This paper is a history of the making of the European Union’s Water Framework Directive (WFD). It will be followed by a second paper, which analyses the relationship between the innovations of the WFD and a range of different interest groups. This directive is of particular interest to commentators on EU policy-making because it was created through the co-decision process, in which the Council of Ministers and the European Parliament have joint influence over the final text. Following substantive differences in position between the two bodies the WFD was finalized through a conciliation process in June 2000. This change in the practice of European decision-making has allowed non-governmental organizations new opportunities to participate in water policy-making and to have a greater influence on EU directives. It is argued that the environmental lobby has adapted swiftly to these changes and used them to considerable advantage in pursuit of its own goals. The passage of the legislation between 1998 and 2000 is described, paying careful attention to who participated in the process of amending the draft directive and what major amendments were made. Copyright © 2003 John Wiley & Sons, Ltd and ERP Environment.

INTRODUCTION

The European Union Water Framework Directive (European Commission, 2000c) is an overarching piece of legislation that aims to harmonize existing European water policy and to improve water quality in all of Europe’s aquatic environments. It has become famous amongst policy analysts because its tortuous evolution, which emerges from struggles between the European Parliament
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(EP), the European Commission (EC) and the member states (MSs) (represented via the Council of Ministers), is emblematic of the European Union’s (EU) environmental policy more generally (Jordan, 1998). It is the highest profile EU directive so far to have involved the new formal conciliation procedure adopted as part of the switch to the co-decision process for some environmental policy areas following the 1997 Amsterdam Treaty (Kallis and Butler, 2001). As such, the WFD is central to debates about a putative shift of institutional power within the European Union away from the Council of Ministers and towards the European Parliament in environmental matters (Jones and Clark, 2001) and to the more general ‘greening’ of the European Treaty (Stetter, 2001).

The WFD is also illustrative of a far more pervasive shift in the mode of governing in Europe and beyond (Jessop, 1997; Rhodes, 1997). This change is usually encapsulated in the phrase ‘a shift from government to governance’ and, in organizational terms, is illustrated in the rising influence of un-elected bodies, which are, in the broadest sense, non-governmental (private firms and their representative associations, quangos, civil society bodies and other lobbying groups). This shift is the central subject of Part 2 of this paper.

This paper follows the story of the production and early stages of implementation of the WFD. It argues that the specific shift in the decision-making process of the European Union and the more general shift in the practice of governance are closely articulated. The paper traces both the ways in which internal changes in the EU’s decision-making process have influenced the shape of the final WFD and the ways in which the increasing participation of NGOs has influenced the final text. The paper maps out a topography of lobbying, in which different groups wield influence in different institutional spheres of the European Union. It is particularly interested in locating power by identifying the moments, places and institutions where different lobbies (particularly environmental NGOs) have successfully intervened and gained ‘agenda territory’ (Biliouri, 1999; Jones and Clark, 1999).

The paper concludes that the increase in decision-making capacity at the European Parliament amplified the investment made by environmental groups lobbying individual MEPs.

The bulk of the paper describes the passage of the WFD through the institutions of the EU between 1998 and 2000, paying careful attention to the different positions of the bodies that participated in the process of amending the draft directive and the major amendments that were made. This account of the process of policy-making is based on interviews carried out with officials from the European Commission, the European Parliament, member state governments and environmental NGOs between September 2000 and September 2001.

THE ORIGINS OF THE WATER FRAMEWORK DIRECTIVE

In 1995 the Environment Committee of the European Parliament and the Council of Environment Ministers asked the European Commission to formulate a more global water policy. The explicit aims were to integrate environmental policy by rationalizing all the varied directives related to water and to increase public awareness about water resources. A preliminary proposal was produced based on the Commission Communication on European Union Water Policy, which was adopted in February 1996 (European Commission, 1996). This communication was itself based on the principles for environment policy set out in the treaty and on the Fifth Environment Action Programme, Towards Sustainability. The proposed directive would ensure the integration of: water quality objectives with water quantity objectives; conservation objectives with economic use objectives; surface water with groundwater protection objectives and emission controls with ecological targets.
EU WATER FRAMEWORK DIRECTIVE 1

In general terms the proposal aimed to protect and enhance the quality and quantity of EU aquatic ecosystems in order to ensure an adequate, but sustainable, supply of water for economic development and growth. Whilst the conservation aims of the proposal were clearly set out, there was more ambiguity in relation to the goal of sustainability. Perhaps this was because the directive was always located within DG Environment and was always presented as part of the EU’s conservation project. The word ‘sustainability’ was added to the stream of benefits in a vague and awkward manner, which would haunt its appearance in the subsequent versions of the proposal.

