

WEAKENING THE EU WATER LAW: INDUSTRY'S WISH LIST



Living
Rivers
Europe





Living Rivers Europe

This briefing was prepared by Living Rivers Europe, a coalition of the following environmental groups who represent a movement of over 40 million people across Europe. Together, we work to safeguard the EU water law – the Water Framework Directive (WFD) – and strengthen its implementation and enforcement.



WWF

WWF is one of the world's largest and most experienced independent conservation organisations, with over 30 million followers and a global network active in nearly 100 countries. WWF's mission is to stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature, by conserving the world's biological diversity, ensuring that the use of renewable natural resources is sustainable and promoting the reduction of pollution and wasteful consumption. The European Policy Office contributes to the achievement of WWF's global mission by leading the WWF network to shape EU policies impacting on the European and global environment.



Wetlands International

Wetlands International is the only global not-for-profit organisation dedicated to the conservation and restoration of wetlands. We are deeply concerned about the loss and deterioration of wetlands such as lakes, marshes and rivers. Our vision is a world where wetlands are treasured and nurtured for their beauty, the life they support and the resources they provide.



ERN

The European Rivers Network (ERN) seeks to promote the sustainable management of living European rivers and water, as opposed to the exploitation, pollution and degradation that has occurred in the past. Founded in France in 1994, ERN aims to link groups, organisations and people in the fifty major rivers basins in Europe to improve communication (environment, culture, education and human rights) to protect and restore the basic equilibrium of rivers and aquatic environments. ERN implements its own projects in France and transboundary rivers in Western Europe.



EEB

The EEB is Europe's largest network of environmental citizens' organisations. We bring together around 140 civil society organisations from more than 30 European countries. We stand for sustainable development, environmental justice & participatory democracy.



EAA

The European Anglers Alliance (EAA) is a pan-European organisation for recreational angling. Its mission is to safeguard the fish stocks and fisheries of Europe, and to protect the interests of all those who fish with rod and line for recreational purposes. There are about 3 million affiliated members to EAA's 16 member organisations and affiliates from 14 European nations.

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INTRODUCTION

SECURING THE FUTURE OF EUROPE'S WATERS

Freshwater ecosystems are the most threatened on the planet. In Europe, only 40 percent of EU rivers, lakes, streams and wetlands are healthy today, largely due to pressures from industrial agriculture and hydropower, as well as other sectors, such as mining.

These industries and sectors staunchly refuse to accept that the deterioration of Europe's freshwater ecosystems poses significant risks to the core of their business, and that it is critical that they now adapt their behaviour and approaches – for the good of nature and EU citizens, and as is required under the EU's water legislation. On the contrary, some industries are coming together under the umbrella of European and national associations to lobby for substantial changes to this legislation, the backbone of which is the EU Water Framework Directive (WFD). Such changes would essentially give these industries the green light to maintain their activities "business as usual", resulting in further pollution and degradation of our vulnerable freshwater ecosystems.

Unless EU Member States oblige these sectors and industries to radically change their ways and take a far more active role in the protection and restoration of Europe's waters, it will be impossible to ensure a decent supply of good quality water for all legitimate uses in the future. But our elected representatives have so far failed to do so. Instead, they have continuously delayed action and allowed economic sectors to continue polluting and modifying our waters, resulting in loss of biodiversity and the critical services nature provides.

Brought into effect in 2000, the WFD is based on an innovative and holistic approach to water management. It recognises that, when healthy or in "good status", freshwater ecosystems provide an array of benefits – from providing clean water and natural flood defence, to housing wildlife and absorbing and storing carbon. The law aims to bring the vast majority of EU rivers, lakes, streams, wetlands, groundwater, transitional and coastal waters to good status by 2027 at the very latest. In doing so, it strives to secure the crucial benefits of healthy freshwater ecosystems for the sake of the health, economic prosperity and enjoyment of current and future generations.

The WFD is currently undergoing a standard review led by the European Commissions (known as a "fitness check"), which aims to evaluate whether the legislation is still "fit for purpose". It does this by looking into whether the law is still relevant for meeting its objectives, whether it adds value at European level, and is generally effective, efficient and consistent with other policies and legislation. Given that water fuels all economic sectors, it should come as no surprise that the aforementioned industry groups are making the most of this process to ensure that they can continue "business as usual" – that is, that they will not need to adapt their current practices but continue (and even expand) practices which pollute freshwater ecosystems, destroy their natural shape and flow, and/or take too much water from our rivers, lakes, groundwater and aquifers. If ever put into



effect, their proposals would seriously compromise any efforts made so far by national governments, regional authorities, civil society, but also more progressive companies, to protect and restore EU freshwater ecosystems.

