

SWIM and Horizon 2020 Support Mechanism

Working for a Sustainable Mediterranean, Caring for our Future

Good water governance, focusing on regulatory aspects and the design, monitoring and enforcement of policies

Module 3: Implementation and enforcement
Law enforcement approaches

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Module 3: Implementation and Enforcement Of Policies

Law enforcement approaches

Law Enforcement Approaches

Economic approach (Polluter pays principle, recovery of costs)

Water pricing

Taxes collection

Pollution fees

Water rights trading ...

Regulatory approach (Command and control)

Permitting system

Compliance controls by inspection administration

Administrative and criminal sanctions

law enforcement



Voluntary approach...

Preliminary Conditions

Strong institutional framework

Central level responsibilities well defined by law

Efficient interministerial exchanges (commission)

Clear legal and regulatory corpus and definitions (water code)

Visible local authorities (good connection)

Well-trained staff

Sound resource planification and administration

Clear watershed and sub-basin identification (Quantitative and qualitative)

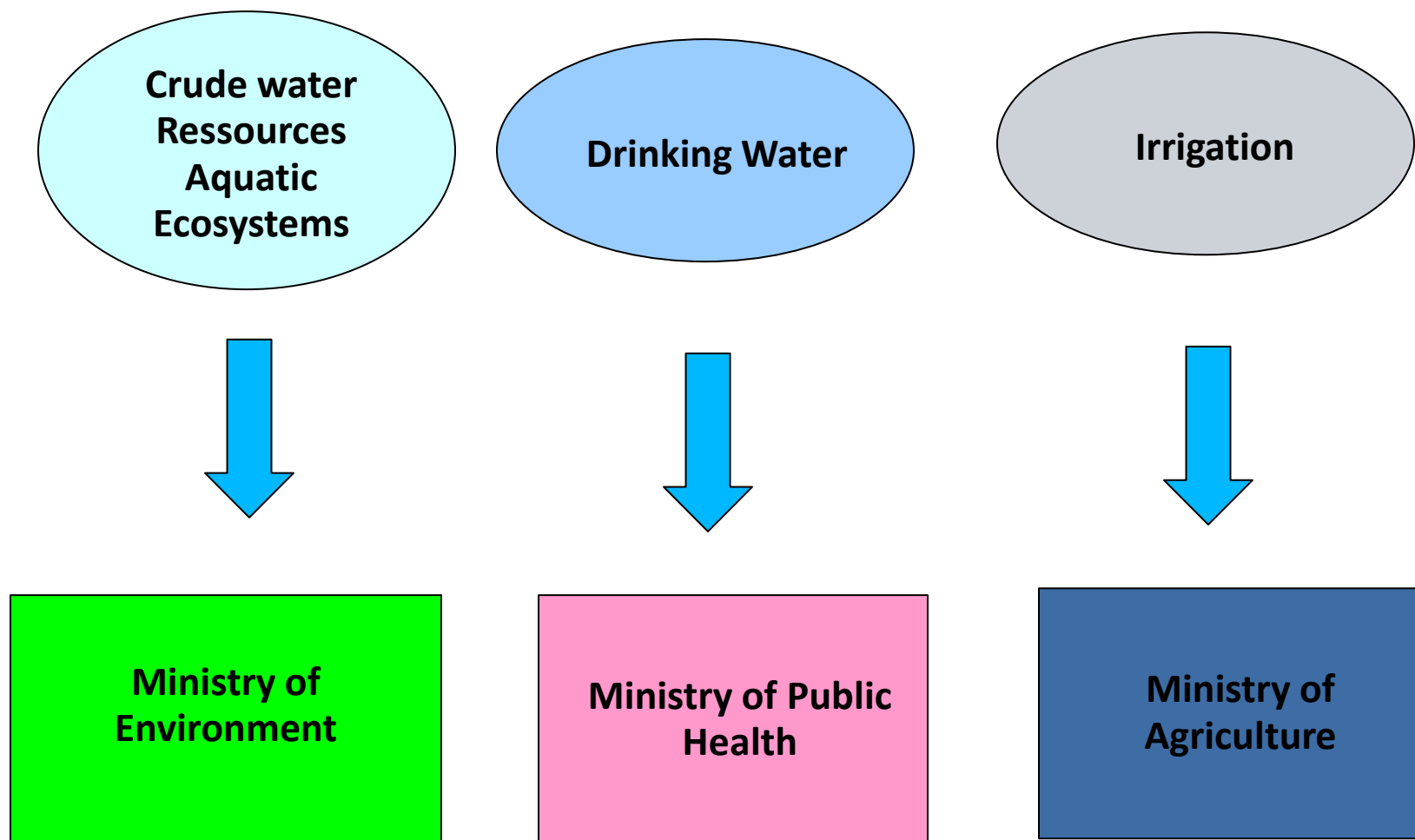
Efficient management plans and documents (status, objectives...)

Structured basin authorities (staff, budget, resources)

- National
- 6 Hydrographic basin
- 13 Regions
- 100 Departments
- (36 000 Municipalities)



Clear Responsibilities (France)



Interministerial Water Commission (France)

Composition

Representatives of the Ministries involved in water

- Chairman: Water Director (or representative)
- Members: Environment, Agriculture, Industry, Public Health, Interior...

