



**Bundesvereinigung
Recycling-
Baustoffe e.V.**

An den BRB Vorstand
An die Geschäftsführer der Landesverbände
An unsere Mitglieder u. BRB Arbeitsausschuss Technik & Umwelt

W 22/2017

**Update BRB „Recht und Verwaltung“ – EU & Bund: verschiedene
Fachthemen**

Sehr geehrte Damen und Herren,

wir informieren Sie über nachfolgende Themen:

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Ansprechpartner:
Jasmin Klöckner
Kerstin Migas (Sek.)

Telefon:
0203 / 99 23 9-20
0203 / 99 23 9-21

Telefax:
0203 / 99 23 9-95

E-Mail:
jasmin.kloeckner@
baustoffverbaende.de

Datum:
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Geschäftsstelle:
Haus der Baustoffindustrie
Düsseldorfer Straße 50
47051 Duisburg

Postfach 10 04 64
47004 Duisburg

Telefon 02 03/9 92 39-0
E-Mail:
info@recyclingbaustoffe.de
www.recyclingbaustoffe.de

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Mit freundlichen Grüßen

gez. Ass. jur. Jasmin Klöckner

Europa

1. Trilog zur EU-ARRL – Ausgestaltung des Getrenntsammlungsgebot von Abfällen – geplante BDI-Stellungnahme

Seit Anfang 2017 läuft der Trilog zum 2. EU-Kreislaufwirtschaftspaket (Stand: 02.12.2015). Hintergrund sind über 1.000 Änderungsanträge und die divergierenden Positionen von EU-Parlament (EP) und EU-Rat (ER).

Nach letzten Berichten des Bundesverbandes der Deutschen Industrie e.V. (BDI-Arbeitskreis Kreislaufwirtschaft) wird im Rahmen der Verhandlungen zur europ. Abfallrahmenrichtlinie (ARRL) u.a. die Ausgestaltung der Vorschriften zum Gebot der Getrenntsammlung von Abfällen diskutiert. Art. 10 Abs. 2 der ARRL sieht vor, dass zur Einhaltung des Verwertungsgebots gem. Art. 10 Abs. 1 eine Getrenntsammlung von Abfällen erfolgt, *„falls dies technisch, ökologisch und wirtschaftlich durchführbar ist“*. Das EP möchte diese Bedingung streichen (AM 157) und nur eine eng begrenzte Ausnahme vom dann strikten Getrenntsammlungsgebots erlauben. Ebenso soll die gleichlautende Bedingung beim Gebot der Errichtung getrennter Sammlungen in Art. 11 Abs. 1 UA 2 gestrichen werden (AM 161). Die Vorschläge des EP lehnt der ER bislang ab. Auch die Bundesregierung spricht sich für eine Beibehaltung des Vorbehalts der technischen, ökologischen und wirtschaftlichen Durchführbarkeit der Getrenntsammlung aus.

Mit Blick auf die möglichen erheblichen Auswirkungen einer Streichung des Vorbehalts auf die Sammlung bzw. Erfassung von Abfällen in Deutschland, hält der BDI es für geboten, zu dieser Frage Stellung zu nehmen. In der geplanten Stellungnahme wird für eine Beibehaltung des Vorbehalts der technischen, ökologischen und wirtschaftlichen Durchführbarkeit der Getrenntsammlung plädiert.

Ein Abschluss der laufenden Trilogverhandlungen zum Legislativpaket der Kreislaufwirtschaft wird dem Vernehmen nach erst im Verlauf der Ratspräsidentschaft erwartet (ab April 2018).

2. Ressourcen- und Energieeffizienz von Gebäuden – EU-Kommission (EU-KOM) startet Pilotphase von „Level(s)“ Ende September 2017

Die EU Kommission hat Ende September 2017 die Pilotphase von „Level(s)“ gestartet. Level(s) ist als Berichtsrahmen auf freiwilliger Basis konzipiert, um die Nachhaltigkeit von Gebäuden zu verbessern. Inhaltlich zielt Level(s) darauf ab, die Ressourcen- und Energieeffizienz von Gebäuden zu steigern und die Kreislaufwirtschaft zu fördern. Als Indikatoren sind u.a. Treibhausgasemissionen, Ressourcen- und Wasserinanspruchnahmen sowie Gesundheit und Wohlbefinden vorgesehen.

Träger von Bauprojekten, Organisationen und Unternehmen mit Interesse an einer Praxisanwendung der Level(s) – oder Teilen von Level(s) – können das neue Instrument testen (Lauf der Testphase bis 2019).

Hierzu veranstaltet die EU Kommission am 04.12.2017 in Brüssel einen Pilotworkshop. Anmeldungen direkt per E-Mail an: europa@worldgbc.org.

Eine erste Einschätzung unseres Dachverbands BBS (Ausschuss Umwelt) unter Bezugnahme auf CEN TC 350 ist als **Anlage 1** beigelegt. Weiter erfolgte eine Beurteilung der Level(s) durch Frau Prof. Grahl (im Auftrag des Instituts für Bauen und Umwelt – IBU –) hinsichtlich möglicher Überschneidungen zu bestehenden Nachhaltigkeitsinstrumenten. Ergebnis: Level(s) verfolgt nicht die Intention, einen neuen Standard zur Nachhaltigkeitszertifizierung von Gebäuden zu entwickeln oder Leistungsstandards zu etablieren.

Weitergehende Informationen zu Level(s) sowie der Bericht von Fr. Prof Grahl können über die Duisburger Geschäftsstelle bezogen werden: kerstin.migas@baustoffverbaende.de (**Stichwort:** EU-Pilotphase Level(s)).

3. Niederländische Studie veröffentlicht: EU-Vergleich der End-of-Waste-Regelungen zu mineralischen Bauabfällen

Das Umweltministerium NL hat die Studie „End of Waste criteria for inert aggregates in member states“ beauftragt und veröffentlicht. Die Studie vergleicht die unterschiedlichen Regelungen zum Ende der Abfalleigenschaft bei mineralischen Bauabfällen/RC-Materialien in den Mitgliedstaaten Europas (Regelungen bislang nur in NL, GB, F, A) und untersucht, welche Abfallschlüsselnummern geeignet sind, um RC-

Material zu erzeugen, welche Prüf- und Überwachungsmethoden zur Anwendungen kommen und welche Produktqualitäten gefordert werden.

Zusammenfassend wird festgestellt, dass in der EU bisher keine Regelungen zum Ende der Abfalleigenschaft von mineralischen Bauabfällen vorliegen, diese aber entwickelt werden sollten, da sie die Recyclingaktivitäten in Europa fördern würden.

Die Studie können Sie über die Duisburger Geschäftsstelle beziehen: kerstin.migas@baustoffverbaende.de (Stichwort: Studie NL End-of-waste).

4. EU-Verordnung zu HP-14 „ökotoxisch“

Am 5. Juli 2017 ist die Verordnung (EU) 2017/997 des Rates vom 8. Juni 2017 zur Änderung von Anhang III der Richtlinie 2008/98/EG des Europäischen Parlaments und des Rates in Bezug auf die gefahrenrelevante Eigenschaft HP 14 „ökotoxisch“ veröffentlicht worden (**Anlage 2**).

Ein zugehöriges Guidance-Document wird aktuell von der Kommission erarbeitet und soll bis zum Jahresende 2017 vorliegen.

5. Überprüfung und mögliche Überarbeitung der europäischen Wasserrahmenrichtlinie (WRRL) & Erarbeitung eines Guidance Documents zu Art. 4 Abs. 7 der WRRL (Umweltziele, bspw. Verschlechterungsverbot)

Die EU Kommission plant von Ende 2017 bis Mitte 2019 den „Fitness-Check der WRRL“. Inhalte des Checks sollen u.a. eine Prüfung regulatorischer Vereinfachungen eine Kosten/Nutzen Analyse und Aussagen zu den Auswirkungen der WRRL auf die Wirtschaft umfassen. Die EU Kommission hat die Möglichkeit geschaffen, den Fitness Check zu kommentieren. Ihre Anmerkungen können Sie bis 17.11.2017 unmittelbar auf der [Webseite](#) einbringen.

Des Weiteren erarbeitet die EU-KOM derzeit ein Guidance Document zu Artikel 4 Abs. 7 der WRRL und hat mittlerweile einen 3. Entwurf vorgelegt (**Anlage 3**). Nach Einschätzung von BBS und BDI sind die Inhalte des Dokuments problematisch für industrielle Genehmigungsverfahren. Der BDI hatte bereits zu den ersten beiden Entwürfen kritisch Stellung genommen. Bzgl. des dritten Entwurfs wird seitens BBS festgestellt, dass die BDI-Forderungen (**Anlage 4**) bisher weitgehend unberücksichtigt geblieben sind. **Anlage 5** enthält eine Übersicht über die vorgebrachten Änderungen und die Kommentare der EU-KOM.

Für eine öffentliche online-Konsultation im ersten Halbjahr 2018 erarbeitet der BDI aktuell eine Stellungnahme.

Deutschland

6. Vierter Bodenschutzbericht des Bundeskabinetts

Vierter Bodenschutzbericht: www.bmub.bund.de/N54344

Das Bundeskabinett hat am 27.09.2017 den von Bundesumweltministerin Barbara Hendricks vorgelegten Bodenschutzbericht verabschiedet. Dies ist der vierte Bericht der Bundesregierung, der alle derzeitigen Aktivitäten des Bundes und der Länder zum Schutz der Böden darstellt. Seit 2000 wird der Bericht einmal pro Legislaturperiode vorgelegt.

Im Bericht werden unter anderem die Potentiale des Flächenrecyclings für die Schaffung neuer Wohngebiete in Deutschland erläutert. Der Bodenschutzbericht geht auch auf die geplante Neufassung der Bundes-Bodenschutz- und Altlastenverordnung ein (Art. 2 der MantelV). Der Entwurf sieht nun erstmals bundeseinheitliche Anforderungen für die Verfüllung abgegrabener Bodenmassen vor. Diese müssen so verwendet werden, dass an anderen Stellen Böden wiederhergestellt bzw. in einen guten Zustand versetzt werden. Gestärkt wird auch der Bodenschutz bei Baumaßnahmen. Die Verordnung sieht bei allen großen Bauvorhaben eine bodenkundliche Baubegleitung vor. Dadurch sollen mögliche Schäden der ursprünglichen Böden wie Schadstoffverunreinigungen und extreme Bodenverdichtungen zukünftig besser vermieden werden.

7. Mit Ländern abgestimmte BMUB Hinweise zur Anwendung und Umsetzung der Abfallhierarchie (§§ 6 – 8 KrWG) vom 25. September 2017

Die vom Bundesumweltministerium auf der Homepage veröffentlichten nicht rechtsverbindlichen Vollzugspapiere (Stand der mit den Ländern abgestimmten Papiere: 25. September 2017) bestehen aus zwei aufeinander bezogenen Dokumenten:

[Leitfaden zur Anwendung der Abfallhierarchie nach § 6 Kreislaufwirtschaftsgesetz \(KrWG\) – Hierarchiestufen Recycling und sonstige Verwertung](#)

Der Leitfaden stellt ein rechtliches Auslegungspapier zur Auslegung und Anwendung der Abfallhierarchie dar, das für alle Abfallarten herangezogen werden kann.

