and closed administrative interest intermediation dimension (Knill and Lenschow, 1998). Due to these characteristics to be regarded in relation with Table 10, "Germany is predestined a misfit between the state-centred, regulatory philosophy and administrative traditions of water management and the partnership-oriented, cross-sectoral aspects of the WFD" (Theesfeld and Schleyer, 2011; 13 in citing Moss, 2004). Indeed, Moss (2004) affirmed that in Germany "the challenge of institutional adaptation and innovation is particularly stark" (Ibid. 86). Certainly, the centralised system required by the WFD might clash with the high degree of autonomy accorded to Länder; however some differences arise between Eastern and Western Germany since the first had already undergone a process of reunification and was more open to new approaches (Uitenboogaart, n.d.).

With these findings in mind, we might proceed with the assessment of Germany's environmental NGOs' activeness and then analyse its implementation of the WFD to account for compliance or defection.

### 6.4.3 National Environmental Activism

Concerning environmental NGOs, the most relevant umbrella organisations are: BUND and *Deutscher Naturschutzring* (DNR). BUND, also known as Friends of the Earth Germany, is a grassroots NGO with more than 480,000 members. In its view, one has "to be persistent in order to turn an idea into an environmental policy reality. Persistence is a characteristic feature of BUND" (Bund, 2014).
In addition, there are several regional BUND sections that carry out specific projects. Numerous are those related to the WFD as the protection of the Elbe river floodplains and the ensuring of biodiversity of rivers. In particular, BUND is being active in the implementation process of the WFD by organising yearly forums. DNR, also known, as the German League for Nature, Animal Protection and Environment is a coalition composed of 96 German environmental NGOs (DNR, 2014) and has relevant groups as the Environmental Associations and the Hydrogen one. The environmental NGO Grüne Liga confide EEB and WWF in their 2005 snapshot survey that "a special WFD-related project taking up two full-time positions" had been established (EEB and WWF, 2005; 9).

Recalling the complaint filed by EEB and WWF in 2006 against eleven Member States for failure to correctly comply with the PPP, active German environmental organisations were: BUND, NABU, Bund Naturschutz Bayern, Grüne Liga, and Arbeitskreis Wasser im BBU. The concerned areas in Germany where the: Danube, Elbe, Ems, Weser, Middle and Upper Rhine (WWF, 2006). Actions taken by the EC see Germany still faced with a judicial ruling by the ECJ.

NABU for instance, is said to be "the leading non-profit and non-governmental organization for nature conservation and environmental protection in Germany" with more than 400,000 members (NABU, 2014). The organisation is particularly active in the Havel river and aims at restore it to its natural status.

Distancing ourselves from the WFD yet underlying activeness we cite case C115/09 of 2011 in which the access to justice pillar of the Aarhus Convention for environmental NGOs has been triggered. The Nordrhein-Westfalen branch of Friends of the Earth, recognised as an environmental NGO by the German national law but not accorded legal standing got the ECJ to affirm that "the German procedural laws run counter to the objective of 'wide access to justice' as laid down in the 1998 Aarhus Convention, and the Environmental Impact Assessment (EIA) Directive" (Asser, 2014).

### 6.4.4 Power, Wealth and Accession

Germany is one of the cofounding Members of the EU in 1952 and has a voting power of 29 in the Council of Ministers equal to that of Italy and the United Kingdom for instance. Having a great political power, Germany shows also a great economical power with a GDP at market prices much higher than the EU average. The same can be said for its GDP per capita in PPS, indicator of considerable wealth, in rise during the first decade of the millennial.

**Table 17** Germany's historical evolution of GDP and GDP per capita

| | 2000 | 2003 | 2009 | 2013 |
|---|---|---|---|---|
| **GDP*** | 24,900 | 26,000 | 29,000 | 33,300 |
| **GDP per capita*** | 118 | 116 | 115 | 124 |

**Source:** Eurostat
* GDP at market prices, unit euro per inhabitant
** GDP per capita in PPS, EU27=100

### 6.4.5 Directive 2000/60/EC

After having introduced aspects of national relevance with regard to our independent variables of interest, we turn our attention to the Member State's compliance with the WFD, and therefore to our dependent variable defined as the degree of compliance with the directive. This section will be structured per tasks, meaning that for relevant milestones identified in section 5.1.4, representing the steps of the compliance process for our directive under analysis, we will provide information on their implementation and we will assess whether or not Germany was in compliance with those requirements.

*Transposition into national law*: To implement the WFD, the Federal Water Act (*Wasserhaushaltzgesetz*) and all related Water Acts and ordinances of federal states (*Landeswassergesetz*) had to be modified (Theesfeld and Schleyer, 2011). An infringement case followed by a judicial act of the ECJ (C67/05) was launched against Germany for not communicating transposition of the WFD (EC, 2007). Case C67/05 and ruling 15/12/2005 refers therefore to the non-communication transposition. This case arose since "Germany had failed to transpose, or to notify such transposition of the Directive to the Commission within the deadline, since the law had not been transposed into the legislation of *all* Bundesländer" (EC, 2012; 16). Germany had been officially condemned but since complied with and the case was closed.

*Geographical identification of RBDs and of responsible authorities for water management*: Since the German water management traditionally works around political-administrative units, RBDs were also identified as administrative units along the water legislation (UItenboogaart, n.d.). Segments of RBDs have been further subdivided into *Teileinsusgsgebieten* i.e. sub-basins (Article 13), all having one state environmental ministry as the competent authority (Neumann, n.d.). On the division of competences, "the *oberste Wasserbehörde* formally determines the RBMPs and programmes of measures; the *obere Wasserbehörde* is the most important actor in the implementation of the WFD, while the *untere Wasserbehörden* are responsible for everything else" (Uitenboogaart, n.d.; 16). Concerning the ten RBDs identified in Germany (Table 18), all but two are international ones.

