

**Water Directors of the EU Member States  
and other countries members of the EU  
CIS process**



**CC:**

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**Members of the SCG of the EU Member  
States and other countries members of the  
EU CIS process**

**26 November 2018**

**Re: Document on “the Future of the Water Framework Directive - Water Directors input to the fitness check process on experiences and challenges of the WFD’s implementation and options for the way forward”**

Dear Water Director,

We are contacting you as we would like to express our grave concerns over the process and the content of the work of the Consultation Group on the future of the Water Framework Directive (WFD). We strongly urge you not to endorse the document on ‘the future of the WFD’ at the Water Directors meeting in Vienna, as it has not been developed in line with the well-established and recognised practice of the EU WFD Common Implementation Strategy (CIS), a process which is exemplary in terms of MS and stakeholder cooperation in addressing environmental pressures at the EU level. Moreover, the document’s conclusions are not derivative of a well-informed process documenting effectiveness and efficiency of the WFD.

We propose instead that a proper and transparent process should be put in place for the CIS process to constructively contribute to the fitness check evaluation of the WFD and other water legislation. In addition, we believe that it would be more pertinent and responsible to discuss how to use the 3rd river basin management cycle 2021-2027 to adopt and implement all necessary measures to keep and bring European waters in good status.

In the paper that has only very recently become publicly available, it is argued that it is a “discussion paper” that “summarizes views expressed during the discussion process facilitated by the Consultation Group /.../ /and that it/ does not reflect any positions of the WD or MS or present a comprehensive consensus among WDs or the MSs governments on issues covered in the report”. However, the content of the paper and its title suggest otherwise: it is noted that the paper is scheduled to be “endorsed” at the Water Directors (WD) meeting in Vienna in November 2018, and that it represents the *Water Directors’ “input to the fitness check process on experiences and challenges of WFD’s implementation and options for the way forward”*. It does not present different views expressed during the closed discussion nor attributes these views to different members of the group.

In the Annex to this letter we outlined the shortcomings of the process of preparing the paper by the Consultation Group and concerns over its content and some of the options proposed. We stand ready to discuss in detail all the issues we are raising in this letter as well as other open questions addressed in the document prepared for the WDs meeting in Vienna.

Yours sincerely,



Ester Asin  
Director  
WWF European Policy Office

On behalf of ***Living Rivers Europe***



## Annex

**1. Submission of a discussion paper directly to Water Directors, bypassing the SCG where stakeholders are represented, runs counter to collaborative modus operandi of the WFD CIS and the fundamental idea in the WFD that water management can only succeed with full transparency and active involvement of all stakeholders.**

The content of the paper or issues raised have never been discussed with the stakeholders, including environmental NGOs, and as such cannot possibly be endorsed by the Water Directors, which represent the highest decision-making body of the CIS process. Stakeholders have only been informed about meetings of the Consultation Group once they have taken place and because NGOs have specifically asked for any information about the process to be shared. Reports at the SCG meetings have been very short and never touched on the content of the discussions in the Consultation Group.

It is extremely worrying that Water Directors decided in their last meeting in Sofia “not to provide stakeholders with the draft report” on the future of the WFD; this marks a worrying change to the way Member States, European Commission, stakeholders and NGOs have been constructively collaborating in the framework of the CIS. It also begs the question why would such an important discussion on the future of the WFD have to be conducted behind closed doors effectively excluding those that have extensive knowledge and experience as regards the implementation of the WFD and are affected by it.

**2. Submission of a paper with proposals on how to change the WFD does not respect the Interinstitutional Agreement on Better Law-Making from 2016.<sup>1</sup> This agreement clearly stipulates that revision of Directives should be based on evaluations. Making proposals for changes at a time when the evaluation process and the public and stakeholder consultation is only just starting, short-circuits the agreed process and undermines the role of stakeholders and the European Commission.**

The issues addressed in the document look at how to amend the WFD (there are clear statements made that the WFD needs to be changed to become ‘fit for purpose’), whereas no conclusions have yet been made on the five assessment criteria of the fitness check evaluation and whether the directive needs to be changed or not. On the contrary, the last fitness check of the WFD in 2012 showed that the WFD is fit for purpose,<sup>2</sup> a conclusion MS ministers agreed with - highlighting “that the current EU legal framework on water is extensive, flexible and essentially fit to address the challenges faced by the aquatic environment”.<sup>3</sup> Conclusions made in this paper are gravely undermining the EU process of EU law evaluations.

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<sup>1</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.123.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.123.01.0001.01.ENG)

<sup>2</sup> European Commission (2012) Commission Staff Working Document, The Fitness Check of EU Freshwater Policy, SWD(2012) 393 final; European Commission (2012) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Blueprint to Safeguard Europe's Water Resources, COM(2012) 673 final.