The initial target was to achieve ‘good water status’ within 13 years (by the year 2010) through a combination of limiting emissions and actively improving (‘restoring’) water bodies. For groundwater, good status would be measured in terms of both quantity and chemical purity; for surface waters, the criteria would be ecological and chemical quality. In addition to the explicit conservation goals, the proposal introduced articles on water pricing and public participation. These two policies initially appear to be beyond the conservation remit of the directive; however, the Commission portrayed them as necessary precursors to achieving the ecological goals. It was hoped that through pricing and participation water would be used more rationally and valued more highly.

The draft legislation was speedily circulated for consultation and was broadly welcomed. The consultation process culminated in a meeting in May 1996 attended by 250 delegates from national and local governments, water providers, industry, agriculture, consumers’ associations and environmental NGOs. Following this consultation the Commission drafted a more formal Proposal for a Water Framework Directive, which was adopted in February 1997 (European Commission, 1997a; Boymanns, 1997). When it was initially adopted the EU Environment Commissioner hailed it as a triumph. This important proposal is on the cutting edge of environmental protection. All water uses necessary to life and society – from drinking to bathing to agriculture to industry – will be carried out with a respect that ensures that water is fit and sustainable into the next century. It will provide a coherent structure for the European Union water policy and it will systematize the collection of environmental information. It identifies and tackles the two great threats to sustainability: over-abstraction and pollution. Sustainability will be achieved through the goal of “good status” for all waters, both surface and groundwater. The proposal for a Water Framework Directive will lead to the reform and rationalisation of the European Union water policy and take it into the 21st century’ (Bjerregaard, 1997). As is normal with EU directives, the proposal drafted by the Commission went through a process of readings and amendments by both the European Council of Environment Ministers and the European Parliament’s Environment Committee. It was amended in July 1997, November 1997 (European Commission, 1997b) and February 1998 (European Commission, 1998). As the significance of the directive became more evident, the debate over its details became increasingly confrontational. Once the economic costs of tightening environmental regulations and the ecological risks of reconsidering existing environmental regulations became transparent, the process of amendment became intense.


In early 1998, the Commission decided to directly involve environmental NGOs in the process of amending the WFD, but without clarifying the legal and institutional status of their involvement (Scheuer, 2001). As sanctioned actors in the policy-making process these NGOs had access to draft legislation and to key civil servants at the Commission. They were able both to keep abreast of changes in...
the text (in a way that had previously been denied) and to alert members of the Commission to what they perceived as the political–environmental risks of certain developments. For example, they were consulted when Annex V was amended. This Annex provides technical details about the environmental objectives of the WFD to support Article 4, which is concerned with water quality standards. Annex V sets out the range of specific qualitative criteria that will be used to measure water status. From the moment they became more incorporated into the formal amendment process, environmental NGOs argued that by leaving it up to member states to define what was meant by terms like ‘significant change’, ‘low level impacts’ or ‘good water status’ the directive and annex effectively allowed MS governments to opt out of any of the provisions of the directive they did not like. In other words the NGOs were always alert to what they saw as the danger of allowing the new directive to replace the obligations of existing directives with a more relaxed regulatory regime, which would allow member states voluntary compliance rather than legal obligations.

According to standard EU procedures, the proposal had to be debated by both the Council of Ministers and the European Parliament, who should ‘co-operate’ in order to reach an agreement on a final text. Each body would propose amendments, that would subsequently be considered by the Commission. In effect, the Council of Ministers alone had the power to legislate, whilst the role of the European Parliament was more like that of a consultant. However, this relationship was scheduled to change with the adoption of the Treaty of Amsterdam.

Later in June 1998 the debate switched from the Council of Ministers to the Environment Committee of the European Parliament, which wanted to see considerable changes to both the Commission’s original proposal and the agreement reached by the Council of Ministers. The Environment Committee of the Parliament considered 270 proposed amendments, including a stricter timetable for implementation. Initially, these changes did little to impress the environmental NGOs (Environment Daily, 1998a). However, when the directive was transferred from the environment committee to the full Parliament for a first reading, it to shape its outcome if it was settled quickly before the Treaty of Amsterdam took effect. The UK delegation was so keen to rush through an agreed text and gain the kudos for overseeing the WFD that they were even willing to drop the idea of full-cost pricing for water, which had been proposed by the Commission and championed by the British Government. Indeed, the ministerial agreement of June 1998 completely rejected the economic pricing of water and struck out the relevant clause from the draft directive (Council of Ministers document 9710/98, dated 26 June 1998). In this respect it diluted the ‘green’ credentials of the WFD, which held that recognizing the full cost of water, including the environmental externalities of its production, was central to its conservation. Environmental critics also argued that the ministerial agreement placed the interests of the private water industry above those of conservation because it relaxed the demanding timescales that had been proposed by DG Environment. The Council of Ministers allowed derogations of up to 34 years on implementation of the directive rather than the 12 years proposed by the Commission.

