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THE INSECURITY OF FOOD SECURITY LAW IN EUROPE: THE FRENCH CASE OF AGRICULTURAL WATER*

Avrupa'da Gıda Güvenliği Mevzuatının Güvensizliği: Fransa'da Tarımsal Su Örneği

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Abstract

Food security law in Europe is paradoxically marked by legal insecurity. In addition to the hesitations of the Common Agricultural Policy under the influence of political and climatic uncertainties, there are also weaknesses at the national level that legislators have been unable to overcome. The case of agricultural water is symptomatic of these shortcomings. The combined intervention of a diverse range of actors, operating at overlapping levels, creates a complex legal framework that is further complicated by administrative litigation. Beyond the perennial debates on simplifying the administrative maze and on the effectiveness of environmental law, particularly in the agricultural sector, this study claims that a two-pronged approach is necessary. Firstly, it focuses on adapting agricultural water law to local issues, whether related to resource availability or geographical characteristics. Secondly, legislators must strengthen the applicable framework by utilizing the full range of legal instruments at their disposal. Only at this price can a better distribution of scarce water volumes be achieved.

Keywords: Food Security, Common Agricultural Policy, Administrative Law, Water Reservoirs, Climate Change

Öz

Avrupa'daki gıda güvenliği mevzuatı, paradoksal bir şekilde hukuki belirsizlikle karakterize edilmektedir. Siyasi ve iklimsel belirsizliklerin etkisi altındaki Ortak Tarım Politikası'ndaki tereddütlerin yanı sıra, yasama organlarının aşamadığı ulusal düzeydeki zayıflıklar da mevcuttur. Tarımsal su konusu, bu eksikliklerin tipik bir örneğidir. Birbiriyle örtüşen düzeylerde faaliyet gösteren çok çeşitli aktörlerin birleşik müdahalesi, idari davalarla daha da karmaşık hale gelen karmaşık bir hukuki çerçeve oluşturmaktadır. İdari labirentin basitleştirilmesi ve özellikle tarım sektöründe çevre hukukunun etkinliği konusundaki bitmek bilmeyen tartışmaların ötesinde, bu çalışma iki yönlü bir yaklaşımın gerekli olduğunu savunmaktadır. İlk olarak, çalışma, kaynak mevcudiyeti veya coğrafi özellikler ile ilgili olsun olmasın, tarımsal su hukukunun yerel sorunlara uyarlanmasına odaklanmaktadır. İkinci olarak, yasa koyucular, emrindeki tüm hukuki araçları kullanarak mevcut çerçeveyi güçlendirmelidir. Ancak bu bedel karşılığında kıt su kaynaklarının daha iyi bir şekilde dağıtımı sağlanabilir.

Anahtar Kelimeler: Gıda Güvenliği, Ortak Tarım Politikası, İdare Hukuku, Su Rezervuarları, İklim Değişikliği

Introduction

Wide farmers contests occurred at the beginning of this year in France and elsewhere in Europe (Gagnebet, 2025). At the heart of this historic contestation was access to water. Securing water projects for farmers helps insuring what is fashionable to call 'food sovereignty' (Vie publique, 2024). The idea is that, owing to the European Union (EU) law, especially regarding water and pesticides, and French

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environmental protesters, access to water is compromised. The same would therefore apply to the right to food of each French citizen.

This national concept of food sovereignty, which is very different to the one known from international alternationalist movements (Food and Agriculture Organization, 1996), is linked to food security. The French Food Sovereignty Law of 2025 (Law No 2025-268 of March 24, 2025) on guidelines for food sovereignty and generational renewal in agriculture (Official Journal of the French Republic (OJRF), 2025a) presents food security as one of its components.[2] This national appetite over water right in the name of food security paradoxically generates insecurity in the legal framework. No less than two laws regarding water and agriculture were voted in France last year (Law No 2025-268 aforementioned, and Law No. 2025-794 of August 11, 2025, known as the '*Duplomb*' law) aimed at removing constraints to the exercise of the profession of farmer (OJRF, 2025b; Grimonprez, 2025b). There are two more laws currently going through the legislative process (Emergency Draft Law (2026) No 2632 for agricultural protection and sovereignty, tabled at the Presidency of the National Assembly on Wednesday, April 8, 2026; also see the Law proposal No 330 (2026) aimed at mitigating over-regulation relating to the use of plant protection products which is detrimental to European competition in order to avoid the disappearance of certain agricultural sectors, tabled at the Presidency of the Senate on Friday, January 30, 2026). The Emergency Draft Law No. 2632 intends, like the 2025 Food Sovereignty Law, to encourage the development of water storage for agricultural uses by adapting existing administrative procedures and litigation. The previous law has not yet fully come into effect, and a new one is already being prepared. Instead of simplifying the legal framework (the official goal of such laws), its complexification is achieved. More and more derogations – some water projects for some farmers – are in the scope of the laws.[3]

