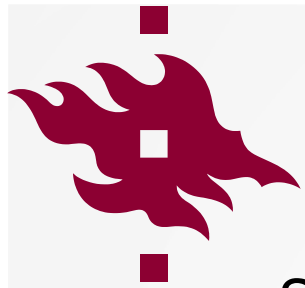




# (WATER) LAW IN FINLAND

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University of Helsinki/HELSUS



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## Two streams of Finnish Water Law

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2. The legal meaning of water
3. Goals and permit systems
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# A SHORT INTRO TO LAW

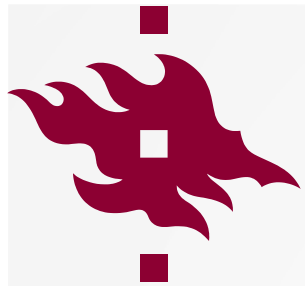


# LAW'S FUNCTION(S)

- **Managing disputes** and facilitating organised and **peaceful development** of societies as THE functions of the law
- Rule of law as legal certainty:
  1. There must be **legal norms** to be obeyed
  2. Legal norms must be public
  3. No retroactive legislation
  4. Legal norms must be understandable
  5. No contradictory legal norms
  6. Legal norms cannot require conduct beyond the powers of the affected party
  7. Legal norms cannot change constantly
  8. Legal norms must be administered as they are announced



