



General Water Law

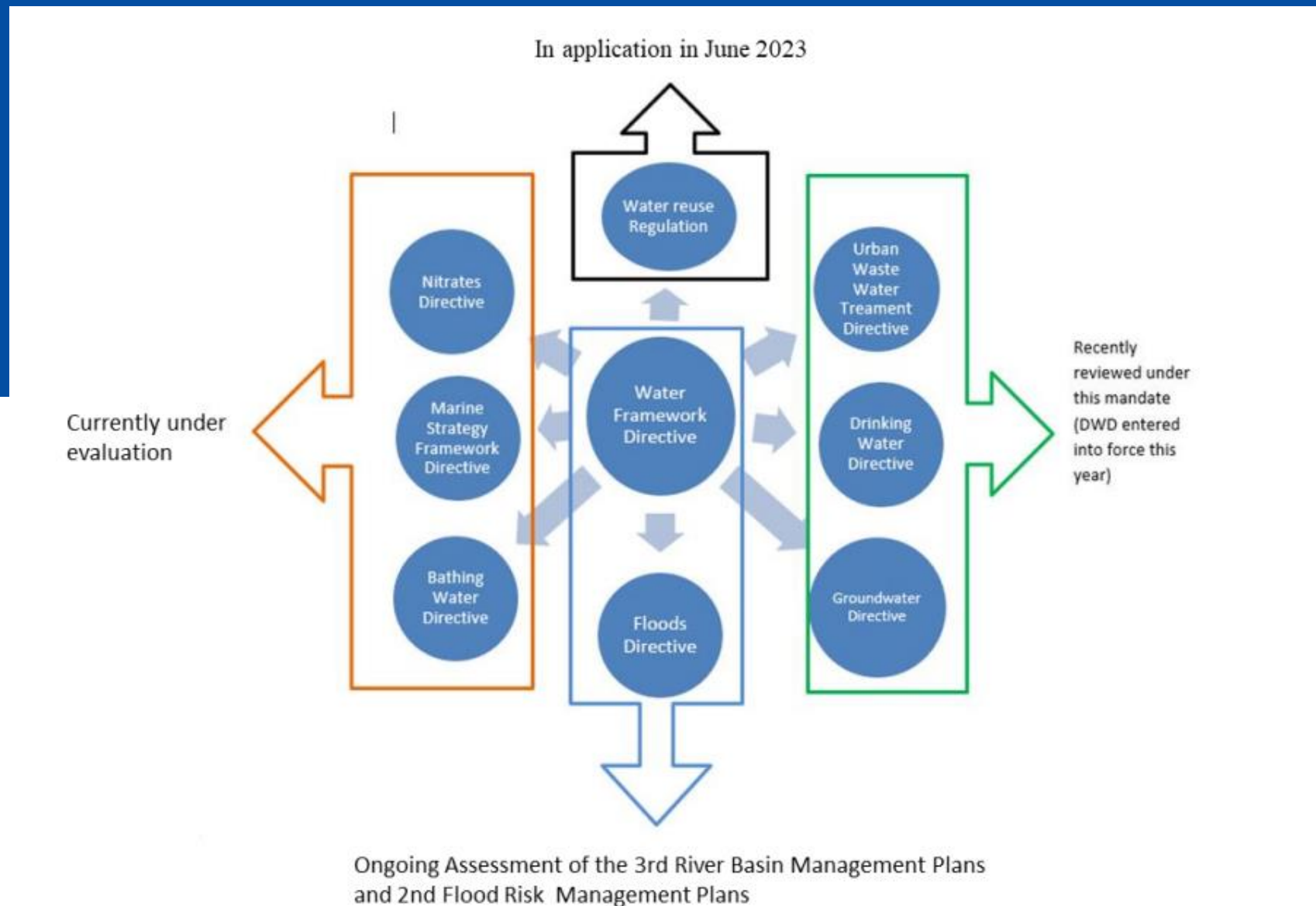


Claudia Olazábal – Head of Unit

