

Drinking water protection: coherence in EU law and policy



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Agricultural pollution by nitrates and pesticides from agriculture is one of the main obstacles to meeting drinking water quality targets in the EU. To successfully prevent and manage diffuse pollution, legal and policy frameworks need to be coherent and consistent.

FAIRWAY has identified important inconsistencies in the EU legal and policy framework that weaken the protection of our drinking water resources against agricultural pollution. This framework needs to be improved through increased cross-referencing and better coherence to ensure EU law and policy that is better fit-for-purpose to ensure sustainable agriculture in Europe.

What we did

We analyzed legal and policy instruments at the EU level, assessed the level of consistency and coherence, identified certain challenges and proposed possible improvements.

To assess the coherence and consistency of the directives and policies, we designed online surveys. Partners with broad expertise in EU legal directives and policies evaluated and scored the degree of coherence across a large number of key legal requirements and objectives.

The ten directives and policies reviewed were the:

- Water Framework Directive (WFD)
- Drinking Water Directive (DWD)
- Nitrates Directive (ND)
- Groundwater Directive (GWD)
- Sustainable Use of Pesticides Directive (PD)
- Habitats Directive (HD)
- Environmental Impacts Assessment Directive (EIA)
- Industrial Emissions Directive (IED)
- Rural Development Regulation (RDR)
- EU Common Agricultural Policy (CAP)

What we found

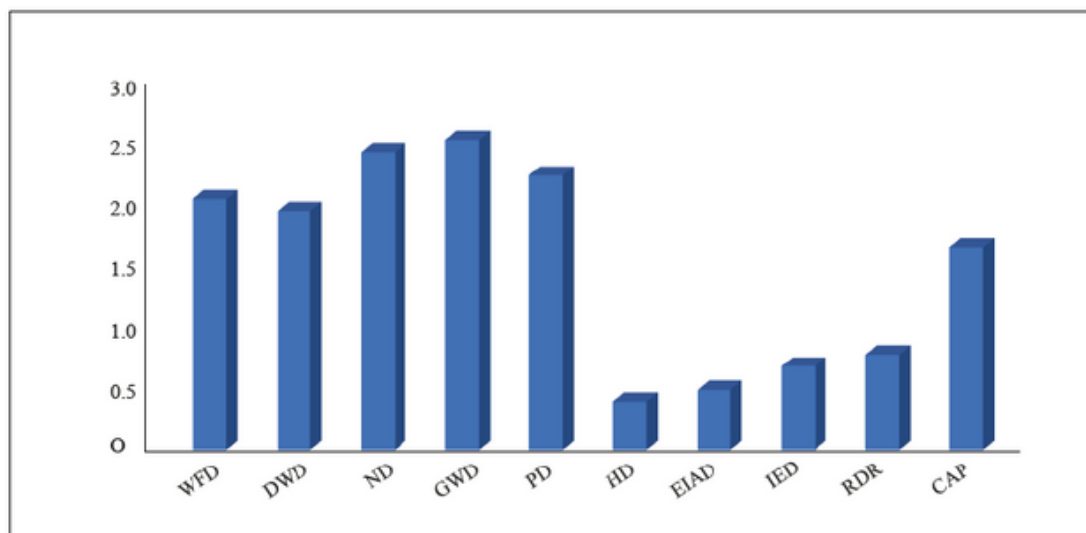
The EU legal framework is both very comprehensive and fragmented. Many directives apply directly and/or indirectly to the objective of protecting drinking water resources against agricultural pollution.

The figure below shows that many directives are highly relevant and impose many important legal requirements upon Member States. Some of the directives are particularly important for protecting our drinking water resources.



This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 727984

In addition to these directives, the Common Agricultural Policy (CAP), encompassing also the Rural Development Regulation, is also crucial for ensuring sustainable agriculture in Europe.



Each instrument was ranked according to their perceived contribution to the protection of drinking water resources against agricultural pollution, from (0) neutral, (+1) enabling, (+2) reinforcing, or (3) indivisible to such protection. Requirements and objectives of each instrument have been scored by different respondents through questionnaires.

Three important weaknesses

- **The relationship between the Drinking Water Directive and the Water Framework Directive:** A potential gap exists between the risk-based approach to improve drinking water quality at the tap as adopted in the DWD, and the wider goal to protect water resources under the WFD. The recent revision of the DWD aimed at diminishing this gap.
- **The relationship of the Water Framework Directive and the Nitrates Directive:** Drinking water requirements rarely extend to the wider catchment. This points at a potential disconnect between the WFD and the ND. Nitrate requirements should target drinking water quality directly, as well as water quality in the wider catchment as this is clearly connected. There appears to be a need for increased specificity in the directives to avoid unclarities.
- **Potential negative effects of the funding mechanism under the Common Agricultural Policy:** Several potential negative consequences of the CAPs funding mechanisms have been identified. For example, CAPs Basic Payment Scheme (BPS), in combination with cross-compliance, could mean that farmers are keeping land in production to receive basic payments. In certain areas, farmers use pesticide to remove rushes, so that the land is eligible under the BPS. This results in increased pesticide run-off to drinking water resources.

Recommendations

- **Improve (policy) effectiveness through increased cross-referencing:** The effectiveness of the overall legal and policy framework should be strengthened through better cross-referencing between key EU directives and policies.
- **Formalise the interdependence between the WFD, ND, DWD and GWD better:** For the protection of drinking water resources, these four directives play a major role, however their connectedness is not formalised in any way. For example, requirements related to institutional frameworks and programmes of measures could be better aligned across the WFD, ND, DWD and GWD.
- **Enhance sustainability through the CAPs funding mechanisms:** Existing funding incentives may encourage farmers to increase production, which could lead to increased pollution by nitrates and pesticides, and will adversely affect our drinking water resources. Better cross-referencing between the CAP and the key legal directives is needed to minimize such adverse effects.