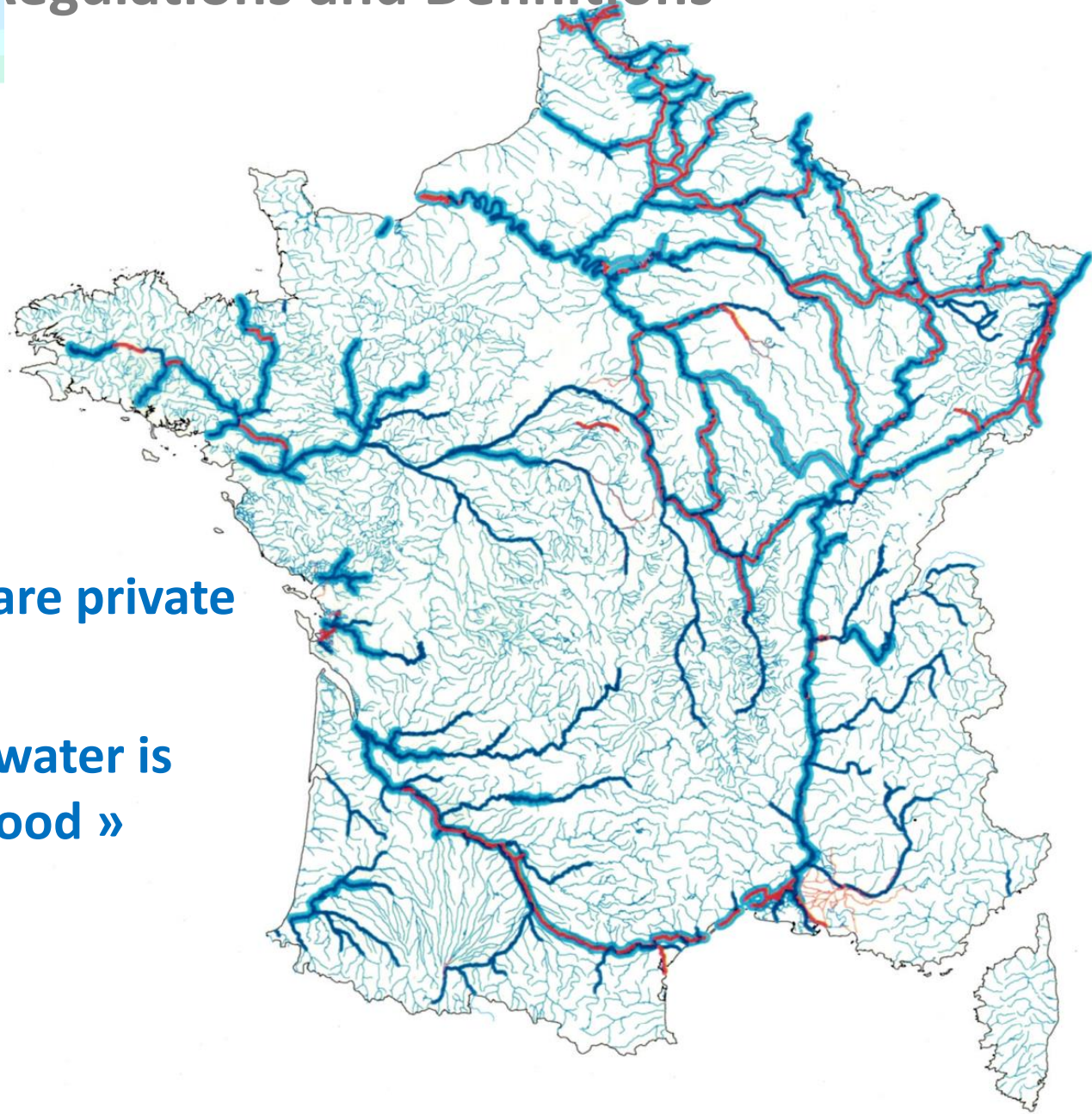
Attributions

Advises the Minister in charge of water about every draft law, decree, order being prepared upon water issues

- Consultation is compulsory
- Procedure can be cancelled if this step is skipped

Clear Legal and Regulations and Definitions

**97 % water beds are private
but
100 % surface water is
« common good »**





Legal Definition of a Stream

A natural bed at the beginning

+

A permanent and sufficient flow

France : Legal Status of Water

Water is a common good

Public Riverbeds (waterways)

16 500 km

Registration

Bed + Right to use

Delimitation : *Plenissimum flumen*

Obligation of maintaining

Special protection

Easements : tow path, way along, fishing

(Exception : water itself is public in overseas zones)

Private Riverbeds

250 000 km

Bed and banks are privately owned

Right to use water

Obligation of maintaining

Groundwater

Accepted General Legal Principles

1. Water is a single unitary resource
2. Water is a common good of the Nation
3. Water preservation is of general interest
4. Priority is given to drinking resource
5. Water resource management must be integrated and sustainable
6. Climate change shall be included in policies
7. The use of water resources must be planned
8. State controls the uses
9. The basin level is the most appropriate geographical unit
10. The local authorities must be taken into account

Integrated Water Resource Management



In France, Basin Committees are like Water Parliaments



40 % local
elected
authorities

20%
State

40 % users
NGO, farmers, industries,...