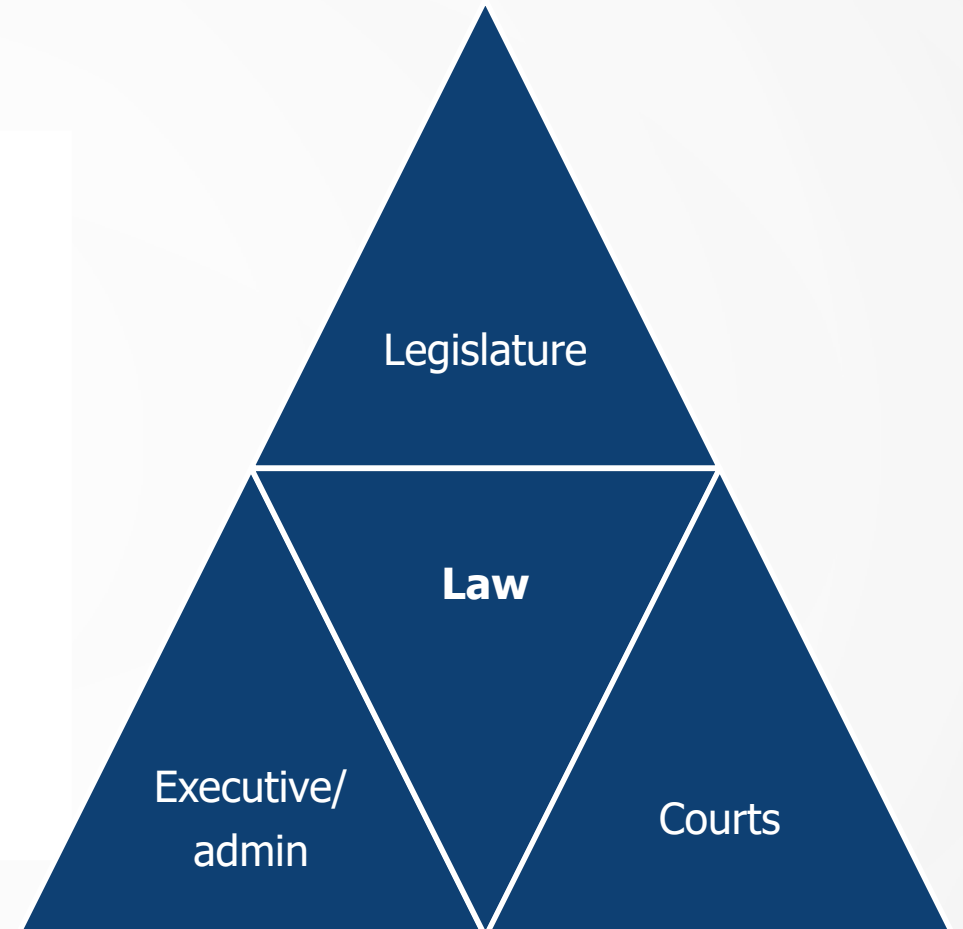
**Why are these needed?**

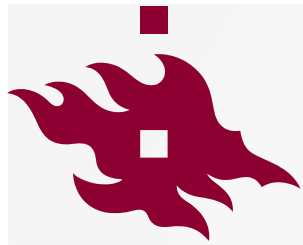


# LAW'S ACTORS

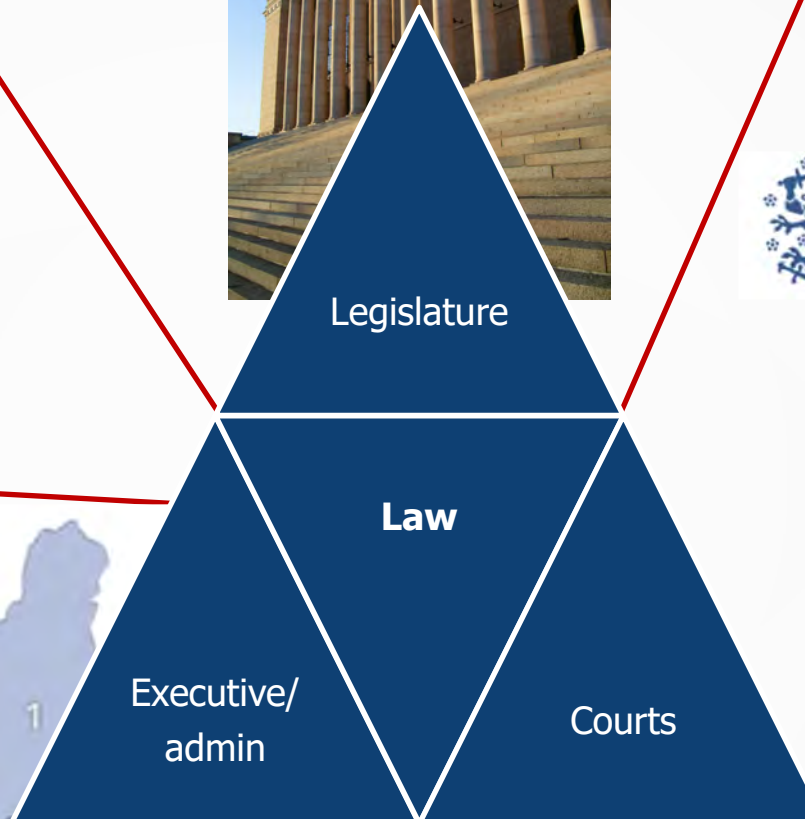


**Why is it important to separate powers between the three branches?**





Korkein hallinto-oikeus  
Högsta förvaltningsdomstolen  
Supreme Administrative Court of Finland



VAASAN HALLINTO-OIKEUS  
VASA FÖRVALTNINGSDOMSTOL

### Valitse alue

- 1 Lappi
- 2 Pohjois-Suomi
- 3 Länsi- ja Sisä-Suomi
- 4 Itä-Suomi
- 5 Lounais-Suomi
- 6 Etelä-Suomi

› Koko Suomi



### Valitse alue

- 1 Lappi
- 2 Pohjois-Pohjanmaa
- 3 Kainuu
- 4 Pohjanmaa
- 5 Etelä-Pohjanmaa
- 6 Keski-Suomi
- 7 Pohjois-Savo
- 8 Pohjois-Karjala
- 9 Satakunta
- 10 Pirkanmaa
- 11 Etelä-Savo
- 12 Häme
- 13 Kaakkois-Suomi
- 14 Varsinais-Suomi
- 15 Uusimaa

› Koko Suomi





# LAW ON MULTIPLE LEVELS

- International & EU law set limits for the national law
- Effectiveness of the law depends on the national level
- Legislative + interpretive linkages