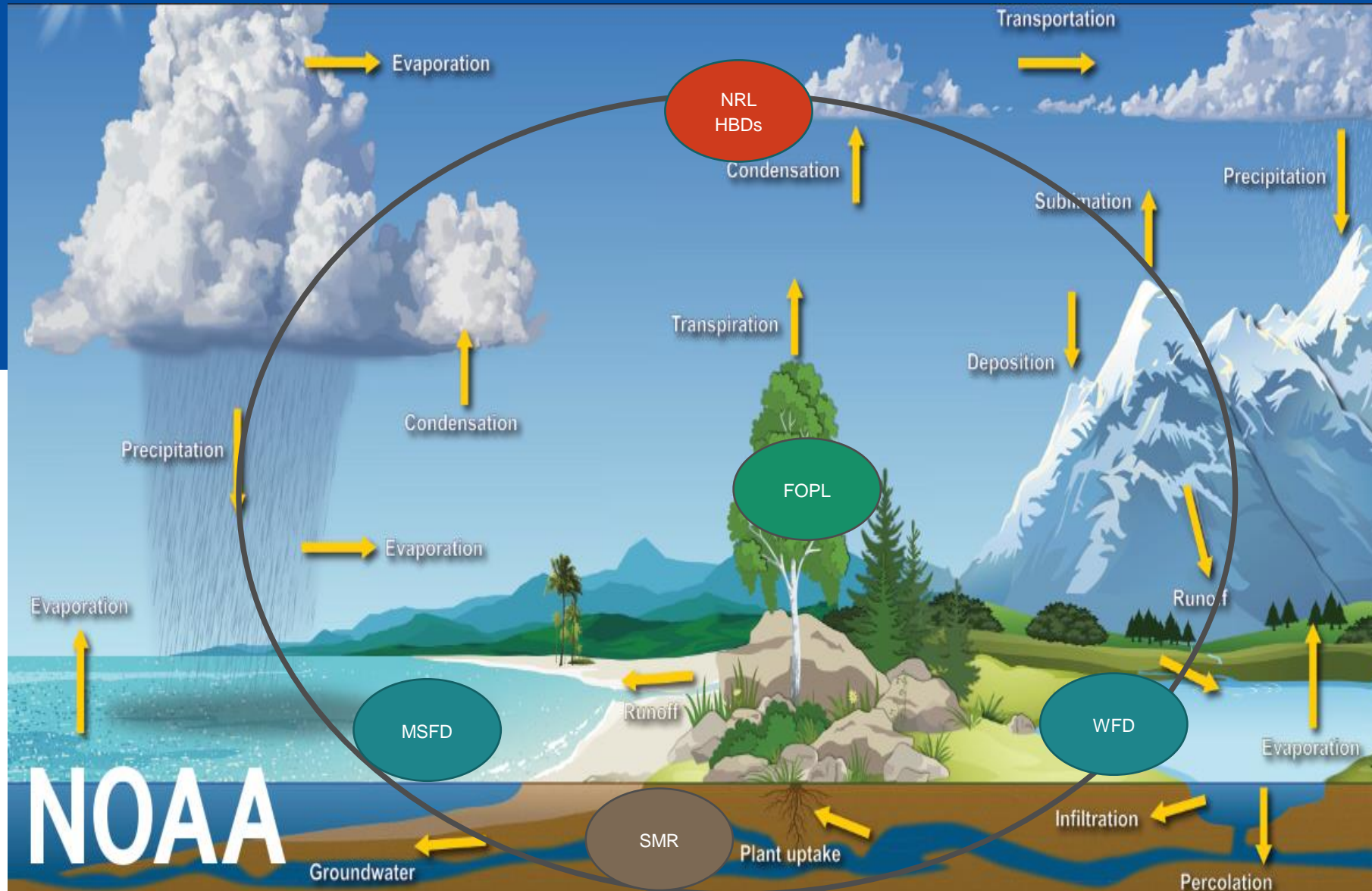
Sustainable Freshwater Management Unit – DG ENVIRONMENT

