# Table of Contents

A. Problem Statement ................................................................. 13

B. The Term “Environmental and Resource Costs” .......................... 16

C. The Term “Water Services” ...................................................... 21
   I. Problem Statement and State of the Debate ............................. 21
   II. Proceedings Before the European Court of Justice in 2014 ........ 24
      1. Infringement Proceedings Against Germany ....................... 24
      2. Water Services: No Definition of Scope by the ECJ ............ 25
      3. The ECJ’s Goal-oriented Approach ................................... 26
      4. Commission Invited to Take Renewed Action ...................... 27
      5. Causa Non Finita: Continuation foreseeable ...................... 28

III. Is a Narrow Definition of “Water Services” Necessary to Limit Harm from Cost Recovery? .......................... 28
   1. Misleading Interpretations of Economic Instruments ............... 29
   2. Responsibility for Costs as a Means of Water Conservation .... 31

IV. Interim Conclusion ............................................................... 32

D. Position of Environmental and Resource Costs in the Norm Architecture of Article 9 WFD ............................... 33
   I. Definition of the Problem ................................................... 33
   II. Legal Interpretations of the Norm Architecture ..................... 33
   III. “Efficient Use of Resources” as a Key Term ........................ 35
   IV. Relevant and Irrelevant Environmental and Resource Costs .... 40
   V. Interim Conclusion ............................................................. 41

E. Environmental and Resource Costs as a Component of Cost Recovery: Which Costs Are to Be Recovered? ...................... 43
   I. Principle of the Purpose Relatedness of the Costs .................. 43
   II. The Cost-related Purpose of Article 9 of the WFD ................ 45
   III. Extent of ERCs – Dependant on Both Water Status and Function of Cost Recovery ........................................... 47
   IV. Reference to Water Status as a Recovery Concept: Achievement of Environmental Objectives According to Article 4 WFD as an Abolishment Threshold? 49
      1. Overview ................................................................. 49
2 Functionality of ERC Allocation in Case of Achieved Environmental Objectives ........................................ 50
3. Target-relatedness of Article 9 of the WFD ........................................ 53
V. Interim Conclusion .............................................................. 57

F. Concepts for “Taking Account” of ERCs: How Should These Costs Be Recovered? ........................................ 58
   I. Interpretation Efforts in the Legal Literature: “Taking Account” as an Obligation Problem ................................ 58
   II. Taking Account as a Calculation Problem ........................................ 60
   III. Approximation of Environmental and Resource Costs by Means of the Costs of the Measures? ................. 66
   IV. Concepts for “Taking into Account” Provided by the Economic Theory of Environmental Policy ............... 72
   V. Nine Arguments Against Focusing on Calculating Environmental and Resource Costs ........................................ 75
      1. Environmental and Resource Costs Cannot Even Remotely be Calculated Accurately in Practice ................. 76
      2. There is More to Taking Account of Environmental and Resource Costs than Identifying Formal Cost Recovery Levels ........................................ 76
      3. Calculation Problems Give Rise to Dubious Derivative Concepts .......................................................... 77
      4. There is No Legal Obligation to Provide a Calculation Solution .......................................................... 79
      5. Environmental Economics Does Not Necessarily Support Calculation Approaches ........................................ 80
      6. Calculation Approaches are Costly and Time-consuming .......................................................... 83
      7. Calculation Approaches Distract from the Real Challenges .......................................................... 83
      8. Calculation Approaches are Not Required from a Conceptual Point of View ........................................ 84
      9. Calculation Approaches Weaken the Political Legitimation of Cost Recovery Policy ........................................ 85
   VI. On the Critique of Decisionist Approaches to “Taking Account” of ERCs ........................................ 86
      1 Overview .............................................................. 86
      2 Four Arguments in Favour of Politically Defined Environmental and Resource Costs ........................................ 87
         a) No Watering Down of the Legal Requirements .......................................................... 87
         b) No Particular Estimation Problems and No Inefficiency .......................................................... 89
         c) Avoiding the Political Paradox: Do the Obvious Instead of Waiting for the Impossible ........................................ 89
         d) The Lack of Enforcement Monitoring and Vested Interests in a Calculation Approach to Taking ERC into Account ........................................ 90
      3. Interim Conclusion .......................................................... 90
      4. Farewell to ERC Accounting? .......................................................... 92

Table of Contents