**Table 18** River Basin Districts in Germany

| RBD | Name | Countries sharing RBD |
|---|---|---|
| **DE1000** | Danube | AT, BA, BG, CH, CZ, HR, HU, IT, MD, ME, MK, PL, RO, RS, SI, SK, UA, AL |
| **DE2000** | Rhine | AT, BE, CH, FR, IT, LI, LU, NL |
| **DE3000** | Ems | NL |
| **DE4000** | Wieser | |
| **DE5000** | Elbe | AT, CZ, PL |
| **DE6000** | Odra | CZ, PL |
| **DE7000** | Meuse | BE, FR, LU, NL |
| **DE9500** | Eider | DK |
| **DE9610** | Schlei | DK |
| **DE9650** | Warnow | |

**Source:** EC (2012), Report from the Commission to the European Parliament and the Council, Member State: Germany, on the Implementation of the Water Framework Directive, River Basin Management Plans **Notes**: The codes represent the identified RBDs to be observed in the map

*Joint analysis for the identification of waters at risk*: On the EA's estimates of the percentage of waters that achieved 'good status' by 2009 and on Member States ambitions for 2015, Germany was said to have 22% of water bodies meeting the aforementioned criteria, and an increase up to 29% had to expected (Parliement.UK, 2012). Concerning environmental exemptions, 80% of water bodies were classified in this category, with 79% requesting an extended deadline (EC 8/30, 2012). Identified HMWBs (37%) in Germany can especially be found in shipping routes, while AWBs (15%) are the result of canals or opencast mining lakes. Thus, less than 50% of German surface waters have been classified as natural mainly due to land drainage, urban and infrastructure use. On the geographical distribution, the biggest share of HMWBs has been identified in the RBDs of the Rhine, Weser, Ems, Elbe, and Eider (BMU, 2010) and most natural lakes are to be found in the North (Uitenboogaart, n.d.). Even though the designation of HMWBs followed steps presented in the CIS guidance (EC 8/30, 2012; 7), the methodology was unclear in some single RBDs in Germany (EC, 2012).

*Launch of water monitoring networks*: Germany was amongst the top three Member States with the highest number of established monitoring networks (6,688) as stated in the EC's second implementation report (EC, 2009). According to the EC, monitoring activities encompassed in programmes of measures indicate a high level of ambition since often these networks "go significantly beyond the explicit and implicit WFD minimum requirements" (EC 8/30, 2012; 7).

*Public consultation*: On public participation diverse scenarios between federal states arose, some of which provided for the involvement of interest parties, while others didn't. Historically, the patterns of interest intermediation are formal and legalistic, with a constrained access for third parties and participation allowed only in explicit cases regulated under national law (Knill and Lenschow, 1998).

Indeed, at the national or federal state level, environmental NGOs previously been approved by the Federal Environment Ministry "have to be granted a hearing and access to all relevant documents and materials for all planning processes" (Theesfeld and Schleyer, 2011; 7). Therefore, for major projects, public participation is required and formally recognised under the *Planfeststellungsverfahren*, i.e. public planning (Uitenboogaart, n.d.). However, the implementation of the WFD might be defined as technocratic since no NGOs, water managers or members of the general public were involved during the formulation phase (Neumann, n.d.). This also due to the amended version of the Water Resource Act of 2002, that did not incorporate the principle yet gives the responsibility to the Länders (Uitenboogaart, n.d.). We recall here the activeness of a German NGO that succeeded in ruling against Germany for their non-respect of the Aarhus Convention and its 'wide access to justice' principle.

*Drawing of RBMPs*: Germany adopted RBMPs at the latest on 22 December 2009 and reported to the EC during the month of March 2010. Some Länder produced individual plans while others worked together in the submission of single RBMP. Even though the assessment of Germany's implementation might appear a 'patchwork of information', "the strength of the plans was to follow a similar structure, making them easy to follow and compare" (EC 8/30, 2012; 6). For instance, in opposition to the technicality of wording in the Netherlands, Germans RBMPs are readable for the general public. Indeed, since "openness to new forms of governance relating to water and land use varies considerably between the 16 states" (Moss, 2004; 92), on monitoring, co-ordinating and harmonising, the *Bund-Laenderarbeitsgemeinshaft Wasser* (LAWA) developed guidelines (Theesfeld and Schleyer, 2011). For instance, representatives of state ministries and federal environmental agencies meet regularly with this body, also relatively active with regard to the CIS (Neumann, n.d.).

*Water pricing policies*: The result of the initial conformity analysis carried out by the EC was negative identifying missing elements or major non-conformity issues in particular with regard to the transposition of provision 9 (on environmental and resource costs) and the definition of water services (EC, 2007 [b]; 12). It is this bad application case that caused Germany a referral to the ECJ in 2012. Germany considers the PPP to be applicable only to the supply of drinking water and the disposal and treatment of wastewater. On the opposite, the Commission has a wider angle on this approach. To ensure application of Article 9, the EC sent an informal letter to the government in November 2007, followed by one in September 2010 and a reasoned opinion one year after. On this issue, Global Water Intelligence interviewed a federal environment ministry spokesman who affirmed that: "we don't have a bad conscience for not implementing requirements. The issue is that we simply have a different interpretation of the law, and if we can't find a compromise then we have to end up in court" (Global Water Intelligence, 2011). The OECD indeed affirmed that: "full cost recovery of public water services is well implemented in the case of both households and industry (Uitenboogaart, n.d.; 8). However, with differing views and seeing no change in interpretation, the EC referred the case to the ECJ (Europa.eu 2012[b]), since "Germany's exclusion of activities hinders the full and correct application of the Water Framework Directive" (Europa.eu 2011[b]).

*On efforts to respect the non-deterioration clause*: On the no-deterioration principle, the initial Federal Water Act did not refer back to it. However, the 2002 amended version clearly states this principle in Articles 25 and 33, though only entering into force after 2003 and without established interim measures. For instance, Germany was one of the biggest contributors to the inclusion of the combined approach in the WFD, sign that this principle was already in place in German's water management (EEB and WWF, 2005; Uitenboogaart, n.d.).

*Concerning the evolution of administrative structures to adapt to requirements of the WFD*: Germany used the transposition to establish new authorities, yet only co-ordinating units (EEB and WWF, 2005). The implementation process in Germany occurred without significant alterations to the organisational structures and administrative responsibilities. Though water management was not historically organised along RBDs yet political boundaries, experiments in the Ruhr as well as the Elbe, Rhine and Wese had already been undertaken afore the WFD (Theesfeld and Schleyer, 2011). Only small changes can be observed at the Länder level, where new project organisations have been established to create management plans (Uitenboogaart, n.d.).