Strong Basin Institutions (since 1964)

6 Continental water agencies

- Adour-Garonne
- Artois-Picardie
- Loire-Brittany
- Rhine-Maas
- Rhone-Mediterranean sea
- Seine-Normandy

+ 4 oversea water offices



What are Basin Agencies ?

Principle

- Geographic, hydrographic unity (= Basin District)
- Financial solidarity

Nature

- Public administrative authority decentralised at basin level
- Under supervision of Ministry of Environment

Actions

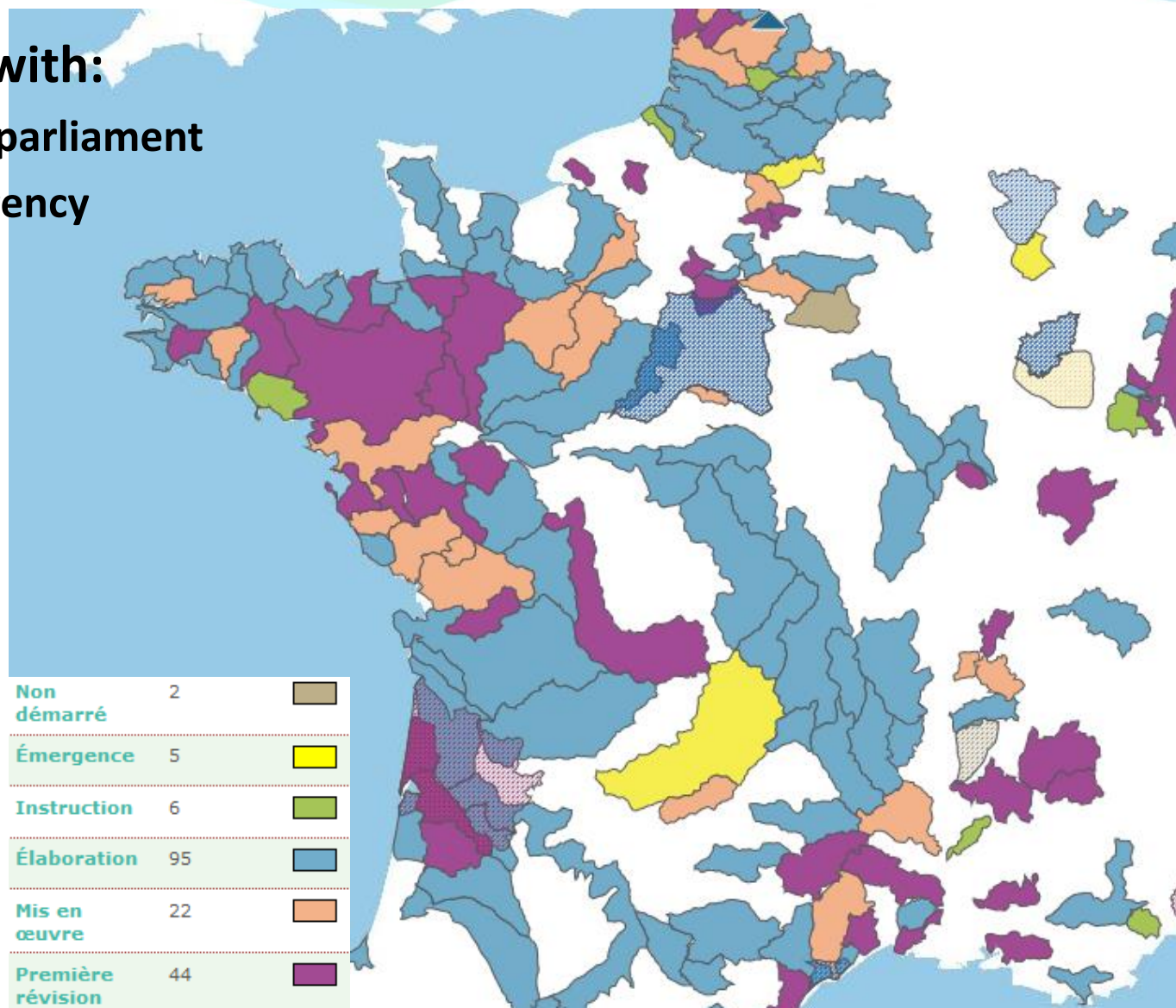
- Taxes collection & subsidies distribution
- Research studies and data collection
- No works, building nor permit issuance

Sub-Basin mapping (since 1992)

175 sub-basins with:

- Sub-basin local parliament
- “Mini” water agency
- “Mini” RBMP

= 50% territory

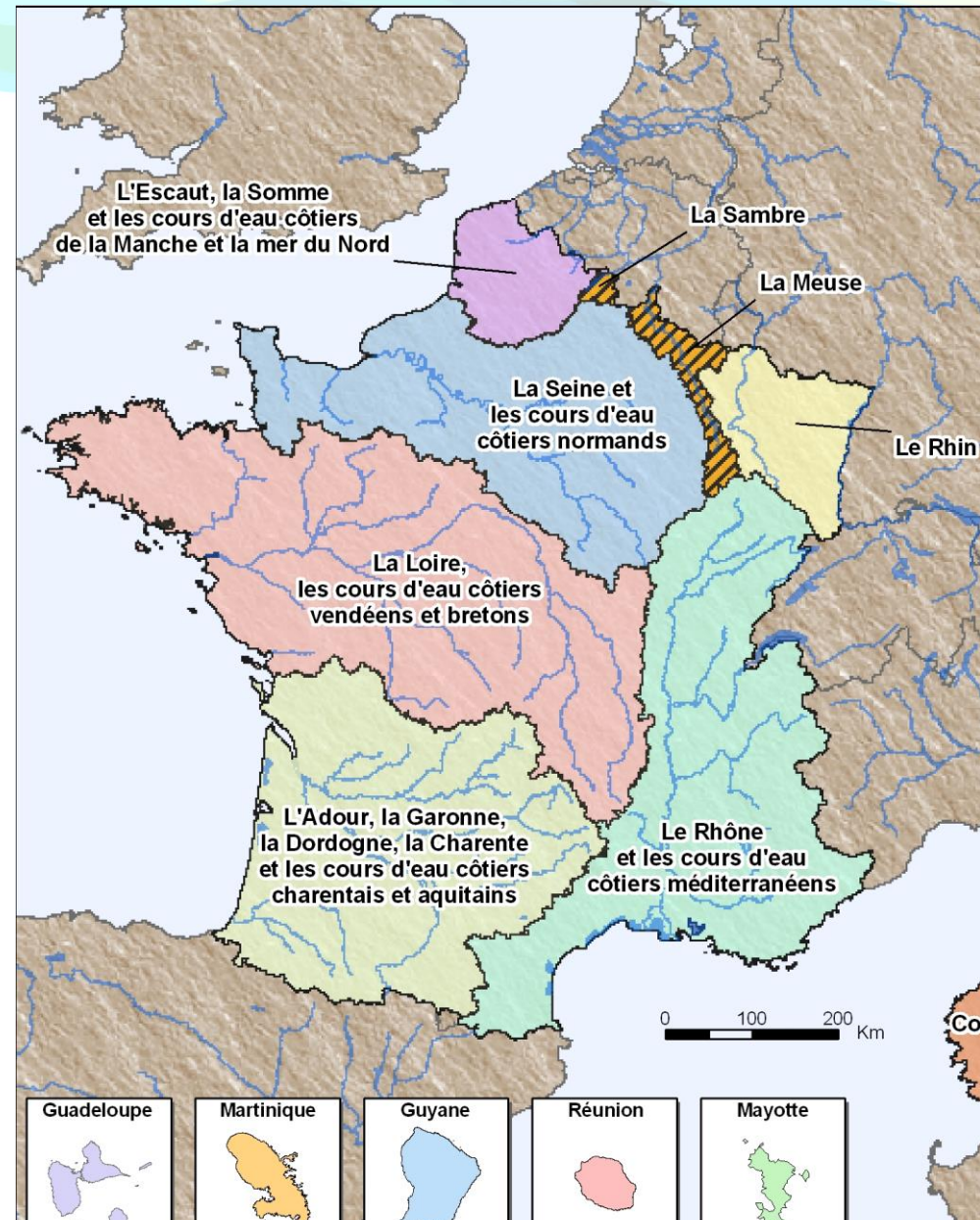


Compliant with the EU Water Districts (since 2000)

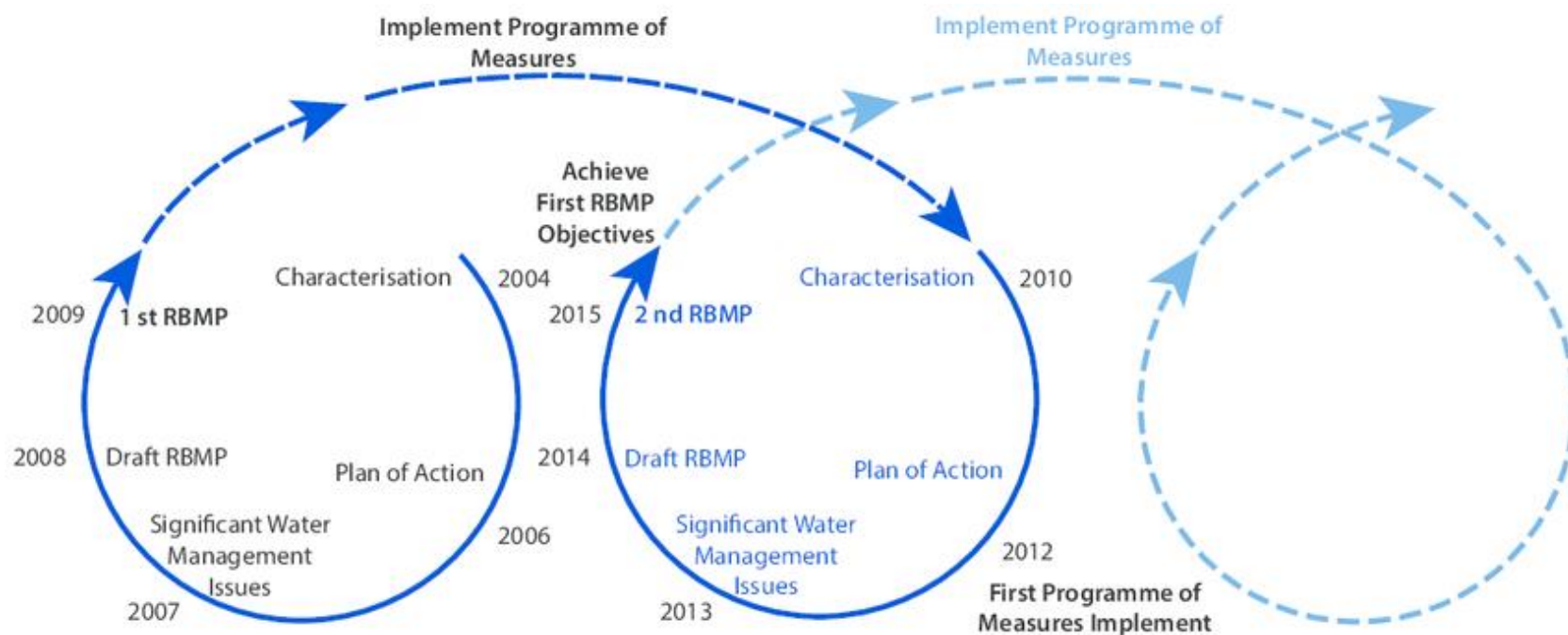
Identification of the river basin districts for a water management in compliance with