[Vollzugshilfe "Gefährliche Abfälle aus industriellen Prozessen, deren energetische Verwertung gegenüber den stofflichen Verwertungsverfahren nach § 8 Abs. 1 Satz 2 i.V.m. § 6 Abs. 2 KrWG als gleichrangig gilt"](#)

Diese Vollzugshilfe bezieht sich – aufbauend auf den Hinweisen des oben genannten Leitfadens – konkret auf die gefährlichen Abfälle aus der chemischen Industrie, da diese Abfälle von der Aufhebung der Heizwertregelung in besonderer Weise betroffen sind (vergleiche bipro-Gutachten 2016 der ökologischen und ökonomischen Auswirkungen des Wegfalls der Heizwertregelung des § 8 Abs. 3 Satz 1 KrWG). Die Auswahl der

gefährlichen Abfälle erfolgte aufgrund von Kriterien, die gemäß den Vorgaben des EU-Rechts sowie des KrWG auf ein Lebenszyklusdenken (lifecycle-thinking, LCT) bzw. eine Lebenszyklusanalyse (lifecycle-analysis, LCA) abstellen. Bei der Erarbeitung der Vollzugshilfe wurden fachspezifische Informationen der betroffenen Industrie berücksichtigt.

Erläuterung:

Diese Initiative hatte das BMUB im Zuge der Aufhebung der Heizwertklausel (Streichung § 8 Abs. 3 S.1 KrWG) ergriffen und ist damit auch einer Entschließung des Bundesrates vom 10. Februar 2017 (vergleiche BR-Drs. 29/17) sowie einer entsprechenden Bitte des Abfallrechtsausschusses (ARA) der Bund/Länder-Arbeitsgemeinschaft Abfall (LAGA) nachgekommen. Auch verschiedene betroffene Wirtschaftsverbände hatten entsprechende Wünsche zum Ausdruck gebracht.

Das BMUB schreibt zum Abstimmungsprozess mit den Ländern:

Die Vollzugspapiere wurden umfassend von den zuständigen Bund-Länder-Ausschüssen erörtert. Auf der Grundlage der Beratungen und Beschlussfassungen des Abfalltechnikausschusses (ATA) und des Abfallrechtsausschusses (ARA) der LAGA sowie des Ausschusses für Rechtsfragen, Umsetzung und Vollzug (RUV) der Bund/Länder-Arbeitsgemeinschaft für Immissionsschutz (LAI) hat die LAGA auf ihrer 109. Sitzung am 20. September 2017 in Berlin unter TOP 3.2. ohne Gegenstimme bei einer Enthaltung folgenden Beschluss gefasst:

"Die LAGA nimmt den vom BMUB erarbeiteten Leitfaden und die vom BMUB erarbeitete Vollzugshilfe zustimmend zur Kenntnis und dankt dem BMUB für deren Erarbeitung. Die Papiere werden den Ländern zur Anwendung empfohlen".

Da der vorgenannte LAGA-Beschluss ohne Gegenstimme gefasst wurde, ist davon auszugehen, dass die Länder die Vollzugspapiere entsprechend einführen werden.

8. Eckpunktepapier Arbeitskreis Bund und Länder für eine neue Verwaltungsvorschrift TA-Abstand – Entwurf BDI-Positionspapier (Frist: 17.11.2017)

Im Rahmen der Arbeiten für eine neue Verwaltungsvorschrift TA-Abstand, hat das BMUB ein Eckpunktepapier vorgestellt (**Anlage 6**). Weiter erhalten Sie den aktuellen Entwurf eines BDI-Positionspapiers zum o.g. Eckpunktepapier (**Anlage 7**).

Sollten Sie Änderungs- oder Ergänzungswünsche haben, bitten wir um Ihre Anmerkungen bis zum **15.11.2017** an unsere Geschäftsstelle: (kerstin.migas@baustoffverbaende.de).

Zur weiteren Facharbeit informiert uns unser Dachverband der Bundesverband Baustoffe – Steine und Erden e.V. (BBS-Ausschuss Umwelt) u.a. über drei eingerichtete Arbeitsgruppen:

- Die **Arbeitsgruppe 1**, geleitet von Herrn Stürmer (NRW), beschäftigt sich mit Abstandsklassen. Es wird geprüft, ob typisierende Abstände für einzelne Anlagen und Stoffe ermittelt werden können. Die AG kommt bisher zu dem Zwischenergebnis, dass eine Typisierung von Abständen mithilfe der bisherigen Gutachten nach KAS-18 denkbar ist, weiterhin aber auch Einzelfall-Gutachten „mit Detailkenntnissen“ möglich sein müssen.
- In der **Arbeitsgruppe 2**, geleitet von Frau Parensen (HH) und Herrn Wiese (NRW), wird die Weiterentwicklung der Methodik zur Ermittlung des angemessenen Sicherheitsabstandes untersucht. Es soll zukünftig ein Referenzmodell geben. Einen Fortbestand von Altgutachten wird es nicht geben.
- Die **Arbeitsgruppe 3** unter dem Vorsitz von Herrn Dr. Wasielewski (SH) soll die im BlmschG genannten „Schutzobjekte“ sowie sonstige relevante Begrifflichkeiten näher bestimmen. Ggf. soll für den angemessenen Sicherheitsabstand zwischen Betriebsbereich und „unter dem Gesichtspunkt des Naturschutzes besonders wertvollen oder besonders empfindlichen Gebieten“ ein Pauschalabstand festgelegt werden. Mangels Rechtsgrundlage soll aber keine generelle untere Grenze für die Festsetzung von angemessenen Sicherheitsabständen festgelegt werden.

Weiterer Zeitplan:

Die Veröffentlichung der abschließenden Ergebnisse der Arbeitsgruppen ist für Frühling 2018 angekündigt, ein erster Entwurf der TA Abstand dann für Juni 2018. Daran anschließen sollen sich die Anhörung der Beteiligten Kreise sowie das parlamentarische Verfahren. Der Beschluss des Bundesrates ist für Februar 2019 vorgesehen.

9. LABO: Einladung zum Verbändegespräch am 06.12.2017 Berlin „Altlastenbearbeitung und Bodenschutz“

Die Bund-Länder-Arbeitsgemeinschaft Bodenschutz (LABO) lädt zu einem Verbändegespräch am 06.12.2017 in der Vertretung des Landes Schleswig-Holstein beim Bund ein. Der Adressatenkreis der Einladung umfasst ausgewählte Verbände, die mit den Bereichen Altlastenbearbeitung und Bodenschutz befasst sind (u.a. BDI und BDE).

Aus der Sicht der LABO sind geeignete Themen die Vorstellung der künftigen Arbeitsschwerpunkte der LABO und die Kooperation zwischen Verbänden und LABO.

10. Neues zentrales Informationsportal über laufende Umweltverträglichkeitsprüfungen

Sie finden das Portal unter: <https://www.uvp-verbund.de/startseite>

Nach dem europäischen Recht und der entsprechenden gesetzlichen Umsetzung in Deutschland ist die Öffentlichkeit über sämtliche Zulassungsverfahren mit Umweltverträglichkeitsprüfung (UVP) elektronisch an zentraler Stelle zu unterrichten. Daher haben alle 16 Bundesländer, gemeinsam ein neues Internetportal für Informationen über Umweltverträglichkeitsprüfungen entwickelt. Das Portal gibt künftig über sämtliche Zulassungsverfahren mit Umweltverträglichkeitsprüfung Auskunft.

Im neuen zentralen UVP-Portal können Sie sich über UVP-pflichtige Vorhaben, deren Verfahrensstand, Auslegungs- und Erörterungstermine, eingestellte Unterlagen, Berichte und Empfehlungen sowie anschließende Entscheidungen informieren. Die entsprechenden Informationen über laufende UVP-pflichtige Verfahren sind zu finden, sobald das öffentliche Beteiligungsverfahren begonnen wurde.

Hierzu ergänzende Hinweise des BDI (Arbeitskreis Immissionsschutzrecht):

Bitte beachten Sie, dass es sich dabei nicht um die Veröffentlichung sämtlicher Antragsunterlagen handelt. In der Begründung zum UVPG und der 9. BImSchV hatte die Bundesregierung klargestellt, dass § 27a VwVfG keine Anwendung findet, das Fachrecht (BImSchG) geht vor (vgl. § 73 BImSchG).

Sollten in den Unterlagen, die nach § 19 UVPG im Internet eingestellt werden müssen, sensible Unternehmensdaten erfasst sein, ist darauf zu achten, diese entsprechend als Betriebs- und Geschäftsgeheimnisse zu kennzeichnen und von der Veröffentlichung ausnehmen zu lassen. Einmal im Internet veröffentlichte Daten sind weltweit und unbegrenzt verfügbar.

Von: BBS Sekretariat [mailto:sekretariat@bvbaustoffe.de]

Gesendet: Donnerstag, 26. Oktober 2017 10:18

An: Jasmin Klöckner

Betreff: Rundschreiben UW-2017-059 / Level (s) - Building sustainability performance

Ausschuss Umwelt

PG Nachhaltiges Bauen

Nachrichtlich:

Geschäftsführer der Mitgliedsverbände

Sehr geehrte Damen und Herren,

die EU Kommission hat Ende September 2017 die Pilotphase von „Level(s)“ gestartet. Level(s) ist als Berichtsrahmen auf freiwilliger Basis konzipiert, um die Nachhaltigkeit von Gebäuden zu verbessern. Inhaltlich zielt Level(s) darauf ab, die Ressourcen- und Energieeffizienz von Gebäuden zu steigern und die Kreislaufwirtschaft zu fördern. Als Indikatoren sind u.a. Treibhausgasemissionen, Ressourcen- und Wasserinanspruchnahmen sowie Gesundheit und Wohlbefinden vorgesehen. Weitergehende Informationen zu Level(s) erhalten Sie mit den bisher vorliegenden Einführungsbeschreibungen (**Anlagen a und b**).

Die Testphase von Level(s) läuft bis 2019. Alle Träger von Bauprojekten sind eingeladen, das neue Instrument zu testen. Die EU Kommission wirbt mit der Zusage einer technischen Unterstützung dafür, alle oder einzelne Teile von Level(s) in der Praxis anzuwenden. Für Organisationen und Unternehmen, die Level(s) testen wollen, veranstaltet die EU Kommission am 4. Dezember 2017 in Brüssel einen Pilotworkshop. Anbei erhalten Sie die Tagesordnung zum Workshop (**Anlage c**). Bei Interesse können Sie sich per Mail direkt zum Workshop anmelden europa@worldgbc.org.

Das Vorgehen der EU Kommission, Level(s) zu entwickeln und umgehend in einer Pilotphase zu testen, irritiert, denn seit vielen Jahren mandatiert die EU Kommission die Erarbeitung europäischer Normen zur Bewertung der Nachhaltigkeit von Bauwerken. Seit über 25 Jahren arbeitet CEN TC 350 an der Entwicklung von freiwilligen, horizontalen, standardisierten Methoden für die Bewertung von Nachhaltigkeitsaspekten von neuen und existierenden Bauwerken und behandelt auch die Umweltproduktdeklarationen für Bauprodukte. Die Normen sind allgemein anwendbar (horizontal) und beschreiben eine harmonisierte Methodik für die Bewertung der Umweltleistung von Gebäuden und die ökonomische Leistung bezogen auf den Lebenszyklus, sowie die quantifizierbare Leistung bezüglich Gesundheit und Komfort von Gebäuden. Gleichzeitig spiegelt CEN TC 350 die internationalen Normungsaktivitäten des ISO/TC 59 im Bereich des Nachhaltigen Bauens. Es erschließt sich nicht unmittelbar, warum die EU Kommission nun einen Vorschlag unterbreitet, der – ähnlich wie PEF (Product environmental footprint) – keinerlei Bezug zu den langjährigen Normungsarbeiten aufweist.

Dankenswerterweise hat das Institut für Bauen und Umwelt (IBU) Fr. Prof. Grahl damit beauftragt, Level(s) näher zu untersuchen und insbesondere herauszuarbeiten, ob und wo sich Konfliktpunkte oder Überschneidungen zu bestehenden Nachhaltigkeitsinstrumenten

abzeichnen. Anbei erhalten Sie Auszüge aus der Einordnung und Beurteilung (**Anlage d**) von Level(s). Der Fokus ist dabei auf die Frage gerichtet, ob Level(s) Einfluss auf die EPDs des IBU hat bzw. haben kann.