*EU Forum of Judges for the Environment -
Water Law – Barcelona 26-27 October 2023*

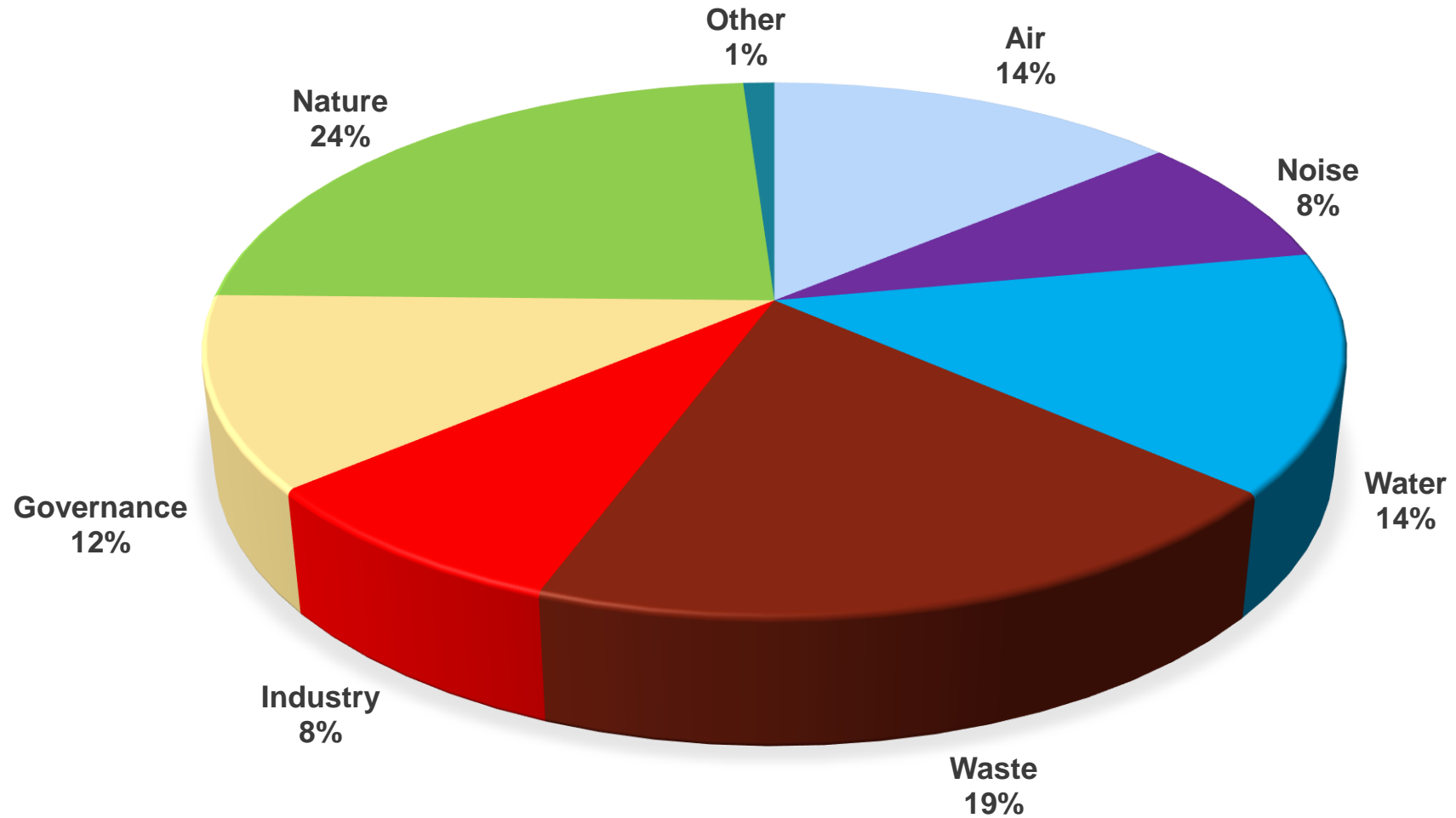
A water acquis in evolution



The water cycle – linked to a much larger acquis



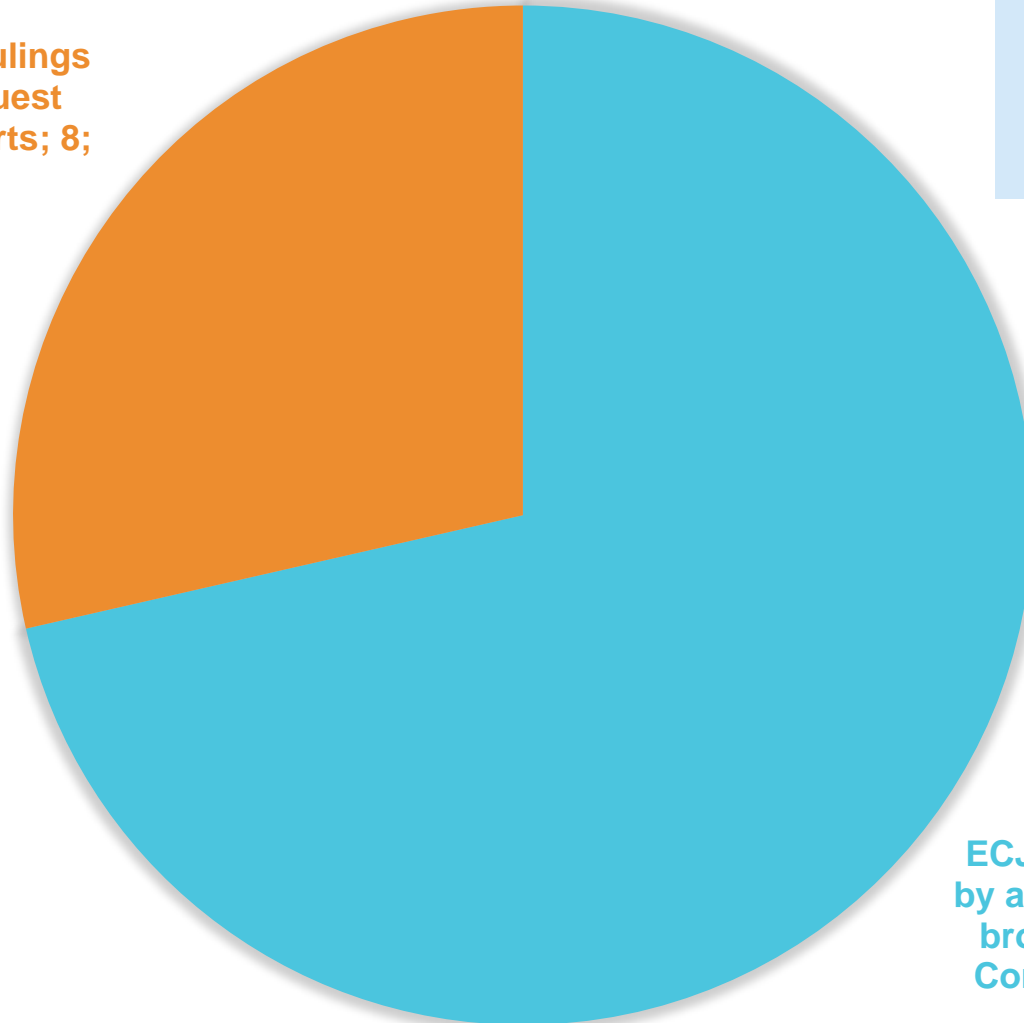
Statistics on the proportion of infringement cases open by the Commission on the basis of the environmental legislation



WHAT TRIGGERED THE WFD RELATED ECJ RULINGS

ECJ Preliminary rulings triggered by request from national Courts; 8; 29%

Many of the requests from national courts are linked to the interpretation of the non deterioration obligation



