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The marathon of the hare and the tortoise: implementing the EU Water Framework Directive

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The marathon of the hare and the tortoise: implementing the EU Water Framework Directive

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Reading the available evidence on the implementation of the European Water Framework Directive (WFD), one gets the impression that some countries anticipate implementation problems by starting off pragmatically and with relatively low ambitions, while others make a quick and ambitious start and tend to slow down in later phases of the process. Inspired by Lundqvist's classical study of air pollution policy in the USA and Sweden, we assess the importance of some general characteristics of the respective political-institutional systems to explain differences in WFD implementation in four EU countries: Denmark, France, England/Wales and the Netherlands. We conclude, among other things, that visibility of the policy process, accountability of politicians and policy makers *vis-à-vis* their stakeholders and the EU, division of responsibilities for policy formulation vs. implementation and the involvement of the public explain the level of ambition in EU implementation to a considerable extent. Thus, the Lundqvist variables turn out to be useful for both classifying and explaining differences in EU implementation processes.

Keywords: policy implementation; EU environmental policy; discretion; Water Framework Directive

1. Introduction

The Water Framework Directive (WFD) is one of the most important and most ambitious pieces of legislation in the history of the European Union's (EU) environmental policy. It requires member states (MS) to set up comprehensive institutions and procedures for the control of the chemical and ecological quality of water bodies in Europe. Not surprisingly, implementation of the WFD turns out to be a lengthy and, in most MS, difficult process. Apart from being an ambitious directive, the WFD is also explicitly a *framework* directive. Except for specific regulations in separate daughter directives (e.g. urgent 'priority substances' in water bodies), the WFD allows MS considerable degrees of freedom in both the process and the outcomes of implementation. In many cases, it is not straightforwardly

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prescribing standards and norms, but rather prescribing procedures in which MS determine and implement partly self-imposed objectives and standards to reach a good status of water in Europe. The WFD can thus be considered a token of a new mode of European governance. Given the freedom in both process and outcomes, we find it particularly interesting to investigate how MS deal with the attributed room for discretion.

A problematic aspect of most implementation studies is that, in most cases, attention is focused on transposition of directives in national laws and regulations (e.g. Mastebroek and Kaeding 2006, Falkner *et al.* 2007, Steunenberg and Kaeding 2009) while practical implementation ‘on the ground’ remains largely under-researched and therefore unclear. This often relates to the ambiguous nature of the term ‘implementation’: it changes colour with the scientific discipline in which it is used (or even within disciplines). We understand implementation to be both *formal* and *practical* (Dieperink *et al.* 2012). In the stage of formal implementation MS are focusing on issues of transposition, legal requirements or formalisation of standards. These are often the more tangible and measurable parts of any implementation history. Next to this, there is practical implementation, focusing on the actual substantial or organisational steps MS are taking, e.g. the delineation of river basins, the designation of water bodies, the production of a range of practical measures needed for a good water quality or the design of stakeholder participation. Very often these are the less measurable or tangible parts of actual implementation of directives. A full overview of both formal and practical implementation is usually limited to specific case studies in one or a few countries (Howarth 2009, Dieperink *et al.* 2012).

The implementation of the WFD is a process in which one needs some patience. Drawing final conclusions is only possible after 2027. Although we are aware that we will not be able to cover the entire process of implementing the WFD, we still want to describe, explain and compare the first important formal and practical steps of the process in four MS: Denmark, France, England (together with Wales) and the Netherlands. The selection of these MS will be justified in the methodological section.

The starting point of our paper is that, if we consider the evidence thus far on the implementation of the WFD (e.g. Steyaert and Ollivier 2007, Howarth 2009, Meijerink and Wiering 2009, Page and Kaika 2003, Petersen *et al.* 2009, Uitenboogaart *et al.* 2009), we get the impression that some countries, such as the Netherlands, anticipate implementation problems by starting off pragmatically (in the sense of a non-ideological, ‘hands-on’ approach) and with relatively low ambitions, whereas others, e.g. Denmark, make a quick and ambitious start and tend to slow down in later phases of the process. Nevertheless, they may all be expected to be heading towards more or less full compliance with the Directive’s requirements. Here, it is difficult not to think about Lennart Lundqvist’s classical study of air pollution policy in the US and Sweden, emphasising differences in style and pace in implementation processes. Lundqvist’s compelling analysis shows that, at the end of the day, air quality improvement in ‘quick starter’ US was about equal to that in ‘slow starter’ Sweden – just as in Aesop’s fable of the race between the hare and the tortoise (Lundqvist 1980).¹ In doing so, Lundqvist focused on firmly established domestic political-institutional structures and styles as explanation for differences between the countries. We find Lundqvist’s theoretical framework particularly useful since the fable of the hare and the tortoise advises us to cover *the entire process* of policy formulation, transposition (i.e. formal implementation) as well as practical

implementation. Considering that the deadline for full implementation of the WFD lies so far ahead, this focus on the process as a whole is particularly important. What we are analysing is not just a race, but a veritable marathon which has in fact only just started. Inspired by Lundqvist, we want to find out whether the choices made in the WFD implementation process in different countries so far could be explained by specific features of the political-institutional structures of MS. We expect Lundqvist's approach to enable us to better understand differences between the four MS.

Another more usual theory of EU implementation, the fit/misfit theory, also points to some general characteristics of the MS political-institutional systems (Knill and Lenschow 1998, 2000, Mastenbroek and Kaeding 2006). However, it does not appear as particularly suited for analysing the implementation of the WFD since, as stated before, MS have considerable discretion in doing things their own way, which therefore makes it difficult to identify an initial degree of 'fit' or 'misfit' at all. In addition, the long and complex process of implementation may well confront countries with problems coming up along the way (Liefferink *et al.* 2011). The fit/misfit theory only addresses the starting situation at the time of formal transposition.