<sup>3</sup> Council Conclusions on a blueprint to safeguard Europe's water resources (December 2012) (Doc. 17872/12), para 8.

The Consultation Group seems to misunderstand the ‘backward-looking’ character of the fitness-check evaluation of the WFD. Rather than providing evidence of the ongoing implementation against the five assessment criteria of the fitness check evaluation, the group jumps to the conclusion the WFD needs to be amended and “made fit for purpose in terms of enabling continuous and ambitious implementation beyond 2027”. Unfortunately, the conclusion that the WFD is not fit-for-purpose is not supported by evidence and is mainly used to justify the failure to reach the objectives of the WFD due to implementation shortcomings. In our view, the main thrust of arguments in the paper seems to be on how to delay the action needed to bring our waters to good status without being in breach of the legal requirements of the directive. A message that would not be received well by European citizens.

**We strongly believe that all the issues identified by the Consultation Group can be addressed through the ambitious implementation of the WFD. So far, we have not seen strong evidence that it is the legal text of the WFD that prevents achievement of its objectives.**

**3. Furthermore, submitting to the CIS process a paper with proposals for amending the WFD undermines the mandate of the CIS to facilitate implementation of the Directive and the long-standing agreement between Water Directors that the CIS meetings should not be used to discuss issues which are for the Council to discuss.**

**4. The document makes far reaching conclusions concerning the future of the WFD based on flawed interpretation of the WFD, especially its derogation requirements, as well as the actual situation of the WFD implementation on the ground.**

This is especially the case for the part of the paper addressing the **question of the 2027 deadline**, which forms the bulk of the paper. Although the paper argues that it is “particularly important to critically analyse /.../ the efforts made to-date”, such analysis is lacking in the paper and therefore leads us to the conclusions that this has not been done as part of this process. Hence, the conclusions reached on the fitness of the WFD in this paper are flawed.

For example, the paper argues that the environmental objectives of the WFD will not be achieved by 2027, despite all the efforts made by MS. A simple assessment of the use of exemptions in the 1st and 2nd management cycles indicates, that MS did not make all the efforts to address the pressures and drivers of less than good status, and that the ambition of the water management can be generalised as being low across the EU. Moreover, hardly any MS has initiated the preparation of the 3rd river basin management plans (RBMPs). It is therefore **not credible to argue that the deadlines need to be postponed as measures needed to achieve the WFD objectives by 2027 have not been selected or assessed, nor have economic assessments or any stakeholder engagement been performed. The paper does not show concretely what kind of effective measures have been taken across EU MS to address the major pressures on water ecosystems, such as agriculture or hydropower, and how these measures have failed to or are failing to effectively address the pressures.**

Our assessment<sup>4</sup> of the WFD implementation shows that the **WFD provides an effective framework for addressing the main pressures facing freshwater ecosystems and with**

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<sup>4</sup> Bringing life back to Europe's waters: The EU water law in action (September 2018), available at [http://d2ouvy59p0dg6k.cloudfront.net/downloads/bringing\\_life\\_back\\_to\\_europe\\_s\\_waters\\_web\\_1.pdf](http://d2ouvy59p0dg6k.cloudfront.net/downloads/bringing_life_back_to_europe_s_waters_web_1.pdf).

**political will it is possible to reach the 2027 objectives of the WFD and continue with water management beyond 2027 under the existing legal framework.**

5. The paper acknowledges that the WFD does not contain a sunset clause and hence its implementation as well as river basin management planning will need to continue post 2027, including in order to prevent deterioration and address chemical pollution established by the revised list of priority substances under the EQS Directive. This is also our interpretation of the WFD and thus we disagree with the conclusion of the Consultation Group that the current legal framework prevents the Member States from adopting necessary measures for improving the status of the water bodies after 2027. WFD not only enables but requires the review of implementation of planned measures and adoption of *any additional* measures in the next river basin management cycle, in case time exemptions have been applied. Moreover, WFD requires for those measures and timelines to be included in the RBMPs. If the intention is really to maintain the high level of ambition of the WFD as stated in the paper on several occasions, surely the focus should be on how to use the upcoming 2021-2027 river basin management planning cycle in order to finally meet the objectives of the Directive across the EU without delaying action to 2045 (as proposed in Vienna at the EU Water Conference, September 2018) or abusing the derogation provisions of the WFD.