Im Ergebnis wird herausgearbeitet, dass Level(s) weder die Intention verfolgt, einen neuen Standard zur Nachhaltigkeitszertifizierung von Gebäude zu entwickeln noch Leistungsstandards zu etablieren. Vielmehr zielt Level(s) darauf ab, einen Rahmen bereitzustellen um die Berichterstattung zur Umweltleistung von Gebäuden für unterschiedliche Zielgruppen (d.h. auf 3 verschiedenen Niveaus) vergleichbar in der EU zu machen. Da Level(s) auf einige bestehende Instrumente zurückgreift, u.a. die EPD-Norm EN 15804, sind die IBU EPDs auch in Level(s) nutzbar. Allerdings greift Level(s) auch auf Informationen zurück, die bisher nicht Bestandteil der EPDs sind. Level(s) knüpft erstaunlicherweise in deutlich geringerem Maße an PEF an.

Für die Hersteller, die über IBU EPDs für Ihre Produkte verfügen, bedeutet das, dass keine zusätzlichen Anforderungen zu erwarten sind. Mögliche Anpassungen können im Rahmen der standardmäßigen Anpassung an die Programmdokumentation vorgenommen werden.

Mit freundlichen Grüßen

Dr. Berthold Schäfer
Geschäftsführer Technik

Bundesverband Baustoffe –
Steine und Erden e.V.
Kochstraße 6-7
10969 Berlin

II

(Rechtsakte ohne Gesetzescharakter)

VERORDNUNGEN

VERORDNUNG (EU) 2017/997 DES RATES

vom 8. Juni 2017

zur Änderung von Anhang III der Richtlinie 2008/98/EG des Europäischen Parlaments und des Rates in Bezug auf die gefahrenrelevante Eigenschaft HP 14 „ökotoxisch“

(Text von Bedeutung für den EWR)

DER RAT DER EUROPÄISCHEN UNION —

gestützt auf den Vertrag über die Arbeitsweise der Europäischen Union,

gestützt auf die Richtlinie 2008/98/EG des Europäischen Parlaments und des Rates vom 19. November 2008 über Abfälle und zur Aufhebung bestimmter Richtlinien ⁽¹⁾, insbesondere auf Artikel 38 Absatz 2,

auf Vorschlag der Europäischen Kommission,

in Erwägung nachstehender Gründe:

- (1) Anhang III der Richtlinie 2008/98/EG enthält eine Aufstellung gefahrenrelevanter Eigenschaften von Abfällen.
- (2) Gemäß der Richtlinie 2008/98/EG sollte die Einstufung von Abfällen als gefährliche Abfälle unter anderem auf den Rechtsvorschriften der Union über Chemikalien beruhen, insbesondere hinsichtlich der Einstufung von Gemischen als gefährlich, einschließlich der zu diesem Zweck verwendeten Konzentrationsgrenzwerte. Mit der Entscheidung 2000/532/EG der Kommission ⁽²⁾ wurde ein Verzeichnis von Arten von Abfällen erstellt, um die einheitliche Einstufung von Abfällen zu fördern und eine einheitliche Bestimmung gefahrenrelevanter Eigenschaften von Abfällen innerhalb der Union zu gewährleisten.
- (3) Gemäß Anhang III der Richtlinie 2008/98/EG wird die gefahrenrelevante Eigenschaft HP 14 „ökotoxisch“ auf der Grundlage der Kriterien in Anhang VI der Richtlinie 67/548/EWG des Rates ⁽³⁾ zugeordnet.
- (4) Die Richtlinie 67/548/EWG wurde mit Wirkung vom 1. Juni 2015 aufgehoben und durch die Verordnung (EG) Nr. 1272/2008 des Europäischen Parlaments und des Rates ⁽⁴⁾ ersetzt. Die Richtlinie kann jedoch für bestimmte Gemische weiter bis zum 1. Juni 2017 gelten, wenn diese gemäß der Richtlinie 1999/45/EG des Europäischen Parlaments und des Rates ⁽⁵⁾ eingestuft, gekennzeichnet und verpackt und bereits vor dem 1. Juni 2015 in Verkehr gebracht wurden.

⁽¹⁾ ABl. L 312 vom 22.11.2008, S. 3.

⁽²⁾ Entscheidung 2000/532/EG der Kommission vom 3. Mai 2000 zur Ersetzung der Entscheidung 94/3/EG über ein Abfallverzeichnis gemäß Artikel 1 Buchstabe a der Richtlinie 75/442/EWG des Rates über Abfälle und der Entscheidung 94/904/EG des Rates über ein Verzeichnis gefährlicher Abfälle im Sinne von Artikel 1 Absatz 4 der Richtlinie 91/689/EWG über gefährliche Abfälle (ABl. L 226 vom 6.9.2000, S. 3).

⁽³⁾ Richtlinie 67/548/EWG des Rates vom 27. Juni 1967 zur Angleichung der Rechts- und Verwaltungsvorschriften für die Einstufung, Verpackung und Kennzeichnung gefährlicher Stoffe (ABl. 196 vom 16.8.1967, S. 1).

⁽⁴⁾ Verordnung (EG) Nr. 1272/2008 des Europäischen Parlaments und des Rates vom 16. Dezember 2008 über die Einstufung, Kennzeichnung und Verpackung von Stoffen und Gemischen, zur Änderung und Aufhebung der Richtlinien 67/548/EWG und 1999/45/EG und zur Änderung der Verordnung (EG) Nr. 1907/2006 (ABl. L 353 vom 31.12.2008, S. 1).

⁽⁵⁾ Richtlinie 1999/45/EG des Europäischen Parlaments und des Rates vom 31. Mai 1999 zur Angleichung der Rechts- und Verwaltungsvorschriften der Mitgliedstaaten für die Einstufung, Verpackung und Kennzeichnung gefährlicher Zubereitungen (ABl. L 200 vom 30.7.1999, S. 1).

- (5) Anhang III der Richtlinie 2008/98/EG wurde durch die Verordnung (EU) Nr. 1357/2014 der Kommission ⁽¹⁾ ersetzt, um die Definitionen der gefahrenrelevanten Eigenschaften gegebenenfalls an die Verordnung (EG) Nr. 1272/2008 anzugleichen und die Bezugnahmen auf die Richtlinie 67/548/EWG durch Bezugnahmen auf die Verordnung (EG) Nr. 1272/2008 zu ersetzen.
- (6) Die Definition der gefahrenrelevanten Eigenschaft HP 14 „ökotoxisch“ wurde durch die Verordnung (EU) Nr. 1357/2014 nicht geändert, da eine zusätzliche Studie benötigt wurde, um die Vollständigkeit und Repräsentativität der Informationen über mögliche Auswirkungen einer Angleichung der Beurteilung der gefahrenrelevanten Eigenschaft HP 14 „ökotoxisch“ an die Kriterien der Verordnung (EG) Nr. 1272/2008 zu gewährleisten. Nachdem diese Studie nunmehr abgeschlossen ist, sollten die darin ausgesprochenen Empfehlungen bei der Beurteilung der gefahrenrelevanten Eigenschaft HP 14 „ökotoxisch“ für Abfälle gemäß Anhang III der Richtlinie 2008/98/EG berücksichtigt und die Beurteilung, soweit möglich, an die in der Verordnung (EG) Nr. 1272/2008 festgelegten Kriterien zur Beurteilung der Ökotoxizität chemischer Stoffe angeglichen werden. Bei der Festlegung der Gefahreinstufung von Abfällen in Bezug auf die gefahrenrelevante Eigenschaft HP 14 „ökotoxisch“ anhand von Berechnungsformeln sollten allgemeine Berücksichtigungsgrenzwerte, wie in der Verordnung (EG) Nr. 1272/2008 definiert, gelten.
- (7) Anhang VI der Verordnung (EG) Nr. 1272/2008 enthält harmonisierte, einer begrenzten Zahl von als „akut gewässergefährdend, Kategorie 1“ oder als „chronisch gewässergefährdend, Kategorie 1“ eingestuften Stoffen zugeordnete Multiplikationsfaktoren, die zur Einstufung eines Gemisches, in dem diese Stoffe vorhanden sind, herangezogen werden. Angesichts von Fortschritten bei der Festlegung dieser Multiplikationsfaktoren kann die Kommission im Einklang mit Artikel 38 Absatz 2 der Richtlinie 2008/98/EG die Berechnungsmethode für die Beurteilung eines Stoffes in Bezug auf die gefahrenrelevante Eigenschaft HP 14 „ökotoxisch“ im Hinblick auf eine etwaige Einbeziehung der Multiplikationsfaktoren in diese Methode überprüfen.
- (8) Bei der Durchführung einer Prüfung zur Beurteilung der gefahrenrelevanten Eigenschaft HP 14 „ökotoxisch“ sollten die in der Verordnung (EG) Nr. 440/2008 der Kommission ⁽²⁾ festgelegten einschlägigen Methoden oder andere international anerkannte Methoden und Leitlinien angewendet werden. Gemäß der Entscheidung 2000/532/EG sind, wenn eine gefahrenrelevante Eigenschaft eines Abfalls sowohl durch eine Prüfung als auch anhand der Konzentrationen gefährlicher Stoffe gemäß Anhang III der Richtlinie 2008/98/EG bewertet wurde, die Ergebnisse der Prüfung ausschlaggebend. Außerdem sollten Artikel 12 der Verordnung (EG) Nr. 1272/2008, insbesondere Artikel 12 Buchstabe b, und die Verfahren für seine Anwendung berücksichtigt werden. Die Kommission sollte den Austausch bewährter Verfahrensweisen bezüglich der Prüfmethode zur Beurteilung von Stoffen in Bezug auf die gefahrenrelevante Eigenschaft HP 14 „ökotoxisch“ im Hinblick auf deren etwaige Harmonisierung fördern.
- (9) Den Unternehmen und zuständigen Behörden sollte ausreichend Zeit eingeräumt werden, damit sie sich auf die neuen Anforderungen einstellen können.
- (10) Der Ausschuss nach Artikel 39 der Richtlinie 2008/98/EG hat keine Stellungnahme zu den in dieser Verordnung vorgesehenen Maßnahmen abgegeben. Die Maßnahmen sollten daher vom Rat im Einklang mit Artikel 5a Absatz 4 des Beschlusses 1999/468/EG des Rates ⁽³⁾ erlassen werden —

HAT FOLGENDE VERORDNUNG ERLASSEN:

Artikel 1

Anhang III der Richtlinie 2008/98/EG wird nach Maßgabe des Anhangs der vorliegenden Verordnung geändert.

Artikel 2

Diese Verordnung tritt am zwanzigsten Tag nach ihrer Veröffentlichung im *Amtsblatt der Europäischen Union* in Kraft.

Sie gilt ab dem 5. Juli 2018.

⁽¹⁾ Verordnung (EU) Nr. 1357/2014 der Kommission vom 18. Dezember 2014 zur Ersetzung von Anhang III der Richtlinie 2008/98/EG des Europäischen Parlaments und des Rates über Abfälle und zur Aufhebung bestimmter Richtlinien (ABl. L 365 vom 19.12.2014, S. 89).

⁽²⁾ Verordnung (EG) Nr. 440/2008 der Kommission vom 30. Mai 2008 zur Festlegung von Prüfmethode gemäß der Verordnung (EG) Nr. 1907/2006 des Europäischen Parlaments und des Rates zur Registrierung, Bewertung, Zulassung und Beschränkung chemischer Stoffe (REACH) (ABl. L 142 vom 31.5.2008, S. 1).

⁽³⁾ Beschluss 1999/468/EG des Rates vom 28. Juni 1999 zur Festlegung der Modalitäten für die Ausübung der der Kommission übertragenen Durchführungsbefugnisse (ABl. L 184 vom 17.7.1999, S. 23).

