



Status box

Meetings: Water Directors Meeting, 29th November in Vienna

Title: The Future of the Water Framework Directive (WFD) – *Water Directors input to the fitness check process on experiences and challenges of WFD's implementation and options for the way forward*

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Status and proposal:

At their meeting in Tallinn 2017, WD agreed on establishing an 'ad hoc Consultation Group' for the purpose of exchanging and documenting views and experiences on challenges, and options associated with implementation of the WFD and regarding the effectiveness and efficiency of the directive, particularly in terms of meeting the 2027 deadline. First draft results of this process were discussed at the WD Meeting in Sofia in June 2018. Following the discussions, the Consultation Group was requested to finalize its document for a final discussion at the WD Meeting on 29th November 2018, Vienna.

As requested by WD in Sofia, the Consultation Group informed the SCG at its meeting on 8th November 2018 about the state of play and the content of the document. An information note on the document was made available in advance on circabc: (<https://circabc.europa.eu/d/a/workspace/SpacesStore/58d8e9cd-c804-4509-b892-19fa59f2d145/4b%20-%20Information%20note%20on%20WD%20Consultation%20Group-final.docx>). SCG was invited to take note of the information and SCG members were invited to send their views in writing to MS representatives in the SCG prior to the WD meeting. A discussion on the document may be conducted at the first SCG meeting in 2019 pending on the outcome of the WD meeting in Vienna.

The Water Directors are invited to discuss the document and to draw conclusions with regard to possible further steps, as appropriate.

Disclaimer:

This document was drafted by a Consultation Group appointed by the Water Directors with the aim of feeding in to the fitness-check evaluation of the water framework directive as a discussion paper.

The content of this document summarizes views expressed during the discussion process facilitated by the Consultation Group. The document 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.

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The Future of the Water Framework Directive (WFD) –

Water Directors input to the fitness check process on experiences and challenges of WFD’s implementation and options for the way forward

Content

Chapter 1. Introduction.	3
Chapter 2. The WFD – current challenges and future options.	5
2.1 What will be beyond the 2027 deadline for achieving WFD’s objectives?	5
2.2 Communication on progress to meeting WFD’s objectives	10
2.3 Towards a user-friendly electronic reporting process.....	11
2.4 Improving RBMPs as tools for water management.....	13
2.5 Transferring river basin specific pollutant to chemical status assessments.	14
2.6 Recovery of costs and the economic analysis.	14
2.7 Monitoring.....	15
2.8 Public information and consulting – streamlining the steps for involving the public.	16
2.9 Length of the management cycle.	17
Chapter 3. Coherence with other water-related policies and environmental legislation.	19
Annex 1. Positive and negative implications of Option A – Enabling time-extensions based on technical feasibility and disproportionate costs beyond 2027.	21
Annex 2. Positive and negative implications of Option B – Enabling time-extensions based on technical feasibility and disproportionate costs after 2027 with additional criteria.....	22
Annex 3. Positive and negative implications of Option C – Extending the scope of ‘natural conditions’	23

Chapter 1. Introduction.

The Water Framework Directive (WFD; 2000/60/EC) aims to achieve and maintain ‘good status’ – or when applicable, good ecological potential – for all surface and ground waters by 2015. To achieve this, integrated and ecosystem-based water management has been established for the river basins across the European Union (EU). Since its adoption in 2000, the WFD has been a success story in the harmonisation and enhancement of water management and protection across river basins. Over recent years, the implementation of the directive and improvements in ecological and chemical monitoring, have significantly improved our knowledge base of aquatic ecosystems, status of the waters and those pressures acting upon them. This has resulted in an increased commitment by member states (MS) to water protection and an improvement in the commitment and cooperation of different authorities, water managers and stakeholders. This can be seen in the implementation of River Basin Management Plans (RBMP) and cooperative management actions.

The European Environment Agency (EEA) recently assessed the statuses of the Europe’s water bodies and indicated that the recovery of impacted waters has not yet occurred in the way it was expected when the WFD was adopted¹. For a substantial percentage of EU water bodies, good status will unlikely be achieved by 2027, which is the final deadline in the WFD unless natural conditions justify further extension. It would appear that more appropriate effort is needed to put into practice the implementation of the programmes of measures (PoM) not only within the years leading to 2027 but also after that date. In addition, the effects of environmental adaptation to climate change on the quality and quantity of water resources are becoming increasingly relevant for water managers. This phenomenon will require a level of consideration in-line with the principles stated in a Blueprint to safeguard Europe’s waters².

Therefore, it is particularly important to critically analyse not only the efforts made to-date in implementation, but also the overall functioning of the directive. WFD’s article 19 requires the Commission (COM) to review the directive at the latest 19 years after the date of its entry into force, that is 2019, and to propose any necessary amendments to it. However, the Better Regulation Strategy guidelines requires the COM to first conclude a Fitness-check and impact assessment on the directive to determine, whether EU actions are proportionate to their objectives and it is delivering as expected. The aim of the Fitness-check is to determine, if the WFD is fit for purpose i.e. is the directive *effective, efficient, relevant, coherent* in itself and with other legislation and if there is *EU-added value*. It is expected that a communication on the review will become available in autumn 2019. Keeping in mind the third RBMP cycle, it is important that COM uses the review to draw conclusions on which issues it may wish to pursue in the second step by assessing and suggesting legislative amendments.

For some time now, Water Directors (WDs) of the MS have repeatedly expressed their conviction that early discussions are needed to ensure the continuous implementation of WFD’s objectives beyond 2027. Discussion is also needed on how to address new developments in, and challenges to,

¹ European Waters – Assessment of status and pressures 2018. EEA Report No 7/2018.

² 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/2012/0673 final.

water management. Simultaneously, WDs have emphasised that the level of ambition of the WFD and its objectives should remain high and not weaken.

Since 2016, the experiences and challenges of implementing the WFD have been collected and discussed at WD meetings. In summary, a “Thought Starter” paper prepared during the NL presidency in 2016, led to discussions on “lessons learned from implementing the WFD”. It was recognised that there is a need to better understand the challenges, particularly in terms of meeting the 2027 deadline. During the WD’s informal meeting (Final Synthesis, Amsterdam, June 2016), it was concluded that solutions to address the identified challenges should be developed before decisions are taken for the third RBMP cycle.