European Directive
WFD 2000/60

Each Agency drafts a strategic document called
« management plan » (6
RBMP) which is voted by the
Basin Committee



River Basin Management Plans Lifecycle (since 2000)

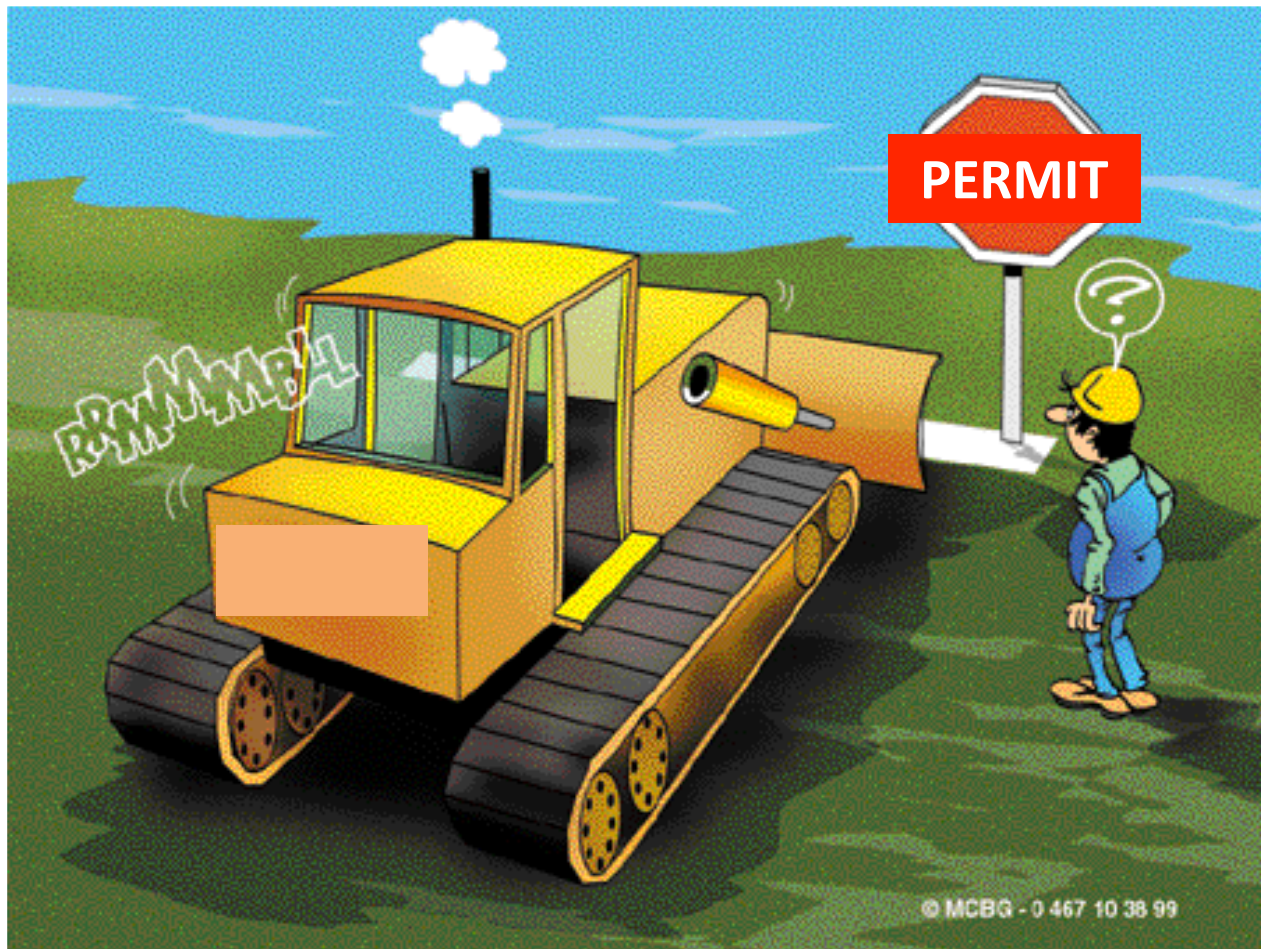


**Continuous improvement,
Good status in 2015,
No deterioration,
6 years lifecycle,
Justified derogations,**