**PARLIAMENTARY PIQUE AND LEGISLATIVE PREVARICATION: JUNE 1998–DECEMBER 1998**

Later in June 1998 the debate switched from the Council of Ministers to the Environment Committee of the European Parliament, which wanted to see considerable changes to both the Commission’s original proposal and the agreement reached by the Council of Ministers. The Environment Committee of the Parliament considered 270 proposed amendments, including a stricter timetable for implementation. Initially, these changes did little to impress the environmental NGOs (Environment Daily, 1998a). However, when the directive was transferred from the environment committee to the full Parliament for a first reading, it
began clear that the body as a whole was very sympathetic to the aspirations of the environmentalists. It was clear that there were real and substantive disagreements between the Parliament and the Council of Ministers over the content of the directive and its pace of implementation. Despite this disagreement, the Council of Ministers declared that they had produced a final text before the Parliament had even given the directive a first reading.

The institutions of the European Parliament were irritated by what they saw as the arrogance of the Council of Ministers. Ian White (the first Rapporteur on the WFD for the Environment Committee of the Parliament) reported that some MEPs took considerable offence since the Council’s move implied that the Council regarded Parliament’s opinion as irrelevant. These MEPs believed that unless they took action the Council of Ministers would ignore their amendments entirely and would rush the WFD through. So, in November 1998, the European Parliament resolved not to undertake their official reading of the WFD until February 1999. In effect, they decided to use a number of delaying tactics in order to ensure that the WFD was not considered until the Amsterdam Treaty had come into force in May 1999 (White, 2001). This would have the result that the WFD would be passed using the co-decision procedure, not the existing co-operative procedure. (Environment Daily, 1998b). Under co-decision the Parliament has equal legislative power with the Council of Ministers, which in effect gives it a veto (Bår and Kraemer, 1998). This meant that the Parliament would have additional negotiating power and could force the Council of Ministers to make some concessions over the content of the WFD. The only thing the Parliament needed to do to ensure that the decision-making for the WFD achieved that status was to delay it until the treaty took force in mid-1999. In addition, the treaty opened the way for ‘constructive abstentions’ (which allow member states to abstain on a vote without blocking a unanimous decision), which create more space for compromise.

The Parliament was not unanimous in its opposition to the position taken by the Council of Ministers. Socialist MEPs representing agricultural interests in Southern Europe, for example, sided with the Council of Ministers against the introduction of full-cost pricing for consumers (which they characterized as fundamentalist neo-liberalism), since this would be a great economic burden on farmers of the European south. However, their proposal to exempt farmers from such payments was defeated in Parliament, which instead opted to revert to the position originally taken by the Commission to introduce full-cost pricing for all consumers – including those using water for irrigation. In general, the Commission and the Parliament were working closely together and were broadly sympathetic in their aims.

THE FIRST CIRCUIT OF COMPROMISE: JANUARY 1999

In early 1999 unprecedented informal ‘conciliation’ talks began between the Parliament, the Commission and the Council of Ministers over the content of the WFD. The understanding was that if an agreement could be reached between the Council and the Parliament, then the Parliament would give the directive an accelerated passage when it finally did look at it formally. The conciliation talks were not an immediate success in terms of resolving differences; however, they made important progress in preparing the ground for further negotiations and were considered to be useful by those who took part (Barth, 2001; White, 2001). Part of the value of these talks was in bringing together some of the key individuals with decision-making power in a deliberative forum, which diffused a degree of the antagonism. According to those who took part the lasting value of these talks was in establishing the personal networks of contact and trust that would pave the way for later compromise.
In this specific case, however, compromise was reached on only three of the 14 points of disagreement. These were the inclusion of wetlands in the directive’s scope, rules on public consultation and rules on marine conservation. The two sides also agreed to include endocrine-disrupting chemicals in one of the annexes of hazardous substances. They still disagreed, however, on the really fundamental issues: the timetable of implementation, the requirements to end release of hazardous substances and the introduction of full-cost pricing as a strategy for managing water demand (Table 1).