The WFD gives Member States the tools to effectively protect and restore EU freshwater ecosystems to their former glory, but they need to make use of them – and that includes making sure industry plays its part. However, instead of making the WFD work and holding these industry groups and sectors to account, several Member States have compiled a similar “wish list” of changes to the legislation, which very much aligns with that of these groups. Like industry, the Member States’ wish list is at odds with the sustainable future citizens across the world have been so vocally demanding, not least through the civil society-led #ProtectWater campaign, during which more than 375,000 citizens expressed their wish for the WFD to remain unchanged.¹ Moreover, over the best part of two decades, EU Member States have demonstrated very little ambition to use the WFD to its full potential to tackle the root causes of bad water management and the destruction of freshwater ecosystems. They have also excessively used, and often misused, the various types of exemptions provided under the WFD to postpone much-needed action, allow destructive projects to go ahead, and water down the legislation’s objectives.²

This briefing brings together the positions on the WFD of national and/or European associations representing the interests of agriculture, hydropower, and extractive industry, as well as proposals made by officials from some Member States. All positions have been taken from documents which have been made publicly available by the relevant parties. The briefing then goes on to show the clear alignment between the wishes of Member States and those of the industry groups, and outlines why these “wish lists” of changes would, if introduced into the legislation, be a terrible blow for nature and EU citizens alike. The briefing concludes with a list of recommendations to both the European Commission and Member States to ensure full implementation of the WFD.

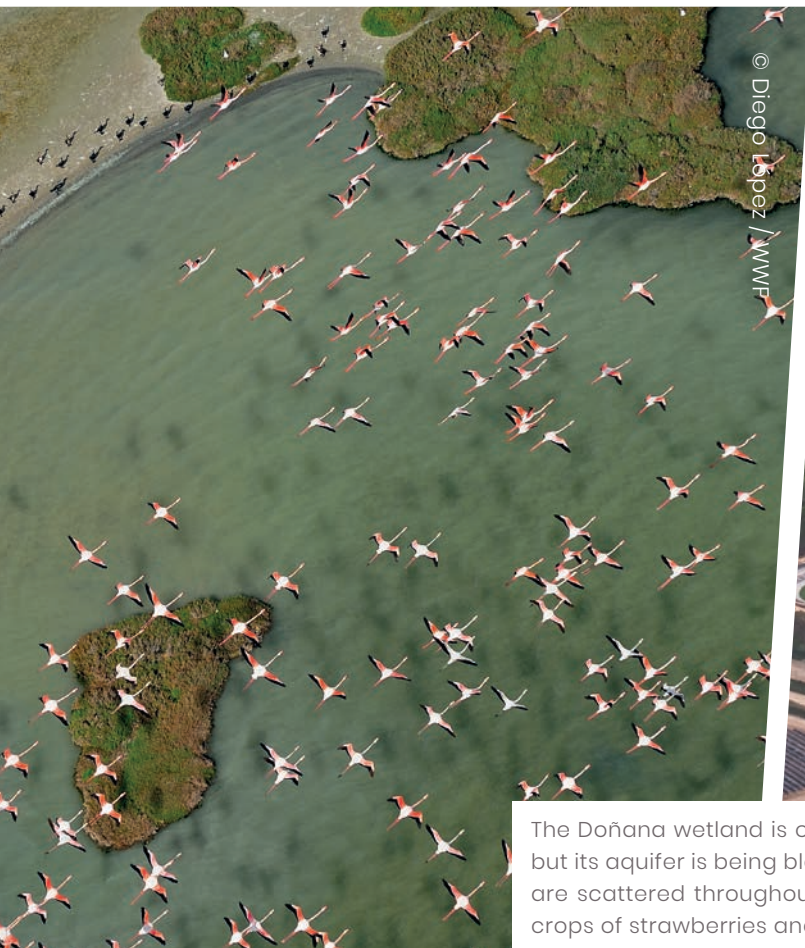
It is clear that, without full, ambitious implementation of the WFD in its current form, it will be impossible for governments to secure enough good quality water for their citizens, nature and economies in the future. It is therefore the duty of both Member States and the European Commission to ward off the pressures of vested industry interests and, instead, see the fitness check of the WFD as an opportunity to strengthen its implementation to ensure no further destruction or deterioration occurs, and that the majority of EU freshwater bodies are, at last, brought back to good status by 2027.