Diese Verordnung ist in allen ihren Teilen verbindlich und gilt unmittelbar in jedem Mitgliedstaat.

Geschehen zu Brüssel am 8. Juni 2017.

Im Namen des Rates

Die Präsidentin

K. SIMSON

ANHANG

Anhang III der Richtlinie 2008/98/EG wird wie folgt geändert:

1. Der Eintrag für HP 14 „ökotoxisch“ erhält folgende Fassung:

„HP 14 „ökotoxisch“: Abfall, der unmittelbare oder mittelbare Gefahren für einen oder mehrere Umweltbereiche darstellt oder darstellen kann.

Abfälle, die mindestens eine der folgenden Bedingungen erfüllen, werden nach HP 14 als gefährlich eingestuft:

- Abfälle, die einen als ‚die Ozonschicht schädigend‘ eingestuften Stoff enthalten, dem der Gefahrenhinweis H420 gemäß der Verordnung (EG) Nr. 1272/2008 des Europäischen Parlaments und des Rates (*) zugeordnet ist, sofern die Konzentration dieses Stoffes den Konzentrationsgrenzwert von 0,1 % erreicht oder überschreitet.

$$[c(H420) \geq 0,1 \, \%]$$

- Abfälle, die einen oder mehrere als ‚akut gewässergefährdend‘ eingestufte Stoffe enthalten, denen der Gefahrenhinweis H400 gemäß der Verordnung (EG) Nr. 1272/2008 zugeordnet ist, sofern die Summe der Konzentrationen dieser Stoffe den Konzentrationsgrenzwert von 25 % erreicht oder überschreitet. Für diese Stoffe gilt ein Berücksichtigungsgrenzwert von 0,1 %.

$$[\Sigma c(H400) \geq 25 \, \%]$$

- Abfälle, die einen oder mehrere als ‚chronisch gewässergefährdend, Kategorie 1, 2 oder 3‘ eingestufte Stoffe enthalten, denen die Gefahrenhinweise H410, H411 oder H412 gemäß der Verordnung (EG) Nr. 1272/2008 zugeordnet sind, sofern die Summe der Konzentrationen aller als ‚chronisch gewässergefährdend, Kategorie 1‘ (H410) eingestuften Stoffe, multipliziert mit 100, zuzüglich der Summe der Konzentrationen aller als ‚chronisch gewässergefährdend, Kategorie 2‘ (H411) eingestuften Stoffe, multipliziert mit 10, zuzüglich der Summe der Konzentrationen aller als ‚chronisch gewässergefährdend, Kategorie 3‘ (H412) eingestuften Stoffe, den Konzentrationsgrenzwert von 25 % erreicht oder überschreitet. Für Stoffe, denen der Gefahrenhinweis H410 zugeordnet ist, gilt ein Berücksichtigungsgrenzwert von 0,1 %, und für Stoffe, denen der Gefahrenhinweis H411 oder H412 zugeordnet ist, gilt ein Berücksichtigungsgrenzwert von 1 %.

$$[100 \times \Sigma c(H410) + 10 \times \Sigma c(H411) + \Sigma c(H412) \geq 25 \, \%]$$

- Abfälle, die einen oder mehrere als ‚chronisch gewässergefährdend, Kategorie 1, 2, 3 oder 4‘ eingestufte Stoffe enthalten, denen die Gefahrenhinweise H410, H411, H412 oder H413 gemäß der Verordnung (EG) Nr. 1272/2008 zugeordnet sind, sofern die Summe der Konzentrationen aller als ‚chronisch gewässergefährdend‘ eingestuften Stoffe den Konzentrationsgrenzwert von 25 % erreicht oder überschreitet. Für Stoffe, denen der Gefahrenhinweis H410 zugeordnet ist, gilt ein Berücksichtigungsgrenzwert von 0,1 %, und für Stoffe, denen der Gefahrenhinweis H411, H412 oder H413 zugeordnet ist, gilt ein Berücksichtigungsgrenzwert von 1 %.

$$[\Sigma c(H410) + \Sigma c(H411) + \Sigma c(H412) + \Sigma c(H413) \geq 25 \, \%]$$

Dabei ist: Σ = Summe und c = Konzentrationen der Stoffe.

(*) Verordnung (EG) Nr. 1272/2008 des Europäischen Parlaments und des Rates vom 16. Dezember 2008 über die Einstufung, Kennzeichnung und Verpackung von Stoffen und Gemischen, zur Änderung und Aufhebung der Richtlinien 67/548/EWG und 1999/45/EG und zur Änderung der Verordnung (EG) Nr. 1907/2006 (ABl. L 353 vom 31.12.2008, S. 1).“

2. Die Anmerkung unter dem Eintrag für HP 15 wird gestrichen.



**COMMON IMPLEMENTATION STRATEGY
FOR THE WATER FRAMEWORK DIRECTIVE
(2000/60/EC)**

Guidance Document No. 35

Exemptions to the Environmental Objectives according to Article 4(7)

New modifications to the physical characteristics of surface water bodies, alterations to the level of groundwater, or new sustainable human development activities

Status box

Title: Exemptions to the Environmental Objectives according to Article 4(7)

Version no.: 3

Date: 06/10/2017

Meeting: Article 4(7) Ad-hoc Task Group (ATG) Meeting, 19-20 October 2017, Brussels

Proposal:

- Draft 3 for discussion at Article 4(7) ATG Meeting on 19-20 October 2017
- Elaboration of draft 4 based on meeting results
- Discussion at SCG Meeting on 8-9 November 2017
- Provision to Water Directors

Disclaimer:

This technical document has been developed through a collaborative framework (the Common Implementation Strategy (CIS)) involving the Member States, EFTA countries, and other stakeholders including the European Commission. The document is a working draft and does not necessarily represent the official, formal position of any of the partners.

To the extent that the European Commission's services provided input to this technical document, such input does not necessarily reflect the views of the European Commission.

Neither the European Commission nor any other CIS partners are responsible for the use that any third party might make of the information contained in this document.

The technical document is intended to facilitate the implementation of Directive 2000/60/EC and is not legally binding. Any authoritative reading of the law should only be derived from Directive 2000/60/EC itself and other applicable legal texts or principles. Only the Court of Justice of the European Union is competent to authoritatively interpret Union legislation.

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1 INTRODUCTION

1.1 A Guidance Document: What for?

This document aims at guiding experts and stakeholders in the implementation of the Directive 2000/60/EC establishing a framework for Community action in the field of water policy - the Water Framework Directive (WFD)¹. It focuses on exemptions under Article 4(7) of the WFD. Article 4(7) only applies to new modifications to the physical characteristics of a surface water body, alterations to the level of bodies of groundwater and new sustainable human development activities, which can lead to failure of achieving the WFD objectives. In case the conditions as outlined under Article 4(7) are met exemptions can be granted.

The document is based on and further specifies the issues already outlined in Guidance Document No. 20 on exemptions to the environmental objectives². It was developed in the frame of the WFD Common Implementation Strategy (CIS)³ process 2016-2018 and aims to provide complementary information and further clarification by taking into account the latest experiences with the implementation of the WFD and case laws related to Article 4(7).

The document constitutes guidance and good practice. Member States are not legally required to follow the recommendations contained in it. Member States are, however, required to use methods and approaches compliant with the requirements of the WFD.

The guidance is specifically addressed towards:

- Water managers and river basin authorities developing river basin management plans;
- Authorities responsible for taking decisions on the granting of permissions for new activities or projects that might have an impact on water;
- Decision makers at different levels who are responsible for the development, promotion and approval of sectorial strategies (e.g. rural development and agriculture, flood risk management, transport policy, energy policy, etc.);
- Experts which are performing assessments under related legislation like Environmental Impact Assessments (EIA), Strategic Environmental Assessments (SEA), assessments under the Habitats Directive (HD), etc.;
- Project developers and representatives from different economic sectors;
- Interested stakeholders and representatives from civil society organisations.

The guidance inter alia recalls the requirements of the WFD related to environmental objectives and the exemptions with a focus on Article 4(7). Chapter 2 reflects on horizontal issues and addresses the importance of policy coherence for the sustainable management of water resources and for assessments under Article 4(7). Chapter 3 outlines the scope and conditions triggering an Article 4(7) Test and chapter 4 provides guidance on a potential assessment approach for determining whether an Article 4(7) Test has to be performed for a certain activity or project. Chapter 5 provides clarification on the different steps which have to be performed under an Article 4(7) Test towards a decision whether a certain activity or project can be approved or not. Finally, chapter 6 provides an outlook on potential

¹ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0060>

² CIS Guidance Document No. 20 – Exemptions to the Environmental Objectives: https://circabc.europa.eu/sd/a/2a3ec00a-d0e6-405f-bf66-60e212555db1/Guidance_documentN%C2%B020_Mars09.pdf

³ Common Implementation Strategy (CIS) for the Water Framework Directive: http://ec.europa.eu/environment/water/water-framework/objectives/implementation_en.htm

follow-up activities for the benefit of a coherent implementation of the WFD and Article 4(7). Practical examples and approaches are illustrated via case studies and inter-linkages with other relevant EU legislation and policies are addressed within the different chapters of the document.

In summary, the document aims at clarifying a number of aspects in relation to the application of WFD Article 4(7). However, this is not a detailed manual on application. Further methodological guidance is likely necessary at Member State level that is adapted to the legal, administrative and technical reality of each Member State.

1.2 WFD and the Common Implementation Strategy (CIS) process

The implementation of the WFD raises a number of shared technical challenges for the Member States, the Commission, the Candidate and EEA Countries as well as stakeholders and NGOs. In addition, many of the European river basins are international, crossing administrative and territorial borders and therefore a common understanding and approach is crucial to the successful and effective implementation of the Directive.

In order to address the challenges in a co-operative and coordinated way, the Member States, Norway and the Commission agreed on a Common Implementation Strategy (CIS). Since 2001 the activities in the frame of the CIS are aiming at a coherent and harmonious implementation of the WFD. The focus is on methodological questions related to a common understanding of the technical and scientific implications. In this context a series of working groups and joint activities have been undertaken during the last years. While Member States have gained valuable practical experience in the use of exemptions, the implementation of Article 4(7) has shown concrete issues that would greatly benefit from this updated guidance. For that purpose a specific Ad-hoc Task Group (ATG) has been established in the frame of the CIS. The following table provides an overview on those main CIS activities relevant for Article 4(7) since the adoption of the Directive. More detailed information can be obtained from the related documents.

Table 1: Overview CIS activities relevant for WFD Article 4(7)

When	Who	Output
2003	Water Directors	WATECO guidance ⁴ which outlines a basic concept of Article 4(7).
2003	Water Directors	Guidance document No. 4 on the identification and designation of Heavily Modified and Artificial Water Bodies.
2006	CIS process	Policy paper on WFD and hydro-morphological pressures ⁵ with a focus on hydropower, navigation and flood defence activities. It includes recommendations for better policy integration.
2007	CIS process	Workshop on WFD & Hydropower ⁶ . As a result some first key principles for hydropower under the WFD have been formulated.
2008	Water Directors	CIS Guidance number 20 on Environmental Objectives and Exemptions ⁷ discusses basic concepts under Article 4(7).
2009	CIS process	Workshop on Heavily Modified Water Bodies (HMWB) delivered several recommendations ⁸ relevant to hydropower and the WFD, such as on the interpretation of “significant adverse effects on the use”, good ecological potential and ecological continuum.
2009	Water Directors	CIS Guidance number 24 – River Basin Management in a changing climate addresses some aspects related to Article 4(7).