Moreover, these new French laws feed doubts about the effectiveness of EU laws. EU legislation does not need it as it is already very unsecure. The new Common Agricultural Policy (CAP) 2023-2027 focuses on water (Maublanc, 2024), but it does not directly serve the Green Deal objectives (Cuadros-Casanova et *al*. 2023). Its water measures change each year owing to climate hazards or farmers protests.[4] Last but not least, European member states legally have some freedom in implementing the new CAP (Aubin-Broute, 2022).

Such news regarding agricultural water is part of a structurally legal complex framework: the insecurity of food security is not new. In French law, water has a 'dual nature', with the French Environmental Code (République Française, 2026) affirming both its status as part of the 'common heritage of the Nation' (Art. L. 210-1) and its role as an 'economic resource' (Paragraph 5 of Article L. 211-1).

Three major legislative milestones mark the history of national water policy. First, a law of 1964 (Law No. 64-1245 on the management and distribution of water and the control of water pollution) established a decentralised management system by dividing the territory into six river basins (OJFR, 1964). Next came the major 'Water Act' of 1992 (Law No. 92-3) (OJFR, 1992), which notably introduced a prefectural authorisation mechanism for water abstraction for agricultural purposes and two new tools for water resource management planning: the Water Development and Management Master Plan (*Schéma directeur d'aménagement et de gestion des eaux* or *SDAGE*) and the Water Development and Management Plan (*Schéma d'aménagement et de gestion des eaux* or *SAGE*). Finally, came the Law on Water and Aquatic Environments (*Loi sur l'eau et les milieu aquatiques* or *LEMA*) of 2006 (Law No. 2006-1772) (OJFR, 2006), stemming from the 2000 European Water Framework (WFD) Directive[5]. It "replaces" the system of individual authorisations with a model of Collective Water Management Bodies (*Organismes uniques de gestion collective de l'eau* or *OUGCs*). 'Replaces' is an ambitious word as individual authorisation still applies in some regions. Moreover, the scale of intervention of stakeholders varies just as theory is not practice.

Against this backdrop of uncertainty, the water resource management framework must meet a dual requirement to ensure food security. Firstly, it is a matter of establishing a legal framework that is realistic, flexible, responsive and adaptable to climate hazards. In other words, a 'tailor-made' legal framework will be discussed in the Section 1. However, the balance is of course delicate, this sophisticated legal framework must nevertheless remain effective as explained in the Section 2.

[2] Art. L. 1 A of the Rural and Maritime Fishing Code created by the Law No 2025-268 aforementioned; see Grimonprez (2025a).
[3] On the perverse effects of the consecration of this right to differentiation in agricultural matters, see Maublanc (2026).
[4] EU Regulation 2021/2115, 2 Dec. 2021, art. 13, § 1 (the Strategic Plans Regulation), are amended by Article 1 of Regulation (EU) 2024/1468 of 14 May 2024 amending Regulations (EU) 2021/2115 and (EU) 2021/2116 as regards standards relating to good agricultural and environmental conditions, programmes for climate, the environment and animal welfare, the amendment of CAP strategic plans, the review of CAP strategic plans and exemptions from controls and penalties (European Union, 2021a; European Union 2021b; European Union, 2024).
[5] Directive No. 2000/60/EC of 23 Oct. 2000 establishing a framework for Community action in the field of water policy, OJEC No. L 327 of 22 December 2000 (European Union, 2000).