1 Living Rivers Europe, 2019, “375,000+ Citizens tell the European Commission ‘Hands off our Water Law!’”, https://www.panda.org/_/search_wwf_news/?344893/375000-Citizens

2 More detailed information around the current pitfalls in the implementation of the WFD can be found in the publication *Bringing life back to Europe’s waters: The EU water law in action* (WWF, EEB, European Rivers Network, European Anglers Alliance, 2018, <http://www.wwf.eu/?uNewsID=334981>)

AGRICULTURE

As captured in the positions of Copa Cogeca, the Danish Agriculture and Food Council, GB Farmers, Austrian Farmers, Irrigants d'Europe, and the Austrian Chamber of Agriculture



The Doñana wetland is one of Europe's most important locations for migratory birds, but its aquifer is being bled dry by unsustainable agriculture. At least 1,000 illegal wells are scattered throughout the national park and more than 3,000 hectares of illegal crops of strawberries and red fruits are monopolising Doñana's water.

The farming sector claims to have contributed to a more sustainable water management, but the current state of waters does not reflect this. Water pollution and abstraction by agriculture remain the core pressures on Europe's freshwater ecosystems and no significant effort is being made to rectify this situation. WFD targets are not being met for a quarter of EU surface waters because of fertiliser, pesticide and sediment pollution.³ Furthermore, water abstraction for agriculture can significantly change habitats and water flow regimes of rivers and wetlands (e.g. through damming rivers and draining wetlands) as well as lower the groundwater levels. Water efficiency measures, where taken, have not had the desired impact.⁴

³ WWF, EEB, European Rivers Network, European Anglers Alliance, 2018, *Bringing life back to Europe's waters: The EU water law in action* <http://www.wwf.eu/?uNewsID=334981>
⁴ Improving water efficiency in irrigation has often led to a higher water use by farmers expanding productive fields or planting more crops which require a lot of water

WISH LIST

WEAKEN WFD OBJECTIVES

More concretely, the farming lobby calls for a replacement of what they call the existing “overambitious” environmental objectives with what they consider to be “realistic” targets. They also request greater flexibility in the application of the WFD’s targets and standards, because of the impacts of climate change and agricultural demands.

SCRAP THE “ONE-OUT, ALL-OUT” PRINCIPLE

According to this principle, a water body is only considered healthy if all the quality elements (for example the flow, whether it is biodiversity-rich, or chemical substances are present) are in good status, and the overall status is defined by the quality element in the lowest class. The farming lobby wants this principle to be replaced with a more forgiving (less strict) system for assessing water quality.

EXEMPT AGRICULTURE FROM COST RECOVERY AND WATER PRICING REQUIREMENTS

The farming lobby wants consumers and industry sectors to pay for the water they use – except for farmers. They also oppose any efforts to further valorise water, and instead call for the water extracted from wells owned by farmers to remain free of charge. They also argue for even greater fiscal and financial support and incentives to foster water storage and irrigation.

OPPOSE ANY TIGHTENING OF POLLUTION STANDARDS

which would be needed to achieve the WFD’s objectives. The farming lobby rejects any further limitations on fertiliser use, as well as lower thresholds (limits) on pesticides (Plant Protection Products (PPPs)).

ENERGY SECTOR – HYDROPOWER

As captured in the positions of Eurelectric, the European Renewable Energies Federation (EREF), Finnish Energy, and Swedish Energy



Soča River, Slovenia, a hotspot for biodiversity and water sports. Many small plants have already fragmented the middle and lower parts of the river.

The energy sector groups participate in the WFD fitness check mostly to protect the interests of the hydropower sector. There are currently more than 25,000 hydropower plants in Europe and they are one of the main drivers affecting the status of rivers, resulting in loss of connectivity, altered water flow and changes in sediment transport. Despite the fact that the EU's potential for hydropower has already been largely harnessed, a significant number of new hydropower plants is being planned across Europe.⁵ The vast majority of projects in the pipeline are small hydropower plants, which generate only a negligible amount of power but still have a dire effect on rivers and ecosystem services.