RETURNING TO FORMAL PROCESSES OF AMENDMENT: FEBRUARY–NOVEMBER 1999

The WFD finally received its first reading in the European Parliament in February 1999, but it was clear that its further passage through the legislature would be delayed until the autumn by the European elections due for the summer of 1999. During the first reading the Parliament made around 200 amendments to the draft directive.

In the extended hiatus in the policy process that was caused by the European elections, officials at the Commission were able to consider the Parliament’s amendments, of which 133 were accepted. Most of these amendments were just linguistic clarifications; however, some were quite substantial (European Commission, 1999).

Four sets of amendments are particularly interesting: those relating to consultation, those relating to the legal status of the incorporation of the Esbjerg declaration, those relating to the process of identifying priority hazardous substances and those relating to the process of setting quality standards for drinking water sources. In addition to these four areas it is also interesting to note that at this stage the Commission rejected Amendment 1, which stated that ‘water is not a commercial product like any other but instead is a part of Europe’s heritage which belongs to the peoples of the European Union and ought, therefore to be protected’. The Commission claimed that this amendment was purely rhetorical and added nothing to a legal text; however, this careful policing of the language employed to characterize water is indicative of the shift within the Commission towards giving high priority to the idea of water as an economic good, and subsequently to water pricing as a key tool for environmental protection.

The Commission welcomed the amendments that placed an obligation on member states to report on their progress towards meeting targets more often and to formalize processes of public consultation. They also welcomed the amendments that called for the continuous reduction of discharges of hazardous substances along the principles of the Esbjerg declaration and the OSPAR agreement. However, the Commission asserted that because of the social and economic implications and because of questions over technical feasibility this should be an ultimate
EU WATER FRAMEWORK DIRECTIVE 1

Table 2. Key legislative moments in the production of the WFD

<table>
<thead>
<tr>
<th>Date</th>
<th>Event and Description</th>
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<tbody>
<tr>
<td>February 1996</td>
<td>Commission Communication on European Water Policy</td>
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<tr>
<td>February 1997</td>
<td>Commission produce Proposal for a Water Framework Directive (COM(97)49)</td>
</tr>
<tr>
<td>November 1997</td>
<td>Commission amend proposal following consultation (COM (97) 614)</td>
</tr>
<tr>
<td>January 1998</td>
<td>Commission involve environmental NGOs in amending Annex V on the proposed WFD</td>
</tr>
<tr>
<td>February 1998</td>
<td>Commission further amend proposal following consultation (COM (98)76)</td>
</tr>
<tr>
<td>June 1998</td>
<td>Council of Ministers adopt a provisional common position on the WFD</td>
</tr>
<tr>
<td>Autumn/Winter 1998</td>
<td>European Parliament deliberately procrastinates over giving the WFD a first reading in order to achieve co-decision status</td>
</tr>
<tr>
<td>January 1999</td>
<td>Informal conciliation talks under the auspices of the German Presidency of the EU between European Parliament, European Commission and Council of Ministers</td>
</tr>
<tr>
<td>February 1999</td>
<td>European Parliament gives draft WFD its first reading – votes to accept 120 of the amendments made by the Environment Committee to the Commissions text</td>
</tr>
<tr>
<td>Summer 1999</td>
<td>Legislative process delayed by elections for European Parliament. European Commission accepts many of the amendments made by the European Parliament, but the Council of Ministers does not and reverts to the political agreement of June 1998</td>
</tr>
<tr>
<td>Autumn/Winter 1999</td>
<td>Environment Committee of the European Parliament re-tables their proposed amendments (PE 231.246), knowing the WFD will have co-decision status</td>
</tr>
<tr>
<td>February 2000</td>
<td>European Parliament give draft WFD its second reading, accepting the bulk of the amendments proposed by the Environment Committee; challenges the common position adopted by Council of Ministers</td>
</tr>
<tr>
<td>May 2000</td>
<td>First round of formal conciliation talks between EU institutions unsuccessful</td>
</tr>
<tr>
<td>June 2000</td>
<td>Second round of formal conciliation talks produces a compromise Water Framework Directive</td>
</tr>
<tr>
<td>September 2000</td>
<td>The text drawn up in the conciliation talks is formally approved by a plenary session of Parliament and by the Council of Ministers</td>
</tr>
<tr>
<td>December 2000</td>
<td>WFD (Directive 2000/60/EC) published in the official gazette (22 December 2000, L 327/1). Member states have three years from this date to transpose it into their legislation</td>
</tr>
</tbody>
</table>