1. A tailor-made legal framework

Tailoring the law applicable to water management requires taking into account the location (1.1.) as well as the state of the resource and the needs expressed (1.2.).

1.1. Adaptation of the territory

Water management is primarily a local matter. This is due to the involvement of stakeholders specialising in water management. They are based in a particular region, whose roles and actions are determined by that region.

The foremost of these stakeholders – in every sense of the word – is the prefect, or rather the prefects: As the coordinating prefect for the river basin, regional prefect[6] approves the main planning tools (*SDAGE*[7], *SAGE*[8] and *TPGE*[9]). In addition to the regional prefect, departmental prefect is competent to enact general rules for the management of water resources as well as specific rules for certain parts of the territory [10], for instance to issue drought decrees. As the sub-basin coordinating prefect, the departmental prefect draws up the list of municipalities within water allocation zones (*ZREs*), characterised by a chronic shortage of water resources relative to demand. In *ZREs*, any abstraction exceeding 8 m^3/h must be authorised.[11] In addition, there is the Public Territorial Basin Authority (*Etablissement public territorial de bassin, EPTB*) which, as its name suggests, operates at the level of a river basin or sub-basin[12]. This body may be responsible for implementing the *SAGE*[13] and the *TPGE*[14] in collaboration with the stakeholders involved in the replacement reservoir projects.

Last but not least, the *OUGC* intervenes whenever water is to be abstracted for agricultural irrigation, whether from surface water or groundwater, from water bodies, reservoirs or dams[15]. Varying in legal status but always appointed by the prefect[16], the *OUGC* also operates within a local area, though this does not coincide with the previous. Thus, in some regions several *OUGCs* operate within the territory of the *EPTB*[17].

This fine-grained territorial division is not, however, an example of weakness. This multitude of stakeholders involved in water management is a source of confusion, delays in decision-making and, at times, inconsistencies (CGEDD and CGAAER, 2020). For a single body of water, the rules may vary, sometimes leading to a lack of understanding among farmers, although a decree of 23 June 2021 attempted to remedy this by, in particular, consolidating authority at the level of the coordinating prefect for the basin.

Less stakeholders but more flexibility to adapt the rule to the diversity of territories is necessary. Some regions are notoriously more exposed to climate hazard and climate change. It is essentially the case of the Southeast of France and more broadly the Mediterranean area (Descrozaille, 2021). This climate insecurity must be managed with appropriate tools.

A good example is the Agri-Environment-Climate Measures or *AECMs* (Art. 70 of Regulation (EU) 2021/2115, 2 Dec. 2021). These EU CAP measures can be deployed on a plot. Some of them are precisely about water savings (see the *AECMs Quality and quantitative management of water for field crops* (intervention 70.06 of the French National Strategic Plan under the *CAP*) or *Quality and quantitative management of water for perennial crops* (intervention 70.07). However, they are voluntary. No obligation

[6] The *SDAGE* at the river basin level (the Adour-Garonne basin in the case of the Charente region) and the *SAGE* at the sub-basin level, in this instance that of the Charente. Regional prefect also approves a third planning tool of a contractual nature: the territorial project for water management (*TPGE*), see note 9 below.

[7] Art. L. 212-1 et seq. of the Environmental Code. See, at local level, the decree of 10 March 2022 approving the 2022–2027 *SDAGE* for the Adour-Garonne basin and establishing the corresponding multi-annual programme of measures (*PDM*).

[8] Art. L. 212-3 et seq. of the Environmental Code. See, at local level, the inter-prefectural decree of 19 November 2019 approving the Charente Water Development and Management Plan (*SAGE*).

[9] This applies in particular to water storage and reservoirs for agricultural purposes. Introduced in 2015 by Government instruction concerning the financing by water agencies of substitute reservoirs (Republique Française, 2015), the *TPGE* project applies to a *'territory that is coherent from a hydrological or hydrogeological perspective'* (République Française, 2019).

[10] See Articles L. 211-2 and L. 211-3 of the Environmental Code respectively.

[11] See 1.3.1.0. of Article R. 214-1 of the Environmental Code. In the departments of Charente and Charente-Maritime, over 90% of the territory is classified as a *ZRE* (see Prefect of Charente-Maritime, 2003).

[12] Art. L. 213-12 of the Environmental Code.