### 6.4.6 Conclusions

The German BMU affirmed that the WFD was a successful Directive that fostered a coherent and systemic approach to water management throughout Europe, especially on co-operation in IRBDs (Parliament.UK, 2012). Environmental policies heavily relied on regulatory instruments, opposed to statutory procedures and participatory/ cooperative forms of governance, leaving the German government inexperienced with the new WFD requests (Theesfeld and Schleyer, 2011). Indeed, the German government claimed that Germany would have "problems achieving the objectives of the Water Framework Directive" and would extend deadlines from 2015 to 2021 and 2027. "We are living in a densely populated state, and a lot of things have been done, especially to the hydro-morphology of surface water bodies. We have a situation where quick improvements are not really possible" (Parliament.UK, 2012). This fear might explain the 'precautionary approach' followed by German officials, for instance with regard to the identification of water bodies reaching good status (EC 8/30, 2012). Underlining that environmental targets were extremely ambitious and that the achievement of good status for all German water bodies was impossible by 2027, the German representative however confirmed that the WFD was providing a great push to get better and that real improvements were to be envisaged. "No more directives, but do not change the existing system" were the closing words (Parliament.UK, 2012). This has been first assessed by Moss (2004), which claimed that water managers intended to meet challenges, yet with minimal change to existing institutional arrangements.

With regard to our independent variables of interest, it appeared that German environmental NGOs' activeness was neither extremely high nor low. Positioning it as medium, we conclude that national environmental activism is best carried out when grouped under an umbrella organisation as the EEB. On the other hand, claims have shown that Germany was faced with a high institutional misfit with regard to the directive, especially concerning its closed and formal interest intermediation style and its inflexible state intervention style. Moreover, seeing no real willigness of change within the German government, we wish to position the Member State in the path of contradiction of the core.

# VII. Comparative Analysis

After the completion of our analysis chapter we have reached the final step of this research, i.e. the comparative case study to draw conclusions on the predictions formulated in section 3.2. Summarising the main findings on our two independent variables of interest, i.e. the activeness of environmental NGOs and the occurrence of institutional fit, will help us reach substantial insights concerning the compliance of the UK, the Netherlands, Italy and Germany with the WFD. The following sections cover conclusions on environmental activism and national administrative structures as operationalisation of possible misfits to confirm or refute predictions.

## 7.1 Environmental Activism

This sections aims at answering the core question of whether or not environmental NGOs were active regarding the WFD and whether their possible activeness did improve Member States' correct implementation of and compliance with the directive. Information have been summarised from the previous case analysis and some comparative aspects have been added where relevant.

"Bureaucrats in the Environment DG of the European Commission are certain that the WFD was greatly improved as a piece of legislation because NGOs were actively involved in the early stages of its production" (Page and Kaika, 2003 in citing Bloech, 2001). On paper, environmental NGOs where given the opportunity to lobby at the national level through Environment Ministers active in the Council of Ministers, as well as at the European level directly towards the EC and the EP (Kaika, 2003). The main aim of environmental NGOs during the adoption and implementation phase of the WFD was to "use public participation provisions to (…) monitor the implementation, assess its quality and push for proper enforcement" (WWF NO, 2010; 6). However, it is important to state that though the executive body of the EU intended to openly integrate NGOs into the process, only the groups having sufficient measures to hold a Brussels-based bureau were at the centre of the decision-making process (Page and Kaika, 2003). Therefore, the most active environmental NGOs during the WFD's consultation process were those having offices in Brussels. For instance, throughout our analysis we have underlined the importance of the EEB and the WWF, yet other influential organisation were the RSPB as well as Birdlife International and Waterpakt. While the EEB received funding from the Commission to perform the task of 'watchdog', Greenpeace timely withdrew the consultation (Page and Kaika, 2003). For example, since 1998, WWF got closely involved in the process and jointly organised with the EEB workshops and conferences/ stakeholders' consultations to "advocate some of the NGO ideas on the new directive" (WWF NO, 2010; 7). For instance, the EEB organised an NGO conference on issues of the EU WFD in which "representatives of different European NGOs and research institutes discussed the most urgent issues as to be the time frame of the directive, the approach to hazardous substances and water prising" (ERN, 2000).

One of the reasons why we didn't found satisfactory information on the activeness of national environmental NGOs (except for the UK) is indeed that these national bodies might work better and be more influential if grouped under an European umbrella organisation as the EEB, capable of stronger influencing the European institutions. Individual NGOs did compliment the Commission's strive for openness and transparency, yet "they still felt that their participation was peripheral, because they were merely consulted about the WFD and had no substantial involvement in actual decision-making" (Page and Kaika, 2003; 9).

To conclude our analysis on the activeness of NGOs, the reader is invited to look at Annex 5 that presents further interesting insights from the EEB and WWF's second 'snapshot' report, produced with data retrieved from surveys addressed to national NGOs. Respondents from our Member States were: the WWF and the RSPB in the UK, Sichting Reinwater in the Netherlands, WWF in Italy, and the GRÜNE LIGA e.V. Bundeskontaktstelle Wasser in Germany. This list of respondent might be an additional clue to identify the most active national environmental NGOs, at least according to the EEB and the WWF.

Relating back to the existing difference between active and passive involvement of NGOs as mentioned in the literature review, the analysis seems to better underline the second type of involvement. Indeed, our findings on the activeness of national environmental NGOs suggest that they exert pressure on Member States ex-post, i.e. once signals of non-compliance already arose. For instance, NGOs are being suggested to "start legal complaints on incorrect WFD transposition at national court level as well as at the European Commission" (EEB and WWF, 2005; 6).

Table 19 summarises the degree of activeness of national environmental NGOs, based on the analysis sections for each Member State and on the findings of the EEB and WWF snapshot report.

**Table 19** Activeness of national environmental NGOs – recapitulative

| | **Activeness of national environmental NGOs** | | |
|---|---|---|---|
| | Low | Medium | High |
| **United Kingdom** | | | **X** |
| **Netherlands** | | **X** | |
| **Italy** | **X** | | |
| **Germany** | | **X** | |

**Source:** Own representation

Underlying the fact that "Environmental NGOs generally have insufficient capacity to fully participate in WFD implementation" (EEB and WWF, 2005; 6), only a minimal empirical evidence has been found to systematically confirm the prediction that environmental NGOs foster Member States' compliance with our directive of interest. Indeed, NGOs themselves claimed that the space for action accorded to them was smaller than wished (WWF NO, 2010).

## 7.2 National Administrative Structures

Sections on national administrative structures helped to assess the occurrence of institutional misfits. Conclusions on the administrative implications of the WFD with regard to the regulatory styles and structures of our Member States will be presented to recap the occurrence of misfits between national traditions and requirements of the WFD (Table 20). The EC, in its third implementation report to the EP and the Council, raised concerns on the governance aspect of the matter. In its words for instance, "an adaptation of existing legal frameworks and water management administration was expected, (but) although progress has been significant, this has not taken place in most Member States, where there is a continuation of the status quo" (EC, 2012; 8).