⁴ <http://ec.europa.eu/environment/water/water-framework/economics/pdf/Guidance%201%20-%20Economics%20-%20WATECO.pdf>

⁵ https://circabc.europa.eu/sd/a/bc0a0b09-a2d3-4762-a1f6-5ac664beaa15/HyMo_Political_Paper_FINAL.pdf

⁶ <https://circabc.europa.eu/w/browse/a839626e-9806-4fee-8a93-678a086c0ab3>

⁷ https://circabc.europa.eu/sd/a/2a3ec00a-d0e6-405f-bf66-60e212555db1/Guidance_documentN%C2%B020_Mars09.pdf

⁸ <https://circabc.europa.eu/sd/a/651417d8-46d6-4120-8c59-54f2bbcf422d/FinalHMWBConclusions.pdf>

When	Who	Output
2010	Water Directors	Statement on "Hydropower Development under the Water Framework Directive" ⁹ summarising key principles and recommendations. A key clarification was that the size of the project is not the relevant criteria to trigger Article 4(7).
2011	CIS process	2 nd CIS workshop on Water Management, WFD & Hydropower made good practice recommendations on the application of WFD Article 4(7) ¹⁰ .
2016	CIS process	Establishment of Ad-hoc Task Group for guidance on the implementation of Article 4(7).

Further guidance documents are available with more general WFD relevance and linking aspects related to Article 4(7).¹¹

1.3 Setting Article 4(7) into context

The **environmental objectives of the WFD** are outlined in Article 4 and the core of this EU legislation providing for a long-term sustainable water management on the basis of a high level of protection of the aquatic environment. Article 4(1) sets out the environmental objectives for natural surface and groundwater bodies and artificial and heavily modified water bodies (HMWBs). Natural surface water bodies must, by 2015, adhere to good ecological and chemical status and groundwater bodies to good quantitative and chemical status. Artificial and HMWBs must achieve good ecological potential and good chemical status. In Article 4(3) the criteria for the designation of artificial or heavily modified water bodies are described. One **further key objective** of the WFD, outlined in Article 4(1), is to implement the necessary measures to **prevent deterioration of the status of all water bodies** - the so-called "**non-deterioration principle**", which is of particular relevance in the context of Article 4(7). Finally, the WFD objective of good status may need to be complemented by additional objectives in order to ensure that conservation objectives for protected areas are achieved (Article 4(1)(c) and Article 4(2)).

Exemptions from these objectives are defined within Article 4, outlining the conditions under which the achievement of good status or potential may be phased or not be achieved, or under which deterioration may be allowed. Article 4(4), 4(5), 4(6) and 4(7) describe the conditions and the process in which they can be applied. They include the following:

- Extension of the deadline, in other words, good status/potential must be achieved by 2021 or 2027 at the latest (Article 4(4)) or as soon as natural conditions permit after 2027;
- Achievement of less stringent objectives under certain conditions (Article 4(5));
- Temporary deterioration of the status/potential in case of natural causes or "force majeure" (Article 4(6));
- Deterioration or failure to achieve good status/potential as a result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or status deterioration of a body of surface water from high status to good status as a result of new sustainable human development activities (Article 4(7)).

All these exemptions contain distinct conditions to be met and have to be set out and explained in the River Basin Management Plan.

Paragraphs 8 and 9 of Article 4 introduce two principles applicable to all exemptions,

⁹ <https://circabc.europa.eu/sd/a/4e0cb9d2-c268-4d67-ac56-f1977c1b85fc/WD%20statement%20May%202010-%20Hydropower%20Development%20under%20the%20Water%20Framework%20Directive.pdf>

¹⁰ https://circabc.europa.eu/sd/a/23d94d2d-6b9c-4f17-9e15-14045cd541f3/Issue%20Paper_final.pdf

¹¹ http://ec.europa.eu/environment/water/water-framework/facts_figures/guidance_docs_en.htm

- first, exemptions for one water body must not permanently exclude or compromise the achievement of the environmental objectives in other water bodies (see chapter 3.5);
- second, at least the same level of protection must be achieved as provided for by existing Community law (including those elements to be repealed).

This Guidance focuses on the exemptions under Article 4(7), which sets out the conditions for exemption in the event of new modifications to the physical characteristics of a body of surface water, alterations to the level of bodies of groundwater or new sustainable human development activities.

Integration with other sector policies is a key issue in this context. The Guidance contributes to the "further integration of protection and sustainable management of water into other Community policy areas such as energy, transport, agriculture, fisheries, regional policy and tourism" with a "continued dialogue and for the development of strategies towards a further integration of policy areas"¹². It also contributes to the "Better Regulation Initiative"¹³.

This to comply with the precautionary principle and with the principle of sustainable development, what is a fundamental objective of the European Union, laid down in the Treaty¹⁴ and applicable to all EU activities and policies and in the context that "a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development"¹⁵.

¹² WFD preamble, paragraph 16.

¹³ Commission Communication Better Regulation: Delivering better results for a stronger Union (COM(2016) 615 final)

¹⁴ Treaty on European Union

¹⁵ Laid down in Article 37 of the Charter of Fundamental Rights of the European Union

2 INTEGRATION OF SECTOR POLICIES AS PREREQUISITE FOR POLICY COHERENCE

Integrated approaches and policy coherence play a central role for the implementation of the WFD and for informed assessments in relation to Article 4(7). New physical modifications, alterations, or new sustainable human development activities, potentially causing deterioration, are frequently linked with the achievement of the objectives of other EU policies such as energy, transport, flood protection, coastal defence, water supply and wastewater treatment, irrigation, etc., next to relevant national policies. Integration of the WFD and its links with the implementation of such policies therefore strongly calls for a coordinated approach and a better streamlining of authorisation processes in relation to Article 4(7).

Some of the relevant EU policies and programs include *inter alia* the following:

- Trans-European transport network (TEN-T)¹⁶
- Energy policy including renewable energy policy and its renewable energy action plans
- Industry policies such as the EU Raw Materials Strategy
- The flood risk management plans under the EU Floods Directive
- Marine Strategy Framework Directive and Maritime Spatial Planning Directive
- European Funding Instruments and the Common Agricultural Policy (CAP)
- Climate change policies including adaptation and mitigation
- Other environmental directives and policies, in particular the SEA, EIA, Birds and Habitats Directives and the Urban Wastewater Treatment Directive

Involvement and consultation of authorities and stakeholders concerned with the implementation of the WFD in the design and implementation of these policies allows integrating the objectives of the WFD from the beginning and might even reduce the need for new modifications and hence the possibility of deterioration of water bodies status due to increased transparency for decision makers on expectable impacts.

Furthermore, assessments under Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive) can contribute to the integration of environmental considerations into the preparation of certain plans and programmes as listed above, which might be subject to an SEA. Assessments under the SEA Directive can help to fully take significant effects on the environment into account, including effects on water.

The results of such integrated approaches can also provide valuable information for assessments required in the context of Article 4(7), in particular when it comes to the strategic dimension of overriding public interest, weighing benefits and impacts of modifications or for the assessment of better environmental options (see chapters 5.3 and 5.4).

2.1 Transport policy

The TEN-T programme was established to support the construction and upgrade of transport infrastructure across the European Union. The programme consists of projects – defined as studies or works – whose purpose is to ensure the cohesion, interconnection and interoperability of the trans-European transport network, as well as access to it.

¹⁶ For more information see http://ec.europa.eu/transport/themes/infrastructure_en

TEN-T projects, which are located in every EU Member State¹⁷, include different modes of transport¹⁸ which can be relevant in terms of their potential effects on water. This can for instance be the case for projects related to the construction and upgrade of railway infrastructure or roads, but can be of particular relevance for navigation covering inland waterways and several coastal and inland water ports. The inland waterways dimension of the TEN-T covers all major rivers, canals and lakes used traditionally for transport purposes in the EU (waterways of European dimension, following the classification of the United Nations Economic Commission for Europe - UNECE). Articles 15 and 39 of the TEN-T Guidelines¹⁹ set the following requirements:

- Rivers, canals and lakes comply with the minimum requirements for class IV waterways as laid down in the new classification of inland waterways established by the European Conference of Ministers of Transport (ECMT) and that there is continuous bridge clearance. At the request of a Member State, in duly justified cases, exemptions shall be granted by the Commission from the minimum requirements on draught (less than 2.50 m) and on minimum height under bridges (less than 5.25 m);
- Rivers, canals and lakes are maintained so as to preserve "good navigation status", while respecting the applicable environmental law.

Article 16 of the TEN-T Guidelines establishes priorities for inland waterway infrastructure development, whereas Article 16(e) outlines that priority should *inter alia* be given to "paying particular attention to the free-flowing rivers which are close to their natural state and which can therefore be the subject of specific measures".

Due to the potential need for modifications to the hydromorphological conditions of water bodies for meeting these objectives, navigation infrastructure projects may cause deterioration or failure to achieve good status/potential and therefore trigger an Article 4(7) Test to assess whether a project can be authorised under the WFD. Since both, the WFD as well as the TEN-T regulations allow for the application of exemptions, and since there is no hierarchical relationship between these two policies, it is important to follow an integrated approach for a coherent implementation of both, water and transport policy. Further guidance on the concept of "good navigation status", addressing also the relationship with the WFD and other environmental legislation, is planned to be made available²⁰.

2.2 Energy policies including renewable energy policy

The focus of the EU Energy Strategy is to make energy supply more secure, affordable and sustainable. Conventional energy generation installations are expected to still play an important role for energy supply in the foreseeable future. However, renewables play an increasingly central role to achieve these targets. The EU's Renewable Energy Directive (2009/28/EC)²¹ sets a binding target of 20% final energy consumption from renewable sources by 2020. Renewables will continue to play a key role in helping the EU meet its energy needs beyond 2020. EU countries have agreed on a new renewable energy target of at least 27% of final energy consumption in the EU as a whole by 2030 as

¹⁷ For more information see <https://ec.europa.eu/inea/ten-t/ten-t-projects/projects-by-country>

¹⁸ For more information see <https://ec.europa.eu/inea/ten-t/ten-t-projects/projects-by-transport-mode>

¹⁹ Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU; See: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R1315>

²⁰ During the drafting process of this document work was ongoing on guidelines towards achieving 'good navigation status', addressing also the linkage to the WFD. Related documents will be made available as soon as finalised.

²¹ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC; See: <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32009L0028>

part of the EU's energy and climate goals for 2030²². On 30 November 2016 the Commission published a proposal for a revised Renewable Energy Directive towards meeting these targets²³. The long-term goal is to reduce greenhouse gas emissions by 80-95% until 2050.

A number of measures are required to achieve these targets, including the increase of energy efficiency and the increase of energy production from renewable sources. EU countries have committed to reaching their own national renewables targets which are varying amongst Member States. Renewable energy can be produced from different sources including wind, solar, hydropower, geothermal, biomass and also tidal. All EU countries have adopted national renewable energy action plans²⁴ under the Renewable Energy Directive. These action plans outline how Member States want to achieve their Renewable Energy targets. Beside others these plans cover:

- individual renewable energy trajectories for electricity, heating and cooling, and transport sectors;
- the planned mix of different renewables technologies.

Hydropower constitutes an important renewable energy source, although the share of contribution from other sources of renewable energy is increasing. Specific hydropower facilities can also play an important role to integrate other sources of variable renewables, such as wind and solar. By impacting on hydromorphology new hydropower plants or new modifications at existing facilities altering hydromorphology are likely to be subject to an Article 4(7) Test by causing deterioration of water status.

2.3 EU Raw Materials Strategy and Extractive Waste Directive

In 2008, the Commission adopted the Raw Materials Initiative²⁵ which set out a strategy for tackling the issue of access to raw materials in the EU. This strategy has three pillars which aim to ensure i) fair and sustainable supply of raw materials from global markets, ii) sustainable supply of raw materials within the EU, and iii) resource efficiency and supply of "secondary raw materials" through recycling. The strategy covers all raw materials used by European industry except materials from agricultural production and materials used as fuel.