⁵ WWF, Revolve, 2018, 'Harnessing Europe's rivers for power - is it worth it?', http://awsassets.panda.org/downloads/hydropower___revolve__28.pdf

WISH LIST

WEAKEN THE “NON-DETERIORATION” REQUIREMENT

linked to extension of the exemption for harmful projects (Article 4(7)) to facilitate the future development of new hydropower. The “non-deterioration” obligation is a cornerstone of the WFD – it exists to ensure that no freshwater ecosystem is allowed to deteriorate any more than it has done already. The energy lobby considers the current wording, while taking into account the European Court of Justice’s (ECJ) interpretation of non-deterioration, to be too strict, and therefore a hindrance to future economic activities for all stakeholders involved.

EXEMPT HYDROPOWER FROM COST RECOVERY AND WATER PRICING REQUIREMENTS

Cost recovery is about recovering the costs associated with implementing the WFD, and water pricing relates to setting a price for water which reflects its true value. These groups believe water pricing is not a relevant tool for water uses and technologies, such as hydropower, because price incentives would not work to change behaviour in terms of water use or would have distortive effects. Consequently, they want cost recovery to focus only on certain water users, such as agriculture, consumers, and sectors other than hydropower.

EXTRACTIVE INDUSTRY – MINING

As captured in the position of the Swedish Mining Industry



© Diego López / WWF



© Jorge Barolome / WWF

A tailings dam failure of the “Los Frailes” pyrite mine in Spain, April 1998. The toxic spill is a clear example of the effects of acid water and heavy-metal rich sludge on the environment of the Coto Doñana wetland system.

The mining industry and coal burning have been major obstacles to restoring our rivers and lakes. Mining activities lead to severe water pollution through metal contamination (including with mercury), sedimentation and acidification. Water pollution happens through discharged mine effluents (liquid waste), as well as surface run-off of minerals and sediment amongst others. This also results in hydromorphological changes (changes to the physical shape and/or flow) of the river.

WISH LIST

WEAKEN THE WFD OBJECTIVES

by changing the way “Good Ecological Status” is defined. Under the WFD, every water body is ascribed a so-called “reference condition”, upon which the various indicators for it to reach “Good Ecological Status” are based. This definition of the “reference condition” is the equivalent of a “natural” or “near-natural” state. The Swedish Mining Industry is pushing for a definition that allows for human influence.

WIDEN THE SCOPE OF WFD EXEMPTIONS

This includes the exemption for harmful projects (Article 4(7)) to allow for polluting activities, like mining, that cause deterioration of Europe’s waters or prevent the achievement of the good status objective. The “non-deterioration” requirement, together with the “one-out, all-out” principle, stops the development of mining projects because of the obligation to not grant a permit for an individual project where it may cause a worsening of the ecosystem health (deterioration) of a body of surface water.

CHANGE THE “ONE-OUT, ALL-OUT” PRINCIPLE AND HOW DETERIORATION IN STATUS IS DEFINED

The Swedish Mining Industry argues that the WFD’s rules for evaluating changes in water status stop the development of mining projects.

INDUSTRY ASSOCIATIONS

As captured in the position of the Association of North German Chambers of Industry and Commerce, and the Federation of German Industries, and the German Association for Water and Energy Industries. These constitute the organisations that have so far published a detailed position paper on the WFD that is publicly available



Destruction of Białka River, Poland. Works were commissioned to rebuild the banks after a summer flood, and turned a river that had once had several beds into one gravel-covered canal.

German industry associations are comprised of many different trade associations that are the top representatives of an entire industrial or service sector. Members of the Federation of German Industries include, but are not limited to, industry representatives from the construction industry, chemicals industry, and pharmaceuticals industry. The German Chambers of Industry and Commerce represent the interests of many companies of all sizes and sectors. The German Association for Water and Energy Industries is the largest energy industry association in Germany. Its members include local and municipal utilities as well as regional and inter-regional suppliers.

WISH LIST

WEAKEN OBJECTIVES AND POSTPONE DEADLINES

These industry associations maintain that the WFD objectives are too ambitious and cannot be reached by the final 2027 deadline. They also argue that they represent a considerable burden for companies.

SCRAP THE “ONE-OUT, ALL-OUT” PRINCIPLE

and replace it with specific targets for individual pressure indicators, instead of the current holistic approach.