In contrast to Lundqvist's research object, the first steps of agenda-setting and policy formulation in the implementation of European directives obviously take place in 'Brussels' rather than at the national level. However, the implementation of EU directives leaves ample room for MS to make their own choices with regard to the design and practical application of national measures. Thus, we argue that Lundqvist's approach remains relevant for this type of analysis – and particularly so in the case of a 'new generation' directive as flexible and open-ended as the WFD. This does not exclude, however, that more specific characteristics of the relationship between the MS in question and the EU (e.g. Falkner *et al.* 2007) play a role as well. Lundqvist's approach, when applied to implementation, may require amending on this point. In the conclusion part we will reflect on if 'and to what extent' the 'EU factor' helps to explain differences and similarities in countries' implementation performance.

The next section will develop our theoretical framework in more detail, followed by a section on the methodology used. This leads on to an empirical investigation of the implementation of the WFD in four MS – France, England/Wales, the Netherlands and Denmark. A cross-case comparison in section 5 will then lead to a number of conclusions in the final section.

2. Theoretical framework: analysing EU implementation with Lundqvist's help

Lundqvist (1980) argued that differences in the making and implementation of air pollution policies (e.g. instrument choice, standard setting, speed of implementation, etc.) could be largely attributed to the national political-institutional context. In Sweden, according to Lundqvist, the policy process in the field of air pollution in the 1970s was dominated by close co-operation with the polluting industry, a consensual style and the idea of 'technical and economical feasibility'. He associated this pattern – briefly characterised as the prevalence of the practicable over the desirable – with the role of the tortoise in Aesop's well-known fable. The US, in contrast, resembled the hare. There, driven by public opinion, health issues related to air quality had risen quickly on the political agenda in the early 1970s. Technical and administrative barriers were surmounted or circumvented to establish new and strong

anti-pollution measures. Or in short, the politically desirable outweighed the practicable, at least at the start of the policy process.

These remarkable differences led Lundqvist to formulate a set of hypotheses relating policy development to the political-institutional context:

In an institutionally competitive situation, with an upsurge in public demand and with high visibility in the public eye, the individual policymaker will be inclined to respond quickly and dramatically to new stimuli. This is even more so if the policymaker will not be responsible for implementing his recommendation to policy change. (Lundqvist 1980, p. 33)

Vice versa, a less competitive policy context, with less visibility in the public eye and policy makers being more directly responsible for implementation, will lead to less dramatic (ambitious) decisions (Lundqvist 1980, p. 34). “Cheered by the audience, the hare will dash away with great leaps, while the shielded tortoise will move forward slowly but steadfastly” (p. 32).

Lundqvist’s analysis of air pollution policy in the US and Sweden is built on four key factors. We argue that all four also affect the level of ambition MS exhibit in WFD implementation – either in an upward or a downward direction (see Table 1). The former two relate to political controversy, the latter two to the character and timing of the involvement of public and private actors in the policy process. From each of these four variables we derive hypotheses that will be tested for the cases of WFD implementation in Denmark, France, England/Wales and the Netherlands.

Table 1. Variables and hypotheses derived from Lundqvist (1980).

Variables derived from Lundqvist	Hypotheses derived from these variables
<i>Political controversy</i>	
The <i>visibility of political processes</i> and the openness of political debate.	Hypothesis 1: The more visible the policy process is, the more ambition will be exhibited by politicians.
The <i>political accountability</i> of politicians and policy makers <i>vis-à-vis</i> their voters and/or political parties and, more broadly speaking, the underlying societal interests involved in the issue.	Hypothesis 2: The more politicians and policy makers are held accountable, the more the level of ambition will be adjusted to the preferences and interests of stakeholders.
<i>Character and timing of actor involvement</i>	
Dependent on the specific constitutional environment, <i>responsibilities for policy formulation vs. implementation</i> may be separated among different institutions or administrative levels, or concentrated in one (institutional) hand.	Hypothesis 3: The more responsibilities for policy formulation and policy implementation are concentrated in one institutional actor, the more policy goals are likely to be set in a pragmatic way.
The <i>involvement of the public</i> ¹ may take place during different stages of the policy process, e.g. in the stage of policy formulation by way of public hearings or other forms of participation by stakeholders and/or the broader public; or in the stage of implementation by way of court cases or other juridical instruments.	Hypothesis 4: The more the public is involved throughout the policy process, the more politicians and policy makers will be kept to their initial ambitions.

Note: ¹We are referring here, of course, to involvement of the public as a domestic system characteristic, not to the specific obligation to this end in the WFD.

Appreciating the individual strength of each of these variables and hypotheses, there are mutual relations between them. For example, high visibility of the policy process (Hypothesis 1) and high political accountability (Hypothesis 2) are likely to reinforce each other and lead to even higher ambition. Similarly, high visibility (Hypothesis 1) is likely to strengthen the effect of public involvement on maintaining the initial ambition level (Hypothesis 4), whereas especially controversial forms of public involvement such as court cases are in turn likely to increase visibility. In that sense, the hypotheses are to be seen as a coherent ‘package’ rather than as independent expectations.

3. Methodology

The hypotheses are tested in four MS: the Netherlands, France, Denmark and England/Wales. The cases originate from a research project that was conducted in 2008–2009 and started off with the question: how is the Netherlands doing in WFD implementation compared to its neighbours?² Initially, the research looked at six countries: the four MS mentioned previously and North Rhine Westphalia and Flanders as direct neighbours of the Netherlands. The criteria for selection of these cases were twofold: resemblance to the Dutch situation, e.g. comparable problem pressure, a combination of rural and urbanised environments – and the presence of possibly interesting practices that might offer learning potential for the Netherlands. In addition to the country level, specific regional cases were investigated (e.g. Norfolk in England, Brittany in France). These regional cases are not systematically referred to in this paper, except for illustration purposes. In each case, we studied policy documents and conducted six to eight interviews with authorities at different government levels. We focused on specific issues that revealed the ambitions in – and the path and pace of – implementation: (1) the designation of water bodies; (2) the choice to make use of exemptions (both lowering and postponing goals); (3) formalisation of the process of goal and standard setting.³ We also looked at the important issue of how stakeholders were involved in the process. In this initial analysis we found striking differences between the countries in the ambitions set and the pace of decision making. We then selected the above four country cases on the basis of the dependent variable (countries showing high ambitions initially or rather ‘hands-on’ pragmatism) to clarify the relationship with the explanatory variables derived from Lundqvist. The initial empirical research was carried out in 2008–2009 and updated in 2011–2012 by means of additional desk research, mainly based on document analysis.