[13] See minutes of the Local Water Commission (CLE), 2019.

[14] In collaboration with the stakeholders involved in the replacement reservoir projects, see the EPTB Charente (2016)

[15] Art. R. 211-111 et seq. of the Environmental Code.

[16] Art. R. 211-113 of the Environmental Code. With regard to the OUGC Cogest'eau in the Charentes, organised as a water management cooperative, see the Inter-prefectural Decree (2013).

[17] In the Charentes, three *OUGCs* operate within the territory of the *EPTB* Charente: the *OUGCs* Cogest'eau Saintonge and Karst, relating respectively – and broadly speaking – to the lower Charente, the upper Charente and the Rochefoucauld Karst.

rests on the farmer to subscribe. This observation is confirmed on a larger scale in terms of payments for environmental services (Maublanc, 2025). In the meanwhile, the EU CAP finances farmer water projects that aren't that severe regarding water savings. Regarding the fruit and vegetable sector (Intervention 50.01 of the French National Strategic Plan (NSP) under the CAP), the beneficiary's project must achieve at least a 15% potential reduction in water use. This general threshold is lowered to 5% for certain sectors, such as the wine sector (Intervention 58.01 of the NSP) (Maublanc, 2024).

Water rights should also be better adapted to the soil or crop types: more or less crucial to ensure food security. The French people's affection for wine is evident from the fact that vineyards can be found everywhere, but water should go first to feed people. Still, a tentative differentiation based on soil type or even crop type can be observed. Some *OUGCs* have thus developed sophisticated methods for allocating water, basing the allocated volumes on these criteria (the Ariège OUGC, for example; see CGEDD and CGAAER, 2020, p. 30).

The region, rather than the type of crop, plays a decisive role when it comes to managing water resources. This is clearly also the case at present.

1.2. Adapting to the state of water supply and demand

Developing legislation in line with current conditions involves two requirements: anticipating and responding to climate hazards such as drops for instance.

Improving the first pillar was one of the main objectives of the *LEMA* (Grimonprez, 2020). Several instruments contribute to this.

Firstly, the construction of water storage facilities is subject to administrative authorisation (Art. L. 181-1 et seq. of the Environmental Code) and low water levels are covered by a management plan (for an example, see Charente Low Water Management Plan (PGE), 2004).

Secondly, withdrawable water volumes are defined: overall by the Local Water Commissions or the State (République Française, 2008) but also specific to withdrawals for agricultural irrigation purposes. With regard to the latter, the *OUGC* plays a dual role under the supervision of the prefect. It first defines these volumes taking into account the availability of water resources. This is the subject of the single abstraction authorisation (*Autorisation unique pluriannuelle* or *AUP*) granted by the prefect and held by the *OUGC* for a maximum period of 15 years (1° of § I. of Art. R. 214-31-2 of the Environmental Code; on the *AUP* regime, see Arts. R. 214-31-1 et seq. of the Environmental Code as amended by the Decree of 23 June 2021). Once this volume has been defined, the *OUGC* allocates it among the water abstractors and irrigators by means of the annual allocation plan (*Plan annuel de répartition* or *PAR*, see Paragraph 2 of Article R. 211-112 of the Environmental Code). The *PAR* is regarded as a *'component* of' the *AUP* (Section I of Article R. 214-31-3 of the Environmental Code, as amended by the Decree of 23 June 2021).

Thirdly, apart from the *AUP*, planning measures are decided by the prefect, for instance the framework drought decree (Article R. 211-67 of the Environmental Code). This is a specific regime applicable to periods known to be subject to droughts. Alert zones are defined and graduated measures for the restriction and temporary suspension of water use in such circumstances are provided for.

Even when correctly anticipated, climate hazards (drops episodes for instance) inevitably call for a response that takes on new legal forms. The prefect plays the leading role here, through the drought decrees he adopts (Art. R. 211-66 of the Environmental Code). The Prefect may then take measures not provided for in the framework decree, for example by restricting agricultural uses of water resources. However, he does not hold a monopoly. On the one hand, any water releases from low-water support dams involve their project owners. On the other hand, the role of the *OUGC* must not be overlooked; far from intervening only in the run-up to droughts to draft the *AUP* as the prefect's assistant and the *PAR*, it can help render emergency measures unnecessary by proposing timely reductions in water abstraction or by adapting the allocation to the new climate reality (see Art. R. 211-112(2) of the Environmental Code). The Cogest'eau *OUGC* is a model case here (CGEDD and CGAAER, 2020, p. 32).