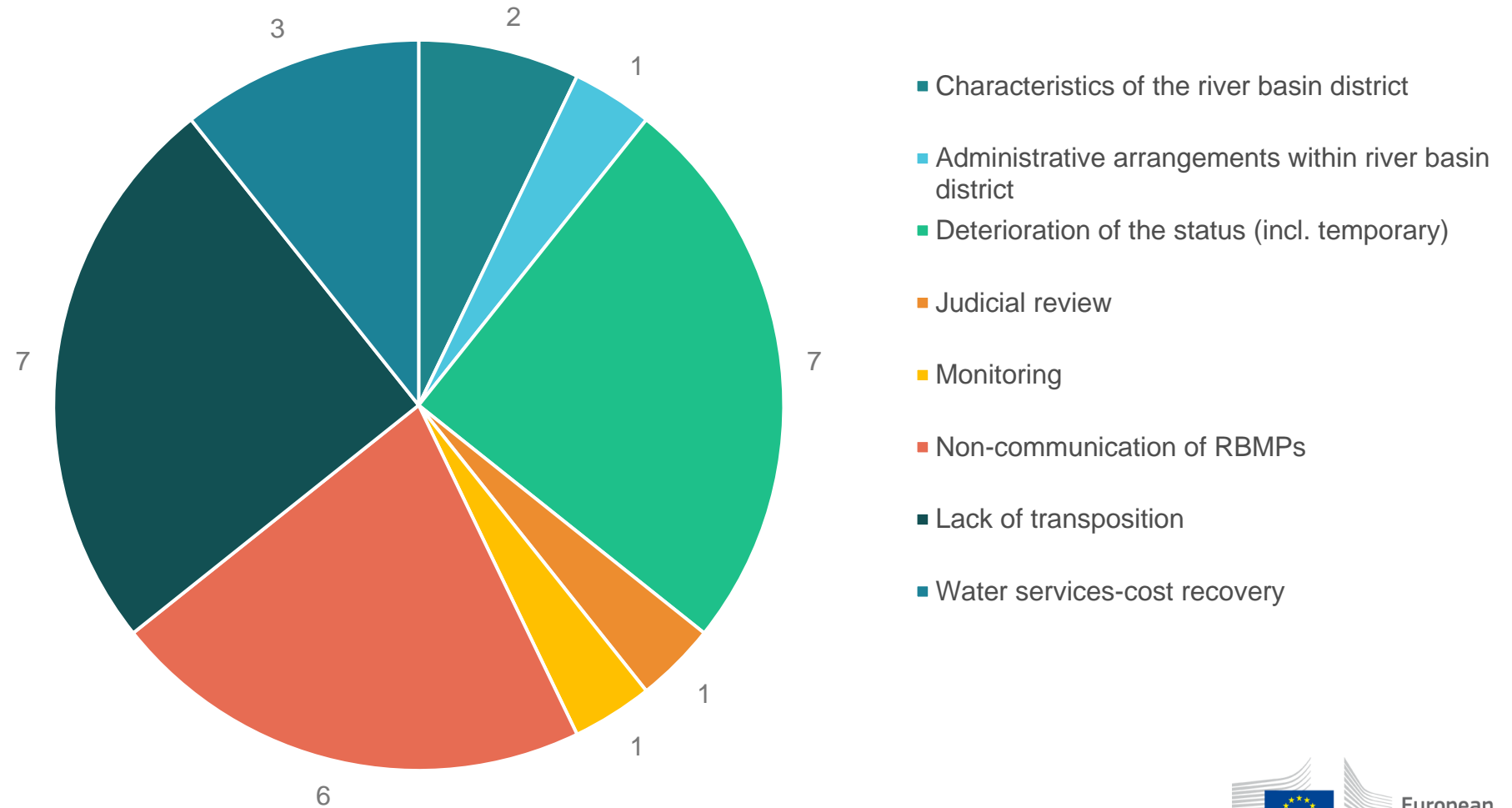
28 cases

ECJ Rulings triggered by an infringement case brought about by the Commission; 20; 71%