Notwithstanding the pragmatic arguments for the initial case selection, it is important to highlight the difference in reputation of the selected countries with regard to their implementation behaviour. Based on empirical work on the formal transposition of six EU labour law directives in fifteen MS, Falkner *et al.* (2007, p. 404) arrived at three ideal-typical transposition styles or ‘worlds of compliance’. Although our analysis extends beyond the phase of formal compliance, the classification by Falkner *et al.* supports our case selection. In their typology, the ‘world of law observance’ is characterised by timely and correct transposition of EU directives, even in the case of domestic conflict. It is claimed that this pattern can be found, in Denmark, Finland and Sweden. In countries belonging to the ‘world of domestic politics’, including Austria, Belgium, Germany, the Netherlands, Spain and the UK, domestic concerns are dominant. As soon as these clash with EU requirements, non-compliance is the likely outcome. Finally, in the ‘world of

transposition neglect', inactivity with regard to EU requirements prevails until intervention by the Commission provokes (usually superficial) transposition. This is claimed to be the case in France, Greece, Luxembourg and Portugal.

According to this typology, the countries in our empirical sample – France, England/Wales, the Netherlands and Denmark – belong to three different 'worlds of compliance'. In the following section we will see whether Lundqvist's political-institutional factors can explain apparent differences in the WFD implementation of these countries, belonging to various worlds of compliance. For reasons of space, we unfortunately cannot go much further than sketching an impressionistic image of the implementation processes in the four countries; our case reports contain more details, quotes from interviewees, references to policy documents and other sources (Uitenboogaart *et al.* 2009).

4. Case analysis

4.1. Denmark

Initially, the Danish Ministry of the Environment actively involved various stakeholders in working out the measures for the implementation of the WFD. High ambitions characterised the discussions in the so-called 'Actors' Group' (*Aktørgruppen*), consisting of representatives from agriculture and NGOs as well as regional and local authorities. However, when the government became aware of the cost associated with these ambitions, it aborted the Actors' Group's activities. From 2005, the Ministry of Finance effectively took over the lead from the Environment Ministry and considerations of cost-effectiveness increasingly moved to the foreground (see Uitenboogaart *et al.* 2009, pp. 90–91, Wright and Jacobsen 2011). Even so, considerable concerns on the part of the agricultural sector remained. They became a major issue in a much broader debate on agriculture, nature and environment in Denmark which was concluded in June 2009 with the adoption of the political agreement on 'Green Growth' (*Grøn Vækst*). Apart from that, the government had opted for formulating comparatively detailed river basin management plans (RBMPs), specifying numerous concrete measures for individual water bodies (Baaner 2011). This caused serious delay in producing the RBMPs, which induced the Commission to start an infringement procedure against Denmark in early 2011. The threat of a Court case aroused considerable political and public attention in 'law-observing' (Falkner *et al.* 2007) Denmark. In December 2011, the 23 Danish RBMPs were eventually approved by the Minister of the Environment.

Notwithstanding the heavy political struggles around the issue, ambitions are still high in Denmark, not least because they are in a sense implied in the initial designation of water bodies under the WFD. Denmark designated less than 10% of its water bodies as either 'artificial water bodies' (AWBs) or 'heavily modified water bodies' (HMWBs). Thus, more than 90% of Danish waters are intended to reach 'good ecological status' rather than the lower target of 'good ecological potential' reserved for AWBs and HMWBs. As this will not be easy, Denmark is formally applying for postponement of goal attainment beyond 2015 (Ministeriet for Fødevarer, Landbrug og Fiskeri/Miljøministeriet 2011) but – contrary to various other MS – this had not been envisaged from the outset.

The ambitious but short-lived Actors' Group concurred very well with the traditional Danish policy style in the environmental field, which may be

characterised as corporatism on a relatively broad basis (Andersen 1997, Bursens 2002). Although the circumstances cannot reasonably be compared with the pluralist system in the US as described by Lundqvist (1980), the involvement of a broad array of public and private actors in policy preparation led to a relatively high degree of visibility and accountability. In a more general sense, environmental policies in Denmark, especially those related to the controversial area of water pollution, tend to become politicised rather easily (Andersen 1997). Both conditions are likely to stimulate quick and vigorous policy responses (cf. Lundqvist's first and second variables). The replacement of the Actors' Group by a much more closed expert group and the take-over of the issue by the Ministry of Finance (which provided the chairman of the new group) went hand in hand with an attempt to reduce the openness and visibility of the process. Involvement of the wider public was limited to what was statutorily required (Wright and Jacobsen 2011; cf. Lundqvist's fourth variable). Following Lundqvist, this course of events is not surprising; he argued that policy makers operating outside the political spotlights are in a better position to stress the costs and administrative implications of the policy at stake than those who are held immediately accountable for their choices by stakeholders and/or constituents. Apparently, however, agricultural interests still feared the Directive's financial consequences and, having a relatively willing ear in the right-wing government coalition that was in power until mid-2011, managed to further slow down the implementation process.

The high ambitions in the early stage of the process can also be related to another factor suggested by Lundqvist. Danish municipalities have a key role in the practical implementation of measures related to the WFD. Thus, policy formulation (through plans and programmes at the central government level) and policy implementation (at the local level) are quite strongly separated (cf. Lundqvist's third variable). Although municipalities were among the many interests represented in the Actors' Group and did have the right to react to plans and programmes established at the central level, it is as yet unclear if they will have sufficient resources and power to implement and enforce the entire package of detailed and specific measures contained in the RBMPs that were eventually formalised in the end of 2011. Related to its relatively high degree of decentralisation, Denmark has in fact a long history of weak implementation at the local level (Andersen 1997, pp. 254–255).

