

# **AQUARIUS AND THE PRECAUTIONARY PRINCIPLE**

**A legal analysis of the gaps to bridge in  
AQUARIUS in order to create win-win solutions  
in practice**

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# The aim of my analysis

- **To show that the problem-solution wheel in AQUARIUS reflects the precautionary principle (This is if the wheel is spun in the right manner)**
- **To explain that looking at AQUARIUS in the light of the precautionary principle, will clarify the procedural knowledge necessary to breach barriers and design decision making processes more efficiently**

# The analysis underlines

- **that authorities need to make room for dynamic collaboration between science and practice, making sure that chosen measures are not general but flexible**
- **the necessity of - and makes sure that - uncertainty is taken into account in the decision making process**

# Outline of the issue from a legal perspective

- **How do we manage the water environment in the best possible way?**
- **When is it necessary to demand a certain water management in order to protect it?**
- **And when would it be an intervention without any sufficient environmental results?**

# Outline of the issue from a legal perspective

**Is the fact, that because it isn't known for sure whether the measures used, will lead to any environmental results because of the uncertain knowledge, they shouldn't be used?**

**The answer is no.**

## European Union Treaty article 191 (2)

**“Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay.”**

# The aim of the precautionary principle

- **To ensure that the uncertain environmental matters at stake are sufficiently scientifically informed**
- **It clarifies the decision making process, highlights key uncertainties, and identifies critical assumptions (This can imply an obligation to further scientific investigations)**
- **To ensure objectivity in decision-making and prevent arbitrary use of law**

# The various elements in the precautionary principle

- **Consists of**
  - 1) a risk assessment procedure**
- **To be followed by**
  - 2) a risk management procedure**



# The steps in the risk assessment

- **Identifying risks legislator/authority sets the acceptable level of risk**
- **Decision-maker has to assess whether the acceptable level is exceeded**
  - **This assessment must show that the decision maker understands the scientific interpretation of the circumstances**
- **The scientific evaluation shall be as full as possible**
- **As far as possible the evaluation should determine the degree of scientific uncertainty at each stage**

# The risk management

**What measure is needed to avoid the identified risk? The answer has to be given in accordance with:**

- **legality requirement**
- **proportionality**
- **non-discrimination**
- **consistency**
- **examination of the benefits and costs of action or lack of action**
- **review of the measures in the light of scientific developments**

# Summary of AQUARIUS expressed in the light of the precautionary principle

## The legal analysis underlines

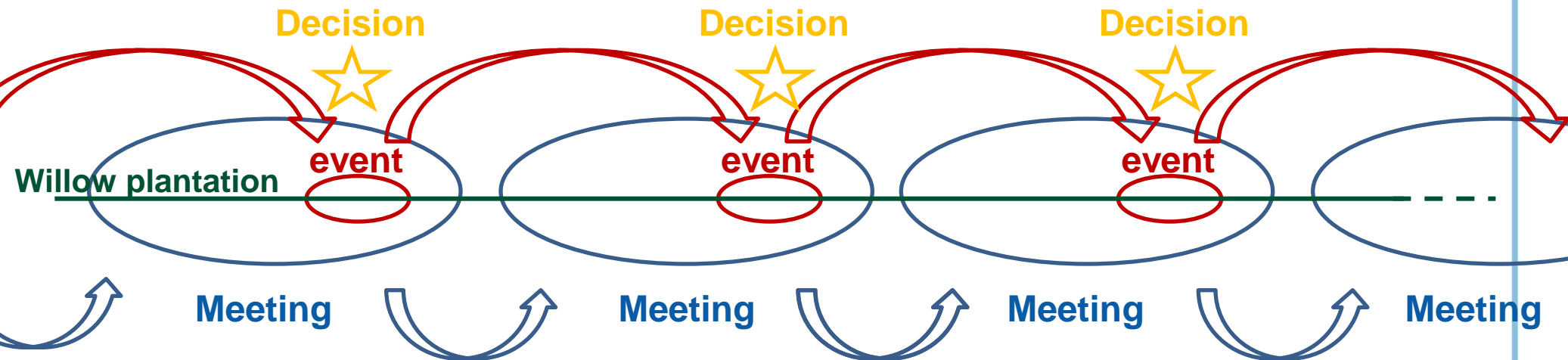
- an appropriate form of water management is an exercise in achieving equal interaction between natural and scientific interests, agricultural business interests, and administrative interests
- That water management is complex, and knowledge and facts are constantly changing. Therefore, management of the area also needs to be dynamic and flexible

# “AQUARIUS’ riddle” expressed in the light of the precautionary principle

Why is the tool abandoned?  
Because of

- A logic that neglects potentials and operates within a command-control paradigm
- A logic that expect science to deliver proven facts - and therefore awaits infinity
- **Uncertainty is not taken seriously enough! It isn’t sufficiently dealt with that uncertainty is a premise!**