In October 2016, MS presented their concerns in the Environment Council Conclusions and again recognised the challenges to reach the good status of all EU waters by 2027. They called upon the COM to work with the MS to develop timely and legally-sound options to enable continuous and ambitious national implementation by 2027 and beyond. As a follow up, the experts from MS and COM produced two documents in 2017. The first explained the use of exemptions, particularly that the WFD enables extending deadlines until 2027 (WD meeting, Malta, June 2017). The second (WD meeting, Tallinn, December 2017) explained the concept of ‘natural conditions’ to be used as a justification for a process of phasing the achievement of the objectives beyond 2027.

At the latter meeting, it was agreed that a consultation should be performed between the experts of water administrations for the purpose of exchanging and documenting views and experiences on challenges, and options associated with implementation of the WFD and regarding the effectiveness and efficiency of the directive, particularly in terms of meeting the 2027 deadline. These options would then be available if it was decided by the COM that amendments of WFD were needed to improve the legislation’s ‘fitness for purpose’. These options could also feed into review and revision of the guidance material adopted in the Common Implementation Strategy (CIS) framework. This consultation was agreed to be conducted by drafting a common document by a Consultation Group appointed by the WD with a view to endorse the document at their meeting in Vienna (November 2018).

This document has been prepared with the aim of feeding in to the Fitness-check evaluation of the WFD as a background document and a discussion paper. The information presented here could also give some suggestions for the next Common Implementation Strategy (CIS) Working Programme. Chapter 2 presents the issues, where challenges have been identified regarding the effectiveness and efficiency of the directive related to its implementation. The issue of achieving the environmental objectives by 2027 is presented first and then other challenges to functional and effective water management are addressed. Chapter 2 also presents options for the ways forward to facilitate better implementation. Coherence of the WFD with other policies and environmental legislation is considered in chapter 3 with the aim to recognise synergies or inconsistencies between the WFD and other EU policies that are expected to work together.

The content of this report summarizes views expressed during the discussion process initiated by the WD of the MS. The report does not reflect any positions of the MS or present a comprehensive consensus among WDs or the MSs governments on issues covered in the report.

Chapter 2. The WFD – current challenges and future options.

2.1 What will be beyond the 2027 deadline for achieving WFD’s objectives?

The WFD’s article (art.) 4.4 enables extending the deadlines for achieving the environmental objectives – good ecological status or potential, good chemical status³ and good quantitative status of groundwater – from 2015 for two management cycles to 2027 on the grounds of technical feasibility, disproportionate costs or natural conditions. Time-extension are only applicable on the grounds of natural conditions after 2027. Thus, all the necessary measures for achieving the environmental objectives have to be implemented by 2027⁴. The WFD does not contain a so-called sunset clause, so the MS are required to continue water management and updating their RBMPs also beyond 2027 in six year cycles.

The information collected from the progress on enhancement of the water status shows that despite all efforts, there is still a risk that the primary environmental objectives will not be achieved for all the water bodies and by 2027 due to other reasons than natural conditions. In these cases, the only option after 2027 seems to be setting less stringent environmental objectives for the water bodies according to WFD’s art. 4.5. Yet, setting less stringent objectives requires more information and in-depth assessment of alternatives than those for extending the deadline⁵. These objectives have to be reviewed every six years in the RBMPs.

Maintaining the high level of ambition and assessing the effectiveness of the directive is the starting point for the considerations regarding the 2027 challenge. This can refer to the ambition to meet the primary objectives but also the ambition regarding the timeframe. With respect to the former, setting numerous, less stringent environmental objectives is generally regarded as lowering the ambition in comparison to keeping the high ambition of good ecological status or potential. However, extending the deadline for achieving objectives can also be seen as lowering the ambition regarding timeframe. Effectiveness of the directive can also refer to whether the regulation is effective regarding the level of environmental protection or regarding the timeframe for achieving the objectives. However, with respect to the 2027-challenge, the view is to strive for maintaining the high level of ambition and effectiveness to meet the objectives in art. 4.1 and avoiding the widespread use of art. 4.5. This exemplifies the will to enable continuous improvement towards achieving good status, yet this may affect the timeframe in the WFD as it stands now.

The scenario if WFD were to remain unchanged

The deadline of 2027 is based on an understanding that prevailed when the WFD was drafted prior to 2000 and subsequently, has not been reconsidered based on new knowledge and development or the changes which have occurred in the environment. Based on the knowledge that was there in the beginning of implementation of the WFD, gathering a clear view on all the pressures and the

³ For chemical status the deadlines follow from the Directive 2008/105/EC on environmental quality standards in the field of water policy (EQSD) amended by directive (2013/39/EU).

⁴ Natural conditions as a grounds for extending the deadline refer to natural processes occurring in and characteristics of a river basin. Also, natural conditions can include circumstances in which recovery process is delayed by remaining effects of former human activities. Natural conditions are purely inherent characteristics of the river basin, not man-made, where measures could be applied to. See paper WD2017-2-2 *Natural Conditions in relation to WFD Exemptions*.

⁵ CIS Guidance Document No. 20 on "Exemptions to the environmental objectives".

measures to mitigate their effects was challenging. As the information on the implementation shows, effects of measures and the progress to enhance the status of the water bodies has been slower than what was anticipated in the beginning. The original timeframe of the WFD is ambitious in relation to several types of pressures, such as long range transport and the ubiquitous nature of hazardous substances and climate change, and the available measures to address these.

Furthermore, existing water protection and restoration measures have lost part of their effectiveness because of climate change. Climate change has had increasingly qualitative effects on the aquatic ecosystems as well as on water quantity, which ultimately shifts achievement of objectives forward. It is unclear, whether climate change or other large scale pressures can be interpreted as 'natural conditions' that would enable extending the deadline for achieving environmental objectives beyond 2027 and this needs resolution. In order to justify time extension based on natural conditions it needs to be proven that either the impact of measures has been weakened or that the time ecosystem needs for healing is prolonged due to effects of climate change.