In short, Denmark started out as a hare in Aesop's and Lundqvist's terms. Just as in the fable, however, the hare appears to be tempted to slow down in the course of the race. A shift of control from the Ministry of the Environment to that of Finance, accompanied by a restriction of the circle of those involved in policy preparation, strengthened the focus on cost-effectiveness. Continuing concerns from the agricultural sector nevertheless led to late submission of the RBMPs and a formal infringement procedure against Denmark. Implementation problems due to the relatively strong separation of (central) policy formulation and (local) policy implementation in Denmark may well lead to a further retardation of the hare in the future.

4.2. France

In Falkner's cultures of EU implementation, France belongs to the 'world of transposition neglect' (Falkner *et al.* 2007). Yet, in the case of the WFD implementation process, France adopted rather ambitious objectives right from the start, thus presenting itself as a hare in Aesop's and Lundqvist's terms. First, France decided to

disregard the possibility to ask for an adjustment of objectives, and will be only asking for deadline extensions. Second, with an objective of attaining good status in two-thirds of all water bodies by 2015, and no more than 10% of them classified as either HMWB or AWB, France cannot be accused of downplaying the importance of the WFD. The declared effort is substantial since in Brittany, for example, the 2004 water quality diagnosis showed that without new measures only 20% of water bodies would be in good status by 2015.

The objective to have two-thirds of all water bodies in good status by 2015 was expressed by President Nicolas Sarkozy in the autumn of 2007. This firm declaration of ambition was made in the same timeframe as the installation of the *Grenelle de l'environnement* initiative, a groundbreaking experiment in deliberative democracy on environmental issues at the national level. Following the window of opportunity opened with the presidential elections (Halpern 2012), Sarkozy's *Grenelle* experiment strongly contrasted with France's meso-corporatist tradition and weak environmental policy (Whiteside *et al.* 2010). However, this unusual degree of political visibility of environmental issues (cf. Lundqvist's first variable) leading to ambitious declarations turned out to be short-lived. Politicians did not feel accountable for the outcomes of the experiment, and water issues remained a rather orphan issue of the *Grenelle*.

Even though President Sarkozy used a blurred phrasing – did he mean 66% of surface water or of all water bodies, in good ecological status only or good chemical status too, on average nationally or in each river basin? – the *Agences de l'Eau*, i.e. the water agencies, responsible for drafting the RBMPs and pressed by the tight schedule of the WFD, did not wait for clarifications. In 2008, the financial budget allocated to WFD measures was raised by, for example, an additional €500 million for Brittany alone. It is worth noting that before President Sarkozy's announcement, in autumn 2007, the tentative budget for Brittany had been censored by the water committee; being too costly, planned expenditures in the region had to be cut by €800 million for reason of 'disproportionate costs', resulting in the loss of 12% of water bodies being in good status in 2015.

What proved to be crucial for maintaining the ambitious target for implementing the WFD is not quite related to political accountability (i.e. Lundqvist's second variable) but rather to the existence of separate responsibilities between policy formulation and policy implementation (i.e. Lundqvist's third variable). Indeed, water agencies in France have never been bestowed the responsibility of actually implementing the RBMPs. These are supposed to be brought into practice by local relays, namely political actors, mostly at the municipal level. Thus, initial ambitions were maintained over time because of both this gap between the responsibility for policy formulation and implementation and because of the interplay between the national and the river basin levels (for more detail see Bourblanc *et al.* 2009).

By law, the management plans drafted by the *Agences de l'eau* have to be approved by the river basin co-ordinating prefect, who acts as a representative of the State at the decentralised level. Hence in theory it is always possible for the state to censor a RBMP. In this case, however, ambitious plans such as the one for the Loire-Brittany basin were eagerly backed up by the Ministry of Ecology. This can be related to its wish to avoid at any cost new infringement procedures with the European Commission. Although the Ministry of Ecology is not itself in charge of implementing RBMPs, it stands as the unique authority responsible *vis-à-vis* the

European Union institutions. More particularly, it is the one that will be paying a fine in case of an implementation default. In general, past prosecutions and fines represented a traumatic experience for the French government. It became all the more concrete in the water sector as until recently France had been under the threat of a huge fine for failing to implement the 1975 Directive on drinking water abstraction (75/440/EEC). Furthermore, the ministries involved are well aware that very active environmental interest groups played a major role in previous infringement processes, directly alerting and informing EU authorities on the domestic situation but also lodging complaints and winning court cases at the national level (cf. Lundqvist's fourth variable). The fear of new EU procedures had in fact already motivated a very cautious and strategic approach right at the start of the process, when the Ministry of Ecology had encouraged a rather pessimistic classification of the current quality of water bodies. When hesitating between two quality classes, and considering the unpredictability of natural phenomena, the lower quality class had systematically been preferred so as to avoid downgrading to a lesser category at a later date, which could prompt a new infringement procedure.

4.3. England and Wales

England and Wales employ a liberal interpretation of European directives, including the WFD: there is no legal establishment of goals, the exemptions and extensions clauses in the WFD are not even transposed into internal law etc. However, this by no means implies a weak organisation of WFD implementation. There is an explicit ambition to reach good water quality, no excuses are sought in the designation of a disproportionate number of AWBs and HMWBs, and particularly concerning protected zones there is a clear political will not to tolerate any deterioration (Crabbé *et al.* 2009). On the other hand, pragmatism rules. England and Wales will no doubt make use of the full three periods, and (in the longer run) the use of exemptions (lowering of goals) is a certainty. The argumentation for this is multi-faceted, including disproportionate costs, uncertainty concerning long-term policy effects, and physical circumstances hindering goal attainment (Crabbé *et al.* 2009).

In short, referring to Aesop's and Lundqvist's terms, England and Wales could be labelled as *tortoises*. Even though they abhor formally setting down goals and obligations in regulation, England and Wales are courageous enough to take up the challenge of reaching WFD goals, and they are systematic and thorough in their implementation of the WFD. Hereafter, we discuss factors that help to explain England's and Wales's characteristics in WFD implementation.