International Law



EU Law



National Law



# FIELDS OF LAW

## VARIOUS FIELDS



Criminal Law



Contract Law



Land Law



Constitutional Law



Tort Law

<https://eduadvisor.my>

## International Law and EU Law

Private Law

Criminal Law

Public Law

Procedural Law

Property Law

Tort Law

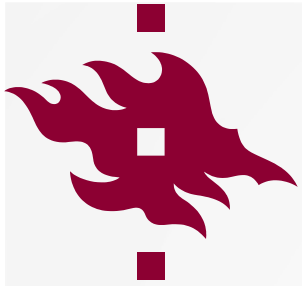
Constitutional Law

Administrative Law

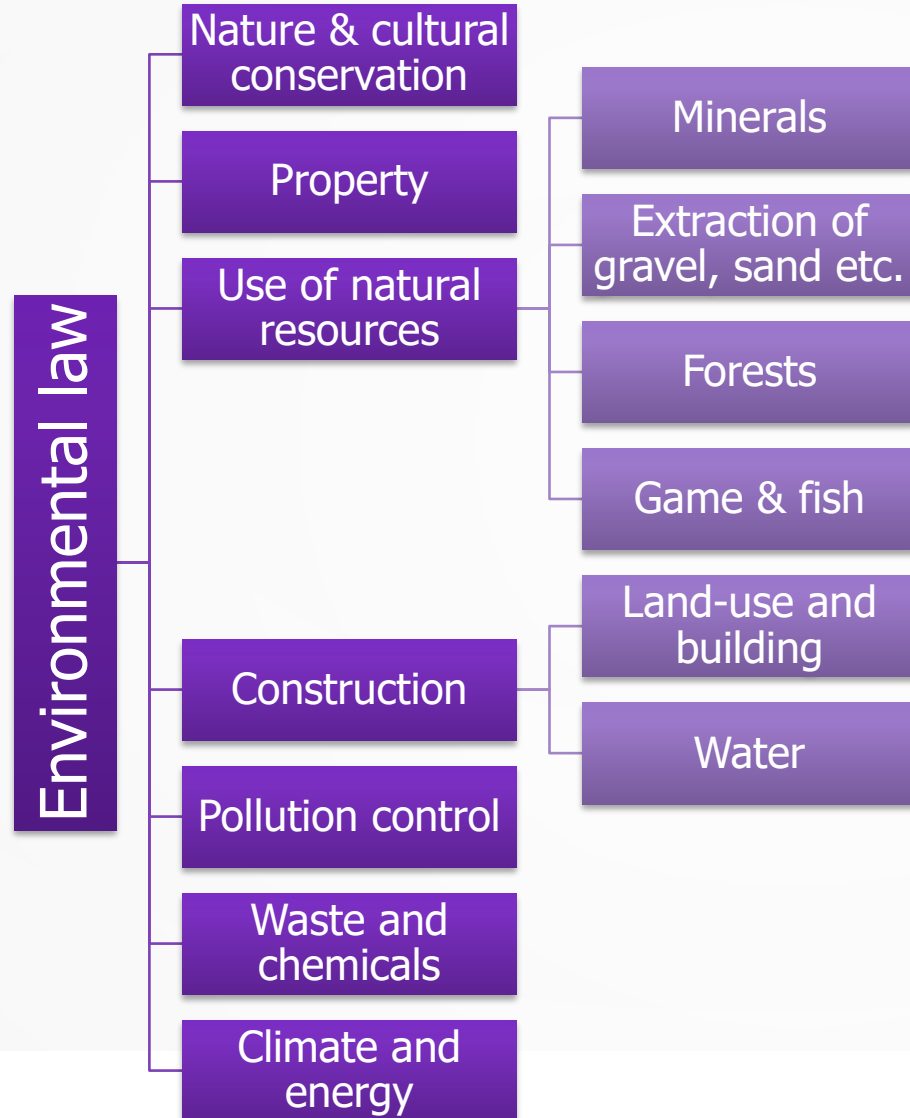
Contract Law

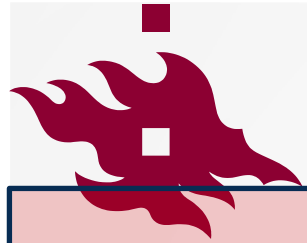
Family Law





# FIELDS OF ENVIRONMENTAL LAW





# TWO PERSPECTIVES TO LAW

## LAW

- What does the law say?
- Constitution of Finland (731/1999) section 2.3:  
"The exercise of public powers shall be based on an Act. In all public activity, the law shall be strictly observed."