WIDEN THE SCOPE OF THE WFD EXEMPTION FOR HARMFUL PROJECTS (ARTICLE 4(7))

to create a possibility for allowing (or permitting), under set conditions, activities that cause negative changes in the chemical, physio-chemical, and biological characteristics of water bodies. The current exemption is limited to changes in a water body's hydromorphological characteristics only or to allow new, sustainable activities related to human development. These associations also wish to widen the scope of Article 4(7) to allow the use of “economic interests” as a reason to be granted exemption.

EU MEMBER STATES

As captured in the paper 'The Future of the Water Framework Directive (WFD)' and presentation 'EU Water Legislation– fit for purpose? A view from the Member State'



WISH LIST

For the analysis of this wish list, please refer to p.18.

MAKE PROVISIONS ON PUBLIC PARTICIPATION LESS PRESCRIPTIVE AND STREAMLINED

These provisions under Article 14 of the WFD define how to involve the public and stakeholders in water management decision-making. Member States would like them to be less prescriptive and streamlined, with a view to giving them more control over how and when they would include the public and stakeholders in water management issues.

POSTPONE THE FINAL 2027 DEADLINE

In some of Member States' proposals, one of the possible deadlines goes as far as 2045, or includes changing the grounds for applying time exemptions (extending the deadline for a water body to achieve good status beyond 2027 is currently only allowed for natural reason). Member States argue that the amount of time foreseen in the WFD – close to 30 years – does not give them enough time to ensure the majority of EU waters are in good status.

SCRAP THE “ONE-OUT, ALL-OUT” PRINCIPLE

Member States do not view this as the most effective tool to demonstrate the progress which has been made to date, nor the progress that is expected towards attaining good status.

WEAKEN ECONOMIC ASPECTS

including the rules for cost recovery and water pricing. This includes changing the scope of cost recovery and water pricing to allow greater flexibility in Member States' decisions as to which sectors should be required to pay for costs of water use and pollution.

WEAKEN THE OBJECTIVES

Specifically the “non-deterioration” obligation by amending the rules for classifying water bodies (Annex V), which could also lead to changes in interpretation of the “non-deterioration” obligation.



























ALIGNMENT BETWEEN THE TWO WISH LISTS

Interestingly, Member States' wish list and that of the various industry groups seem to be very much aligned (see the table on the following page). Just as the industry groups take issue with the WFD's strong environmental objectives, so too do Member States. Like industry, they also attack, amongst other things, two of the cornerstones which make this legislation so ambitious: the "one-out, all-out principle" and the "non-deterioration" obligation.

What is puzzling is that Member States and industry completely diverge in their reasoning for proposing exactly the same changes. Whilst Member States argue that these changes are needed to *maintain* ambition in EU water management, industry groups ask for changes because the current system is *too* ambitious. This is clearly contradictory and raises serious questions regarding Member States' true intent: Do they really have the best interests of citizens and nature at heart? How can they credibly argue that they want ambitious legislation to protect Europe's water bodies, and yet push for the same changes as vested industry interests?

Member States have the tools to significantly improve sustainable water management in Europe and ensure people and nature have a decent supply of good quality water now and in the future. And whilst some progress has been made over the 19 years the legislation has been in effect, they are not on course to bring Europe's rivers, lakes, wetlands, streams, groundwater, transitional and coastal waters to good health by 2027.

This reality is alarming in itself. But what is even more troubling, is that instead of doubling their efforts to meet the WFD's final objective, Member States are aligning with the positions of destructive industry sectors and are putting forward proposals to grant them greater flexibility – flexibility to develop and roll out practices which, far from being in line with the sustainable future citizens so vocally demand, would keep us locked in a destructive and unsustainable present (and future) for some time to come.

|  Agriculture |  Energy sector |  Extractive industry |  Industry associations |  Member States |
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KEY



Scrap or weaken the "one-out, all out" principle



Challenge the "non-deterioration" obligation



Postpone the final 2027 deadline



Weaken the economic aspects of the WFD



Widen the scope of Article 4(7) to allow harmful projects



Less strict definition of "Good Ecological Status"



Lower the WFD's objectives



Less strict requirement to involve the public

WHY THESE ASKS ARE BAD FOR PEOPLE AND NATURE

ASK 1: WEAKEN THE WFD'S SCOPE AND OBJECTIVES. THIS WISH LIST INCLUDES:



1.1. Postpone the final 2027 deadline for achieving "Good Ecological Status"

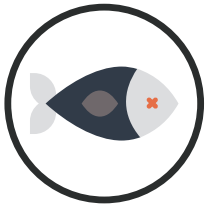
In the preamble to the WFD, water is described as not being "a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such." The current definition of a water body's so-called "reference condition" – essentially a "natural" or "near-natural" state – is the only appropriate means of setting ecological targets within the WFD, and of honouring this opening statement, that is to recognise the full value and potential of this ecological heritage.