In England and Wales, WFD implementation is seen largely as a procedural matter, to be taken care of by civil servants. The actual achievement of good status is not a substantive requirement; putting in place measures is what is legally required; timely achievement of good status is legally irrelevant (Howarth 2009). Arguably, if the 'necessary' measures are taken, they should logically produce the desired result of achieving good status – however without a guarantee on the effectiveness. This 'best efforts' approach can be labelled as a flaw with the British EU environmental policy style of the 1980s and 1990s; the UK then tended to postpone remedial actions until their effectiveness had been scientifically proven (Wurzel 2002). Being regarded largely as a procedural matter, the implementation process is mainly a backstage process; because of its low visibility (cf. Lundqvist's first variable), the implementation process is not considered apt for big political discussions.

In England and Wales, WFD implementation is related to the historical distribution of responsibilities in the water policy field. The central government is responsible for WFD implementation. The Department for Environment, Food and Rural Affairs (DEFRA) and the Welsh Assembly Government, the appropriate authorities, publish guidance papers and carry out preparatory work. The Environment Agency (EA), the competent authority, is responsible for practical implementation and feedback to DEFRA and the Welsh Assembly Government. The EA's regional offices take the lead in drawing up the 11 RBMPs and the corresponding programmes of measures; the EA also prepares sub-basin plans (called 'supplementary plans'). Even though DEFRA and the Welsh Assembly Government draw the big lines, the regional EA offices have important discretionary power to make locally tailor-made interpretations of the WFD. The British practice also historically favours flexible working on the river basin scale, which allows greater discretion to consider particular circumstances, such as local environmental quality, available technology and local support for measures (Knill and Lenschow 1998). So, without neglecting the role of the central government, it is fair to say that the EA plays an important role as it holds the formulation and implementation of the RBMPs firmly in one hand (cf. Lundqvist's third variable).

Over the past 30 years there has been a gradual intensification of stakeholder- and particularly public involvement in water-related issues. With the introduction of integrated approaches to water management as a result of the WFD, the role of stakeholders in water management is undergoing further changes (Orr *et al.* 2007, Rees 2005). This, however, does not imply that the views of policy makers on problems of water quality have significantly changed. In practice, a relatively small number of technically well-versed stakeholders discuss critical issues in WFD implementation in a language of specialist disciplines (Howarth 2009). Thus, the likelihood of productive and open public discussions (cf. Lundqvist's second variable) tends to be limited. Furthermore, conflicting societal interests have not (yet) been uploaded to higher political levels. Although participation in water policies has increased over the last decades (cf. Lundqvist's fourth variable), politicians are not really pressed to be open and clear about their political stance towards WFD implementation.

4.4. The Netherlands

The Netherlands shares with Denmark a relatively strong role for decentralised authorities, although for water management it is not the municipalities that are most relevant but rather the autonomy of the regional water boards. While the national water agency, *Rijkswaterstaat*, is responsible for the major rivers and lakes, these functional regional authorities (placed administratively between the provincial and local level and geographically largely following river basins) play an important part in the operational management for regional waters. The water boards advise the provinces on environmental objectives and standards, and are at the same time responsible for the actual implementation of the measures to secure these objectives.

In setting goals and measures for the respective RBMPs, the lower governmental levels were involved from the beginning: water boards propose their plans, which are assessed by the provinces, who make their own plans, and by the Ministry in relation to its national planning ('*up the stairs*', in the Dutch administrative jargon). Then, the process can be reversed ('*down the stairs*'), with the Minister giving instructions

to the provinces and the provinces to the water boards, before the plans are definitively adopted (Ten Heuvelhof *et al.* 2010, Uitenboogaart *et al.* 2009). This all fits well in the consensual culture of decision making that prevails in the Netherlands.

In an early stage of the implementation process there was a political debate induced by the so-called *Aquarein* report, an *ex ante* evaluation of the consequences of the WFD for Dutch agriculture. One of its findings was that intensive livestock, and especially the use of organic manure on land, would become extremely problematic or even impossible. Considering that agriculture had just recovered from the battles around domestic manure legislation and the EU Nitrate Directive as well as several animal diseases, the outcome was that the WFD should not lead to a severe impact and higher costs for Dutch intensive agriculture. Because of the *Aquarein* report there was an upsurge in the political debate on WFD implementation, leading to increased political visibility (Hypothesis 1). However, this happened in a very early (and possibly even premature) stage of decision making; it mainly caused defensive responses from the authorities involved. It is a telling detail that the initial document on the Dutch WFD implementation process was first referred to as an 'ambition document' and was later renamed 'Pragmatic implementation of the WFD in the Netherlands' (Ministry TPW 2004). This response to the short-lived political debate on implementation, primarily trying to avoid further political controversy, actually reinforced the more 'closed shop' policy making that we can recall from traditional corporatist practices in the Netherlands and strengthened the idea that governmental authorities were the first responsible. This is not to say that there was no participation of public actors at all. Public participation took place at different levels of decision making. In some sub-river basins, such as in the Dommel basin (a contributory to the Meuse), people could make use of integrated regional planning processes, although these were not organised for the WFD only. Next to this local and regional level, stakeholders were involved at the Meuse River Basin District level by way of a 'sounding board group' (*Klankbordgroep*). Although these options were created, participation remained limited, because of both the technical complexity of ecological and chemical water management and the procedural complexity of WFD implementation. The stakeholders in the 'sounding board group' were involved mainly with regard to general plans and outcomes (Uitenboogaart *et al.* 2009).