Internal perspective

(law as doctrine)

## GOVERNANCE

External perspective

(law as a policy instrument)

- Law's impact/ effectiveness
- Law's legitimacy
- Law's efficiency
- ETC.



# EXERCISE: INTERNAL PERSPECTIVE TO LAW

The Finnish parliament has passed an Act which states in section 9:

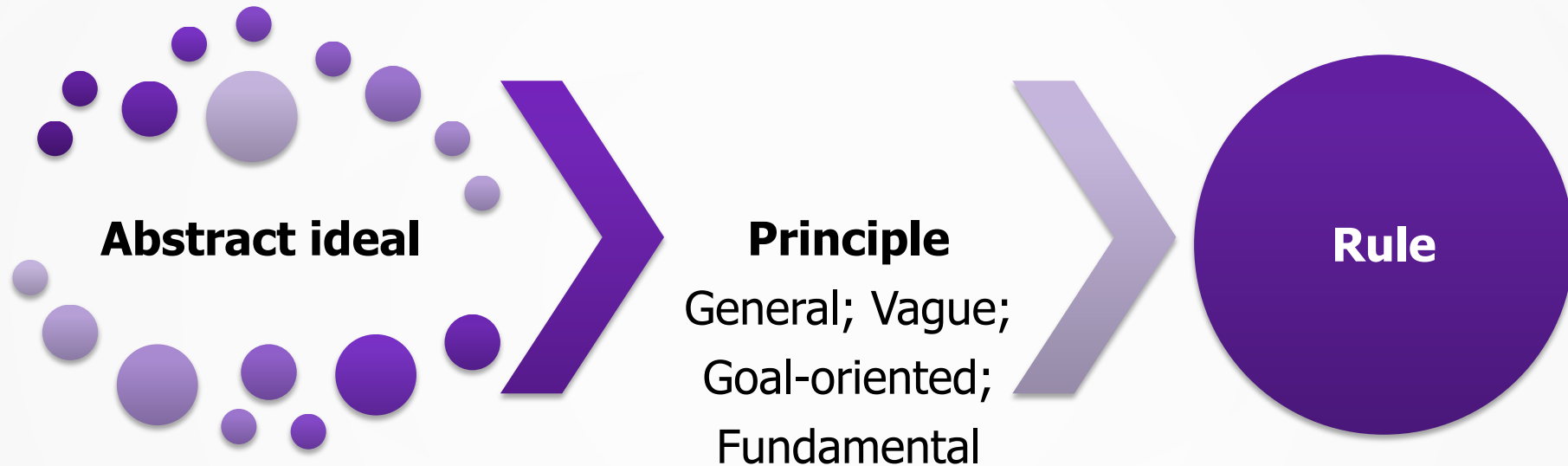
**"It is forbidden to issue a water permit to projects deteriorating the ecological quality of waters."**

Answer following questions:

- What interpretative problems can be found from the above mentioned section 9?
- Is the permit authority allowed to:
  - a) issue a permit for short-term deterioration?
  - b) issue a permit for a project deteriorating individual quality elements (e.g. hydro-morphological) but not impacting the overall ecological quality of a water body?



# DIFFERENT KINDS OF LEGAL NORMS



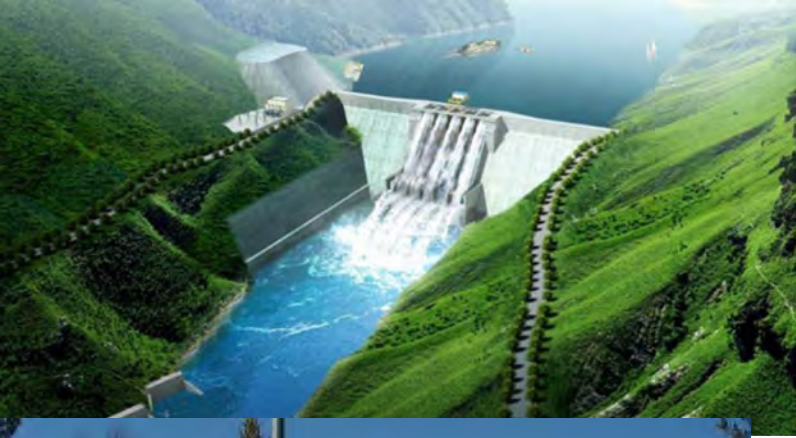
**"Equity"**

**"Common but differentiated responsibilities"**

Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.