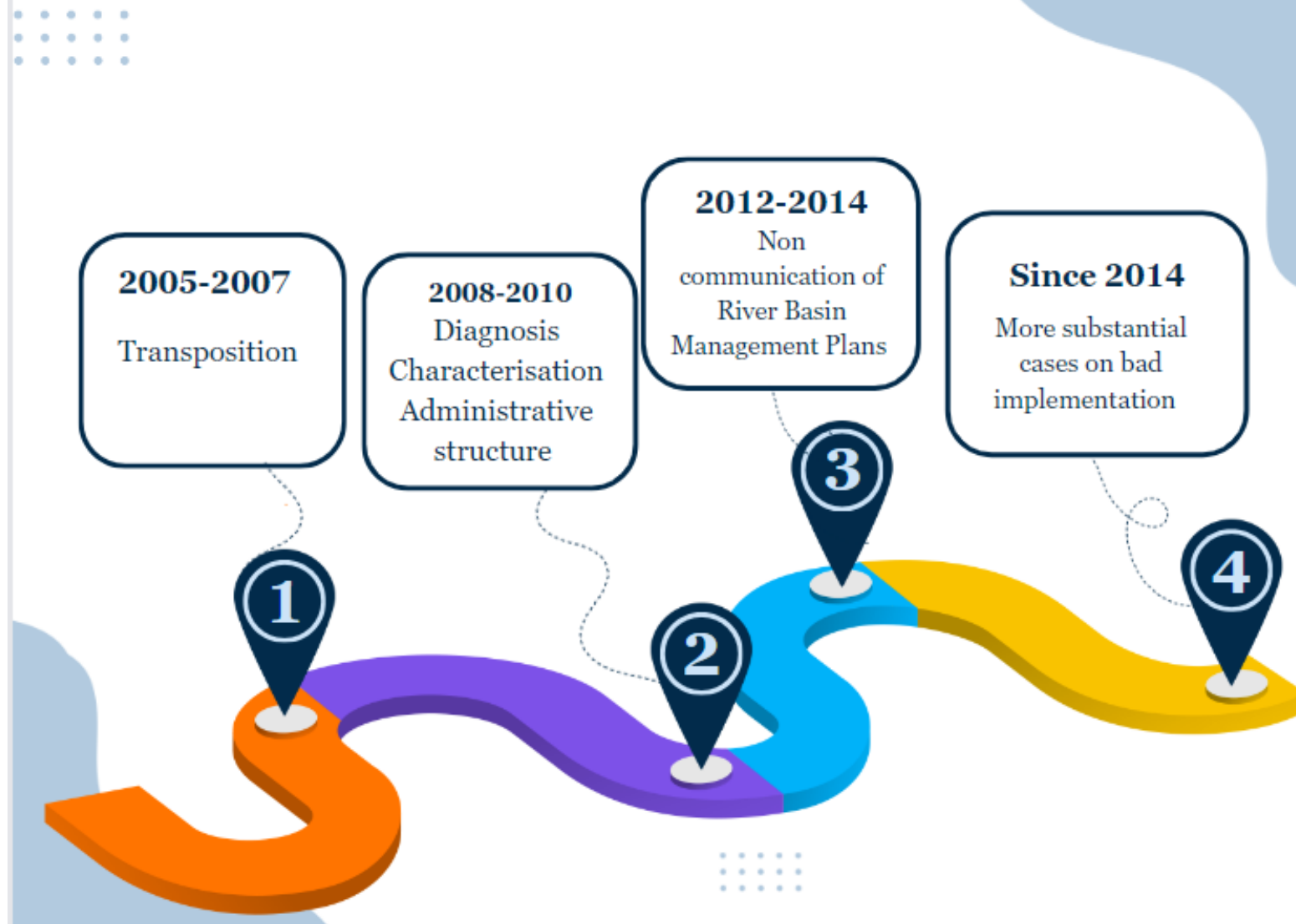
What were the main breaches that underpinned the cases