Uncertainty regarding the knowledge of natural processes and in the relation between pressures–status–measures makes it difficult to identify all the necessary measures for achieving the environmental objectives by 2027. Climate change is a relevant factor here, since its accelerating rate creates uncertainty on the ecosystems ability to recover. It also needs to be acknowledged that some measures needed to achieve good status may be considered technically infeasible or disproportionately costly today, but not perhaps in the future. Since development of new technologies to address pressures is continuous, some measures may become feasible and cost-effective only after 2027.

Continued implementation of the WFD as it stands today could lead to setting less stringent environmental objectives (art. 4.5) on a large scale and after 2027, which would mean lowering the ambition of the environmental objectives. Since the less stringent objectives are to be formulated individually for a water body, there is also more discretion regarding the time-frame for achieving those objectives; as it stands today, there is no WFD regulated deadline for status enhancement for these water bodies after 2027. Large scale application of art. 4.5 would also lead to a more diverse mosaic of environmental objectives at water body level, which would make coordination within the river basin districts (RBD) increasingly difficult and weaken the comparability of the implementation efforts and achievements between RBDs and among the MS.

Having set less stringent objectives, the work towards enhancing the status of the water bodies could continue beyond 2027 based on the review of art. 4.5(d). Also art. 4.3 requires a review of designation of heavily modified or artificial water bodies every six years. With the obligation of art. 11.8 to review and when necessary, update PoMs every six years also after 2027, these imply that there is a possibility or even an obligation to take additional measures to restore the water bodies also beyond 2027 where art. 4.5 or 4.3 has been applied. Although in practice, it is uncertain if these reviews can guarantee the original high ambition of the WFD. This is because these objectives are formulated for each water body individually. Once less stringent objectives have been set, it will be hard to review permits or regulations that are in line with the less stringent objectives. In addition, there is no clear provision in the WFD that would oblige MS taking measures in order to enhance the status of water bodies after 2027.

Thus, setting less stringent environmental objectives for after 2027 and reviewing them is not the most effective solution to 2027-challenge. In addition, there might be some non-compliances with meeting the deadline that cannot be justified within the conditions under art. 4.5 or natural conditions in art. 4.4(c). There is no provisions in the WFD on how to deal with these water bodies after 2027 in order to achieve the environmental objectives. With this respect, the effectiveness of the directive is not optimal, since the objective is to enhance the status of all water bodies.

Additional measures would also be needed after 2027 for those water bodies that are subjects of time extensions beyond 2027 based on their natural conditions in order to prevent deterioration or to deal with the effects of climate change. However, it is not clear in the WFD, whether measures could be taken to improve the status of these waterbodies. If the WFD regulation does not enable this, it should be considered whether the current regulation is optimal in terms of effectiveness and efficiency. The scenario would exist where a MS would be required to continue water management but would be restricted from implementing new measures for enhancing the status of waters.

Furthermore, there is also uncertainty and incoherence in the WFD between the deadlines for good ecological status and good chemical status. The method for time extensions for the chemical status is complex. Some of the objectives for chemical status reach beyond 2027 due to updates of the priority substance list in the Environmental Quality Standards Directive (EQSD) as amended by the 2013 Priority Substances Directive. Water management planning and implementation of measures aiming to status enhancement will need to continue beyond 2027 regarding these chemicals. The different deadlines for different substances need to be taken into account in the assessment and presentation of the chemical status. There is also uncertainty regarding the chemical status objectives due to future updates of the priority substances list, since extending the list of priority substances will change the time scales to achieve good chemical status objectives.

Possible options involving more time to achieve WFD's objectives

In the light of the challenges presented above, provisions of the WFD could be made more 'fit for purpose' in terms of enabling continuous and ambitious implementation beyond 2027. Currently, the directive risks not being able to respond to existing and evolving environmental pressures after 2027. Continuous ambition and efforts to reach good status or potential and preventing deterioration must be maintained also beyond 2027. Thus, more time is needed to introduce and implement measures to tackle emerging water management issues, such as climate change and other large-scale pressures. This would also allow more time to enhance coherence of WFD with its daughter directives and cross-directive coordination with e.g. nature, marine and flood risk related legislation.

With respect of the 2027-challenge, several regulatory options have been considered. Enabling more time for water management in terms of achieving the objectives could be done by amending art. 4.4, thus broadening the application of time-extensions when it can be justified. Three regulatory are proposed for consideration:

- (A) allowing time-extensions also based on technical feasibility or disproportionate costs in article 4.4 for more management cycles;
- (B) allowing time-extensions based on technical feasibility and disproportionate costs after 2027 with additional criteria; and

(C) extending the scope of natural conditions in article 4.4, litra c.

Option (A). Enabling time-extensions based on technical feasibility and disproportionate costs also beyond 2027.

In this option, the WFD's art. 4.4(c) would need to be amended to enable time-extensions beyond 2027 for more management cycles to take place based on disproportionate costs or technical feasibility. There would be same preconditions for extending the deadline beyond 2027 as there are for extending the deadline to 2027. This option would maintain the environmental ambitions of reaching good status with realistic and experience-based progress where it's feasible and justified on cost-benefit grounds (see Annex 1). However, enabling deadline extensions for more management cycles may be seen as lowering the ambition regarding the timeframe and to allow postponement of the measures to further cycles instead of implementing them in advance of 2027.

At this point, there is no clear view on how many more management cycles should be foreseen in article 4.4(c). However, the timeframe should ensure coherence of WFD provisions with other EU environmental legislation, such as the EQSD (2008). The current EQSD timeframe enables measures to improve chemical status up to 2027 concerning certain chemicals and this deadline can be extended according to article 4.4.

Coherence with Floods Directive (FD), Nitrates Directive (ND), Urban Waste Water Treatment Directive (UWWTD) and Habitats Directive (HD) could also be improved by allowing more time for coordination, bearing in mind that there is no deadline in these directives for achievement of their objectives.

Option (B). Enabling time-extensions based on technical feasibility and disproportionate costs after 2027 with additional criteria.

Deadline extensions after 2027 could also be enabled based on technical feasibility and disproportionate costs only if additional criteria were met. This would prevent the arguments that extending the applicability of time-extensions on all grounds would mean a loss of ambition regarding the timeframe. In this option, art. 4.4(c) would need to be amended and additional criteria would need to be added.