Compared to other countries, the Netherlands is designated a relatively large number of HMWBs (42%) and AWBs (53%). This leaves only 4% of 'not designated' or 'natural' water bodies where good ecological status has to be reached. This outcome can partly be explained by the artificial nature of the low lands (e.g. Dutch river systems have changed dramatically in the 18th and 19th century), but this is not the whole story. Some transboundary river branches were designated as heavily modified in the Netherlands, while neighbouring North-Rhine Westphalia designated the same waters as 'natural', which points towards strategic considerations. In addition, the Dutch are not afraid to make elaborate use of exemptions, both in terms of postponing ('phasing') and relaxing goals. Finally, the Netherlands shows itself to be cautious to formalise standards too strictly, e.g. it formulates environmental standards as target values (*richtwaarden*) rather than intervention values (*grenswaarden*) (Keessen *et al.* 2010). One of the reasons for Dutch cautiousness in formal implementation is that legal obligations can easily lead to court cases in a juridical system as accessible as the Dutch one (VROM-raad 2008).

Dutch implementation of the WFD can thus be characterised as pragmatic rather than ambitious. Lundqvist's ideas on policy style and pace can clearly explain some of these findings. Referring to Hypotheses 1 (visibility) and 2 (accountability), we can state that, despite the short upsurge during the times of the *Aquarein* report, the implementation process was generally in the hands of governmental authorities, scientific experts and professional environmental or water-related NGOs and industries. The discussions in these circles were often too complex and too undetermined to be of great interest to the broader public. *Aquarein*, as mentioned, eventually even strengthened the 'closed shop' character of the process. In addition to that, the principal actors in operational water management, the water boards and *Rijkswaterstaat*, are responsible both for proposing goals and packages of measures and for their practical implementation (Hypothesis 3). Hence, they have an interest in not promising more than they can substantiate. Moreover, due to earlier problems in implementation, for example, with the EU Nitrate and Air Quality Directives, an increasing fear for European obligations tends to make policy makers even more cautious in formulating goals, standards and measures than they would be without Europe looking over their shoulders. In sum, the Netherlands started out as a tortoise, both for political and institutional reasons. The strong position of the specialised water boards (and *Rijkswaterstaat*) can however be reason to have faith in the pace of the tortoise; following Lundqvist, it is likely to keep on moving.

5. Comparing the cases

In section 3 we selected four variables suggested by Lundqvist that could explain patterns of implementation in different member states. These variables add up to two ideal types. An implementation process that is characterised by hare-like behaviour can be explained by *high* visibility of political choices, *high* (political) accountability, *strong* separation between policy formulation and implementation, and *high* involvement of the public. Motivated by public and political pressure, the hare starts off quickly but may be easily diverted along the way. A tortoise is characterised by *low* visibility, *low* accountability, *little or no* separation between policy formulation and implementation, and *low* involvement of the public. It starts slowly, but outside the spotlights it does not lightheartedly stop once started. In the previous section, we gave a condensed description of the implementation process in Denmark, France, England/Wales and the Netherlands based upon earlier reports (Uitenboogaart *et al.* 2009). In Table 2 we briefly summarise our findings.

As the Table shows, the characteristics of the hare and tortoise are well reflected in our findings. In Denmark, at least in the beginning of the process, we found a combination of relatively high visibility, a clear role for stakeholders in the context of the so-called Actors' Group and, thus, high political accountability. This was combined with separated responsibilities (goal and measures at central level, implementation by municipalities). This constellation and the resulting relatively high level of politicisation led to the quick and ambitious start that is typical for the hare. As soon as visibility and stakeholder involvement were reduced by the abolishment of the Actors' Group, however, the hare retarded. An increased focus on cost-effectiveness emerged and, in a slightly later stage, gave room for agricultural interests to even further slow down the process.

The Netherlands and England/Wales, in contrast, showed more resemblance with Lundqvist's tortoise. In a very early stage, the so-called *Aquarein* report sparked off

Table 2. Summary of findings: characterisation of the WFD implementation process in Denmark, France, England/Wales and the Netherlands with the help of the 'Lundqvist variables'.

	Denmark	France	England/Wales	The Netherlands
'Lundqvist variables'				
<i>Hypothesis 1 on Political visibility</i>	Generally high (Actors' Group, controversy around cost for agriculture)	High at national level (<i>Grenelle</i>), but considerably lower at river basin level	Low (technical and administrative character of the process)	In a very early phase high, but soon lower (key role of fairly 'invisible' water boards and technical character of the issue)
<i>Hypothesis 2 on Political accountability</i>	High in the beginning (Actors' Group), later reduced and emphasis on cost-effectiveness	High at national level during the <i>Grenelle</i> , but lower at river basin level	Relatively low and indirect (mainly technical and admin. process)	Low (process taking place largely within the administrative system ('up and down the stairs'); technical character)
<i>Hypothesis 3 on Responsibility for policy formulation vs. implementation</i>	Separated: - goal setting at central level - implemented by municipalities	Separated: - Goal setting in river basin comm. - Implemented at local level	Mainly in one hand (Environment Agency, incl. regional offices)	Largely in one hand (key role of water boards in both goal setting and implementation)
<i>-Hypothesis 4 on involvement of the public (partic., access to justice, etc.)</i>	High in the beginning (Actors' Group), later reduced	Low in <i>Grenelle</i> with regard to water issues - Higher and more formalised at river basin and local level	Slightly increased but still low (strong focus on technical and administrative aspects)	Generally low (mainly experts involved), but relatively easy access to justice
<i>Expectation on basis of 'Lundqvist variables'</i>	Hare	Hare (particularly at national level)	Tortoise	Tortoise
<i>Characterisation on basis of WFD case</i>	→ Hare: quick start, but soon slowing down due to increased focus on cost-effectiveness and implementation problems	→ Hare: quick start induced by an electoral window of opportunity, then ambitions maintained to avoid EU procedures	→ Tortoise: tradition of both pragmatism and conscientious implementation	→ Tortoise: for both political and institutional reasons

political commotion about the possible consequences of the WFD for the future of agriculture in the Netherlands. This proved such delicate territory that less explicit ambitions and less visibility were sought by policy makers. Consequently, the Dutch policy process became more detached from political pressures. Policy formulation and implementation in the Dutch water domain, moreover, have always been directly connected.