**Table 20** Member States' regulatory style and structure

| | **Regulatory Style** | | **Regulatory Structure** |
|---|---|---|---|
| | State intervention | Interest intermediation | |
| **WFD** | Flexible for means, Command and Control for requirements | Public Participation, Transparent, Pragmatic bargaining | Co-ordination of competencies<br>Co-ordination of policies<br>Possible creation of administrative structures |
| **UK** | Self-regulated, Flexible | Informal, Pragmatic, Consensual, Closed | No hierarchical co-ordination, Sectoral fragmentation, Sector decentralisation |
| **NL** | Inflexible | Formal, Consensual | Hierarchical co-ordination of local activities, Sectoral decentralisation |
| **IT** | Inflexible | Informal, Closed | No hierarchical co-ordination, Comprehensive de-centralised |
| **DE** | Hierarchical, Substantive, Inflexible | Formal, Legalistic, Closed | Hierarchical co-ordination, Sectoral fragmentation, Functional decentralisation |

**Source:** Knill and Lenschow (1998) and others

In addition to the regulatory style and structure (Table 10 and 20) we highlight the degree of administrative adaptation pressure based on Knill and Lenschow (2001). The reader is invited to return to section 2.2.2.a for a reminder of the different paths of domestic change in response to EU policies. Knill and Lenshow (2001) recalled that the UK was historically characterised by a secretive and closed patterns of administrative interest intermediation, yet showed since mid-1970s and in specific with respect to the Environmental Impact Assessment Directive a more proactive provision of environmental information to stimulate public interest in environmental matters (Ibid. 135). This respects the definition of change within a changing core. Moreover, authors confirmed that Member States characterised by a policy style unfamiliar to negotiations and participation will experience stark issues of adaptation when confronted to *new generation* directives as the WFD.

One example of such country is Germany. Indeed, the willingness of authorities to take a participatory approach "will prove difficult in those Member States which have traditionally relied on hierarchical, sectoral structures and regulatory instruments to achieve environmental objectives" (Moss, 2004; 92). Table 21 presents the appropriate paths of domestic change for our case study units.

**Table 21** Patterns of administrative transformation to the EU WFD requirements

| | **United Kingdom** | **Netherlands** | **Italy** | **Germany** |
|---|---|---|---|---|
| **WFD** | Confirmation of the Core | Change within a Static Core | Change within a Changing Core | Contradiction of the Core |

**Source:** Knill and Lenschow (2001) and others

Based on previous assertions, we provide a recapitulative on the institutional fit/misfit that arose between Member State's national policies and WFD requirements; hereafter illustrated in Table 22. We affirm that for our cases, national policies depended on national administrative structures, and therefore an institutional misfit might also imply a policy misfit.

**Table 22** Occurrence of policy fit/ misfit - recapitulative

| | **Institutional Fit** | | |
|---|---|---|---|
| | Low | Medium | High |
| **United Kingdom** | | | **X** |
| **Netherlands** | | **X** | |
| **Italy** | **X** | | |
| **Germany** | **X** | | |

**Source:** Own representation

It seems however that the difficulties that Member States encounter might also depend on their willingness to react to requirements and adapt their national policies and structures, in particular with regard to the process of implementation. For instance, Germany and the UK were both part of the arrow of Member States that were already using the River Basin approach (Page and Kaika, 2003), however severe co-ordination problems did arise only in Germany. Moreover, even though international coordination mechanisms were already in place in a certain share of IRBDs, the Netherlands and the UK are some of the few Member States that have reported using them in establishing their monitoring programmes (EC; 2009).

The assumed degree of misfit would then become only a point of departure from which Member State could detach. On the opposite hand, "an initial 'good fit' may well create adaptation pressure in later stages of the implementation process" (Liefferink et al., 2011; 721). This is why the last concluding section on the compliance of Member States with 2000/60/EC will take into account not only filed infringement cases yet also country specific interpretations and ambitions.

## 7.3 Power, Wealth and Accession

It has been our duty to account for cofounding variables able to influence both our independent variables as well as our dependent variable in this case study. In order to avoid spurious relations, we have hold constant during our analysis the following variables: GDP, GDP per capita, voting share in the Council of Ministers and year of accession to the EU. Therefore, we will take those four control variables as fixed when drawing conclusions on the compliance of our Member States with the WFD. To recap, three of our Member States are cofounding countries in 1952, while the United Kingdom joined the EU in the first wave of accession of 1973. In addition, the UK, Germany and Italy all have a share of 26 votes in the Council of Ministers while the Netherlands only possesses 13 due to its reduced population. Of more interest to us however is their economical power expressed in GDP and their level of wealth expressed in GDP per capita. Table 23 hereafter positioned will provide an overview of data relative to our timeframe of interest for the compliance analysis of the WFD.

**Table 23** Economical power and wealth of Germany, Italy, the Netherlands, and the UK

| | 2000 | | 2003 | | 2009 | | 2013 | |
|---|---|---|---|---|---|---|---|---|
| | GDP | GDP /capita | GDP | GDP /capita | GDP | GDP /capita | GDP | GDP /capita |
| **EU27** | 19.100 | 100 | 20.800 | 100 | 23.600 | 100 | 25.900 | 100 |
| **DE** | 24.900 | 118 | 26.000 | 116 | 29.000 | 115 | 33.300 | 124 |
| **IT** | 21.000 | 118 | 23.300 | 111 | 25.200 | 104 | 25.600 | 98 |
| **NL** | 26.300 | 135 | 29.400 | 130 | 34.700 | 132 | 35.900 | 127 |
| **UK** | 27.500 | 121 | 27.900 | 123 | 25.700 | 112 | 29.600 | 106 |

**Source:** Eurostat
* GDP at market prices, unit euro per inhabitant
** GDP per capita in PPS

The aim of identifying control variables has been to exclude from our analysis those variables that could have had an effect on our dependent variable, i.e. on the level of compliance of our Member States of interest with the WFD. Since all are cofounding Members, or joined in the first wave of accession (UK), there should be no theoretical explanation under the difference in compliance as anticipated by Falkner and Treib (2008). Therefore, we exclude the possibility that our Member States defected from the WFD requirements due to different years of accession. Correspondingly, the political power of a Member State will not be accounted for as an explanation of different levels of compliance in our study. On the economical power, authors as Borzel et al. (2007) would have predicted that the Netherlands would comply worse with the WFD compared to Italy for instance, since its GDP is historically much higher. Though we observe that this is not the case in our analysis, we leave aside theoretical explanations and hold these variables as taken. Now that we summarised our control variables, we will proceed with conclusions concerning the level of compliance.