Criteria could include uncertainty of the impacts of measures in the water body or large-scale pressures such as the climate change or ubiquitous substances, which may impede the improvement of the water body status (see Annex 2 for the advantages and disadvantages of this option). Time-extensions beyond 2027 would need to be justified with demonstrable progress towards improved status, in other words, phased achievement of the objectives. Instead of lowering the ambition of the objectives for the water bodies where good status is not achieved by 2027, MS would set up a step wise approach over the next planning cycles with the aim of reaching good status at the end of the extended timeframe.

However, the logic behind WFD art. 4.4 and 4.5 is that less stringent environmental objectives can be set if the environmental objectives provided in art. 4.1 cannot be achieved even within the framework of extended deadlines. The additional criteria should therefore cover the water bodies

that are not in good status or potential by 2027 due to other reasons than natural condition, but to which it would not be possible to apply to art. 4.5.

Option (C) Extending the scope of natural conditions.

This option deals with some of the challenges presented above and relates to extending the scope of the term 'natural conditions' in art. 4.4(c). Extending the deadline after 2027 would be possible only on the grounds of natural conditions, but the scope of natural conditions would also take into account levels of uncertainty. This options aims to recognise that uncertainty on the sufficiency of the measures taken before 2027 may result in the need for additional measures to be taken after 2027. As a criterion, measures taken after 2027 should be motivated based on a thorough process of system analysis. This option is based on the view that uncertainty is as relevant in 2027 as it would be in each management cycle thereafter.

There have been discussions on whether this option is already within the logic of art. 4.4. Art. 4.4(d) requires that a summary of the measures, to bring the water body progressively to the good status which is the primary objective, is presented in the RBMP, when time extensions are applied. The provision, as well as art. 4.3 and 4.5, also states that a review of the implementation of these measures, the reasons for any significant delay in making these measures operational, the expected timetable for their implementation and a summary of any additional measures shall be included in updated RBMPs. Thus, the objectives, the exemptions and the measures are reviewed as part of the preparation of the updated RBMPs in 2027 and thereafter. This provides an opportunity to revise decisions in light of new evidence and information (see Annex 3 for the positive and negative implications of this approach).

The PoMs have to be reviewed and, when necessary, updated every six years also after 2027. Measures are to be sufficient to prevent deterioration after this date. It is however, unclear whether additional measures can be applied when a time extension based on natural conditions is applied beyond 2027 and, especially where further analysis proves that the initial measures did not achieve the objectives within the extended deadline. Thus, with regard to legal clarity, it should be made clear within the WFD text that additional measures can/may be implemented if it can be justified by uncertainty of the anticipated effects that have prevailed once such measures have been implemented.

Summary.

There is a need for continuous effort to safeguard Europe's waters and enhance their status. Continuation of the WFD, including the possibility to take additional measures beyond 2027 is crucial for ambitious and effective river basin management. For effective water management and ambitious objectives, there is a need for clarity in the WFD on how to continue enhancing the status of water bodies after 2027.

At the present time, the current regulation is not seen optimal in terms of water management beyond 2027. It also adds unnecessary uncertainty and confusion before 2027. As foreseen in the considerations above, the 2027-challenge could be dealt with by changes to the preconditions of applying time-extensions after 2027.

Allowing more time to meet the objectives on grounds of technical feasibility and disproportionate costs would postpone the moment that good status is achieved. However, the level of ambition regarding the environmental objectives would still be retained since setting less stringent environmental objectives on a large-scale would not be needed in 2027. Extending the scope of natural conditions in WFD's art. 4.4(c) would enable dealing with uncertainties but it would not solve all of the problems relating to the 2027-challenge. Enabling time-extensions beyond 2027 based on technical feasibility and disproportionate costs with additional criteria would address the perceived lowering of ambition regarding the objectives as well that relating to the timeframe, since extension of the 2027 deadline would need to be fully justified. In conclusion, all of these options presented here should be discussed further in order to find the appropriate and workable solution to the 2027-challenge.

2.2 Communication on progress to meeting WFD's objectives

Communication of success stories of water protection is of utmost importance for effective water management. Successful communication crystallises the overall objectives, implementation of measures and impacts of water management. It is also a tool for keeping the public, stakeholders, regulators and policymakers informed and involved. Currently, based on the experiences of implementation, some challenges have been identified in the WFD regulation regarding communication.

Classification of ecological status and communication on progress on enhancing the surface water status, is based on the 'one-out-all-out' principle. The WFD aims for good status for all parameters. However, there are challenges with one-out-all-out principle when it is used for communication, since it does not readily demonstrate progress achieved to date or progress that is expected towards attaining good status. The one-out-all-out principle is only mentioned in WFD's Annex V, paragraph 1.4.2 and there is no clear provision for it in the art. 4.1(a) in accordance with Annex V. The challenges of communication on progress of achieving the objectives relate also to the overwhelming complexity of Annex V as well as the complexity of the RBMP's key water management tools (see also sections 2.3 and 2.4, below).

In particular and due to the one-out-all-out principle, the ecological classification procedure does not always accurately reflect the positive changes in terms of reduction of the significant pressures. In some cases, supporting parameters such as hydromorphological and physico-chemical elements could reflect the changes in water status more rapidly. However, in the communication it is the biological parameters which are used to reflect the status of the whole ecosystem. As the objective of the WFD is to restore the ecosystems as a whole, the WFD places emphasis on these parameters for the purposes of status assessments. There are also challenges related to communication of the chemical and quantitative status of groundwater. Communication on the overall status does not always reflect on how much progress has been achieved in improving chemical status.

Indicators used in the electronic reporting in 2016 could be used as a starting point for better and overall communication. The European Environmental Agency's report⁶ made a good effort to demonstrate the positive trends in the enhancement of water status. However, report overlooked a meaningful holistic message of the progress of water management. There is an obvious need

⁶ European waters – Assessment of status and pressures 2018. EEA Report No 7/2018.

therefore, to critically address the way communication is performed under WFD during the fitness check evaluation process. Some amendments would be useful in order to increase comparability and to allow reporting of successes to be taken into account in WFD compliance checking.

A specific problem regarding the status assessment and communication of the chemical status of both surface water and groundwater is the role of ubiquitous substances. Concentrations of these substances often result in poor chemical status and there it is challenging to put in place appropriate national measures for to manage them. Separating ubiquitous substances from the assessment of the other priority substances could increase the effectiveness of communication. This could provide a more differentiated picture of contributions of the different components of the chemical status to the progress made in achieving good chemical status. According to WFD, separate geographical maps to illustrate developments in surface water status are permitted, but they are not assessed and acknowledged as positive results concerning achievement of the objectives. This does not help communicating the results achieved to the public, stakeholders and to policymakers.