Waste from extractive operations (i.e. waste from extraction and processing of mineral resources) is one of the largest waste streams in the EU. It involves materials that must be removed to gain access to the mineral resource, such as topsoil, overburden and waste rock, as well as tailings remaining after minerals have been largely extracted from the ore.

Directive 2006/21/EC²⁶ provides for measures, procedures and guidance to prevent or reduce as far as possible any adverse effects on the environment²⁷, in particular water, air, soil, fauna and flora and

²² European Council (23 and 24 October 2014) Conclusions on 2030 Climate and Energy Policy Framework; See: <http://data.consilium.europa.eu/doc/document/ST-169-2014-INIT/en/pdf>

²³ Proposal for a Directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources COM/2016/0767 final - 2016/0382 (COD); See: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0767>

²⁴ See <https://ec.europa.eu/energy/node/71>

²⁵ Communication from the Commission to the European Parliament and the Council - The raw materials initiative — meeting our critical needs for growth and jobs in Europe COM(2008) 699 final; See: https://ec.europa.eu/growth/sectors/raw-materials/policy-strategy_en

²⁶ Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC; See: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02006L0021-20090807>

²⁷ The directive does not apply for injection of water and re-injection of pumped ground-water as defined in the first and second indents of Article 11(3)(j) of Directive 2000/60/EC, to the extent authorised by that Article.

landscape, and any resultant risks to human health, brought about as a result of the management of waste from the extractive industries.

In regard to water the construction and management of waste facilities need to meet the conditions in the short and long-term perspectives that preventing pollution of the soil, air, groundwater or surface water, taking into account the groundwater directive and the WFD. The operator of such a facility has to take the necessary measures in order to meet Community environmental standards in that regard. The requirement for such measures can only be reduced if an environmental assessment (Art 13 of the Directive) shows that the waste facility poses no potential hazard to soil, groundwater or surface water.

Further according to Article 13(5) when placing extractive waste back into excavation voids, whether created through surface or underground extraction, which will be allowed to flood after closure, the operator shall take the necessary measures to prevent or minimise water status deterioration and soil pollution. The operator shall provide the competent authority with the information necessary to ensure compliance with Community obligations, in particular those in WFD.

2.4 Flood risk management

In 2007, the EU Floods Directive (FD)²⁸ entered into force with the aim to reduce the adverse consequences on human health, the environment, cultural heritage and economic activity associated with floods in the Community. Under Art 9 the FD requires Member States to develop flood risk management plans. These have to include a summary of measures and their prioritisation aiming to achieving the appropriate objectives of flood risk management (FD article 7). The first flood risk management plans have been adopted for the 2016-2021 cycle.

Furthermore, Member States shall take appropriate steps to coordinate the application of all aspects of implementation focusing on opportunities for improving efficiency, information exchange and for achieving common synergies and benefits (FD Article 9) and more specifically:

- The flood maps and the reviews of the characterisation analysis required under WFD Article 5(2) and the information in the flood maps shall be consistent with relevant information presented under the WFD (FD Article 9(1));
- The development and review of the FRMPs and RBMPs shall be coordinated, and may be integrated (FD Article 9(2));
- The active involvement of all stakeholders under both Directives shall be coordinated, as appropriate (FD Article 9(3)).

The implementation of both the WFD and FD would benefit from Member States taking an integrated approach to maximise the synergies between the two policies (e.g. via natural water retention measures²⁹) and minimise conflicts between them. When designing programmes of measures under both directives it is important to be clear on what synergies are being taken advantage of and what potential conflicts there may be. New flood risk management projects triggered by the FD could result in changes to the hydromorphology, e.g. hard defence systems. Such planned changes can require being subject to Article 4(7) assessments.

²⁸ Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks; See: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32007L0060>

²⁹ For more information see: <http://ec.europa.eu/environment/water/adaptation/ecosystemstorage.htm>

2.5 Marine Strategy Framework and Maritime Spatial Planning Directives

The *Marine Strategy Framework Directive* (Marine Directive or MSFD, 2008/56/EC) aims at achieving the 'good environmental status' of European marine waters by the year 2020 through the implementation of two overarching principles: the ecosystem-based approach to the management of human activities and an integrated, coordinated approach at regional and sub-regional level.

In the context of exemptions, it is important to consider the scope and differences of the MSFD and the WFD in defining environmental objectives:

- Both the MSFD and the WFD address coastal water bodies but the MSFD clarifies its scope in covering coastal water bodies to those particular aspects of the environmental status of the marine environment which are not already addressed through the WFD. The MSFD consequently applies to WFD coastal water bodies for additional topics such as birds, cetaceans, fish, litter, underwater noise and other aspects not already addressed by the WFD.
- Both the WFD and the MSFD use similar concepts for their environmental objectives. Good Ecological Status in coastal water bodies under the WFD refers to defined pelagic and benthic biological objectives taking into account physico-chemical and hydromorphological parameters. Good Environmental Status under the MSFD is broader and covers 11 qualitative descriptors, including all aspects of biodiversity (birds, mammals, reptiles, fish, cephalopods, pelagic and benthic habitats, food webs) and a number of pressure-based descriptors (non-indigenous species, eutrophication, hydrographical changes, contaminants, litter and energy). There are overlaps between the definitions of good status under the WFD and MSFD, particularly for eutrophication and contamination issues.

Article 14 of the MSFD provides for certain exceptions to achieving good status in its coastal and marine waters (Note: not to confuse with the WFD's "exemptions"). Among other reasons, Article 14(1)(d) provides that Member States must notify the Commission in case it identifies an instance where it cannot achieve good status due to modifications or alterations to the physical characteristics of marine waters brought about by actions taken for reasons of overriding public interest which outweigh the negative impact on the environment, including any transboundary impact. Member States have to take appropriate ad-hoc measures aiming to continue pursuing their environmental targets, to prevent further deterioration in the environmental status and to mitigate the adverse impact at the level of the marine region or sub-region concerned or in the marine waters of other Member States. In addition Article 14(1)(2) specifies that Member States shall ensure that the modifications or alterations do not permanently preclude or compromise the achievement of good environmental status at the level of the marine region or sub-region concerned or in the marine waters of other Member States.

As the WFD covers all coastal waters out to one nautical mile beyond the baseline from which territorial waters are drawn, new physical modifications, like dredging, port construction, drainage or flood protection taking place within this area or with an impact on this area must be assessed for WFD compliance and the possible application of Article 4(7) requirements.

The *Maritime Spatial Planning Directive* 2014/89/EU (MSP) creates a common framework for maritime spatial planning in Europe. This since competition for maritime space – for renewable energy equipment, aquaculture and other growth areas – has highlighted the need for efficient management, to avoid potential conflict and create synergies between different activities. Several marine activities (even if offshore) might trigger a modification of the coast (e.g. oil and wind platforms require landing of cables and pipelines).

Engaging at an early stage with marine planners can help to reach improved policy coherence and might reduce the need for Article 4(7) cases in coastal water bodies.

2.6 European Funding Instruments

The European Funding Instruments promote the implementation of specific policies. Each instrument has a dedicated focus and targets certain actors and activities. Proposed operations and investments for new projects, which might require assessments in relation to WFD Article 4(7), are frequently linked with investments financed under these instruments and *inter alia* need to meet the requirements of EU legislation, including the WFD. In the following, some of the main European Funding Instruments related to water are briefly described.

2.6.1 European Structural and Investment Funds

The European Structural and Investment Funds (ESIF) are the European Regional Development Fund (ERDF), the Cohesion Fund (CF), the European Social Fund (ESF), the European Agricultural Fund for Rural Development (EAFRD), and the European Maritime and Fisheries Fund (EMFF), aiming to invest in job creation and a sustainable and healthy European economy³⁰. The ESIF is also the main EU funding instrument for water related projects.

Member States were required to submit strategic level Partnership Agreements to the European Commission setting out how the funds will be used during the current funding period at national level. Specific investment programmes then detail how funds will be spent in the different regions and through projects in policy areas concerned.

The ERDF and CF (which form together with the European Social Fund the so-called Cohesion Policy) are managed through Operational Programmes, which cover an entire Member State or regions therein. Cohesion Policy³¹ is an important source of funding for technical flood defence infrastructure like dykes, dams, retention walls, etc., or investments in the water, energy or transport sectors. The EAFRD is administered through Rural Development Programmes. Member States have the possibility to request co-financing for the construction of new irrigation networks including reservoirs, drainage of agriculture land and flood risk prevention measures like dykes and dams.

Projects financed by ESI funds *inter alia* need to meet the requirements of EU legislation, including the WFD, and its exemptions. As an example, Article 6 of Regulation 1303/2013 points out that "*Operations supported by the ESI Funds shall comply with applicable Union law and the national law relating to its application ('applicable law')*"³². More specifically, Annex 1 of Regulation 1303/2013 requests that investments shall be in line with the water management hierarchy in line with the WFD³³ and contains a specific ex-ante-conditionality related to the WFD³⁴. Therefore, ensuring compliance,

³⁰ The funds have a total EU budget of EUR 454,446,693 implemented in the framework of 533 programmes for the period 2014-2020. More information: <https://cohesiondata.ec.europa.eu/overview>.

³¹ 11 investment priorities or "thematic objectives" are supported in the 2014-2020 programming period. Thematic objective 6 applies to water.

³² Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006; see: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1303>

³³ Annex 1 "Common Strategic Framework", Point 5.2.3 of EU Regulation (No 1303/2013; <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R1303>

³⁴ Annex XI to CPR 1303/2013, ex-ante-conditionality for Thematic Objective 6, p.123: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0320:0469:en:PDF>

also with Article 4(7), is a compulsory prerequisite and an obligation for a project proposal in order to be selected and subsequently eligible.³⁵

2.6.2 Connecting Europe Facility (CEF)

The Connecting Europe Facility³⁶ (CEF) is a key EU funding instrument, financed by the Cohesion Fund, to promote growth, jobs and competitiveness through targeted infrastructure investment at European level. It supports the development of interconnected trans-European networks in the fields of transport (TEN-T), energy and digital services. CEF investments fill the missing links in Europe's energy, transport and digital backbone. The CEF is divided into three sectors: CEF Energy, CEF Transport and CEF Telecom. The CEF is implemented through direct management by the European Commission (direct grants). Article 23 of Regulation 1316/2013³⁷ calls for compliance of projects proposed to be financed under CEF with EU legislation, including the WFD and Article 4(7), as a prerequisite for eligibility.

2.6.3 Instrument for Pre-Accession

The Instrument for Pre-accession Assistance³⁸ (IPA) is the means by which the EU supports reforms in the 'enlargement countries' with financial and technical help. The IPA funds build up the capacities of the countries throughout the accession process. The EU operates comprehensive approval procedures to ensure new members are admitted only when they can demonstrate they will be able to play their part fully as members, namely by complying with all the EU's standards and rules. The conditions and timing of the candidate's adoption, implementation and enforcement of all current EU rules (the "acquis") are negotiated between the EU and the respective candidate country.

Chapter 27 is "Environment". The acquis comprises over 200 major legal acts including the WFD covering horizontal legislation, water and air quality, waste management, nature protection, industrial pollution control and risk management, chemicals and genetically modified organisms (GMOs), noise and forestry. Compliance with the acquis, including the application and enforcement of the WFD in the IPA countries, requires significant investment.

2.7 Climate change policy including adaptation and mitigation as a cross-cutting issue

At the Paris climate conference (COP21) in December 2015, 195 countries adopted the first-ever universal, legally binding global climate deal. The agreement set a framework for mitigation and adaptation framing also the EU climate policy.

Climate change adaptation and mitigation strategies respectively plans have been and are developed at different administrative levels. The main aim is to reduce the vulnerabilities to climate change or to mitigate greenhouse gas emission. They can therefore trigger a set of measures, such as flood defence infrastructure, reallocation of existing infrastructure, water storage (incl. hydropower) and water abstraction, but also investments in green infrastructure like natural water retention measures.