With the framework thus defined, it remains necessary to ensure that its implementation serves the intended objective of establishing a tailored legal framework. The picture appears to be more nuanced, for at least two reasons.

Firstly, the law only allows for adjustments to be made in response to the state of water supply and demand under certain conditions.

Stakeholders must first *be able* to rely on reliable and accurate data with regard to both water demand and supply (for example, there is a local initiative by the *OUGC* Cogest'eau to map crops and irrigated areas via the *Hydrim* platform and, with regard to water supply, the monitoring of groundwater

levels, river flow rates and the state of aquatic environments carried out by the Nouvelle-Aquitaine Regional Biodiversity Agency, the Hydrometry and Flood Forecasting Department of the Nouvelle-Aquitaine Regional Directorate for the Environment, Planning and Housing, and the National Low Water Level Observatory of the French Biodiversity Agency).

They must also *be willing* to incorporate this data. Here again, the picture is mixed. A legal text may legally allow for a delay: the decree of 23 June 2021 thus temporarily authorises withdrawals exceeding available resources … in exchange for a promise to eventually return to balance (Art. R. 214-31-2 of the Environmental Code, as amended by Art. 7 of the Decree of 23 June 2021). More often than not, however, failure to take account of the data and the legal texts that draw conclusions from it is subject to legal sanctions. Administrative oversight is provided for, for example by the prefect in the case of *SAGEs* and *PAR*. Added to this is judicial review of the actions of that same administration. The administrative decrees and authorisations already mentioned may be referred to the judge for abuse of power provided the claimant can demonstrate an interest in bringing the case which it assesses – as always – on a case-by-case basis. Thus, this condition for the admissibility of the appeal is met for an environmental protection association in relation to the order approving the *AUP* … but not for the one approving the *PAR*, unlike the irrigators (Administrative Tribunal of Poitiers, 2020). This is particularly the case for decrees approving the *AUPs* and *PARs*. Following a challenge by environmental protection associations, the Poitiers Administrative Court annulled the prefectural decrees approving the 'Cognac' *AUP*' on the grounds of incompatibility with the *SDAGE* and *SAGE*, insufficient impact assessments, and an authorised volume far exceeding the volumes that could be abstracted (Administrative Tribunal of Poitiers, 2019) concerning the *AUP* issued to Cogest'eau. The annulment was upheld on appeal (Administrative Court of Appeal of Bordeaux, 2021).

Secondly, and more fundamentally, the ability of the law to permit such a bespoke approach in absolute terms is questionable. It is not, in fact, the best tool for planning or responding to drought.

The timeframe for enacting or amending a regulation does not coincide with that of managing the risk. The sometimes belated drought decrees illustrate this in terms of response, but surprisingly the same applies to planning if one considers the *SAGE*, the *AUP* or the *PAR* (CGEDD and CGAAER, 2020, p. 42), despite the intervention of the decree of 23 June 2021 cited above, which aims to speed up the establishment of the *PAR* (see Article R. 214-31-3 of the Environmental Code as amended by Article 7 of the text).

Furthermore, the risk of litigation, when it leads to the annulment of administrative acts, may have the effect of replacing the tailor-made approach with an 'industrial' one. The annulment of an *AUP*, as was the case in Charente, calls into question all irrigation withdrawals. Pending the enactment of the new legislation, the *PAR* has been capped at the average consumption recorded for each abstraction point over the last ten years. As regards the Cogest'eau *AUP*, the Poitiers Administrative Court had postponed the annulment. The application file for the new *AUP* had not been submitted by that deadline[18] nor since then[19]. Far from being tailored to individual needs or promoting water conservation, this mechanism has in fact ended up rewarding the largest water users (Maublanc, 2026). The *Emergency Draft Law* No. 2632 of 2026 moreover stipulates that, in the event of a legal challenge to a water withdrawal permit issued to a single collective irrigation management body, the administrative authority may provisionally authorize the continuation of withdrawals until a new permit is issued (see Council of State, 2026).