Summary.

The effectiveness of the WFD could be improved by making the communication process of outputs from RBMPs easier to demonstrate efforts and progress achieved towards good ecological and chemical status. The one-out-all-out principle is not the most effective tool to demonstrate progress or to make a comparison between management cycles, RBDs or between MS. Communicating and reporting of progress should ideally include indicators that provide more detailed information than just 'status' and that recognises the positive trends and success in water management. In this respect, a policy orientating short report (i.e. an executive summary) could be developed in the implementation process, highlighting the achievements during the implementation cycle. Also the regulation in the WFD should be looked upon with this regard. In terms of communication, particular attention should be given to clarity of Annex V (e.g. paragraph 1.4.2) and on how WFD monitoring results are presented which provide a more informative and accurate picture of the state of the water bodies.

2.3 Towards a user-friendly electronic reporting process.

River basin management plans (RBMPs) are the basis for reporting and compliance-checking of the implementation of the WFD. Art. 15 (reporting) is quite clear and straightforward – it simply stipulates that the RBMP are to be reported to the COM. However, the function as a reporting tool has resulted in RBMPs being overloaded with details as required by the COM for assessing compliance. This weakens their basic function as a planning and communication tool at the RBD level (see also sections 2.2 and 2.4). Furthermore, it is not sufficient to use only the RBMPs in the assessment of compliance. It is apparent that electronic reporting has been developed on a voluntary basis. Unfortunately, the considerable volume of guidance material associated with reporting has made reporting complex, instead of improving the efficiency of reporting and assessments. Since the RBMPs are the only product that lead to decision-making, the electronic reporting should only be used for additional or supporting information. This has led to ambiguity during compliance checking, as COM has utilised both RBMPs and electronic reporting in their compliance checking procedure.

According to Annex VII, RBMPs contain a large amount of information, and thus, the reporting via RBMPs requires laborious compilation, conversion and input of available data. Textual reporting in general is regarded as an outdated approach. The amount of information reported has increased significantly after adoption of electronic reporting. The preparation of the RBMPs and the background information for the electronic reporting requires a considerable amount of resources and this has a knock-on effect in terms of resources available for as an example, the implementation of measures. This is not ideal nor optimal in terms of effectiveness of the WFD. Most of the information that is included in RBMPs is also required in electronic reporting, which leads to double-reporting and again this cannot be regarded as an efficient way to utilize resources.

RBMPs and the electronic reporting system have two different purposes and, a clear distinction should be made between them. Detailed information required for assessments by the COM (according to Annex VII) could be reported electronically more effectively and efficiently than by compiling them to RBMPs. However, the problem with electronic reporting is that the outcome does not always reflect the situation in reality since it focuses on details without presenting a holistic picture as a result of the implementing WFD. RBMPs should have a role in the compliance checking by providing context for the information that is reported electronically. Allowing some of the detailed information to be reported electronically would enable RBMPs to be more focused on key issues, objectives and strategy of water management.

Electronic reporting needs to be improved to address the issues outlined above. The aim should be for a user-friendly and efficient system with mostly automated measures for data collection and indicator -calculations. Ultimate future goal for streamlined electronic reporting would be harmonised data sources, where the information could be automatically extracted for compliance checking without any separate, laborious, reporting process. Essentially, the reporting procedures should be as easy and labour-efficient as possible and it should be considered that such reporting tools should developed by COM in cooperation with the MS.

The reporting periods and methods of the WFD and its daughter directives could be better aligned to increase coherence and efficiency. There is an obvious need of coherence in reporting between water related regulations and other environmental legislation. Over the recent years, several EU actions and projects have been carried out to streamline and modernise the reporting procedures and monitoring practices within environmental legislation⁷. In the summer of 2018, COM communicated a proposal for an alignment regulation of environmental reporting obligations⁸. This regulation would amend the reporting obligation of ten directives and regulations in the field of environmental legislation. The modern approach to reporting has also been adopted in other recent legislative proposals, such as the recast of drinking water directive and a proposal for a regulation on water re-use.

Summary.

⁷ Streamlining of reporting and monitoring procedures in environmental legislation was analysed in Fitness Check in 2016. The final report and future tasks were published in 2017 (COM(2017) 312, SWD(2017) 230). Future tasks include 10 actions ranging from legislation updates to the efficient use of new sources of background data (http://ec.europa.eu/environment/legal/reporting/fc_overview_en.htm).

⁸ COM(2018) 381.

There is potential to improve the effectiveness and efficiency of the WFD and its implementation by streamlining the reporting process. Discussion is needed on the status of both the RBMPs and the electronic reporting and their fit-for-purposeness. The distinction between the roles of the RBMPs and the electronic reporting for compliance checking should be clarified, and they should be used as mutually supporting, not as overlapping instruments.

The electronic reporting should be further developed and improved. In terms of increasing effectiveness and reducing uncertainty, the purpose and role of the electronic reporting could be clarified in WFD's art. 15. Those approaches used to align reporting across other pieces of environmental regulation could be adopted in water related legislation. There should also be other efforts at the EU level to improve coherent, harmonized and synchronised reporting, and reporting periods and to avoid double reporting. Development of new tools and streamlining of reporting procedures need to be promoted and taken into account in the WFD fitness check procedure. The outcomes of the environmental reporting fitness-check and the future tasks could form the basis for future amendments to WFD. Experiences from the second cycle of WISE could be used to establish lessons-learned and as a basis for streamlining the reporting process.

2.4 Improving RBMPs as tools for water management.

Currently, the complexity and overwhelming content of the RBMPs pose a challenge with regard to their function in activation and participation by the public. This ultimately undermines the effectiveness of the WFD since the RBMPs are the key water management tools. A more attractive and compact RBMP would serve better as a tool for enhanced communication with the public and policymakers (see also section 2.2).