For England and Wales a more or less similar story can be told. WFD implementation is seen as an administrative-procedural matter, with low visibility and relatively low and indirect political accountability. With the Dutch, the British share the concentration of responsibilities for policy formulation and implementation in one hand, with a key role played by the central Environment Agency and its regional offices. Stakeholder discussions on the WFD until now have remained rather technical; conflicting societal interests have not (yet) been uploaded to higher political levels. England and Wales take WFD obligations seriously and cannot be accused of downplaying the importance of the WFD, but they are thoroughly pragmatic in their approach.

The picture of France shows that it started as a hare but, quite unexpectedly for a hare, maintained a steady pace so far. Indeed, French WFD implementation had a quite ambitious start, more comparable to the Danish hare than to the Dutch and British tortoises. Temporarily raising the political profile, visibility and political accountability of the environment more generally, President Sarkozy's *Grenelle de l'environnement* created a favourable political context for aiming high in the initial phase of implementing the WFD. Hypotheses 1 and 2 at first sight seem to provide a good explanation for this. However, there are good reasons to believe that – for water, as well as for other environmental issues discussed during the deliberative experiment, the *Grenelle* mountain would have given birth to a mouse if the initiative had not been seized by other political levels. Conversely, the story about the evolving RBMP financial budget suggests that the Water Agencies alone would not have been able to pass such high targets if the *Grenelle* had not offered new opportunities to do so. Moreover, the separation of policy formulation and implementation in the French administrative system strengthened possibilities of hare behaviour. Further along the process, these high targets continued to receive support from governmental actors fearing EU infringement procedures. A combination of domestic political-institutional factors suggested by Lundqvist, incidental political factors (the momentum of the *Grenelle*) and EU-related factors can thus explain that France started as a hare and actually keeps acting like it up to the present even though the initial political visibility of the subject has faded away.

6. Discussion and conclusions

Lundqvist's political-institutional variables have convincingly explained important variations in implementation patterns in our four cases. With reference to Hypothesis 1, there were clear differences regarding the *political visibility* of implementation between France and Denmark on the one hand and England/Wales and the Netherlands on the other. *Political accountability*, the subject of our second hypothesis, also helped to explain 'hare' or 'tortoise' behaviour, although it was less straightforward. First, Lundqvist referred to accountability *vis-à-vis* voters and/or political parties, or to put it more bluntly, to the difference between making promises in the spotlight of the political arena versus consensual decision making behind

corporatist doors. But accountability is not restrained to the initial political arena. It can also refer to being held responsible for actions during the process of (practical) implementation, e.g. at local level. Second, our hypothesis on accountability is meant to remain fairly open: which direction it takes in terms of ambitions depends on the societal interests and preferences involved. If farmers opposing the WFD are the most influential stakeholders, for example, the hare may run off in the direction of low rather than high *environmental* ambitions (but instead may have high ambitions, e.g. in the field of agricultural production). A 'hare-like' constellation of Lundqvist's political-institutional factors does not appear to exclude this possibility. The findings more clearly confirm Hypothesis 3, claiming that concentration of responsibilities for *policy formulation and actual implementation* in one hand leads to more pragmatic goal-setting than in the case of separation of these responsibilities among different institutions and/or administrative levels. This link, moreover, appears in our analysis as fairly independent of the political context, i.e. more basically institutional than politically determined. Finally, the result of Hypothesis 4 about *public involvement* is less conclusive than the others. This probably has to do with the particular nature of the WFD, in particular its technical and procedural complexity which may prevent formal public participation to have a significant impact on the implementation process in most countries. Without downplaying these critical notes with regard to individual hypotheses, however, it should be stressed once again that our hypotheses, just like Lundqvist's original factors, are to be seen as a coherent package rather than as independent expectations. Considered in that manner – and leading to something like an aggregate 'diagnosis' of the political-institutional context relevant for policy formulation and implementation – our framework based on Lundqvist's seminal analysis of the hare and the tortoise turns out to be useful for both classifying and explaining differences in EU implementation processes.

Our study of WFD implementation in four countries gives rise to the expectation that the approach based on Lundqvist's seminal book could also 'work' for analysing and comparing other cases of EU implementation. Further research should testify this. In view of this, we would like to end with some general reflections on Lundqvist's set of political-institutional factors in relation to EU implementation.

In his original work Lundqvist presented his factors as general – so to say 'systemic' – features. Our analysis suggests that they are in fact more issue-specific (or even policy-specific in the case of WFD) than assumed at the outset. This seems plausible because not every policy field is organised in the same way. For example, both the regional water basin authorities in France and the water boards with their extensive tasks in water management in the Netherlands are quite specific for the water sector. In air pollution or nature conservation, the division of responsibilities between policy formulation and implementation (cf. Hypothesis 3) may be quite different. In Denmark, water problems have for a long time been more politicised than other environmental issues (Andersen 1997), relating to Hypothesis 1 (on visibility) and 2 (on accountability). Dependent on the policy field at stake, and even within the environmental area at large, one or more of the Lundqvist factors may be set differently, potentially turning the hare in one field into a tortoise in another.⁴ In other words, Lundqvist cannot be used to produce cultural typifications of countries in general, but must be contextualised.

A second, and related, point of consideration may be the distinction between incidental circumstances and structural political-institutional features of

implementation processes (see also Mastenbroek and Kaeding 2006), The critical role of the *Grenelle* in France, as described in section 4, appears as incidental rather than structural. It might be wise to distinguish between more structural institutional features of the political system, which were the initial focus of this and Lundqvist's analysis, and issue-related or context-dependent features of the process that additionally explain the implementation processes. In that respect, we see some variations in the type of explaining factors that is relevant in the four MS. In the French case especially, political issues may be argued to play a decisive role. In the English case, in contrast, incidental political factors are almost absent, the issue is basically treated as an administrative matter and thus it is mainly structural institutional factors that explain the level of ambitions. In the Danish case, and also to some extent in the Dutch case, we can see more of a mixture of institutional and political factors (e.g. the fairly sudden strategic abolishment of the Actors' Group by the Danish Government). However, it remains difficult to make a crystal-clear distinction between both types of factors, as political 'incidents' also take place within – and are in fact partly shaped – by the institutional structure which Lundqvist's factors try to describe.