**Evaluation, monitoring,
Program of mesures,
Transparency, Participation,
Economic justification,
Reporting.**

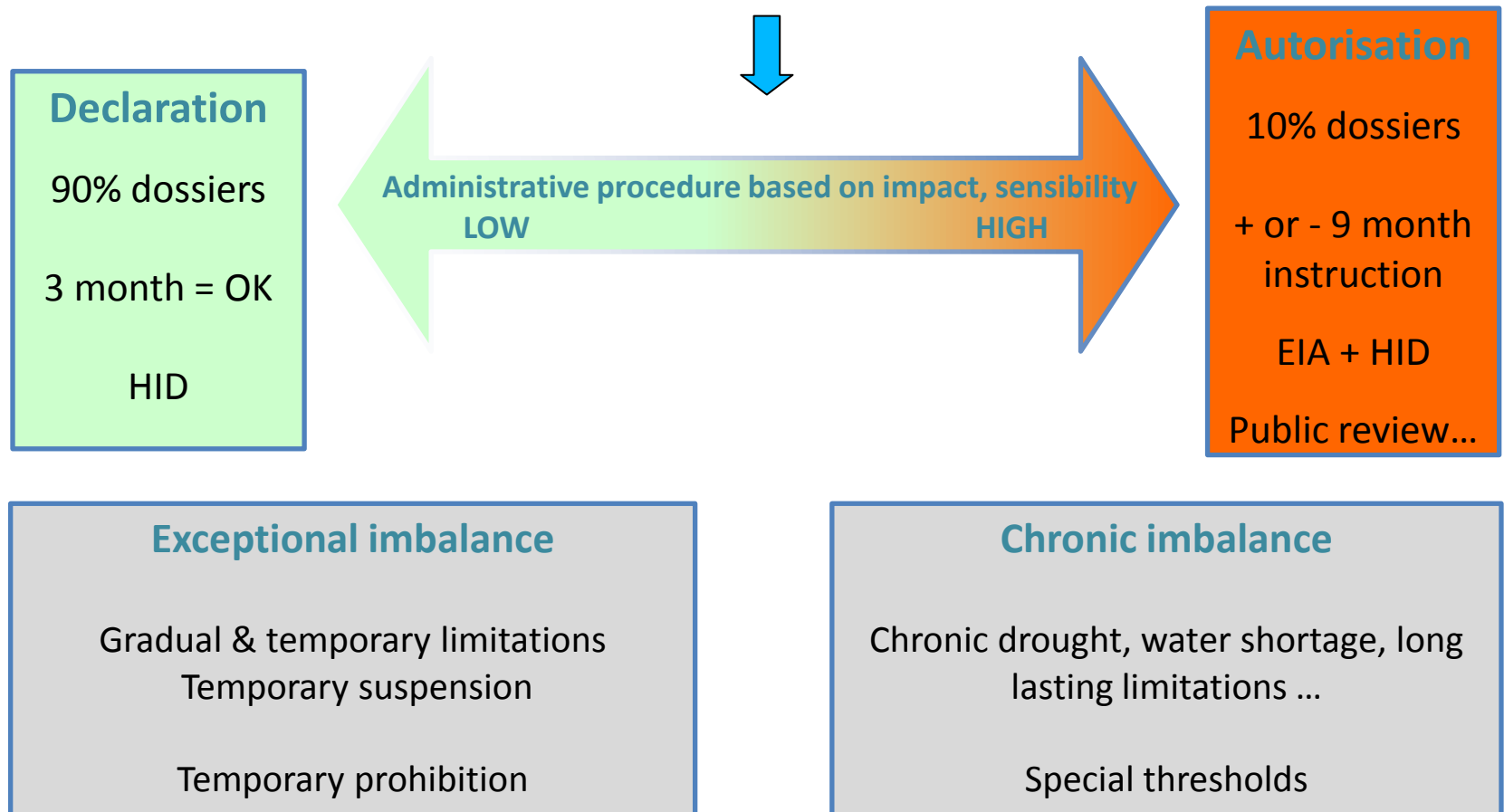
Law Enforcement Approaches

Permitting System



Permitting System

National list of 45 different types of combinable classified activities & works
= Approx. 17000 administrative procedures /year