In line with the challenges and options presented in the previous section on reporting, developing electronic reporting for compliance checking would enable RBMPs to be more focused on key issues, objectives and strategy. Utilising the potential of the RBMPs most efficiently requires attention being paid to the content requirements of the plans as described in WFD's Annex VII. Documents could be considerably shorter with enhanced clarity and they should concentrate on key water management issues, pressures, measures and the progress of implementation. RBMPs should also demonstrate the process of water management, positive progress and look to the future regarding the achievement of objectives. In this way, they would then create a more holistic view of water management.

Summary.

Publicly understandable communication is needed and the RBMPs are the key instruments for this. They cover the legal obligations of the WFD but they should also have a stronger role as user-friendly planning instruments. The precondition for this approach to the purpose of the RBMPs is that electronic reporting is improved and further developed and that the roles of RBMPs and electronic reporting are distinguished and in-line with the considerations in section 2.3. With this regard, the content requirements of the RBMPs described in Annex VII should be reviewed with a view to allow RBMPs to be written in a more attractive, communicative and activating way.

2.5 Transferring river basin specific pollutant to chemical status assessments.

The distinction between river basin specific pollutants (RBSPs) as part of the ecological status and the priority substances as the central element of the chemical status is unclear and leads to confusion. For communication reasons, it is difficult to explain that a group of chemicals have been selected by MS to be part of the ecological status and this group is different from priority substances as listed in WFD's daughter directive. The RBSPs also vary between MS. In general, there is a discrepancy between the priority substances addressed under the WFD and the chemical contaminants which may be emerging at a level of concern such as new authorized pesticides and biocides, at the national level.

The environmental quality standards (EQSs) for the nationally-selected substances also vary between MS. This has led to disparities in the assessment of the ecological status, which also impacts on communication on the status and progress and transboundary cooperation. Identification of RBSPs needs to be more transparent with clear information on e.g. how substances are selected and on the methods for derivation of the national EQS. Thus, methods for deriving EQSs for RBMPs should be harmonised. It is also essential to continue to establish EU standards for those specific pollutants that are wide spread across many EU river basins.

Summary.

It should be considered if and how the RBSPs should be included as part of water body classification due to the measurement of chemical contaminants, e.g. be part of the assessment of chemical status. There is also a need for guidance on the methodology for selecting RBSPs and on the harmonisation of derived EQSs. This could be part of the next Common Implementation Strategy work programme. Also, the combined effect of similarly related chemicals and chemical mixtures should be considered in the status assessment and monitoring programmes under the WFD.

2.6 Recovery of costs and the economic analysis.

Article 9 of the WFD has proved to be one of the most debated provisions of the WFD as the text of the article. It:

- uses complex terms such as 'environmental' and 'resource costs', which are not defined in the directive; and
- is vague with regard to the extent of the flexibility provided in art. 9(4) and the criteria for the justification if it is applied.

Since the directive came into force, there have been attempts to interpret the text and to provide guidance on its application. The European Court of Justice (CJEU) has provided some clarification on in its ruling on art. 9 as well as the definition of water services.⁹

As for the reporting of data from the economic analysis there is a lack of harmonised definitions and approaches leading to a lack in comparability among MS. On the other hand, it should be acknowledged that the focus of the WFD is on achieving the good status for water. In line with the CJEU ruling, it is not necessary to harmonise national financial systems. Furthermore, experience

⁹ CJEU C-525/12.

with updating economic analyses every six years revealed that the underlying economic conditions relevant for water management do not change significantly within one planning cycle.

Summary.

Incorporating clarification into the text of arts. 2 and 9 could improve the transparency of the legal requirements and enhance the clarity of the national approaches for applying art. 9 and might therefore be assessed as an option in the WFD review process. The definition of water services and uses could be considered in the CIS framework. Allowing more flexibility regarding the frequency or scope of the regular updates of the economic analyses (Annex III in connection with art. 5) may also be helpful for improving the quality of the economic analysis.

2.7 Monitoring.

The current monitoring obligations of the WFD are based on water body site specific monitoring programmes and methods. The WFD provisions were drafted in late 1990s based on the best knowledge and technology at that time. Today, new technologies and techniques could be introduced to enable more effective and efficient monitoring. Since the WFD provisions are based on now outdated approaches, modernising the monitoring programmes and methods can not be done solely in national implementation at the MS level.

Attention should be paid to advanced methods – e.g. remote sensing, passive sampling, use of summary indicator parameters, citizen science, DNA assessment, *in situ* logging probes etc. This would result in the collection of up-to-date data on the status of waters and would be an improvement on the laborious approach of site-specific sampling and analyses. Also, the use of new elaborate, numerical models should be increased in status assessment. To give an example, the effect of all the measures cannot be predicted using only the biological quality elements. However, the reduction of nutrient and hazardous substances loading to the water quality elements can be modelled and therefore the right measures can be set.

Streamlining and simplifying the monitoring practices was also referred to in section 2.3 on reporting. Of ten actions proposed in the Fitness Check report¹⁰, three dealt directly with monitoring and data collection. These actions were 1) making better use of data generated through the Copernicus programme; 2) promoting the wider use of citizen science to complement environmental reporting; and 3) developing and testing tools for data harvesting / mining at the EU level.

New methods for screening and effects-based monitoring of chemicals is a particular issue regarding emerging contaminants. At the moment, there is little relation between the actual discussion on chemical contaminants and the chemical assessment, many emerging chemicals of concern are not taken into account, methods are lacking and the process to gather data is very time consuming. Progress in analytical chemistry and increasing monitoring activities reveal the occurrence of a growing number of substances in the environment. Thus, it is extremely important to improve the exchange of information on emerging substances and to foster harmonisation of protocols and improvement of data quality. Ideas of a more effect-based monitoring and/or non-target screening

¹⁰ COM(2017) 312, SWD(2017) 230.

should be explored to complement conventional monitoring and assessment of individual substances.

Summary.

Monitoring requirements under the WFD should be reviewed in the light of making use of new and validated methods and technologies. Aspects such as climate change and the development of effects-based monitoring methods for substances and mixtures of chemicals and biological quality elements should be considered. Improved flexibility of the directive would allow the use of modelling in status assessments. The requirements on monitoring and assessment under WFD, its daughter directives and other related directives could also be better aligned to increase coherence and efficiency. In general, there should be initiatives and concerted efforts at the EU level to setting a better base for more coherent and harmonised monitoring, synchronising reporting periods and avoiding double reporting which are described in section 2.3.