political aim rather than a legally binding objective. The Commission also rejected Amendment 33, which defined hazardous substances (because the criteria used were unclear), and Amendments 164 and 165, which called for establishing lists of all hazardous substances (because of a lack of standardized data to assess hazardous properties). The Commission preferred instead to return to the criteria for assessment of priority substances set out in Article 21 of the original proposal, which they believed would target resources more effectively by focusing on a smaller number of specific substances. Amendments 84 and 85 reduced the interval between reviews of the list of priority substances, but the Commission argued that it was impractical to review the list more often than once every six years. Finally, the Parliament had taken the view that quality standards for sources of drinking water should
be set completely independently of existing drinking water treatment regimes (Amendment 158). Their thinking was that allowing for water treatment in a standard setting was insufficiently strict. The Commission rejected this position, because it would contradict the existing legal position taken by the Drinking Water Directive and because it was held to be perverse to effectively pretend that water treatment did not exist when it did. In summary, most of the Commission’s objections related to strategy rather than substance, particularly in relation to pollution control.

The Council of Ministers also used the gap in the process caused by the elections to consider the amendments made to the draft by the Parliament in February 1999. However, unlike the Commission, their reaction to the Parliament’s text was far more hostile and in March 1999 they decided to overturn most of the substantial amendments and return to the position they had resolved in June 1988. First, where the Parliament wanted the directive to ‘oblige’ the governments of member states to achieve good water status, the Council of Ministers proposed that the directive should ‘request’ that member states ‘make an effort’ to achieve good water status. Second, while the Commission and the Parliament had amended the WFD to reinsert full-cost pricing, the Council deleted this requirement from the draft directive for a second time. Third, they proposed to overturn the amendment that reduced the period for implementation. They suggested that the WFD should return to their original political agreement, which allowed member states 34 years to implement the measures dictated by the directive. Moreover, they introduced a great number of derogations, which would allow many European waters to be exempt from the directive. Fourth, they proposed that the zero-emission approach for list 1 substances of the Groundwater Directive (80/68) should be abandoned and that the zero-emission approach for 129 substances in the Dangerous Substances Directive should be reduced to 32 substances. They proposed that each of the proposed 32 substances on the list should go through a lengthy and careful assessment in order to show whether it presented an unacceptable risk. These changes were formally reconfirmed in October 1999 when the common position on the first reading was endorsed by the Council of Ministers.

When they became known, the Council of Ministers’ proposals produced a strong and hostile response from environmental NGOs. This development was what environmentalists had feared from the outset. Not only did the proposals dilute the legal force of the new WFD, but (since the new directive would replace existing directives which already placed legal obligations on member states) it watered down existing legislation as well. Irene Bloemink from the NGO Waterpakt stated in a press release that ‘a directive must be legally binding and enforceable, otherwise it is worth nothing. It is embarrassing, that some member states want to allow binding legislation of the 70s and 80s to be replaced by a more or less voluntary Directive.’ The derogations, it was suggested, would mean that 90% of Europe’s water would not be affected by the WFD if it went through on the Council’s terms. From the environmentalist perspective the proposals so weakened the WFD that it became ‘useless and counterproductive’ (EEB, 1999). In this form, they argued, the directive would impose a heavy administrative load but do little to protect European waters. In the autumn of 1999 (during the run-up to the Parliament’s second reading of the draft directive) NGOs such as the WWF and the EEB (European Environmental Bureau) resolved to lobby MEPs to strengthen the legislation again. Their targets were full cost water pricing, a shorter implementation deadline than the maximum 34 years proposed by the Council of Ministers, a commitment to phase out certain hazardous substances (in agreement with the OSPAR treaty) and a limit to exemptions given for ‘heavily modified’ waters deemed beyond rehabilitation. Most importantly, however,
they wanted to reassert the binding character of the directive.


In December 1999 the text of the draft directive returned to the European Parliament. Knowing that Parliament’s position was now strengthened by the Amsterdam Treaty and the introduction of co-decision-making, Marie-Noèle Lienemann, the new EP Rapporteur on the WFD, re-tabled most of the amendments that had been rejected by the Council of Ministers, including changes on the key issues of water pricing, implementation deadlines and the phase-out of hazardous substances (European Parliament, 1999). In a conciliatory bid, the Environment Committee of the Parliament dropped the demand that forced agriculture, industry and households to achieve full-cost pricing individually. In January 2000 the Committee considered the Rapporteur’s report and extended the compromise by entirely dropping the demand for full-cost pricing. Instead, the MEPs called for an ‘adequate contribution’ to the recovery of the costs of water services and policies that provide ‘adequate incentives for users to use water resources efficiently’ as well as a charging system that ‘encourages rational use of water resources’. This would later develop into the Commission’s proposal for pricing policies that enhance the sustainability of water resources (European Commission, 2000b; European Parliament, 2001). Having made this major concession to the Council of Ministers, the Environment Committee was not further inclined to compromise.