## 7.4 Compliance with 2000/60/EC

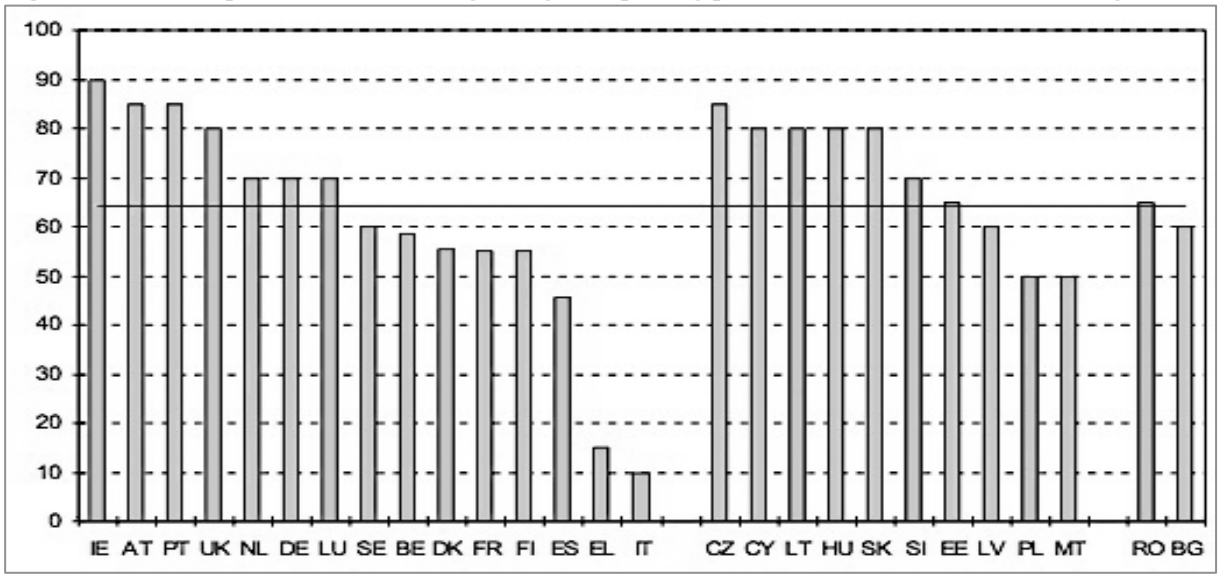
Member States have the opportunity to accommodate requirements in different phases of the implementation process, and most importantly, in different manners. The problematic feature lies in the fact that difficulties arise in comparing Member States, since although diverging one from each other, they might at the end be able to reach the same goal (Liefferink et al., 2011). The EC, welcomed the 'flexible governance' strategy of the WFD yet warned Member States that it would not hesitate to use its powers under the treaties in case this non-formalistic approach would likely fail (EC, 2007, 11). Therefore, aim of this section is to make a comparative analysis of Member States' compliance.

As introduced in section 5.1.5 on the administrative implications of the WFD, Frédéric de Hemptinne, environment consultant at The Sustainable Synergies Group, expressed to the UK Parliament his thoughts about the main difficulties that Member States would have encountered in the implementation process of the WFD. Alongside the unforeseen costs, the dimension of required changes with regard to co-ordination structures, and the innovative nature of the participative and inclusive approach of the WFD, de Hemptinne called upon the scope to which this holistic approach of the WFD shed light on previously unforeseen problems (Parliament.UK, 2012). Of particular relevance is the second obstacle that falls under our second hypothesis of the salience of administrative structures.

According to the 'soft evidence survey' by the EEB and WWF, "Member States general attitude to WFD transposition into national law appears to be minimalist, showing little real ambition (Ibid, 2005; 5). Extremely important is the fact that all our four countries of interest were part of the nine Member States that initially received by the EC in 2004 "final written warnings, which (called) on them to urgently put in place all the necessary national legislation to comply with the EU Water Framework Directive" (Europa.eu, 2004). The Commission sent final warnings under the claim that: "by not implementing this important Directive the nine Member States (were) not giving their citizens the improved water quality in lakes, rivers and coastal waters that they are entitled to" (Europa.eu, 2004). Specifically, we recall that by the due date of the 22nd December 2003, Germany had only partially transposed the Directive since specific legislation in the 16 Länder needed to be completed. With six months delay, the UK finally notified its legal transposition of the Directive. However, by the end of May 2004, Italy and the Netherlands were part of the Member States that had not notified any information on the transposition yet (EC, 2004).

It is interesting to present that concerning the first milestones of the WFD, the EC graded Member States' on a four-point scale: conformity of legal transposition, compliance with Article 3 and Article 5, as well as on their overall reporting performance (EC, 2007; 6). Outcomes on the overall reporting performance rating (whether the report was provided on time and was clear and complete) can be observed in Figure 5. Italy was the worst performing Member State at the date of analysis.

**Figure 5** Indicator per Member State regarding its reporting performance and the EU-27 average




**Source**: EC (2007)

Member States' ambitions to comply with the WFD are also reflected in the time path envisaged for the implementation of the WFD, in particular with regard to the attainment of good status. For instance, Dutch representatives agreed that the set deadline for the achievement of the main target would be 2027, and not even 2021 (Liefferink et al., 2011; 719). Country specific situations moreover might explain differences in compliance.

The introductory part of our four cases served the purpose to superficially account for other possible control variables than those identified in our research design. All four Member States have for instance external water footprints contributing 60% to 95% to their total water footprint (Mekonnen and Hoekstra, 2011) and high population density, at least in big portions of their lands. For instance, on the situation of the United Kingdom with regard to our other Member States of interest, a claim of the Natural Environment Research Council (NERC), Centre for Ecology and Hydrology, witnessed that: "we have a very big gradient of not just population but also weather within the UK (…) the north of Scotland receives 2.5 metres of rain per year; we in London probably get 0.5 metres (…) That is a pretty big discrepancy (…) but, because the Water Framework Directive works on those thresholds, we suffer perhaps a little more than some other countries in the interpretation of those thresholds" (Parliament.UK, 2012).

Lastly, it is worth stating that the River Rhine that runs through all our analysed Member States apart from the UK has won the very first International River Foundation European River Prize. The Judging Panel stated that: "the Rhine had overcome a range of challenges and achieved real on-ground improvements in river and species health" (EEA, 2014).

To summarise the main infringement cases opened against our Member States of interest as well as the overall degree of compliance we provide Table 24.