2.8 Public information and consulting – streamlining the steps for involving the public.

Based on experiences in the two previous RBMP cycles, there is room for making the public involvement procedure described in art. 14 of the WFD more effective and efficient. Public consultation on timetable, significant water management issues and draft RBMPs is mandatory for a period of six months. However, stakeholders have expressed that PoM is the most interesting and important document for the consultation although it is not mandatory to present the document in consultation process. Moreover, the formal hearing process lasting for six months is a long, public consultation procedure and detracts the attention from the actual management. This can lead to lower interest among stakeholders to participate and express opinions.

In practice, participation is often on-going for the six year RBMP cycles and discussion on the ambition and measures are on hold during the formal procedure. Therefore, a minimum requirement (shorter than six months) for the formal procedure would be preferred instead of the current requirements. Interest in formal consultations on the work programme/timetable and on the overview of the significant water management issues identified in the river basin have generally been low, so the time devoted to public consultation on these could be adapted in practical implementation. In addition, more time in between the consultation period for the draft-RBMP and the deadline for publishing the RBMPs would be beneficial to MS and lead to an improvement in the effectiveness of the process.

However, WFD's provisions on public consultation and their involvement have to fully implement the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). According to the Convention, the Parties of the Convention shall make appropriate provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. With this respect, MS are subject to obligations of ensuring that public participation procedures include reasonable timeframes for the different phases and there is a provision for early public participation, when all options are open and effective public participation can take place. Hence, any amendments to the regulation in terms of public consultation need to ensure that the corresponding level of the right to participate is ensured for the public.

RBMPs are subject to assessment of environmental impacts under Strategic Environmental Assessment Directive (SEAD). The SEA procedure includes e.g. preparation of environmental report on significant effects on the environment of implementing the RBMP and on reasonable alternatives, which must undergo consultation of the relevant authorities and the public. For improving efficiency of the RBMP drafting process, the SEA process and public consultation of draft RBMPs should be combined in the practical implementation.

For practical implementation, one solution could be combining the RBMP and PoM for the public consultation. However, the requirements in WFD's art. 14 should be considered in the light of coherency with (more recently produced) requirements of the Floods Directive (FD) and the Marine Strategy Framework Directive (MSFD). Implementation of these directives is highly related to each other and thus, synergy in public consultation would increase effectiveness and efficiency. Streamlining the public involvement procedures of these directives would improve communication to the public on the interlinkages of these directives. Also, taking advantage of new possibilities of communications should be regarded as supportive means in the public consultation process such as map-based feedback services, apps, social media and other new technologies.

Summary.

The Fitness-check of WFD should look into the possibilities of making art. 14 of WFD more streamlined and the public involvement less prescriptive and more effective. For example, a more flexible period of consultation could be introduced. Coherence with the public consultation process in the FD and MSFD could also be improved. Following the approach taken for environmental reporting in the proposal for alignment of reporting obligations (see also section 2.3), taking a modern approach for involving and informing the public should also be considered in the fitness check process. This includes making up-to-date information on implementation publicly available and reducing formal consultation procedures.

2.9 Length of the management cycle.

Management cycle of six years is a relatively short time period for implementing measures and then demonstrating the effectiveness and progress of measures towards improving water as well as assessing the need for new measures based on the estimation of the progress and effects of new developments. This is especially pertinent. Since administrative steps including public consultation periods and legal adaptation of the RBMPs require a considerable amount of time within the management cycle. Longer management cycles would enable more appropriate amount of resources to be devoted to the implementation of measures with less on the planning.

In order to achieve good status, it is often necessary to adopt long-term solutions. Some measures require a longer planning and implementation period than six years. In addition, the transition from one measure to another may result in a temporary deterioration in the status of water bodies regardless of whether the new measure improves the likelihood of achieving good status in the end. The risk of temporary deterioration that exceeds the length of the management cycle can result in MS not adopting new and better measures and could be viewed as ineffective water management. Currently, a particular challenge in relation to this is that art. 11(3) of WFD requires that any new or revised measures established in PoMs shall be made operational within three years of their establishment, and measures are subject to intermediate reporting. In addition, longer cycles would

enable monitoring periods of appropriate length; this would be justified particularly from the groundwater point of view.

Improved harmony in the implementation cycles of water related legislation would increase effectiveness, efficiency and coherence of WFD. One of the challenges so far has been the lack of coordination between amending the EQSD and the planning cycle of the WFD. If new EQSD requirements are set in the middle of a management cycle, reasonable stocktaking, including the derivation and planning of specific measures become increasingly difficult and this does not enable transparent comparability of the status of the water bodies. Consideration could be given to lengthening WFD's RBMP cycles to, for instance a 12 year period, which would maintain alignment of WFD planning cycle with the six year cycles of the FD and MSFD.

Summary.

The length of the management cycle could be reviewed and discussed within the WFD's and its daughter directive Fitness-check evaluation process. As to the challenges relating to the timeframe of implementation of measures, a solution could be found by increasing flexibility of implementation during the cycle and how the measures are reported. Aligning the review cycle of the EQSD and other water-related directives with WFD's management cycle would work towards increasing the efficiency and coherence of WFD.

Chapter 3. Coherence with other water-related policies and environmental legislation.

Ensuring the coherence of the WFD with other environmental policies is of utmost importance for the near and far future. The fitness-check of the WFD should recognise the policy fields that are of particular relevance regarding coherence with WFD. These policies include e.g. nature conservation, climate change adaptation and mitigation and protection of human health as well as the environment. Following WFD's adoption, the COM has since launched or will launch new strategies and policy developments relating to e.g. pharmaceuticals in the environment and plastic, which should also be taken into the consideration of the WFDs fitness for purpose. As far as practically possible, the WFD should include the implementation of these strategies aligning them with its objectives. It is of particular relevance to ensure that there is a coherent legal EU framework and environmental policy for the implementation of WFD and other relevant policies.

The strategy for plastics has been acknowledged in the proposal for Drinking Water Directive (DWD). This strategy also contains a need for amendments to Urban Wastewater Treatment Directive (UWWTD). Several pharmaceutical substances are already on the watch list. However, the approach to this issue should be considered in further in the fitness-check. A common approach on how to handle these new, emerging pressures in the RBMPs should be developed under the Common Implementation Strategy.