In February 2000 the Parliament debated the amended directive and voted to support the position put forward by the Environment Committee. They voted in support of OSPAR and for a ten year target period for the implementation of the directive. They also voted to introduce legal obligations in several key articles of the draft. MEP Alexander de Roo, member of the Parliament’s Green group, reported that the endorsement of the OSPAR target was ‘remarkable given the tremendous combined lobbying pressure from governments and the chemical industry’ against it. However, some environmentalists were still not satisfied with the amendments made by the Parliament. Greenpeace, for example, described the vote as a ‘disaster’ for groundwater protection. They said that an existing directive that was effective and legally binding would now be repealed, with no provisions in place to require action when deterioration in groundwater quality occurred.


The disagreement between the Council and the Parliament on important points made a formal conciliation process inevitable. Immediately prior to the first conciliation meeting the environmental lobby made a high profile intervention in Brussels. On 22 May 2000 the EEB produced a list of demands and stated that it could only support the proposal if these were taken into account in the ongoing consultation process (EEB, 2000a). The demands included: the obligation to reduce emissions; the simplification and acceleration of the procedure of setting emission limit values; the identification of zero pollution as a binding goal by 2020; the inclusion of wetlands and groundwater in the WFD; the operationalization of the ‘polluter pays principle’ through cost pricing and taxation policy; the assurance that no earlier directives should be repealed unless the new legislation offered equally strong protection; the allocation of the status of ‘daughter directives’ to important annexes of the directive in order to ensure that subsequent changes would only be made through democratic decision-making procedures instead of bureaucratic ones and finally the incorporation in the WFD of ‘water parliaments’ with powers to access information in order to provide a
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forum for stakeholders to participate in making river basin management plans. From the perspective of the EEB, the Council of Ministers was championing the interests of industry and agriculture and preventing the production of a powerful directive, whereas the delegation from the Parliament was carrying the banner of the environmentalists.

Despite the strong stance of the environmental lobby, when the first official conciliation talks began on 28 May the delegation from the Parliament offered another major concession to the Ministers by dropping the demand that all discharges of hazardous substances should be halted by 2020 (OSPAR). They proposed instead that member states should cease discharges only of those substances targeted for action on a priority list to be established by the Commission under the directive. A draft of this list, identifying 32 hazardous substances, which had been under preparation for several years, had been published in February 2000. However opponents of this move argued that it allowed for procrastination because there could be endless arguments about what was included on the list and because it abandoned the precautionary principle. Despite the concessions made from the Parliament’s side, the conciliation meeting failed to make progress on the WFD (largely because most of the meeting was given over to arguments on other directives) and so a second round of conciliation talks was scheduled.

In between the two rounds of conciliation talks a memo was leaked from the legal service of the Council of Ministers that suggested that the WFD could be unenforceable. In an opinion on the wording of the law proposed by Ministers, the legal service said it is ‘difficult to understand’ how the European Commission will assess whether member states are meeting the directive’s water quality objectives. This reinforced the environmentalists’ fears that the Council of Ministers was seeking to produce a piece of legislation whose ambiguities member states would be able to exploit in their attempts to avoid compliance. In the original March 1997 legislative proposal, the Commission called for both the water quality objectives and the strategies to achieve them to be legally binding requirements. However, the environment ministers insisted that member states should only be required to ‘aim to achieve’ the directive’s objectives. This would make it hard for the Commission officials to assess the degree of implementation from the part of member states. The EEB reacted to that memo by issuing a press release stating that the ‘Council wants to create legally not enforceable environmental objectives and to weaken the existing protection standards’. The EEB’s Secretary-General John Hontelez added ‘obviously environmental ministers are here doing the dirty job the agriculture lobby is asking them to do’ (EEB, 2000a). The European Parliament’s delegation was quick to use the leak in the pre-conciliation negotiations to demand a strong wording ensuring that member states would be obliged to meet the water quality objectives.