Bearing in mind the considerable threat to freshwater ecosystems across Europe and, with that, the future availability of good quality water, the argument that the WFD's objectives are "overambitious" is weak – the need for action to protect and restore Europe's water bodies is urgent, and all measures should be put in place in order to reach the WFD's targets as soon as possible (and certainly no later than 2027). Lowering the legislation's environmental objective will not contribute towards healthier freshwater ecosystems, but simply lower the bar for Member States, and give unsustainable industry the green light to continue and expand their activities uninterrupted.

Based on the European Commission's most recent report on WFD implementation⁶, which included a simple assessment of the use of exemptions in the first and second river basin management cycles, it is clear that Member States have not put all their efforts into addressing the pressures and drivers of the poor state of Europe's waters, and that Member States' ambition in relation to sustainable water management can generally be described as low across the EU. Moreover, very few Member States have started to prepare their third River Basin Management Plans (RBMPs). It is therefore not credible to argue that the WFD's deadline needs to be postponed, as the measures needed to achieve them by 2027 have not yet been selected or assessed, nor have economic assessments been undertaken or any stakeholders been engaged.

Rather than trying to delay the action to 2045 – which was the deadline put forward by some Member States during the 2018 EU Water Conference in Vienna – Member States should now focus on how they can best utilise the upcoming 2021-2027 river basin management planning cycle to ultimately meet the WFD's objectives across the EU by 2027 at the very latest.

⁶ European Commission, 2019, Report from the Commission to the European Parliament and the Council on the implementation of the Water Framework Directive (2000/60/EC) and the Floods Directive (2007/60/EC) Second River Basin Management Plans First Flood Risk Management Plans, https://eur-lex.europa.eu/resource.html?uri=cellar:b6e2c9d9-39d2-11e9-8d04-01aa75ed71a1.0005.02/DOC_1&format=PDF



1.2. Challenge the “non-deterioration” obligation

Any changes to the “non-deterioration” obligation would be tantamount to weakening the legislation’s standards. This obligation has led to

some damaging projects being blocked and, subsequently, the WFD’s strong environmental objectives not being compromised – these projects include a plan to deepen the Weser River in Germany, as well as the construction of the Biscarrúes Dam on the Gallego River in Spain. It is most contradictory that, on the one hand, Member States are strongly advocating for this change to be made, and yet remain adamant that they wish to maintain the current WFD’s current level of ambition.



1.3. Widen the scope of Article 4(7) to allow harmful projects to go ahead

Despite the strong “non-deterioration” maxime, Article 4(7) of the WFD provides for the possibility of exemptions. Already

now, this provision is being used extensively, to the detriment of environmental protection. Nevertheless, the mining sector and associations which represent a diverse group of industries (including the construction, chemicals, and pharmaceuticals industry) are pushing for an extension to the exemptions covered under Article 4(7). If this came to pass, this would almost certainly lead to an increase in the already considerable pressures on Europe’s freshwater systems.

1.4. Less strict definition of “Good Ecological Status”

The current definition of a water body’s “reference condition” is the only appropriate means of setting ecological targets within the WFD, and of honouring the legislation’s opening statement. By changing this definition water will no longer be seen as a heritage that both nature and people have a right to access and enjoy and instead will simply be a resource to be exploited

The current definition of “reference condition” – found in Annex II of the WFD – provides considerable flexibility to Member States as to how they assess type-specific biological reference conditions. This is drafted in a way that allows any new scientific and technical methods (including improved modelling and historic/palaeologic data) to be integrated into the definition. Moreover, the farming lobby and representatives of extractive industries argue that the “reference conditions” should change because of climate change. The impacts of climate change predictions, with the

aim of making Europe’s freshwater bodies more resilient to approaching climatic threats. This purpose still stands: Any weakening of the existing “reference standards” risks making water bodies unsuitable for healthy biological communities and unable to buffer the impacts of climate change. It is important to note that the greatest impacts on our freshwater bodies are direct anthropogenic pressures and not related to climate change, and that water bodies that are in good condition are far more resilient and able to cope with climatic extremes. In contrast, those with simplified hydromorphology, high concentrations of pollutants and under pressure from over-abstraction in normal conditions are those hardest hit by drought, heat and floods.