To improve food security, water management must be a fine art. Yet it must not merely be a decorative feature.

2. Strengthened legislation

Legal uncertainty and unpredictability weigh heavily on the management of climate risk. To move towards a strengthened legal framework, we most utilise the full weight of legal standards (2.1.) as well as the support of economic incentives (2.2.).

2.1. The weight of legal standards

The law can be a tool for managing climate risk, but it can also be its weak point. As with everything, a fair balance is needed: neither too much nor too little law.

First, not too much law. Although this is always an easy wish to make, reducing unnecessary constraints on those involved in water management is a necessity.

[18] See Inter-prefectural Order (2022, April 7) giving Cogest'eau formal notice to rectify the administrative situation and imposing interim measures pending compliance with administrative requirements.

[19] See the Inter-departmental Order (2023, March 17) imposing additional requirements on the interim measures relating to the regulation of water volumes for irrigation use for the period from 1 April 2023 within the management area of the OUGC Cogest'eau.

The single abstraction authorisation application dossier certainly provides the best example of this. A breeding ground for disputes, the impact assessment required of the applicant proves to be disproportionately complex given the nature of the project promoters, namely the *OUGCs* (in this regard, CGEDD and CGAAER, 2020, p. 38). Although the decree of 23 June 2021 sought to provide legal certainty for *AUPs* (Art. R. 214-31-2 of the Rural Code, as amended by Art. 7 of the Decree of 23 June 2021), a legislative basis would theoretically have placed the scheme beyond the reach of the administrative court, at least as regards the review of legality in *the strict sense* that it carries out. This wish is about to be granted by the French reform of 2025-2026 which simplifies the court rules regarding these acts. The French legislature is still seeking to remedy this legal fragility, (see point 14 of the opinion of the Council of State (2026), relating to the draft emergency law for the protection and sovereignty of agriculture regulating the effects of the contentious annulment of a levying authorization issued to an *OUGC*).

The prefect's intervention also contributes to these excessive constraints. With regard to *AUPs* – as with the rest of the *PAR* – the *OUGC* proposes and the State decides (see above, section 1.1.). This prefectural approval, however, proves to have no real added value, to the extent that its abolition has been proposed in relation to the *PAR* (Recommendation 5 of the CGEDD and CGAAER, 2020, p. 43). The picture is hardly any more flattering when it comes to the *AUP*, as the 'Cognac affair' demonstrated: the prefect should have reacted to the manifest disproportion between the volume of water authorised for abstraction and the available water resources. Beyond this specific case, the prefects deliberately approved *AUP* applications submitted by *OUGCs* which they knew full well were legally tenuous and would consequently be at risk of being overturned[20]. Faced with delays in the establishment of the *OUGCs* and the determination of the *AUPs* (CGEDD and CGAAER, 2020, p. 37), the prefects showed leniency towards the *AUP* applications, a stance clearly not shared by the administrative judge. '*Responsible but not guilty*' to paraphrase French Minister Georgina Dufoix's famous phrase, the prefect faces the annulment of the decree he issued, but it is the *OUGC* that prepared it which faces professional and media censure (on *the 'anxiety-inducing* effect' of the cancellation of the *AUP*, see CGEDD and CGAAER, 2020, p. 21).

On the one hand, the law is too present; on the other, it is insufficient. The criticism here is twofold: "true" law – hard law – is lacking, when it is not the law itself that is absent.