Finally, and not totally unexpectedly, we have to address another factor playing a major role especially in France and the Netherlands: the EU variable. With the EC infringement arsenal on the one hand and environmental NGOs acting as watchdogs of EU legislation compliance on the other hand, France is subject to both significant European 'push' factors and forceful domestic 'pull' factors (Börzel 2003). Together these make the country quite eager to implement the WFD fully and properly in order to avoid a new EU prosecution. It is important to note, however, that not all the countries will behave the same in face of the 'EU threat' as we can see by comparing the French and Dutch implementation processes. As already stated, the French reputation as one of the more problematic implementers of EU (environmental) law and its wish to 'correct' this image entailed high ambitions from the very start and sustained strong targets upon time. The Dutch implementation process is also to be seen at least partly as a response to problems encountered in implementing other directives, notably the Nitrates Directive and the Air Quality Directive (VROM-raad 2008). In both cases, infringement procedures by the Commission went hand in hand with domestic lawsuits, facilitated by relatively easy access to justice in the Netherlands. In dealing with the WFD, the Dutch wanted to avoid both new domestic implementation problems and new EU infringement procedures. So there is a clear perception of EU threat also here, but in the Dutch case it prompted pragmatism rather than ambition.

There is good evidence, however, that the EU juridical weapon prompts a reaction in the other MS in our sample too. Denmark, for example, also hurried up the drafting of RBMPs after an infringement procedure was launched against it. Therefore, it might be worth 'adapting' Lundqvist's originally purely domestic framework to the specific requirements of an EU implementation study by bringing in the EU variable. We propose to do so by extending the accountability factor, so as to cover not only the relationship of politicians/policy makers to their domestic constituency and stakeholders, but also their relationship to the EU and its institutions. In this context, the history of the latter relationship, including experiences with the implementation of other directives, deserves closer scrutiny as it informs the way countries will respond to the 'EU threat'. Hence an additional hypothesis on accountability could read as follows: *the more politicians and policy*

makers feel they are held accountable by EU institutions, the more the level of ambition will be adjusted to the perceived adequate implementation process in front of the EU.

The remarks made above do not diminish the relevance of Lundqvist's thesis. On the contrary, they should be taken as further strengthening its value for understanding processes of EU implementation. Apart from highlighting some of the most relevant political-institutional factors explaining these processes, one of its strengths lies in the fact that it is sensitive to time issues. This sets it off against other theories of implementation which tend to focus on the early phases of the process. Indeed, Lundqvist's political-institutional factors can be applied to the different choices in the implementation process as a whole: to formal as well as practical implementation – or in other words, not just to the starting positions but to the entire race between the hare and the tortoise. This allowed us to characterise Denmark as a hare rapidly losing speed and maybe eventually having difficulty crossing the line in the leading group. For example, the approach by Falkner *et al.* (2007) would have depicted Denmark as belonging to the world of 'law observance' – and rightly so in its own terms, as it focuses on transposition only, but it would have missed the rest of the story. The same is true for the fit/misfit approach (Knill and Lenschow 1998, 2000), which builds its hypotheses entirely on the *initial* fit or misfit between EU requirements and national institutional characteristics. In our view, visibility, accountability, division of responsibilities and the influence of participation may be expected to play a role *throughout the process*, as our case studies can attest.

This observation may also be turned into a reflection upon policy practice. The implementation of the WFD has only just started. With its finish line lying far beyond the horizon (in 2027), the race between the hare and the tortoise looks in fact rather like a marathon. For the hare, the risk of distraction along the way is even bigger than in a race over a shorter distance. It may be necessary to keep up the pressure from time to time, for example by ensuring sufficient public participation throughout the process and consistently holding implementers accountable for their actions, through interest groups and – not least – the threat of unremitting enforcement by the EU. The WFD with its emphasis on participation and stakeholder involvement seems to be relatively well equipped for this. It is up to the Commission to maintain a sufficiently assertive enforcement strategy, e.g. in the case of delays during the process. For the tortoise, in contrast, the risk of distraction is limited. Once the administrative system has started, it will keep moving. The main concern is the pace at which it moves. In this context it may be particularly important that in both of our 'tortoise cases' (England/Wales and the Netherlands) policy formulation and implementation are concentrated in one institutional hand. Creating a strong and enduring commitment of these key actors to substantive long-term targets appears as essential for reaching the finish line in time. Rather than in an atmosphere of politicisation and controversy, the tortoise is likely to thrive in the more technocratic environment of knowledge exchange and policy learning in regular expert meetings – in good old comitology, in short. Our analysis suggests that countries do not only pursue different implementation strategies, but also need to be stimulated – or if necessary, be pressurised – in different ways to keep on track during the lengthy process of putting EU legislation into practice.

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Notes

1. The fable concerns a hare that went on and on stating that he was the fastest runner and that he was invincible. At a certain point the tortoise was fed up with the blustery attitude of the hare and challenged him to a race. The hare soon leaves the tortoise behind but, confident of winning, he soon decides to take it easy, e.g. by taking a nap midway. When the hare awakes, he notices that the Tortoise is way ahead and is only a small dot at the horizon. The Hare decides to make a sprint, but he has to conclude that his competitor has arrived before him, just by crawling slow but steadily.
2. This research project was financed by the Dutch Environmental Assessment Agency together with the (former) Ministry of Transport, Public Works and Water Management (see Uitenboogaart *et al.* 2009).
3. For a more detailed discussion of our assessment of a country's level of ambition in implementing the WFD, see: Liefferink *et al.* (2011).
4. Note that this is not to discard Lundqvist's original work. It must be borne in mind that he compared air pollution policies in two fundamentally different democracies, Sweden and the US, where systemic differences are much more likely to override internal differences between policy fields. Between the four West-European countries investigated in this study, differences *between* the systems are considerably smaller and differences between policy areas *within* those systems consequently become more visible.

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