**Table 24** Member States' compliance with the WFD - recapitulative

| | Infringement Cases | Problems | Compliance |
|---|---|---|---|
| **UK** | 2004/0152 – Non communication of transposition<br>2007/2241 – Non conformity with article 2(38) | Economical requirements | High |
| **NL** | 2004/0086 – Non communication of transposition<br>2006/4644 – Application of cost recovery principle | Article 4 | Medium |
| **IT** | 2004/0059 – Non communication of transposition<br>C85/07 – Bad application and non reporting (Article 5 and 15) | Article 4, 5, 15 Annexes II and partly V | Low |
| **DE** | C67/05 – Non communication of transposition | Article 9 | Medium |

**Source:** Own representation

Data confirm that the 2000 WFD has been identified as one of the least implemented of all environmental internal market directives (Boscheck, 2006). Indeed, the EC assessed in 2012 that "a more determined effort is needed to ensure achievement of WFD objectives in 2015, 2021 and 2027 cycles" (EC, 2012; 14).

The reader might find an answer in the following quote by Howe and White, 2002: "the directive states enforcement will ensure if either the integration process is not followed within a certain timescale or if good water status is not eventually achieved. However, it is unclear how strict the penalties will be" (Ibid. 1029). Therefore, based on Table 18 on the occurrence of institutional misfit and the correspondent degrees of compliance with the WFD, we decide to confirm that for our four analysed cases a low fit corresponded to a low compliance level. Therefore, our second hypothesis has been accepted, bearing in mind the limitations of this study.

## 7.5 Conclusions on Predictions

Now that we have summarized our findings for our variables of interest (Table 25) we can reach conclusions on our predictions (Table 26). Our two hypothesis formulated in section 3.2 were as follow: (1) Environmental NGOs' activeness positively influences Member States' compliance with EU Environmental Directives and (2) Institutional fits positively influence Member States' compliance with EU Environmental Directives.

**Table 25** Relations between NGOs' activeness, institutional fits and compliance with 2000/60/EC

| | **Environmental NGOs' activeness** | **Institutional Fit** | **Degree of Compliance** |
|---|---|---|---|
| **United Kingdom** | High | High | High |
| **The Netherlands** | Medium | Medium | Medium |
| **Italy** | Low | Low | Low |
| **Germany** | Medium | Low | Medium |

**Source:** Own representation

Overall, limitations of this study will show that there was a discrepancy in our research between empirical and theoretical insights. Based on the first indeed, the empirical evidence to assess the activeness of environmental NGOs has not proved sufficient to systematically confirm our first hypothesis. However, neither did the opposite occur. It seems therefore that national environmental NGOs' activeness might foster compliance if sufficient space for manoeuvre is accorded to those organisations.

On the other hand, occurrences of institutional fits between both national policies in place, national regulatory styles and structures and the directive's requirements considerably facilitated Member States' process of implementation and compliance. Our second hypothesis is therefore confirmed based on our cases.

**Table 26** Conclusions on predictions

| | **Compliance with 2000/60/EC** |
|---|---|
| **Environmental NGOs' activeness** | Neither confirmed nor rejected |
| **Institutional fits** | Confirmed |

**Source:** Own representation

## VIII. Conclusion

We have analysed with this master's thesis the compliance of four Member States with regard to one of the most delicate 'new generation' environmental directives of the European Union. After a targeted literature review on the topic, we delineated two predictions and decided to perform a case study to reach conclusions applicable to most similar cases. We took into account the national administrative structure of the countries under analysis as well as their national environmental NGOs' activism. With the identification of their transposition progress we assessed the level of institutional fit/ misfit and related it to their compliance performance that has been operationalized through different stages of the infringement proceedings. Findings suggested that national regulatory styles and structures as compared with European policy requirements do shape the degree of Member States' compliance with the WFD, yet authorities' openness to change is a variable that revealed to be of more importance than previously imagined. Moreover, empirics showed that environmental NGOs do have the means to exert pressures on national governments to limit defection and guide them towards compliant behaviours, though this influence might be stronger at a later stage of the non-compliance process.

On the limitations for the case selection part, it is important to assess that we used data retrieved from the World Values Survey that have been collected on a 'self-reported' basis. This implies that "the level of self- reported group membership in any nation is subject to the normal variation of sampling error (as well as non-random questionnaire effects)" (Dalton, 2005; 443). Moreover, as outlined by Dalton (2005), "The interpretation of what constitutes a conservation or environmental group is left to the respondent, and the understanding of these terms may vary across nations" (Ibid. 442). Furthermore, the concept of misfits might be too static to "capture the process of matching malleable EU requirements on the one hand and evolving domestic insights and institutional arrangements on the other" (Lieffering et al., 2011; 712). In addition, environmental activism, has revealed itself to be a too broad variable to analyse, and the chosen operationalisation might not have been the most adequate to fulfil the expected role. Indeed, having observed that only Brussels-based NGOs are actively striving for more voice in the matter, the operationalisation of their role might have been better assessed through the analysis of their power in terms of resources. Since one of our two independent variables of interest has been proven to be of non-significance for our specific case, an inclusion of further variables as for instance the references to the party political support theories (i.e. as analysed by Treib, 2003) would have maybe led to more insightful results. In addition, the qualitative direction of this thesis initially called for a mere analysis of European policy papers, both theoretical and empirical, yet after the comparative analysis chapter we recognise that a restricted number of interviews might have raised the validity of the research. Hitherto we invite further researches to expand the number of cases under consideration, both in terms of units of analysis (Member States and directives) as well as of independent variables.