It is now time to ensure synergies exist, and are workable, between WFD other water-related pieces of legislation. There is a need to improve consistency between the WFD and the likes of DWD, UWWTD, the Groundwater Directive, MSFD and ND. Of particular relevance are the harmonization of monitoring programmes and reporting requirements of water legislation. There is also a need to improve the coordination between the EQSD and other relevant European chemical legislation, such as the Industrial Emissions Directive and REACH to facilitate the development and implementation of measures aimed at reducing environmental contaminants to work towards and achieving good chemical status as soon as is practically possible. This also holds true for the mutual use (and access) of data on ecotoxicological properties of substances, as acquired under REACH and the Plant Protection Products and Biocide regulations.

The WFD review process should identify other policy fields where maximum synergies with the WFD could be pursued. For example, a recognition of the challenge faced by MS to integrate the needs of sustainable food production and the impacts this may bring whilst simultaneously aiming to achieve good status in their water bodies. The synergy of WFD with the Common Agricultural Policy (CAP) has been identified as one of the most challenging points of the water management. This should be acknowledged both in the revision of CAP and the WFD fitness-check.

Other policy fields include fisheries, food policy, transport, flood risk -management, spatial and land use planning and energy policy. The objectives of the WFD cannot be met without a more improved and integrated, system analysis approach to land use whilst permitting the protection (and restoration) of for example riparian vegetation, wetlands and meanders and allowing space for buffer strips for nutrient retention as well as the reconnection to floodplains. However, better integration with other policy areas does not only mean specific and new orientations of the WFD, as optimal synergies will also require reviews and possibly amendments in other policy fields.

What is also relevant here is the coherence of WFD with international chemical management frameworks and initiatives such as the Minamata Convention for mercury and the Stockholm Convention for persistent organic pollutants (POPs). As some river systems are shared between one or more MS, transboundary cooperation has to be coherent with the provisions of international conventions (e.g. Water Convention, New York Convention) which have been mandated by MS and non-MS sharing river basins. It should also ensure that the WFD regulation is in accordance with the United nation's Sustainable Development Goals and supports their implementation.

Summary.

Harmonisation with other environmental policies should be examined during WFD's evaluation. Particular attention should be paid to consistency with other water-related legislation and particularly synergies of objectives and harmonisation of planning processes, monitoring programmes and reporting requirements. As the WFD is a framework, it would be worthwhile to consider more explicit references are made to WFD and its objectives in other pieces legislation to achieve workable and optimal synergies with other policy objectives in relation to environmental and human health protection.

Annex 1. Positive and negative implications of Option A – Enabling time-extensions based on technical feasibility and disproportionate costs beyond 2027.

Positive	Negative
maintains the ambition of reaching the environmental objectives	enabling more time to meet the objectives could also be seen as a loss of ambition regarding the timeframe
setting less stringent environmental objectives on a large scale is avoided	the sense of urgency of status enhancement is lower, which might lead to postponement of implementation of the feasible measures
the long-term ambition level regarding the timeframe is retained since there would be a binding deadline in the WFD	
WFD systematics of exemptions are not drastically changed	
acknowledges the fact that more time is needed for status enhancement than what was anticipated and provides more time to make good use of new knowledge	
gives opportunities to take into account the effects of the climate change and other new challenges and the time needed for the planning and implementation of measures, land acquisition etc.	
measures which are today regarded disproportionately costly or not feasible may become feasible and proportionate over a longer time span	
enables better synergy with the environmental objectives for chemical status concerning new priority substances	
maintains political support for the WFD as drastic economic and social impacts are avoided	

Annex 2. Positive and negative implications of Option B – Enabling time-extensions based on technical feasibility and disproportionate costs after 2027 with additional criteria.

Positive	Negative
WFD systematics for exemptions can remain in place	difficulty of formulating criteria on how to take into account of uncertainty for the predicted effects of measures in future planning cycles
extending the deadline is better justified in the context of the original WFD systematics – 2027 is still the prime deadline but time extensions are possible if there are cogent reasons	added complexity and uncertainty in applying exemptions for MSs and stakeholders
minimizes the loss of ambition regarding the objectives as good status / potential remains the prime objective	difficulty of formulating criteria how to take into account climate change
minimizes the loss of ambition regarding the timeframe, since time-extensions beyond 2027 would need to be justified more emphatically due to additional criteria	systematics of the directive could become blurred and the regulation more complicated
transparency to the public and the stakeholders providing a clear overview on the level of ambitions in the years to come (also for the next planning cycles and the assumed date for the achievement of the good status)	the sense of urgency is lower, which might lead to postponement of the implementation of the feasible measures
gives opportunities to take into account the effects of the climate change and other new challenges and the time needed for the planning and implementation of measures, land acquisition etc.	
enables better synergy with the environmental objectives for chemical status concerning new priority substances	
maintains political support for the WFD as drastic economic and social impacts are avoided	

Annex 3. Positive and negative implications of Option C – Extending the scope of ‘natural conditions’.

<u>Positive</u>	<u>Negative</u>
the ambition level of the directive both in terms of the environmental objectives and also regarding the timeframe would be retained	does not solve all the problems with the 2027 deadline; not a solution for measures that cannot be taken before 2027 because of technical feasibility or disproportionate costs, if there are insufficient grounds for applying article 4.5
positive implications to communication, since the deadline of 2027 would be retained	difficulty of regulating uncertainty since it might lead to legislative problems and problems with the interpretation; criteria would need to be introduced in relation to uncertainty and thus it would mean supplementary workload to justify the use of uncertainty
uncertainty and emerging new knowledge is taken into account and is not restricted a specific number of planning periods, so changing conditions can always be dealt with	additional value generated by this option is not clear compared to article 4.4 and 4.5
WFD systematics of exemptions would not be drastically changed	it would be difficult to use this option repeatedly; difficult to argue in consecutive planning cycles that due to uncertainty the previous planned measures were not sufficient
uncertainty and effects of the climate change would be incorporated in ‘natural conditions’ beyond 2027	climate change needs a more profound role/place in the WFD
the sense of urgency of taking measures is the same as in current regulation for the management cycle of 2021-2027	