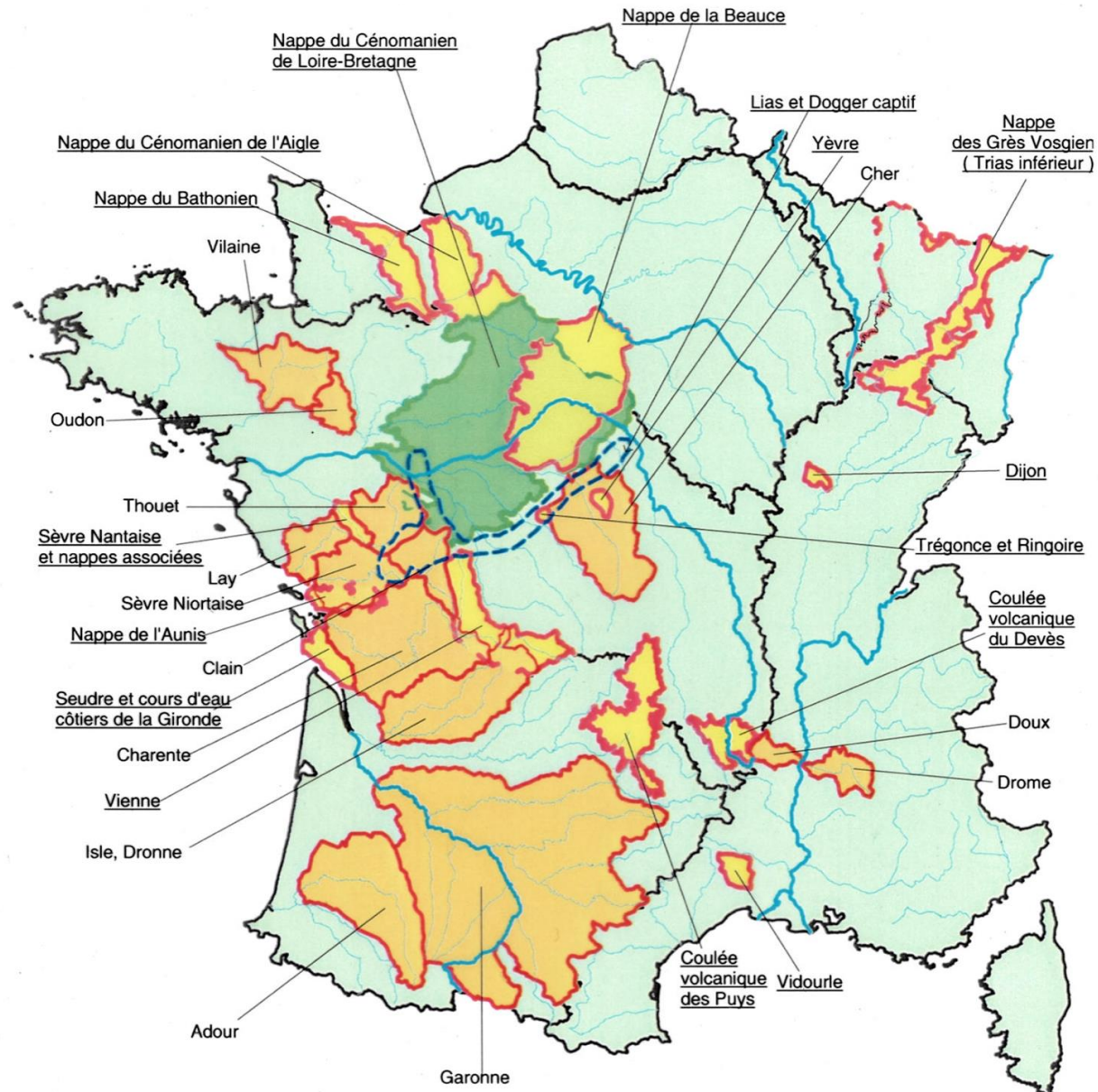
Chronic Imbalance Zones

No Chronic Imbalance

Chronic Imbalance

Chronic Imbalance

Chronic Imbalance



Off-Takes Permits (examples 1, 2 & 3)

1.1.2.0 Groundwater abstractions

≥ 200 000 m³/year



Autorisation



8 m³/h

> 10 000 m³/year
< 200 000 m³/year



Declaration



Other

1.3.1.0 Chronic imbalance

1.2.1.0 Surface water abstraction

> 1000 m³/h or 5% flow



Autorisation

Comprised between 400 m³ and 1000 m³/h
or comprised between 2% and 5% of the flow



Declaration

Releases Permits (examples 4 & 5)

2.1.1.0 Sewage treatment plants

> 600 kg BD05



Autorisation

> 12 kg and < 600 kg BD05



Declaration

2.1.2.0 Manure spreading

> 800 t/year or total nitrogen > 40 t/year



Autorisation

comprised between > 3 t/year < 800 t/year



Declaration

or

Total nitrogen comprised between
> 0,15 t/year and < 40 t/year



Declaration

Permits for Activities Impacting Aquatic Systems (examples 6 & 7)

3.2.3.0 Artificial lake

Superior or equal to 3 ha surface



Autorisation

Superior to 0,1 ha and inferior to 3 ha surface



Declaration

3.3.1.0 Wetland drainage

Superior or equal to 1 ha surface



Autorisation

Superior to 0,1 ha and inferior to 1 ha surface



Declaration

Activities Impacting Aquatic Systems (example 8)

3.1.1.0 Installations, building in the minor bed of a stream

Obstacle to flooding



Autorisation

Obstacle to ecological continuity

≥ 50 cm



Autorisation

> 20 cm

< 50 cm



Declaration

Activities Impacting Marine Environment (example 9)

4.1.2.0 Port development works and other works made in contact with the marine environment and having a direct impact on this environment:

1 ° Of an amount greater than or equal to 1 900 000 Euros



Autorisation

2 ° Of an amount comprised between
160,000 Euros and 1,900,000 Euros



Declaration

The Consequences of Two Different Procedures

Declaration = non opposition principle

- Incl. Hydrological Impact Document (HID)
- Delivered by Prefect services (3 month)

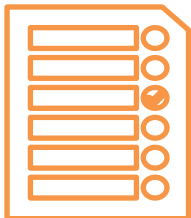


– > **Declaration receipt**

Based on national technical prescriptions (orders)

Authorization = deeper investigation (impact...)