28 cases



EVOLUTION IN THE BASIS OF THE WATER RELATED CASES



Implementation cases brought by the COMMM

Since 2014

More substantial cases on bad implementation

4



European Commission v Federal Republic of Germany

Case C-525/12

Failure of a Member State to fulfil obligations— Directive 2000/60/EC — Recovery of the costs for water services — Concept of ‘water services’

European Commission v Republic of Austria

Case C-346/14

Failure of a Member State to fulfil obligations — Directive 2000/60/EC— Overriding public interest — Authorisation to construct a hydropower plant on the **Schwarze Sulm River** (Austria) — Deterioration of the water status

European Commission v Kingdom of Spain

Case C-559/19

Failure of a Member State to fulfil obligations – **Doñana** protected natural area– Directive 2000/60/EC -- Deterioration of bodies of groundwater – Absence of further characterisation – Appropriate basic and supplementary measures – Directive 92/43/EEC – Article 6(2) – Deterioration of natural habitats and habitats of species.

MITIGATED SUCCESS FOR THE COMMISSION



More groundbreaking ECJ rulings coming from requests from National Courts



NON DETERIORATION Breaking ground: the Weser ruling

(Reference for a preliminary ruling Directive 2000/60/EC — Article 4(1) — Environmental objectives relating to surface waters — Deterioration of the status of a body of surface water — Project for the development of a navigable waterway — Obligation of the Member States not to authorise a project that may cause a deterioration of the status of a body of surface water — Decisive criteria for determining whether there is a deterioration of the status of a body of water)

Case C-461/13,

REQUEST for a preliminary ruling from the Bundesverwaltungsgericht (Germany)
Bund für Umwelt und Naturschutz Deutschland eV vs Bundesrepublik Deutschland,

- ❑ Making new projects subject to prior assessment and authorisation
- ❑ Strengthening the implementation of the WFD and mainstreaming of non-deterioration principle in EU law (impact on other policy areas CAP, Taxonomy, RED, RRF, NZIA, CRMA, etc.)

More groundbreaking ECJ rulings coming from requests from National Courts

Access to justice



Although there are no explicit provisions on access to justice in the WFD, some rulings have clarified such possibilities

Cases:

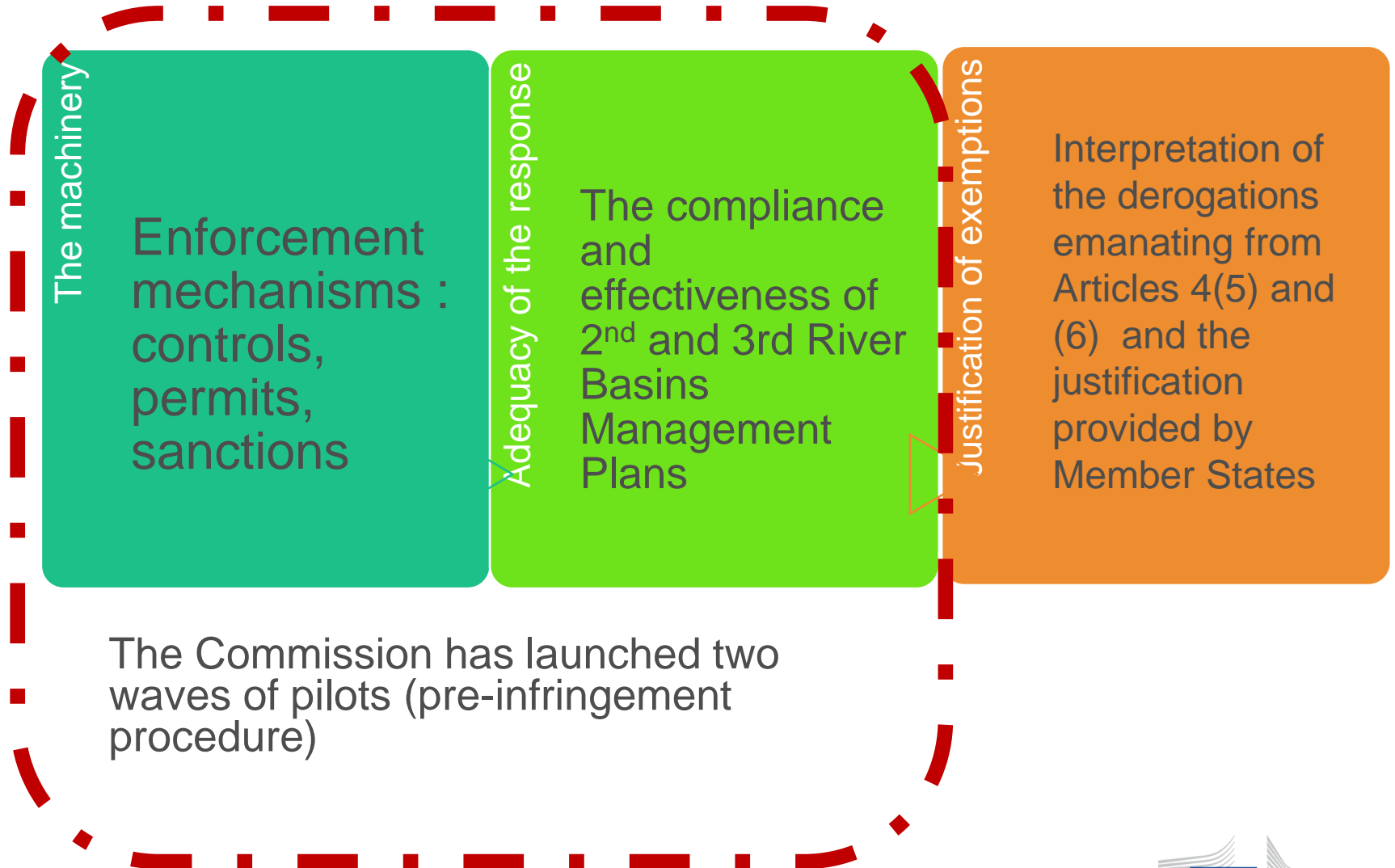
C-197/18

- Request for a preliminary ruling from the Verwaltungsgericht Wien Directive 91/676/EEC — Protection of waters against pollution caused by nitrates from agricultural sources - Rights of individuals to have such a programme amended — Locus standi before the national authorities

C-535/18

- Request for a preliminary ruling from the Bundesverwaltungsgericht- Public participation in the decision-making process - Irregularities vitiating the procedure for approval of a project - Access to justice - Limitations laid down by national law - Directive 2000/60/EC - EU action in the field of water policy - Deterioration of a body of groundwater -Right of individuals to take measures in order to prevent pollution - Standing to bring proceedings before the national courts

The thrust of enforcement in the future



Ongoing study on Article 4 (5)

Article 4(5) WFD allows achieving **less stringent environmental objectives** where bodies of water are so affected by **human activity** or their natural condition is such that achieving good status would be **infeasible** or **disproportionately expensive**.

This is subject to **justification** in RBMPs, **no deterioration** below the level set, **maximum mitigation** and six yearly review

Study on-going to support EC to clarify

- ❑ - the extent of justification required under this provision
- ❑ - the minimum conditions of any methodology applied to assess disproportionate cost

More information at [wfd - Library \(europa.eu\)](https://wfd-library.europa.eu)

Challenges



Lack of data or data is too old



Limited human resources



Interpreting the flexibility provided by the WFD to achieve environmental objectives

The toolbox for enforcement



- Legal proceedings
- Structured dialogues with MS
- Empowering national courts (ie Forum of Judges meeting in Barcelona next week on the water acquis)
- Facilitating access to Justice
- Improving data access so that whoever brings a case to the court can underpin the case with accurate and recent information
- Use of remote sensing to gather almost real-time data to redress situations
- Use of DNSH principle for EU funding

Thank you

claudia.olazabal@ec.europa.eu