"The Parties included in Annex I shall – – reduc[e] their overall emissions of [greenhouse] gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012."







# THE LEGAL MEANING OF WATER?





# CONSTRUCTION & POLLUTION







# TWO SETS OF GOALS

## Water act (587/2011)

The purpose of this Act is to:

- 1) **promote**, organise and coordinate the **use of water resources** and the aquatic environment, so as to render it socially, economically and ecologically sustainable;
- 2) prevent and **reduce the adverse effects** of water and the use of the aquatic environment; and
- 3) **improve the state** of water resources and the aquatic environment.

## Environmental protection act (527/2014)

The purpose of this Act is to:

- 1) **prevent** the **pollution** of the environment and any risk of this, prevent and reduce emissions, **eliminate** adverse **impacts** caused by pollution and prevent environmental damage;
- 2) safeguard a **healthy**, pleasant, ecologically **sustainable** and biologically **diverse environment**, support sustainable development and combat climate change;
- 3) **promote sustainable use of natural resources**, reduce the amount and harmfulness of waste, and prevent adverse impacts caused by waste;
- 4) make the assessment of activities causing pollution and the consideration of the impacts as a whole more effective;
- 5) improve the opportunities of citizens to affect decision-making concerning the environment.



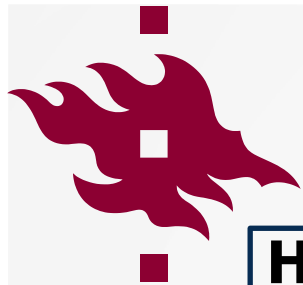
# TWO PERMIT SYSTEMS

## Water act (587/2011)

- Requirement to apply a permit → categorical list ([FWA 3:3](#)) & risk of negative impacts on protected interests ([FWA 3:2](#))
  - Permit criteria:
    - Right to use project areas ([FWA 3:4.3](#));
    - Harm minimisation ([FWA 2:7](#));
    - Weighing of interests ([FWA 3:4.1](#));
    - Permit conditions ([FWA 3:10–15](#))
- close linkages to the WFD

## Environmental protection act (527/2014)

- Requirement to apply a permit → categorical list + risk of environmental pollution ([EPA 27 §](#))
  - Permit criteria:
    - Site selection (EPA 11 §);
    - Principle of caution and care + BAT/BEP (EPA 20 §);
    - Harm to health, or significant pollution (EPA 48 and 49 §);
    - Permit conditions (EPA 52 §)
- close linkages to the WFD



# TWO PERMIT EXAMPLES

## Hydropower (Kemijoki Oy)

- 44 MW output
- Benefits outweighed the harm
  - B: Value of electricity + adjusting power
  - H: Harm to properties (3.4ME), fisheries (1.4ME), tourism & recreation, ecological condition
- Obligation to compensate harm to nature conservation
- Obligation to prepare for building fishways
- WFD: no deterioration due to HMWB classification and earlier hydropower

## Pulp mill (Finnpulp Oy)

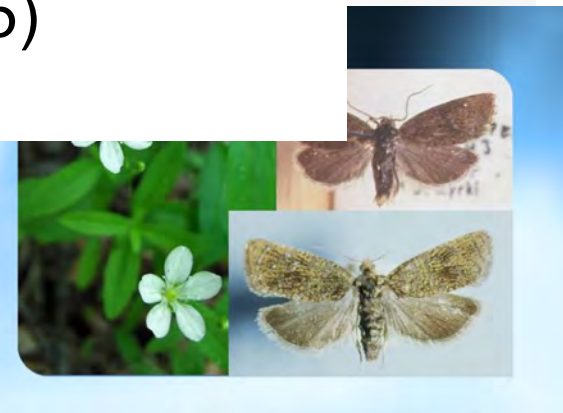
- 1.2M tonnes of pulp per year; produces 1 TWh of electricity per year
- Site selection: land-use plans
- BEP/BAT: [BREF requirements ok](#)
- No harm to health or significant pollution
- Permit conditions: Limitations to Adsorbable organic halides, kadmium, phosphorus and sulphate emissions
- WFD: no deterioration due to hydrological flow rates