- Incl. HID + EIA + public participation...
- Delivered by Prefect services (9 month)



– > **Authorization Order**

Based on national technical prescriptions (orders) tailored with complementary case-by-case prescriptions

Focus on : Hydrological Impact Document

Content

- Origin of the chronic, occasional or accidental impacts
- Impact on water and on human activities
- Influence of seasonal variations
- Measures for reducing the impacts
- Compatibility with RBMP and Sub-RBMP
- Impact on Natura 2000 sites

Focus on : Hydrological Impact Document

Administration control

- Absent = illegal procedure
- Incomplete or insufficient = slow down procedure

Court control

- Environmental Impact Assessment + Hydrological Impact Document are in the heart of the Judge's control
- Authorisation cancelled for absence or insufficient of report on compatibility with RBMP and Sub-RBMP or endangered species not taken in account

Law Enforcement Approaches

Inspection Administration & Compliance Controls

Short Video on French Water Police



<https://www.dailymotion.com/video/x67x9t0>

Water Police Inspection Corps

Responsibility : Ministry en Environment (via Prefects) :

- Coordinated by special service (departement / Prefect level)
- Uniforms and weapons
- 1000 agents
- 30 000 controls / year
- 3500 legal reports



Water Police Duties

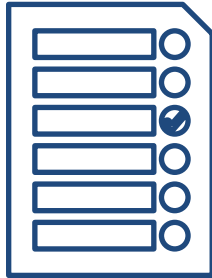
Both administrative and judiciary roles:

- Administrative controls :
 - Based on declaration receipt or authorization order
 - On paper & on site controls
 - Regular or without notice
- Criminal investigations and reports :
 - Research based on public complaints, judge's request...
 - Ascertainment based on any existing criminal legal definition

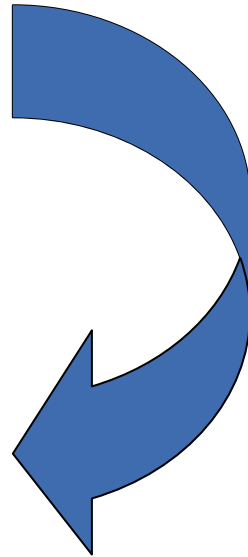


Administrative and criminal sanctions

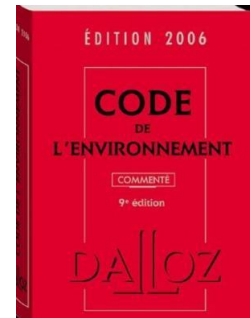
Administrative and Penal Sanctions



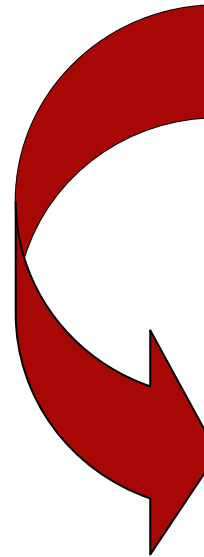
Autorisation
declaration
permit



Administrative sanctions



Environmental code
Water law...



Penal sanctions

Administrative Sanctions

Special inspection agents
from central and local
administrations

- Finding of the irregular situation
- Formal mandatory notice
- Technical prescriptions
- Budget retention
- Works execution (substitution)
- Suspension of activity
- Closing down
- Fees...



Urgent situations
No direct victims
Simple procedure
Efficient results

Categories of Penal Sanctions

- **Crimes:** environmental terrorism
 - **Offenses:** operation without authorization permit, failure to comply with a formal notice, barrier to inspection. Up to € 75,000 € 150,000 penalty. From 1 up to 2 years imprisonment.



- **Violations:** operation without declaration permit.... Penalties up to € 1500 for a natural person and € 7500 for a legal entity.

Examples of Penal Sanctions

Water pollution

⇒ up to € 75,000 / 2 years in prison

Destruction of fish

⇒ up to € 18,000 / 2 years in prison



+ Complementary penalties: display by press, confiscation of property (vehicle, boat, plane), prohibition to exercise up to 5 years, site restoration...

+ After justice procedure initiated by General prosecutor or victim (several years, with appeal...) or both.



Deterrent / preventive effect
Possible victims civil compensation

Penal Transaction Mechanism

General prosecutor can initiate a penal transaction before the criminal action is opened. Must be accepted by the polluter. The transaction is approved by the prosecutor after negotiation on conditions / context: depending on the circumstances and gravity of the offense, the personality of the perpetrator and its resources and charges

Capped: 1/3 of the fine due

The transaction extinguishes the penal action to the payment of the fine (not the civil action)



Effectiveness

Possible victims civil compensation

SWIM-H2020 SM

For further information

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Thank you for your attention.

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