³⁵ Commission Implementing Regulation 2015/207 of 20 January 2015 lays down detailed rules for major projects related to the WFD; <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015R0207>

³⁶ Art. 5 of Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010. The total EU Budget is EUR 33,242,259,000 for the period 2014 to 2020.

³⁷ Art. 23 EU Regulation 1316/2013 Compliance with Union policies and Union law: "Only actions which are in conformity with Union law and which are in line with the relevant Union policies shall be financed under this Regulation".

³⁸ Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II). IPA II dedicates EUR 11.7 billion for the period 2014-2020.

CIS Guidance Document No. 24 on River Basin Management in a changing climate³⁹ points out that "the implementation of specific adaptation measures, for instance infrastructure projects, might invoke exemptions according to Article 4(7) of the WFD more often". And further that "certain adaptation measures to climate change can be counterproductive to WFD aims, e.g. storage basins. Such measures need to meet the conditions set in Article 4(7) of the WFD on new modifications".

The elaboration and implementation of climate adaptation and mitigation plans would benefit from an integrated approach by taking WFD requirements into account in order to maximise the synergies between the two policies and minimise conflicts between them.

2.8 Other environmental policies

The WFD is strongly linked with other environmental directives and policies. WFD Article 4(9) indicates that steps must be taken to ensure that the application of Article 4(7) (as well as Article 4(3) to 4(6)) guarantees at least the same level of protection as existing Community legislation. In other words, compliance with other environmental legislation must be ensured despite the application of exemptions under the WFD.

Ensuring compliance also provides the opportunity to utilise synergies and reduce the work load in the assessments required for a proposed project under different legislation. As such grouping of assessments and streamlining can be efficient (e.g. in terms of data collection and public participation)⁴⁰.

In the following, key environmental directives are described, including the Strategic Environmental Assessment (SEA Directive), Environmental Impact Assessment (EIA) Directive and the Habitats Directive (HD). The specific linkages and potentials for streamlining of assessments are addressed in more detail in the subsequent chapters of the Guidance. A comparative overview table summarising relevant requirements of these directives is provided in Annex A.

2.8.1 Strategic Environmental Assessment (SEA) Directive

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive)⁴¹ aims to provide a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation of certain plans and programmes with a view to promote sustainable development. The SEA Directive seeks to protect the environment by laying down requirements with respect to the procedures to be followed by the Member States when identifying, recording and assessing the environmental effects of certain plans and programmes which are likely to have significant effects on the environment.

The SEA Directive applies to plans and programmes which meet all four criteria:

³⁹ https://circabc.europa.eu/sd/a/a88369ef-df4d-43b1-8c8c-306ac7c2d6e1/Guidance%20document%20n%2024%20-%20River%20Basin%20Management%20in%20a%20Changing%20Climate_FINAL.pdf

⁴⁰ For more detailed information of such approaches see e.g. Guidance on Streamlining environmental assessment procedures for energy infrastructure Projects of Common Interest (PCIs), http://ec.europa.eu/environment/eia/pdf/PCI_guidance.pdf; Commission guidance document on streamlining environmental assessments conducted under Article 2(3) of the EIA Directive <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:273:FULL&from=DE>

⁴¹ Directive 2001/42/EC of the European Parliament and the Council on the assessment of the effects of certain plans and programmes on the environment, OJ L 197, 21.7.2001, p. 30–37.

- (i) the plan or programme should be subject to preparation and/or adoption by an authority at national, regional or local level;
- (ii) the plan and programme is required by legislative, regulatory or administrative provisions;
- (iii) it is prepared for any of the sectors listed in Article 3(2)(a) of the SEA Directive (e.g. agriculture, fisheries, energy, industry, transport, water management, town and country planning or land use); and
- (iv) sets the framework for future development consent of projects listed under Directive 85/337/EEC, or which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC.

Therefore, plans and programs as described in the previous chapters might, prior to their adoption, be required to be subject to an assessment of their environmental effects under the SEA Directive.

Also CIS Guidance Document Nr 11 on the planning process⁴² points out that land use planning and water planning should support each other as far as possible and that, where applicable, the SEA should be taken into account as well. The collection of baseline data, the identification and assessment of the reasonable alternatives and cumulative effects, the mitigation measures, the development of monitoring procedures, the development of consultation and public participation procedures are potential issues to consider for synergies between the SEA process and Article 4(7) related assessments. If the plans and programmes are expected to affect water bodies, it is recommended that the assessment under SEA includes a chapter on the WFD and Article 4(7). This can result in the saving of resources, strengthening of the assessment procedures and generation of a more holistic approach in management planning⁴³.

The application of the SEA procedure can in particular:

- be used as a first indication if Article 4(7) assessments might be required;
- help to assess cumulative effects of a number of individual projects in their entirety;
- facilitate relevant assessments on overriding public interest / weighing of interests and the assessment of better environmental options under an Article 4(7) procedure.

Therefore, to ensure the effectiveness and the efficiency of the two assessments (SEA and Article 4(7)), it is recommended that competent authorities coordinate and closely cooperate with each other throughout the process, e.g. by gathering of environmental information, assessing the likely significant impact of the particular activity on the environment including on water status, providing access to information, consultation and participation to the concerned stakeholders and the public.

2.8.2 Environmental Impact Assessment (EIA) Directive

Directive 2011/92/EU⁴⁴ on the assessment of the effects of certain public and private projects on the environment (EIA Directive) as amended by Directive 2014/52/EU aims to ensure that projects which are likely to have a significant effect on the environment are adequately assessed before they are approved. Hence, before any decision is taken to allow such a project to proceed, the possible impacts

⁴² CIS Guidance Document No. 11 – Planning process; See: [https://circabc.europa.eu/sd/a/4de11d70-5ce1-48f7-994d-65017a862218/Guidance%20No%2011%20-%20Planning%20Process%20\(WG%202.9\).pdf](https://circabc.europa.eu/sd/a/4de11d70-5ce1-48f7-994d-65017a862218/Guidance%20No%2011%20-%20Planning%20Process%20(WG%202.9).pdf)

⁴³ Carter, J.; Howe, J. (2006): The Water Framework Directive and the Strategic Environmental Assessment Directive: Exploring the linkages, Environmental Impact Assessment Review 26(3):287-300

⁴⁴ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, OJ L 26, 28.1.2012, pp.1-21, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, OJ L 124, 25.4.2014, pp. 1-18

it may have on the environment (both from its construction, operation or demolition) need to be identified and assessed.

An assessment is obligatory for projects listed in Annex I of the Directive, which are considered as having significant effects on the environment. Other projects, listed in Annex II of the Directive, are not automatically subject to an EIA procedure. For Annex II projects, the Member States have a margin of discretion to decide on a case-by-case basis or according to thresholds or certain criteria whether the project is to be made subject to an assessment because of its likely significant effects on the environment taking into account the relevant selection criteria set out in Annex III of the Directive. In the case where the Member State decides that the project will have significant effects on the environment an environmental impact assessment has to be carried out.

The relevance and potentials for synergies and streamlining of assessments required under the EIA and Article 4(7) are specified in more detail in the subsequent chapters of the Guidance (see in particular chapter 4.2 and Annex A).

2.8.3 Birds and Habitats Directives

Directive 92/43/EEC⁴⁵ on the conservation of natural habitats and of wild fauna and flora aims to ensure the survival of Europe's most endangered and vulnerable species. Together with the Birds Directive 2009/147/EC, it sets the standard for nature conservation across the EU and enables Member States to work together within the same legislative framework in order to protect the most vulnerable species and habitat types across their entire natural range within the EU. The protected areas designated under these directives form the Natura 2000 network.

Together with the Directives' species protection requirements the establishment and management of Natura 2000 sites⁴⁶ are the key tool for maintaining or bringing protected species and habitats into a favourable conservation status. The Birds Directive protects around 500 bird species naturally occurring in Europe. The Habitats Directive protects around 1,200 European species other than birds which are considered to be endangered, vulnerable, rare and/or endemic. Included in the Directive are sites hosting the natural habitat types listed in Annex I (e.g. coastal and halophytic habitats, fresh water habitats) and habitats of the species listed in Annex II such as mammals, reptiles, fish, crustaceans, insects, molluscs, bivalves and plants.

The key requirements for the protection and management of Natura 2000 sites are set out in Article 6 of the Habitats Directive. In particular, any plan or project likely to damage a Natura 2000 sites has to be subject to an appropriate assessment within the meaning of Article 6(3) of the Habitats Directive and can only be authorised if it does not affect the integrity of the site, or if it fulfils the conditions for derogations under Article 6(4) of the Habitats Directive⁴⁷. A proposed project affecting a water body might therefore not only require assessments related to Article 4(7) of WFD; it might also lead to the need for assessments in relation to a Natura 2000 site hosting such a water body under Article 6(3) and 6(4) of the Habitats Directive⁴⁸.

⁴⁵ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

⁴⁶ Special Areas of Conservation under the Habitats Directive and Special Protection Areas under the Birds Directive.

⁴⁷ For more detailed information see Guidance documents on Article of the 'Habitats Directive' 92/43/EEC at: http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm
http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/new_guidance_art6_4_en.pdf

⁴⁸ For more detailed information on links between those assessments see the relevant document, section 4.3, at: <http://ec.europa.eu/environment/nature/natura2000/management/docs/FAQ-WFD%20final.pdf>

Thus, both, the WFD and the Habitats Directive allow for the use of exemptions under certain conditions, although there are some differences in the procedures and conditions. In both cases authorities need to carry out the relevant procedures and tests under each Directive. However, there are also potentials for synergies and streamlining of the related data collection and assessments, which are outlined in more detail in the subsequent chapters of the Guidance.

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3 GENERAL CONSIDERATIONS AND SCOPE OF ARTICLE 4(7)

3.1 Principle relationship between assessments

The following chapters provide a recapitulation of the WFD environmental objectives and clarification on the scope of Article 4(7), its applicability and examples for conditions under which an Article 4(7) Test is triggered.

The process for determining whether a

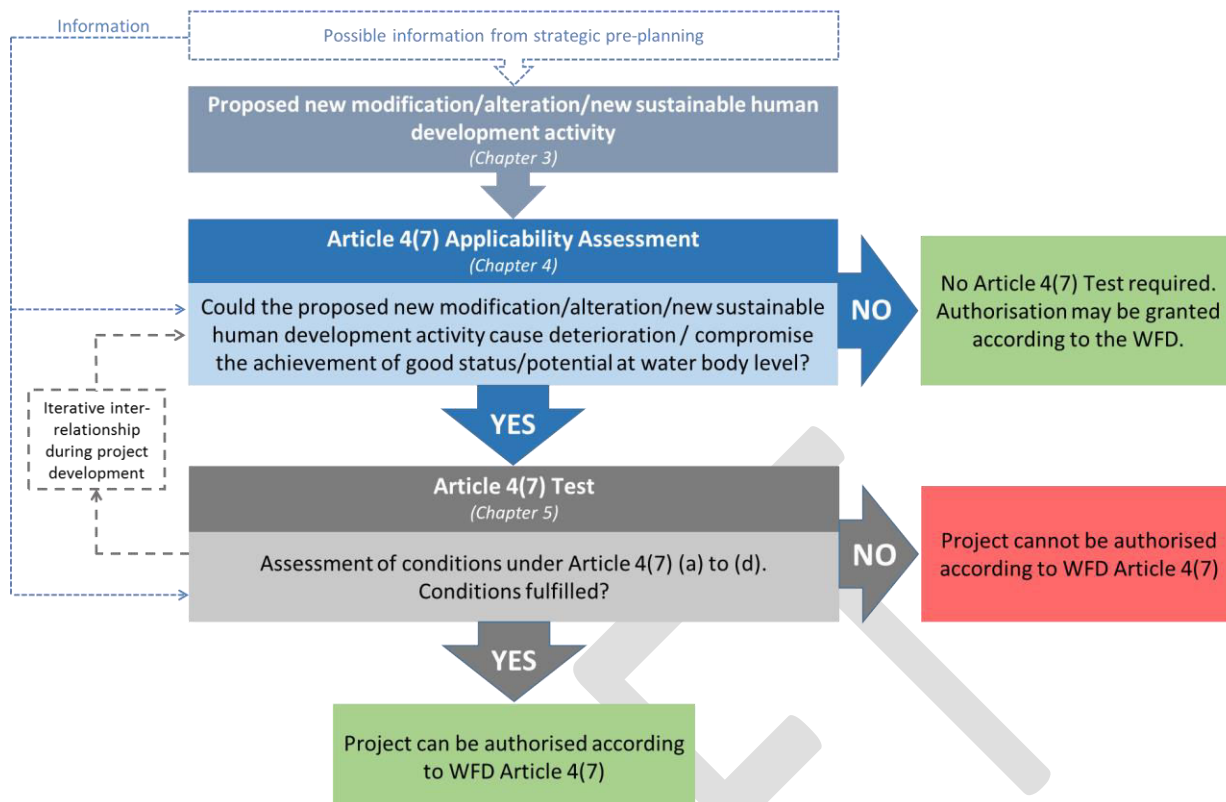
- new modification to the physical characteristics of a body of surface water / alterations to the level of bodies of groundwater might lead to deterioration / non-achievement of good status / potential, or
- a new sustainable human development activity might lead to deterioration from high status to good status