The second round of conciliation talks in June 2000 was the last opportunity to reach a decision. According to the European Union’s decision-making procedures under the Amsterdam Treaty the two sides were now obliged to reach agreement on a joint text within six weeks; if they failed to meet this deadline, the whole WFD would be abandoned.

The formal conciliation procedure was new and there was doubt over what voting method would apply to the decision on the final text. It was clear that to be endorsed it would need an absolute majority in the European Parliament, but it was less clear what principle would apply to the vote in the Council of Ministers. Under Paragraph 1 of article 175 of the EU Treaty, laws with environmental objectives were dealt with by qualified majority voting. However, under article 2 of paragraph 175 of the EU Treaty there is a list of exceptions to this rule. One of these exceptions is the management of water resources. On the basis of this article (article 2) the Spanish government argued that there would have to be unanimous
support within the Council of Ministers for the vote to pass. This would effectively give the Spanish the power of veto, which they wanted to use to prevent the WFD becoming law. The Commission on the other hand (along with Portugal, France and Finland) argued that the inclusion of the management of water resources in the list of exceptions in article 2 of the treaty referred only to quantitative matters. Therefore, they argued, the WFD should be dealt with by qualified majority voting in the Council of Ministers since it was primarily concerned with qualitative and not quantitative issues of water management. The decision was taken to the European Court of Law and in May 2000 legal judgement was made in favour of the Commission and it was settled that qualified majority voting would be used for the vote in the Council of Ministers.

The two sides met again on 28 June 2000. After long and exhausting talks behind closed doors (the minutes of which are not publicly accessible yet), the conciliation meeting 'eventually secured in the early hours of the morning an agreement on the proposed directive establishing a framework for Community action in the field of water policy' (European Commission, 2000a). Both sides appeared to have made significant compromises over a complex range of issues.

In relation to the legal enforceability of the WFD it was agreed that, although member states will only have to ‘aim’ to achieve good water status (as the Council desired), there will be a series of subsidiary phrases which state that member states ‘shall’ protect different kinds of water, prevent water quality deterioration and enhance water bodies. The Parliament delegation claimed that this was a success for them. They also claimed that the directive was strengthened because it committed member states to end discharges of hazardous substances. However, they had conceded that the directive referred only to substances on a special priority list rather than to all hazardous chemicals. Furthermore, the prohibition on discharging radioactive substances (inserted by the Parliament at second reading) was dropped. It was agreed instead that discussion about discharge of radioactive substances would take place in the context of establishing the lists of priority hazardous substances (European Parliament, 2000). This is a watering down of the Parliament’s original position, since the list will contain a specific number of hazardous substances, and the possibility of adding all radioactive substances to that list was lost. They also conceded that the target for achieving the obligation on discharges was 20 years after the list was published, not the year 2020 as was stated in the OSPAR convention. The principle underlying the process of drawing up this list was debated and it was agreed to drop the Council’s original demand for an individual risk assessment for each chemical. Such a process is labour intensive and time consuming and would have prevented rapid implementation. Instead the substances on the list would be selected on the basis that they were intrinsically hazardous. The Parliament also succeeded in reinserting its rhetorical opening statement that ‘water is not a commercial product like any other, but, rather a heritage which must be protected, defended and treated as such’.

Having taken their main stand on ensuring that the environmental objectives of the WFD would be binding on member states the Parliament made concessions elsewhere. Where they had set the implementation timetable for aiming at good water status at 10 years and the Council at 16, the compromise deadline was 15 years (2015). All polluting discharges must be controlled under a combined approach of environmental quality standards and emission limit values by December 2012. Countries will have to ‘take account’ of the principle of cost recovery and ensure that there are ‘adequate’ incentives for efficient resource use by 2010. Further, whilst there is a requirement on incorporating environmental costs into water pricing, the Parliament conceded and allowed an opt-out clause, which will permit individual member...
states to completely ignore this requirement. From the outset the Republic of Ireland has said that it would opt out of this article of the WFD. The obligation to prevent groundwater pollution was also dropped, though it was agreed that a ‘daughter’ directive on groundwater protection would be drafted and debated in 2002. The repeal of existing EU legislation on groundwater pollution has been timed so that no weakening of the current level of protection will be possible.

**THE FINAL PHASES OF THE LEGISLATIVE PROCESS:**
**JULY–DECEMBER 2000**

On 18 July 2000 the co-chairmen of the Conciliation Committee established that the joint text had been approved, and forwarded it to Parliament and the Council (EEB, 2000b). On 21 August 2000 Parliament’s delegation to the Conciliation Committee adopted the draft legislative resolution unanimously. The compromise text came back before Parliament for final approval during the Parliament Plenary in September 2000. It was formally ratified by the Council of Ministers on 14 September and came into force on 22 December (Environment Daily, 2000; European Commission, 2000c). Member states have three years from that date to transpose it into their national legislation.