ASK 2: SCRAP OR WEAKEN THE “ONE-OUT, ALL-OUT” PRINCIPLE

The “one-out, all-out” principle was included as a key component within the WFD precisely because it recognises that

freshwater ecosystems are comprised of complex, interconnected and interdependent relationships between species and physical processes. It embodies the precautionary principle in the face of uncertainty about how these complex interactions and interdependence operate. The “one-out, all-out” nature of status objectives for the WFD has been critical for the effectiveness of the WFD, as it has pushed Member States to address all pressures and – crucially – clearly points out where this has not taken place.

If this principle is scrapped, there is a real danger that the actual status of our water bodies will neither be properly assessed nor addressed. It is possible to communicate progress achieved in the status of our waters, as well as any other positive trends, without changing the WFD.

Whilst it is disappointing that there are unaddressed pressures for so many of our water bodies, where this has led to poor headline performance in meeting objectives it has been for legitimate reasons: These water bodies are simply not in good enough health to meet the objectives of the WFD.



ASK 3: WEAKEN THE ECONOMIC ASPECTS OF THE WFD, INCLUDING COST RECOVERY, ECONOMIC ANALYSIS AND WATER PRICING

The WFD’s economic provisions as a whole are designed to ensure that the finite nature and value of

water is understood, and that the cost and benefits of water management choices are clear. Economic provisions are comprised of several pillars: Economic analysis, cost recovery – one method to achieve this is the “polluter pays” principle – and water pricing. So far, not one of these has been adequately implemented or enforced.

The industries that have challenged their responsibility to pay a fair share either for water consumption (abstraction) or restoration efforts represent some of the major pressures on freshwater ecosystems. For example, on average, agriculture accounts for 40 percent of water use in the EU, compared to only 12 percent for households. But it is in fact households and water services that cover the vast majority of the cost. The refusal of main “polluters” of freshwater ecosystems to accept any responsibility for the monetary costs of water places an even greater burden on the shoulders of the average household consumer.

In general, water pricing has not been fully nor adequately implemented across sectors. Instead, it is often limited to wastewater treatment and the provision of drinking water. Moreover, prices do not reflect the real cost, with environmental and/or resource costs rarely integrated in the pricing system. The changes to these economic provisions – as put forward by the farming and hydropower lobbies and some Member States – would significantly limit the opportunity for this economic-policy instrument to generate potential revenue streams to fund the needed investments, advance rationality and transparency of water-related decision-making, as well as create hugely beneficial incentives for changing unsustainable practices (e.g. over-abstraction of groundwater for agriculture) and therefore support the cost-effective achievement of the WFD’s objectives.

Full implementation of the WFD in its current form would result in a fairer distribution of cost, including through the “polluter pays” principle, a method cost

recovery. The principle establishes that those who exert major pressures on freshwater ecosystems should pay the cost for protection and restoration. Not applying the “polluter pays” principle to certain industry sectors – as advocated for by hydropower and agriculture lobbies – would also simultaneously remove any incentive for these industries to reflect on their current water use, and improve on their water management to reduce their costs. As it stands, the WFD’s “polluter pays” and water pricing principles are neither fully implemented by Member States nor enforced by the European Commission. With regards water pricing, the EU Court of Justice (EUCJ) confirmed that water services are not limited only to the supply of water and wastewater treatment, but can also include impoundments for the generation of hydropower, navigation and flood protection, as well as abstraction or storage for irrigation and industrial purposes.⁷



ASK 4: LESS STRICT REQUIREMENT TO INVOLVE THE PUBLIC

This provision ensures the requirement to involve the public in water management decisions.

Minimum standards, including the length of the consultation processes, have allowed for far greater public engagement within the framework of sustainable water management. It stipulates that the public must be involved in water management planning at an early stage and have access to all background documents.

This provision has led to a great deal of public support for the WFD’s objectives. Indeed, citizens across all Member States have consistently supported the removal of pollutants from their water bodies, improved the management of flood risk, and the return to ecological health that are embodied by the WFD. By allowing authorities to decide on the contents and length of their public consultation (where citizens and stakeholders can give input), public participation would be severely limited.