The author is struck first and foremost by the legal fragility of the existing water management framework. Whilst it is certainly based on decrees and orders, the bulk of it is of a more uncertain legal standing. It consists primarily of guidelines, for example regarding water storage facilities (République Française, 2015; République Française (2019). It is also based on circulars dealing with issues as crucial as the penalties imposed by the *OUGCs* in the event of non-compliance with their internal regulations (République Française, 2008). As for these regulations, they determine the fulfilment of the tasks incumbent upon the *OUGCs*, although their enforceability is uncertain and their legal standing is, in any case, very weak (Difficulty identified from the outset, see Lafitte, Devos and Fortet, 2008; for a more nuanced assessment, see CGEDD and CGAAER, 2020, p. 24). In these circumstances, is it really reasonable for the *OUGCs* to devise innovative methods for allocating water volumes or to outline a system of sanctions in the event of overuse (Limitation of the volume allocated in year N+1 in the event of an overrun in year N. For an illustration, see CGEDD and CGAAER, 2020, p. 35) if these provisions remain ineffective? Although the *OUGCs* are competent to issue administrative acts in accordance with the *Epoux Barbier* case law (Tribunal des Conflits, 1968), since they are private entities entrusted with a public service mission (the collective management of water) and to which public authority powers have been granted (notably the collection of charges, see section 2.2. below), the prefect's inability to delegate his policing powers to them renders their power to impose sanctions meaningless (on this subject, see Zakine, 2014). Hence the encouragement to conclude contracts between them and the irrigators, despite the reservations of the 2006 legislature (CGEDD and CGAAER, 2020, p. 44). Furthermore, even when the legal validity of a text such as the *AUP* is indisputable, it is nonetheless undermined by the risk of litigation and the systematic intervention of drought decrees which, in practice, supersede it. By defining the withdrawable volume too generously (CGEDD and CGAAER, 2020, p. 37), it inevitably appears, in the long run, to be a chimerical text (Dumoulin and Hubert, 2019). Ultimately, it is the binding force of the prefectural decrees themselves that comes to be doubted. On the one hand, the wording of the provisions in drought decrees sometimes reads more like a recommendation than an obligation (National Assembly, 2020). Yet, when the decree is vague, the water user-irrigator pays it little more than a distracted ear, to adapt the phrase used in the 1991 annual report of the Council of State on legal certainty (*'When the law talks too much, the citizen listens with only half an ear*', p. 20) … On the other

[20] Memorandum of 3 May 2016 on the end of temporary authorisations for water abstraction for agricultural irrigation in water distribution zones (*ZRE*), NOR: DEVL1610431N.

hand, the rules governing the publication of these administrative acts are not always followed, rendering the restriction measures they set out unenforceable (National Assembly, 2020).

Moreover, the law is simply not powerful enough. The levers of water management are, in part, devoid of legal basis. The regulatory value of *TPGE* thus depends on whether or not they are incorporated into a *SAGE*; otherwise, they merely serve as *a* 'prelude' (CGEDD and CGAAER, 2020, p. 48). Similarly, a significant proportion of the tasks carried out by the *OUGCs* are not provided for in the legislation, starting with the regulatory section of the Environmental Code. This results in considerable discrepancies between the tasks of *OUGCs*, even those in neighbouring areas. Some stick to the bare minimum: applying for *AUPs*, allocating annual *PAR* volumes and passing on information to government departments. At the discretion of the *OUGCs* and with no legal basis other than their internal regulations, additional powers may be exercised, such as the authority to impose sanctions, a coordinating role for the agricultural council, or the development of partnerships with cooperatives and water managers (CGEDD and CGAAER, 2020, pp. 35–36). Finally, the issue of collecting the levy, the proceeds of which are paid to the Water Agency, is subject to provisions that vary according to internal regulations.

In anticipation of increased tensions between water users – whether for agricultural irrigation or other purposes – a consolidation of the existing legal framework would be welcome, pending a more comprehensive overhaul. Another lever for strengthening the effectiveness of positive law lies in the use of economic incentive mechanisms.

2.2. The role of economic incentives

Hitting people in the pocket often proves more effective than lengthy speeches, even legal ones. This obvious observation relates to the economic theory of the 'price signal'. Applied to water resource management, it dictates that the price of water should not be too law, otherwise water abstraction and, more broadly, the expansion of irrigated crops would be encouraged (Flory, 2003). The price of water can also be a powerful driver of behavioural change, for example by rewarding efforts to reduce water use (Art. R. 211-117-1 of the Environmental Code), where this is, of course, possible.

Two aspects are worth noting regarding water abstraction for agriculture.