# Process analytical approach

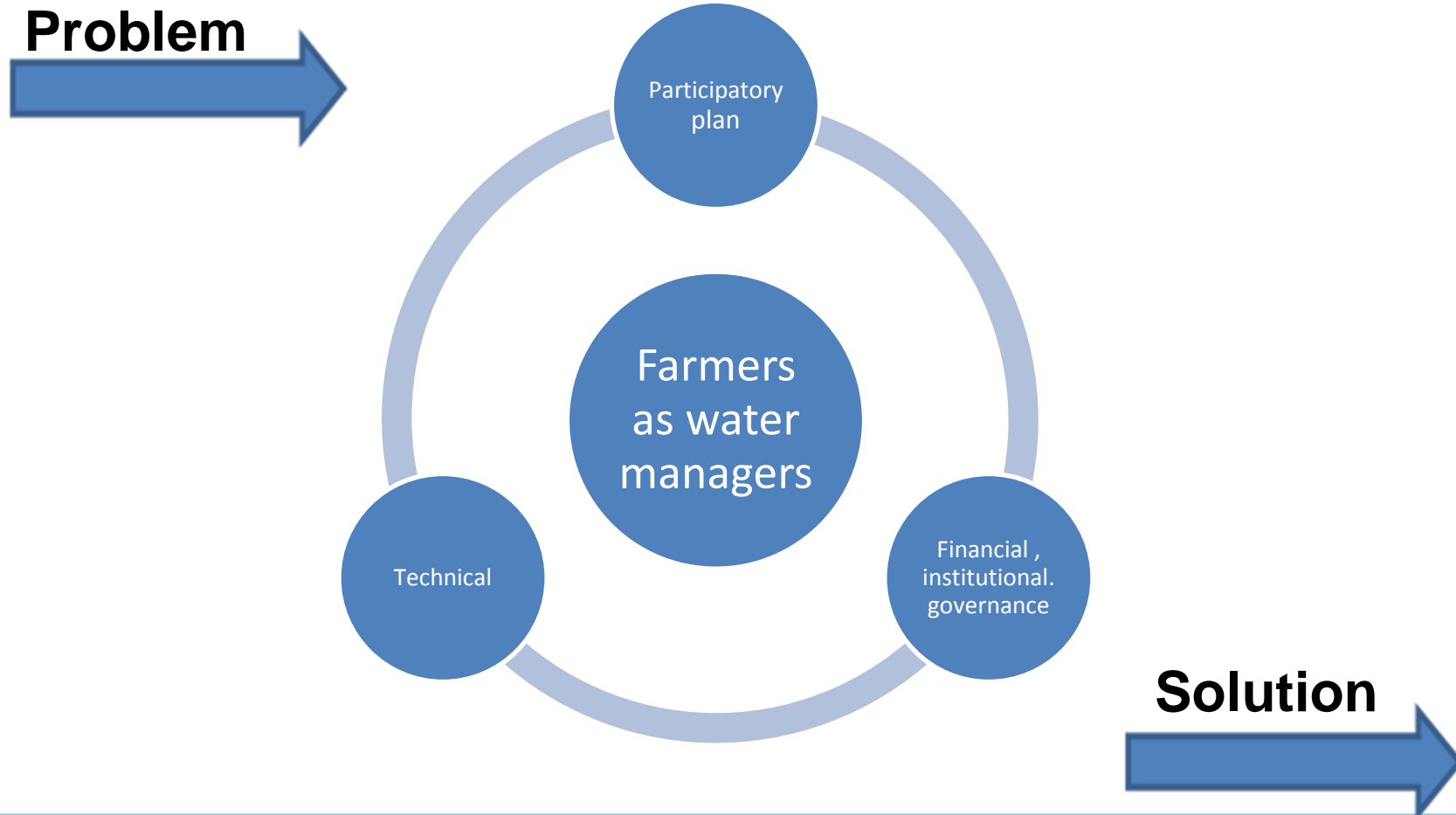


**AQUARIUS expressed in light of the precautionary principle**  
**- a shift from using science as an instrument of control to an instrument for informed action**

# Why is the creation of win-win solutions so difficult in practice?

**Win-win projects chosen well aware of the uncertainties and barriers being a part of the project, wouldn't to quite the same extent have been an opportunity to say, that because of this uncertainty the project is not being realized**

# How to find the win-win solutions?



More information at the conference  
12 – 13 October

**[HTTP://WWW.AQUARIUS-NSR.EU/](http://www.aquarius-nsr.eu/)**



# Thank you for your attention !