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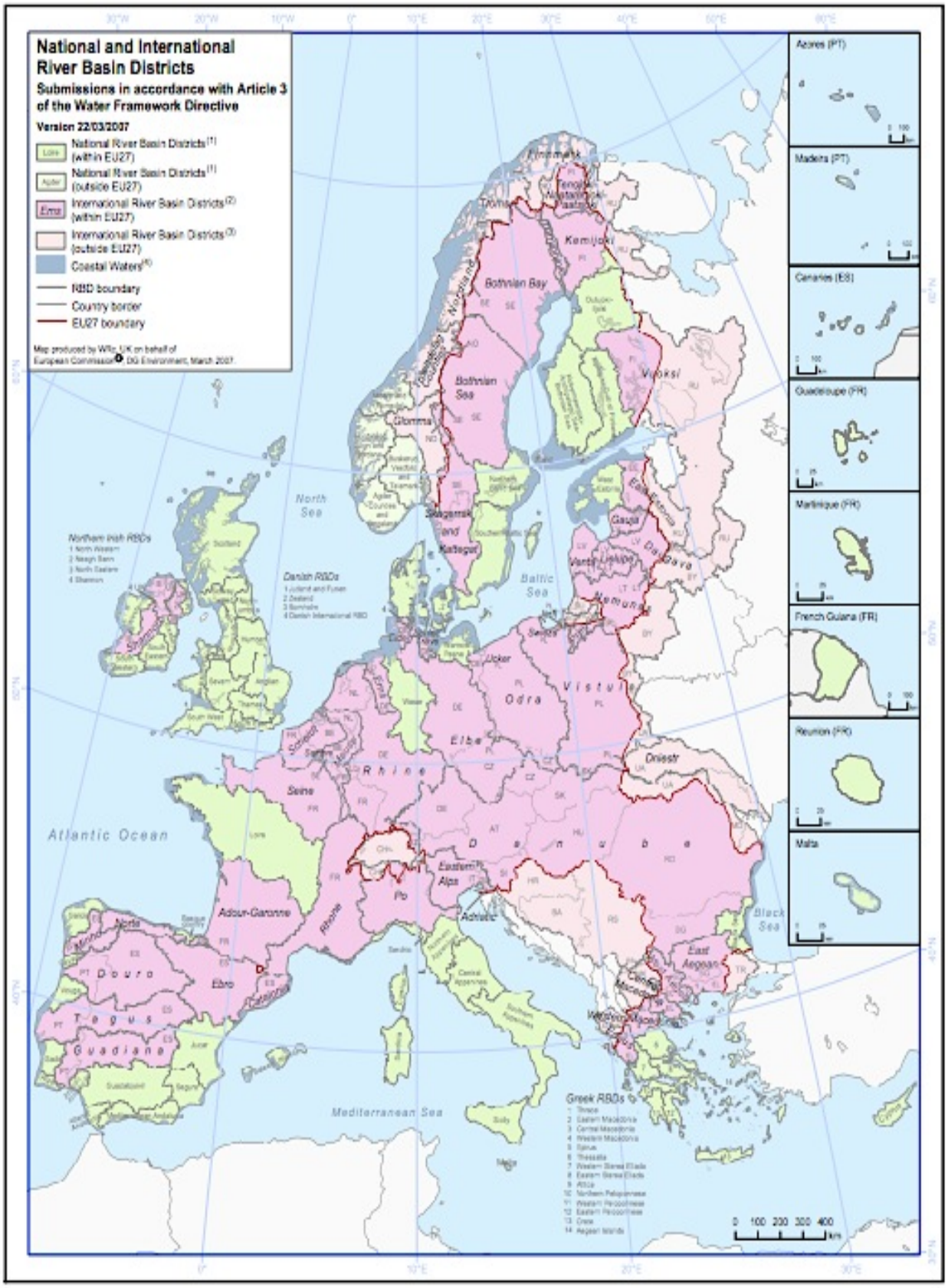
# Annexes

**Annex 1** Main terminology under the WFD

| Term | Reference | Definition |
|---|---|---|
| **Surface water** | *Article 2(1)* | Inland waters, except groundwater;<br>Transitional waters and coastal waters, except in respect of chemical status for which it shall also include territorial waters |
| **Groundwater** | *Article 2(2)* | All water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil |
| **River basin** | *Article 2(13)* | 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 |
| **River basin district** | *Article 2(15)* | 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 under Article 3(1) as the main unit for management of river basins |
| **Good surface water status** | *Article 2(18)* | Means the status achieved by a surface water body when both its ecological status and its chemical status are at least 'good' |

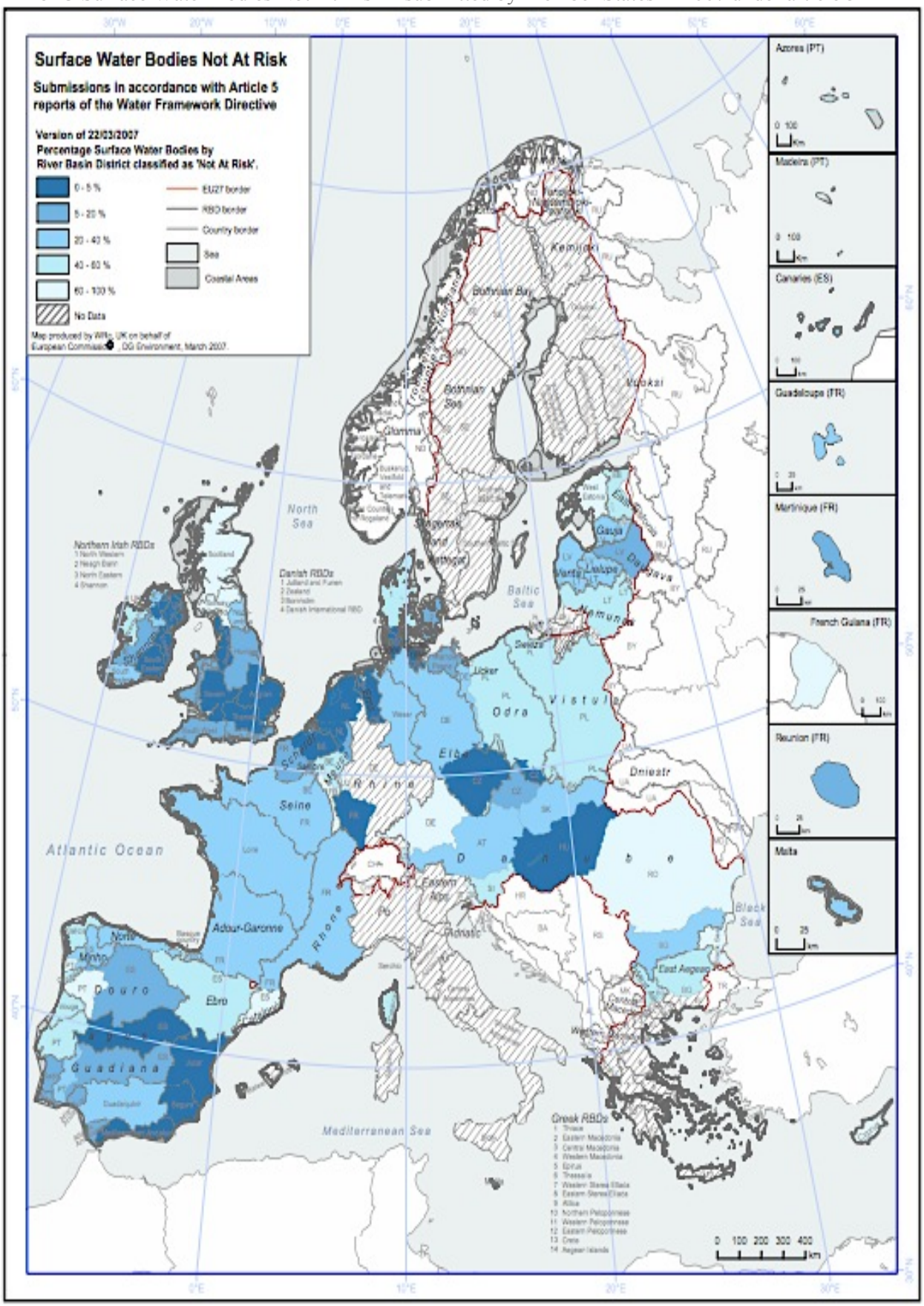
**Source:** 2000/60/EC, retrieved from: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0060