Firstly, charges are levied on water abstractors and irrigators under the Environmental Code: the charge for water abstraction for irrigation that the *OUGC* may collect on behalf of the Water Agency (last paragraph of Art. R. 211-112 of the Environmental Code), but also the specific fee that the *OUGC* may impose to finance its operations (Art. R. 211-117-1 of the Environmental Code). The latter consists of a fixed component per user and, where applicable, a variable component depending on the volume of water consumed (First paragraph of Art. R. 211-117-2 of the Environmental Code).

Furthermore, financial penalties are imposed in the event of non-compliance with the regulations, in other words when the authorised volume is exceeded or the abstraction is unauthorised (Article R. 214-31-4 of the Environmental Code, referring to the controls and penalties relating to environmental authorisation provided for in Article L. 181-16 of the same Code). In addition to the criminal penalties under Art. R. 216-12 of the Environmental Code, there are administrative penalties which may take the form of fines (see Art. L. 171-9(4) of the Environmental Code). Whilst these are indeed regulations, these penalties also serve as an economic deterrent, as their cost is factored into the water price by the abstracting-irrigator. If the price is low and, moreover, inspections are rare, breaking the rules remains the most economically advantageous option.

What lessons can be drawn from the implementation of these two economic incentive mechanisms?

The first lesson lies in the limited room for manoeuvre of the *OUGCs*. At least here (see 2.1.) their levers for intervention are based on solid legal foundations. Nevertheless, the *OUGCs* are once again guided by the 'invisible hand' of the State. The methods for calculating the variable component of the specific charge are heavily regulated by the state. Based on quantitative criteria (Third paragraph of Article R. 211-117-2 of the Environmental Code), it cannot, moreover, be used as a tool to promote good environmental practices.

The second lesson concerns the effectiveness of the scheme. We have just discussed the charges: their amount is particularly low compared to other categories of water use. Penalties and enforcement are also of little deterrent effect. Despite the provisions of the decree of 23 June 2021, users may prefer to pay the €1,500 fine rather than comply with the rules. As for inspections, they are sporadic. Furthermore, they do not focus on the proper use of water volumes but are limited to exceeding limits observed at water intake points. Finally, there is the question of which authority is capable of carrying out any form of inspection. In theory, this is the responsibility of the water police, in this case, the Departmental Directorate for Territories (DDT), but the limited resources at their disposal obviously do not allow them to check all water abstraction

points – some of which are not geolocated in any case (CGEDD and CGAAER, 2020, p. 35). The *OUGCs* could also be involved – the debate is still ongoing. Although most refuse to act as a substitute for the water police and simply pass on the data they collect to the state authorities, it is worth asking whether, as the *OUGCs* are the holders of the *AUP*, they are not responsible for ensuring compliance with both the overall allocated volume and the allocated volumes… and would be responsible for enforcing them (CGEDD and CGAAER, 2020, p. 34).

The final lesson concerns the limitations of these economic incentive mechanisms designed to reinforce the applicable law: they amount to nothing more than 'support'. As the volume of water available for allocation has been significantly reduced, consumption can in any case only be legally restricted, *all the more so* in structurally water-deficient basins. Nevertheless, the *OUGCs* cannot fulfil their remit if the specific levy is insufficient or remains unpaid.

Conclusion

Will things change soon? Probably not. In the name of 'food security' and more broadly 'food sovereignty', French Parliament last year voted a 'good faith presumption' for farmers during controls (see article 35 of the 2025 *Food Sovereignty Law* creating article L. 123-3 of the code of relations between the public and the administration relating to the right to regularization in the event of an error applicable to controls carried out in an agricultural operation). If the French Constitutional Court (2025) had not censored it, it would have continued the gradual easing of controls and sanctions for small farmers. The 2023 *CAP* horizontal regulation already provided for this (Regulation (EU) No 2021/2116 of 2 December 2021, Articles 83 and 84, on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013); the recent *CAP* revision decided to address the agricultural situation further relaxes the system (Regulation (EU) No 2024/1468 of 14 May 2024 amending Regulations (EU) 2021/2115 and 2021/2116 as regards standards for good agricultural and environmental conditions, programmes for climate, the environment and animal welfare, amendment of CAP strategic plans, review of *CAP* strategic plans and exemptions from controls and penalties). Creating more rules but lifting sanctions is not effective. It also creates insecurity. Let's hope a change in EU law make, thanks to European elections that are still a long way off, food security law more secured!

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