# ROLEPLAY: NEW HYDROPOWER IN KEMIJOKI RIVER



What are your primary concerns as: 1) permit authority (AVI); 2) enforcement authority (ELY); 3) hydropower company; 4) private person suffering damage; 5) environmental NGO





# CURRENT PROBLEMS OF FINNISH WATER LAW

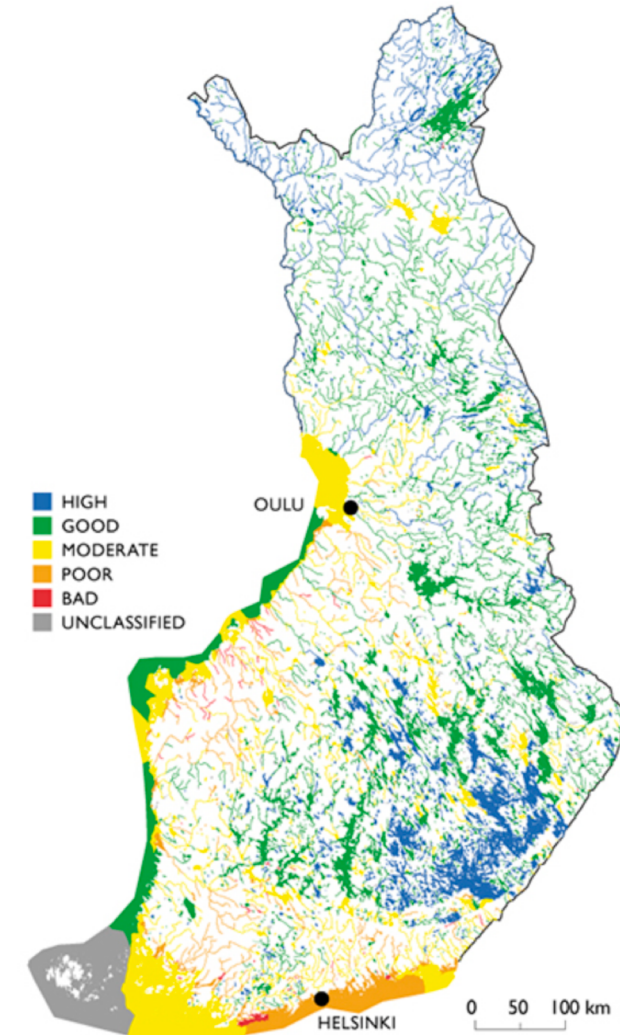
- Regulating diffuse water pollution: nutrients + microplastics → hardly regulated at all
- Enforcement of environmental permit conditions (Talvivaara)
- Reconciling hydropower & natural reproductive cycles of migratory fish → permanence of existing water permits
- Climate adaptation: management of flood-risks and droughts

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## Adaptive law and governance

- How do we make sure that law encourages sustainable grassroots developments without compromising rule of law?
- How do we secure the scientific basis of water management?

Surface waters by ecological status in Finland 2013





# BlueAdapt

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[www.blueadapt.fi](http://www.blueadapt.fi)

 /Blueadapt

 @BlueAdapt

## **Julkaisuja:**

*Soininen, Niko – Belinskij, Antti – Vainikka, Anssi – Huuskonen, Hannu: **Bringing Back Ecological Flows: Migratory Fish, Hydropower and Legal Maladaptivity in the Governance of Finnish Rivers.*** Water International 2018.

*Soininen, Niko – Platjouw, Froukje Maria: **Resilience and Adaptive Capacity of Aquatic Environmental Law in the EU – An evaluation and comparison of the WFD, MSFD, and MSPD.*** Teoksessa David Langlet – Rosemary Rayfuse (eds.): Ecosystem Approach in Ocean Governance and Planning. Brill 2018.

*Soininen, Niko: **Torn by (un)certainty – Can there be peace between the rule of law and other SDGs?*** Teoksessa Duncan French – Louis Kotzé (eds.): Global Goals: Law, Theory & Implementation. Edward Elgar Publishing 2018, 250–270.