**Annex 2** National and International RBDs – submitted by Member States in 2007 under article 3



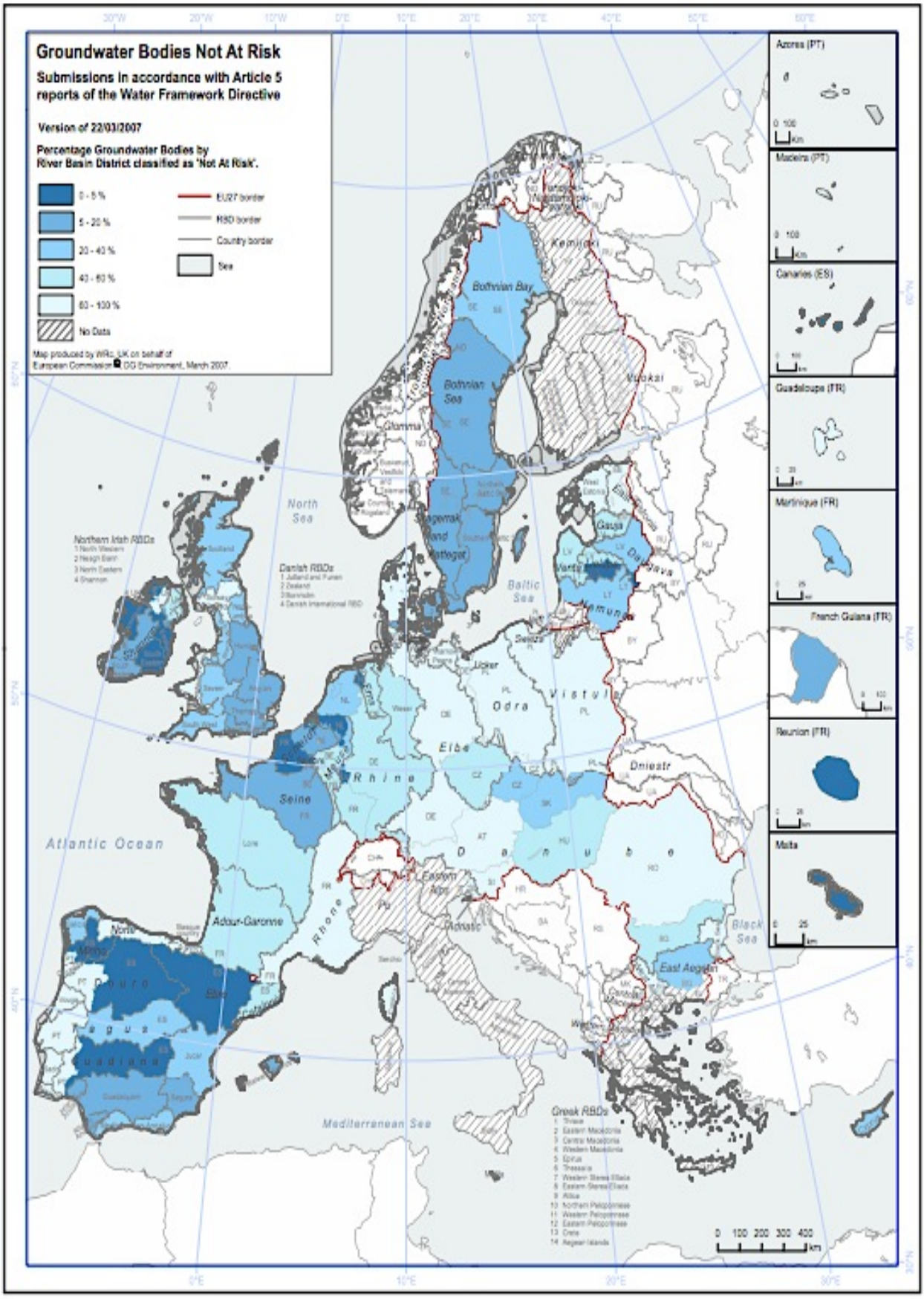

**Source:** European Commission DG Environment, Fact and Figures, River Basin District 2007

**Annex 3** Surface Water Bodies Not At Risk – submitted by Member States in 2007 under article 5




**Source:** European Commission DG Environment, Fact and Figures, Surface Water Bodies Not At Risk, 2007

**Annex 4** Groundwater Bodies Not At Risk – submitted by Member States in 2007 under article 5




**Source:** European Commission DG Environment, Fact and Figures, Groundwater Bodies Not At Risk, 2007

**Annex 5** Quality of WFD implementation according to national environmental NGOs

| | UK | NL | IT | DE |
|---|---|---|---|---|
| **Does the transposition law state the objective to achieve good status by 2015?** | Yes | No | N.I. | Yes |
| **Does the transposition law state the obligation to prevent deterioration in the status of water bodies?** | No | After 2003 | N.I. | After 2003 |
| **Does the transposition law establish competent authorities for RBDs?** | One authority per RBD, weak | Co-ordination between existing ones | N.I. | One authority per RBD, weak |

**Source:** EEB and WWF (2005)

**Annex 6** On public participation: practices by national authorities

| | **Governments update NGOs about WFD implementation** | **Governments pro-actively involve NGOs** | **NGOs asked to provide inputs** | **NGOs participate in meetings, forums etc. on the WFD** | **Attitude towards public participation improved with WFD** |
|---|---|---|---|---|---|
| **UK** | Yes | Yes | Yes | Yes | Yes |
| **NL** | Only after asking/ irregularly | Yes | Yes | Yes | Very much |
| **IT** | No | Poorly | Only after asking/ irregularly | Only after asking/ irregularly | Not at all |
| **DE** | Yes | Yes | Yes | Yes | Yes |

**Source:** EEB and WWF (2005)
**Notes:** Since in Germany the WFD implementation lies within the competence of the Länders, it is very difficult to give one overall picture