⁷ Court case reference C525/12

RECOMMENDATIONS

Member States are ultimately responsible for the implementation of the WFD and the European Commission for overseeing this. Because the industry groups – whose positions have been explored in this briefing – exert a huge amount of pressure on freshwater ecosystems, Member States and the European Commission must ensure that they are acting for the good of nature and citizens, and not those of vested industry interests.

It is critical that Member States and the European Commission now take steps to ensure no further deterioration occurs and that the majority of water bodies in the EU achieve good status by 2027. As such we call on them to do the following:⁸

- **Member States should develop more effective and ambitious third-cycle river basin management plans** (2021-2027) and associated programmes of measures to bring European waters to good status by 2027.
- **Member States should significantly restrict their use of exemptions to exceptional cases only.** To uphold the purpose and effect of the WFD, **the European Commission should use enforcement measures** to facilitate significant reduction in the use of exemptions.
- **Member States should strictly apply the “non-deterioration” obligation and precautionary approach.** They must protect remaining free-flowing, unaltered and clean stretches of rivers for their biodiversity and ecological values and not leave them open to further hydropower development and modifications for inland navigation.
- **Member States should increase the uptake of nature-based solutions and dam removal** to ensure that freshwater biodiversity can spread back into degraded areas.
- **Member States should apply in full the “polluter pays” principle** in line with the WFD, ensuring that water pricing reflects the true value of water and that all users, including agriculture, contribute to the full costs of water services in a more equitable way. **The European Commission should take prompt and effective enforcement actions** to ensure introduction of adequate water pricing.
- **Member States should improve transparency and enable effective public participation** in river basin management planning and application of exemptions (e.g. Article 4(7) WFD).
- **Member States and the European Commission should ensure coherence** between management and conservation of water ecosystems and relevant sectoral policies (most notably energy, agriculture, transport, flood management).
- **Member States and the European Commission should improve procedures** and introduce effective tools for preventing, detecting and sanctioning breaches of established water and conservation laws.

⁸ Detailed recommendation on improving water management in Europe can be found in the the publication *Bringing life back to Europe's waters: The EU water law in action* (WWF, EEB, European Rivers Network, European Anglers Alliance, 2018, <http://www.wwf.eu/?uNewsID=334981>)

GLOSSARY

“Article 4 (7)”: Also referred to in this briefing as the exemption for harmful projects, this article specifies the scenarios in which Member States are exempt (not required) from complying with the “non-deterioration” obligation.

“Economic provisions”: The WFD’s economic provisions as a whole are designed to ensure that the finite nature and value of water is understood, and that the cost and benefits of water management choices are clear. They are comprised of the following pillars:

- **“Economic analysis”**: This should be used to determine the costs of current water uses, to cover the costs of future scenarios, as well as studying the potential for cost recovery of water services. It also includes identifying and selecting the most cost-effective measures to be included in Member States’ River Basin Management Plans (RBMPs).
- **“Cost recovery”**: Recovering the costs associated with implementing the WFD. The “polluter pays” principle (see definition below) is one possible way to apply this.
- **“Water pricing”**: Setting a price for water that reflects the true value of water for all users.

“Good Ecological Status”: Under the WFD, the vast majority of EU rivers, lakes, wetlands, streams, groundwater, coastal and transitional waters are required to reach good health – defined as “Good Ecological Status” – by 2027 at the very latest. All elements that contribute to a healthy, functioning freshwater ecosystem are considered within this definition, including whether it is biodiversity-rich, and whether its hydrological characteristics and the chemical characteristics are in order.

“Non-deterioration” obligation: Within the WFD, Member States must ensure that the current state of of any given water body does not deteriorate any more than it has done already.

“One-out, all-out” principle: A principle within the WFD which states that if one parameter for evaluating the status of a freshwater ecosystem is not in good status, the ecosystem as a whole cannot be classified as good status.

“Polluter pays” principle: Those who exert major pressures on freshwater ecosystems (e.g. polluters) should pay the cost for protection and restoration.

“Reference” condition: Under the WFD, every water body is ascribed a “reference condition”, upon which the various indicators for it to reach “Good Ecological Status” are based. The definition of the “reference condition” is the equivalent of a “natural” or “near-natural” state, i.e. a water body without human influence.

River Basin Management Plans (RBMPs): These plans are a requirement of all Member States under the EU’s water legislation. They outline governments’ plans to achieve its objectives, and are an effective tool for achieving the protection, improvement and sustainable use of freshwater across the EU.

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