



The implementation of virtual water within the European water policy : the basics for a legal and political analysis

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The structure of the presentation :

1. Has the EU already legislated about ‘virtual water’ or about the quantity of water used in the production of agricultural commodities ?
2. Can the EU legislate about ‘virtual water’ ?

1. The European political documents about virtual water & water footprint concepts

- There is no EU legislation about these concepts ; Why ? : this issue is still at an early stage
 - « *At this stage, a robust common methodology still needs to be established for the calculation of the water footprint before using it as a tool in legislation or labelling across Europe* ». European Commission, 2008
- The EU only mentioned these concepts on political documents which have no legally binding force but which may have political effects
 - Soft-Law documents
 - Working documents
 - Political documents

Political documents on virtual water & water footprint

- Soft-law rules :

Ex. Communication on water management in developing countries in 2002 ;

- Working documents :

Ex. Working document of the European Parliament on the 4th thematic session on climate change in 2008 ;

Ex. The opinion of the Committee of the Regions on addressing the challenge of water scarcity and droughts in the European Union in 2008 ;

- Politically documents :

Ex. Written questions to the European Commission from the European Parliament in 2008;

2. Can the EU legislate about ‘virtual water’ concept ?

- The study of the European legislation on water resources demonstrates that the EU mainly focused on the quality of water resources and the prevention of risk of pollution
Based on polluter pays principle and prevention principle
- Two main sets of water directives :
 - **First seven directives (1957 - 1986) : a partial and mercantilist approach**
 - **Since the Single European Act (1986) : towards a global and environmental approach**

The quantitative provisions within the directive 2000/60/EC

New approach on water resource : global and integrated water management

- **However** : The quantitative management must be subordinated to the quality approach

Ex. Whereas n°19 : « *This directive aims at maintaining and improving the aquatic environment in the Community. This purpose is primarily concerned with the quality of the waters concerned. Control of quantity is an ancillary element in security good water quality and therefore measures on quantity, serving the objective of ensuring good quality, should also be established* »

Why the ‘water use’ is limited within the European *acquis* on water management ?

Existence of the article 175.2 of the Treaty EC :

- Introduced by the Treaty of Maastricht 1992 and modified by the Treaty of Nice
- If the EU deals with ‘quantitative management of water resources’, is required the unanimous agreement of all Members States

« By way of derogation from the decision-making procedure provided for in paragraph 1 (...) the Council, (...) shall adopt : measures affecting quantitative management of water resources or affecting, directly or indirectly, the availability of those resources »

The ‘water use’ measures : an application of the subsidiarity principle

Traditionally, **quantitative management of water** and other issues such as fiscal matters, country planning and energy supply are considered as a **sovereign power** of the Member States;

Ex. Construction of hydroelectric dams, reservoirs, etc
(Projects intended to transfer drinking water from a rich water region to an arid one)

As a conclusion

Virtual water & water footprint measures have an impact on ‘water use’

- The 175.2 should be modified ?
- Another legal basis such as 175.1 could be applicated ?

By the application of subsidiarity principle we could imagine that:

- The European Union could set mandatory targets in the catchment for agricultural production of water within the Community
- The Member States develop their own tools to achieve these targets : water pricing policies, identify their water footprint, application of virtual water trade, etc.