**CONCLUSIONS**

The story of the process of producing the WFD suggests that the environmental lobby is becoming increasingly influential in shaping European water policy. The effectiveness of the green lobby is in part a result of internal shifts within the governing structures of the EU. These internal shifts may be constitutional (as in the ‘greening’ of the treaty) or institutional (as in the increasing power assigned to the European Parliament through the Amsterdam Treaty). In either case, these changes have opened up a space in which individuals within the Commission, the Parliament and the Environmental lobby can find common ground and make considerable progress in producing regulations. Several of the interviewees noted that whilst these shifts in how the EU is organized operate at a ‘grand’ scale the reality of producing policy is far more individualized and works at a more modest scale. The number of individuals who have both the inclination and the opportunity to marry the Commission is actually quite small. It is within this small network that personal relationships develop enabling innovations to be introduced and compromises to be negotiated. As a result of its small size and the history of personal involvement the network that shapes policy is one in which the relative influence of new players can be quite great. It is in this context that a few representatives from environmental groups have managed to become important. Such a trend is amplified by the atomized nature of European policy production. So, for example, the WFD is produced and implemented primarily through DG Environment. This gives the environmental lobby considerable advantages relative to, say, the consumer lobby, which might have closer links to DG Health and Consumer Affairs. In short, the environmentalist’s position has benefited from the recent structural shifts in the European Union, which have enabled new individuals to insinuate themselves within the network that produces environmental policy.

In addition to changes in the practice of EU decision-making, there is also a commitment on the part of the Commission to involve ‘stakeholders’ in the process of producing policy. This commitment is not limited to the European Union, or indeed to Europe. This shift is enshrined in the WFD in Article 14, which obliges member state governments to involve the public in the production of river basin management plans. Within DG Environment in Brussels the experience of involving stakeholders, particularly environmental NGOs, has been largely positive. Members of the Commission feel that it has
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not only made the policy production process more transparent, but that it has actually improved the quality of the legislation that is produced, because environmental NGOs have brought distinctive strategic and scientific ideas into discussions at an early point. They bring a political scepticism, which, perhaps, is lacking from the input of the more traditional scientific advisors on whom the Commission has always relied. Furthermore, in the wider context of the EU's anxiety about its lack of popular credibility amongst citizens across the continent, the incorporation of citizen's organizations such as environmental NGOs is seen as a vital and productive move. However, there is a danger in this recent trend. The fact that NGOs participated in the policy-making process is used by bureaucrats as the justification for the policy itself. For example, full-cost pricing is easier to defend politically when endorsed by environmental NGOs, despite its unpopularity amongst many stakeholders (agricultural, consumers). DG Environment (whose staff includes several former environmental lobbyists) are anxious not to appear to have been hijacked by environmental interests and emphasize that they are equally open to the contributions of other stakeholders such as the manufacturers of pesticides and fertilizers. Inevitably, however, the goals of DG Environment and those of the environmental lobby are much closer than those of DG Environment and the chemical industry. Thus, opening up policymaking to stakeholders is of particular advantage to the environmental lobby.

In the case of the WFD a specific topography of lobbying can be detected. On the one hand, industrial interests lobbied hardest at a national level via the Council of Ministers, whilst on the other the environmental lobby concentrated their efforts on lobbying internationally via the European Parliament. The Commission was lobbied by everybody. From the perspective of the environmental lobby, the struggle to make the WFD legally binding was seen (crudely) as a tussle between a pro-environment European Parliament/European Commission and an anti-environment Council of Ministers. The environmentalists’ position was doubly enhanced by the fact that they had an increasingly powerful advocate in the empowered European Parliament with its veto in the co-decision process, and an increasingly open colleague in DG Environment at the Commission, with its interest in stakeholder participation. Such an increase of influence does not mean that the final WFD is the product of environmental NGOs; indeed, it is far from what environmental NGOs were fighting for. Within the Brussels green lobby there is considerable doubt about the robustness of the law and the sincerity of the member states’ apparent support for it. Rather, the claim is that the environmental lobby was swift to capitalize on recent changes, and is in as strong a position as it has ever been to shape European water policy. The question that emerges, however, is whether any citizens’ groups have become excluded from the policy-making process by the same shifts.

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REFERENCES


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