6. Furthermore, MS' argument that they will resort to the application of Article 4(5) derogation as it becomes clear that good status will not be achieved in many cases by 2027, is not justifiable by the text of the WFD. As expressed clearly in the '*Discussion paper on the use of Article 4(4) and 4(5) exemptions in the future RBMPs and the concept of natural conditions*', prepared by the EC for WDs meeting in Bratislava (November 2016), "Article 4(4) and 4(5) WFD are essentially different. Article 4(5) is not an alternative to Article 4(4). Its application should be exceptional and limited".<sup>5</sup> Furthermore, any attempt to "unduly extend the application of Article 4(5) in the 2021 RBMPs will likely face important difficulties in terms of justification, assessment and scrutiny. It may also send wrong and confusing signals to stakeholders and have negative consequences in terms of weakening the implementation of the WFD, all in exchange of no clear benefits".<sup>6</sup>

7. In the paper prepared by the Consultation Group it is consistently argued that the reason for proposed options for changes to the WFD is the need to maintain the ambition in water management in Europe after 2027. However, **many of the proposals made and considered would lead to a significant weakening of the EU water management framework and lowering of the ambition**, even if the actual standards (i.e. good status/potential; non-deterioration) would not be changed. Taking into account the current application of Article 4(4) exemption and lack of enforcement, we are convinced that **giving an opportunity to extend the achievement of the environmental objectives for reasons other than natural conditions beyond 2027 would lead to continued procrastination or even permanent avoidance of WFD compliance**. It would even further lower the ambition in water management across the EU. There is no assurance that objectives will be delivered upon if Article 4(4) would allow for extensions after 2027.

8. Moreover, it is absolutely crucial that the 'one out all out' principle regarding the status of water bodies is maintained. **The 'one out all out' nature of status objectives for the WFD has been**

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<sup>5</sup> Discussion paper on the use of Article 4(4) and 4(5) exemptions in the future RBMPs and the concept of natural conditions, <https://circabc.europa.eu/d/a/workspace/SpacesStore/be6ccb2d-1f7a-4750-b146-11fe72b82261/WFD2016-2-1%20Item%201%20-%20Continuation%20thought%20starter%20discussion.docx>. The document 'Natural Conditions in relation to WFD Exemptions' endorsed by WDs in their meeting in Tallinn (December 2017) also recognises that 'Article 4(5) is different in nature from Article 4(4)'.  
<sup>6</sup> Discussion paper on the use of Article 4(4) and 4(5) exemptions in the future RBMPs and the concept of natural conditions, *ibid*.

**critical for effectiveness of the WFD**; it has pushed MS to address all pressures, and makes it clear where this has not taken place. It is disappointing that there are unaddressed pressures for so many water bodies, but where this has led to poor headline performance in meeting objectives it is for legitimate reasons: water bodies are simply not in good enough health to meet the purposes of the Directive as set out in Article 1. **If this principle is scrapped there is a serious threat that the actual status of the water bodies will not be properly assessed nor addressed.**

Moreover, **amending provisions for classification of water bodies (Annex V) could also lead to changes in interpretation of the ‘non-deterioration’ obligation, hence effectively weakening the standard of the WFD.** Other ways on how to communicate any positive trends in the same status level can be discussed and would not require a change in the WFD. Changes to the WFD would also not be needed to address the question of communicating RBMPs, which constitute a strategic planning tool of the WFD and its content should be maintained (Annex VII).

**9. Proposals for changes to the economic provisions of the WFD do not seem justified either;** they haven’t been adequately implemented so far and this is the actual reason for them having a limited impact on the freshwater environment to date. Economic analyses, if performed at all, are often not adequate and changes to the wording of Article 5 and Annex III is not needed to improve their quality. As regards water pricing, the EU Court of Justice (EUCJ) confirmed (C525/12) that water services are not limited only to supply of water and wastewater treatment, but can for example also include impoundment for hydroelectric power generation, navigation and flood protection, and abstraction or storage for irrigation and industrial purposes. Since the ‘water services’ ruling, however, we have not seen improvements in implementation of the cost recovery provision of the WFD in the EU MS. In general water pricing has not been fully and adequately implemented across sectors, and is instead often limited to wastewater treatment and provision of drinking water. Moreover, prices do not reflect the real cost, with environmental and/or resource costs rarely integrated in the pricing system.

**Changes to Article 9 that would strip the requirement for adequate cost recovery from the biggest drivers of ecosystem deterioration, such as agriculture, hydropower or navigation, would significantly weaken the EU water management framework.** Such changes would significantly limit the opportunity for this economic-policy instrument to generate potential revenue stream to fund the needed investments, advance rationality and transparency of decision-making on water, as well as create hugely beneficial incentives for changing unsustainable practices (e.g. groundwater over-abstraction for agriculture) and therefore supporting cost-effective achievement of the WFD objectives.

10. Last but not least, WFD’s provision on public participation must be kept. We **strongly disagree with the opinion** expressed in the paper **that to make public participation more effective, Article 14 of the WFD would need to be streamlined and less prescriptive,** especially by allowing authorities to decide on the content and length of the public consultation. Public must be involved in water management planning at an early stage and have access to all background documents.