is a first step in an authorisation or licensing process and needs to be accomplished in advance. This process is called in this context "Applicability Assessment" in relation to Article 4(7) (see chapter 4). This step is necessary to give effect to the obligations of the Directive as it is essential to assess how a proposed project or licensable activity⁴⁹ is expected to affect the environmental objectives of the affected water bodies. It is an important first step to determine whether an "Article 4(7) Test" is required (see chapter 5). The "Applicability Assessment" needs to be distinguished from the "Article 4(7) Test". If a project is expected not to cause deterioration, or jeopardizing the achievement of good status/potential (e.g. due to the application of mitigation measures which should be an inherent element of a project), then no Article 4(7) Test is required and the project can be authorised under the WFD.

On the other hand, if the project may cause deterioration / jeopardizing the achievement of good status/potential, then it can only be authorised in case the conditions as outlined under Article 4(7) (a) to (d) are fulfilled, and hence the "Article 4(7) Test" is passed. It follows that if the conditions are not fulfilled and the Article 4(7) Test fails, the project cannot be authorised under the WFD.

Figure 1 illustrates the principle relationship between the "Article 4(7) Applicability Assessment" and the "Article 4(7) Test". Both are later on specified in more detail, including the iterative inter-relationship between "Applicability Assessment" and "Article 4(7) Test" during project development. Strategic pre-planning (e.g. for specific sectorial development plans) may inform the elaboration and selection of projects, WFD related assessments and overall the decision making process.

⁴⁹ In the remainder of this document, the term "project" should be taken to include other types of licensable activity with the potential to affect the status or potential of water bodies.

Figure 1: Principle relationship between "Article 4(7) Applicability Assessment" and "Article 4(7) Test"

Note that next to the conditions of Article 4(7) it needs to be ensured that other relevant WFD requirements are fulfilled (e.g. Article 4(8) and 4(9), specified later in the document). The investigations undertaken during the "Applicability Assessment" phase but also the "Article 4(7) Test" provide the opportunity to utilise synergies with assessments which might be required under other EU environmental legislation, in particular the Environmental Impact Assessment (EIA) Directive, the Habitats Directive (HD) and the Strategic Environmental Assessment Directive (SEA). The relationships are described later on in more detail.

3.2 Recap of the WFD Environmental Objectives and Article 4(7)

The objective of the Water Framework Directive is to 1) achieve good status/potential of all water bodies by 2015 and 2) prevent further deterioration of any water body. These objectives apply to both, surface water bodies (including natural, artificial and heavily modified), and groundwater bodies in accordance to Article 4(1).

For natural surface water bodies, ecological status is defined through biological quality elements (BQEs) as well as the hydromorphological, chemical and physico-chemical elements supporting the biological elements (see WFD Annex V). Chemical status is defined by the environmental quality standards for chemicals set at EU level in Directive 2008/105/EC amended by Directive 2013/39/EU (priority substances and certain other pollutants).

MS are allowed, under certain conditions, to designate surface water bodies as artificial or heavily modified water bodies (HMWBs). Artificial water bodies are surface water bodies created by human activity. HMWBs are surface water bodies which, as a result of physical alterations by human activity, are substantially changed in character (Article 4(3)). The environmental objective for artificial and heavily modified water bodies is to achieve good ecological *potential* rather than good ecological status (Article 4(3)), and good chemical status.

Groundwater status consists of both quantitative and chemical components. Quantitative status is defined by the available groundwater resource not exceeded by the long-term annual average rate of abstraction; and the groundwater levels and flows are sufficient to meet environmental objectives for associated surface waters and groundwater dependent terrestrial ecosystems; and anthropogenic alterations to flow direction resulting from level change does not cause saline or other intrusion. Chemical status is defined by conductivity and concentrations of pollutants (for details see WFD Annex V and Directive 2006/118/EC).

These objectives established by the WFD are legally binding. Article 4(7) sets out circumstances in which failure to achieve certain of the WFD objectives are permitted.

WFD Article 4(7):

Member States will not be in breach of this Directive when:

- *failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or*
- *failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities*

and all the following conditions are met:

- a) All practicable steps are taken to mitigate the adverse impact on the status of the body of water;*
- b) The reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;*
- c) The reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and*
- d) The beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.*

Member States are required — unless an exemption under Article 4(7) is granted — to refuse authorisation for an individual project where it may cause deterioration of a water body or failure to achieve good status or potential⁵⁰. The decisive governing factor on whether an Article 4(7) Test needs to be applied is the potential effect of the new modification/alteration or new sustainable development activity on the water body status (see chapter 3.4), irrespectively of whether it is an entirely new activity (new modification/alteration or new sustainable development activity) or amendments (e.g. expansions) to already existing activities or infrastructure (e.g. modifications or extensions at an existing dam or weir). In this context, note that also the renewal of an existing authorisation or licensed activity, e.g. a water abstraction permit, can require an Article 4(7) Test - if the conditions of the permit are changed and the change of activities undertaken according to the renewed permit could cause deterioration. For pressures on water bodies stemming from activities authorised under existing permits, a timely review, and potential amendment, is important for the achievement of the WFD objectives.

⁵⁰ See Case Ruling C-461/13 Bund für Umwelt und Naturschutz Deutschland e.V. versus Bundesrepublik Deutschland: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=165446&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1112450>

As outlined in Article 4(7), Member states will not be in breach of the Directive if a new modification/alteration/new sustainable human development activity leads to deterioration or compromising the achievement of good status/potential at water body level, and the conditions as outlined under Article 4(7) (a) to (d) are met. Following a precautionary approach, competent authorities may authorise a project in absence of an Article 4(7) Test only if there is no reasonable doubt that it will not cause deterioration or compromise the achievement of good status / potential (see chapter 4.1 for further considerations). Such evidence should be documented.

It follows that assessments as to whether a new modification/alteration may lead to deterioration or compromise the achievement of good status / potential need to be determined in advance (*ex-ante*), representing the Article 4(7) "Applicability Assessment" phase.

In this context it is important to bear in mind that the designation of artificial or HMWBs in accordance with Article 4(3) is not considered as a type of exemption. Artificial and HMWBs are considered as a specific water body category with its own classification scheme and objectives. Therefore, also for water bodies designated as artificial or heavily modified, non-achievement of good ecological potential or deterioration due to a new modification can only be allowed in case the conditions under Article 4(7) are met.

3.3 Scope of Article 4(7)

Under the first limb of Article 4(7), failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential, or to prevent deterioration in the status of a body of surface water or groundwater is addressed as the result of new modifications to the physical characteristics of a surface water body or alterations to the level of a groundwater body. Furthermore, under the second limb of Article 4(7), failure to prevent deterioration from high status to good status of a body of surface water is addressed as the result of new sustainable human development activities.

In the following, clarification on the above terms is provided⁵¹:

- **New modifications:** Modifications to the physical characteristics of surface water bodies mean modifications to their hydro-morphological characteristics (hydrological regime, river continuity, morphological conditions, tidal regime). There is no requirement here regarding the size or spatial extent of the modifications brought about by the project. Also small modifications are covered by this provision. The effects on status may result directly from the modification or alteration or may result from changes in the quality of water brought about by the modification or alteration. Non-exhaustive examples can include hydropower plants, flood protection schemes, future navigation projects or abstractions which are covered by this provision. Also the hydro-morphological characteristics of impoundment created for hydropower and water supply can dictate the oxygen and temperature conditions resulting in a deterioration of ecological status in the impounded water and in the downstream river (see also chapter 3.5). These may be different from those in an unmodified water body.
- The effects on status of those modifications and alterations may be limited to the water bodies in which modification works are undertaken; or extend to water bodies beyond those in which the modification works are undertaken. For example, the abstraction of water from a body of groundwater may cause adverse effects in an associated surface water body and then an Article 4(7) Test might also be required in such an associated surface water body (see chapter 3.5).

⁵¹ See also CIS Guidance No 20: http://ec.europa.eu/environment/water/water-framework/economics/pdf/Guidance_document%2020.pdf

- Alterations to the level of groundwater: These can result from new groundwater abstractions via new boreholes or increased abstractions from existing boreholes. Also modifications to surface waters can lead to alterations to the level of groundwater.
- New sustainable human development activities: The Directive does not give a definition of those activities; however, sustainability includes economic, social and environmental aspects. In general, such activities cannot be defined per se through a set of criteria or policies but are framed by the relevant decision making process requirements within an open ended and iterative procedure. The exact definition for an activity falling under sustainable development will thus depend on aspects such as time, scale, involved stakeholders and information available. Relevant process requirements are provided in the WFD itself, the Strategic Environment Assessment, Environmental Impact Assessment and "Aarhus" Directives and should be guided by the principles of the EC Treaty, being the polluter pays principle, the precautionary principle and preventive action, the principle of rectification of pollution at source and the principle of sustainability.
Guidance on sustainable development can be found in the UN Sustainable Development Goals as articulated, for example via the Communication on next steps for a sustainable European future and the related staff working document, which was adopted by the European Commission on 22 November 2016⁵². Furthermore, the decision making process should follow the principles of "good governance", including policy coherence, social inclusion and transparency and make best use of the availability of alternatives. A generic approach for small business developments affecting the same water body may be considered when applying the second point of 4(7).

Table 2 provides an overview on the modifications and activities covered by Article 4(7) and the relationship and potential effects on the different quality elements of surface and groundwater bodies.

1. New modifications to the physical characteristics of surface water bodies (hydromorphological alterations) can have potential direct and/or indirect effects on the biological quality elements and relevant supporting quality elements of surface water bodies, as well as potential indirect effects on groundwater quantitative status (e.g. changes in surface water hydrology or morphology might lead to alterations to the levels of groundwater). There are also potential indirect effects on the chemical status of surface or groundwater bodies (e.g. abstraction might reduce dilution capacity and therefore increase concentrations).
2. Alterations to the level of groundwater can have potential direct effects on groundwater quantitative status but in some cases also indirect effects on quality elements determining surface water ecological status and/or the chemical status of groundwater (see also chapter 3.4.2).
3. The second point of Article 4(7) relates to deterioration of surface water bodies from high status to good status as a result of new sustainable human development activities. Deterioration of groundwater is not covered by this point (neither quantitative nor chemical status), and neither are heavily modified or artificial water bodies due to the direct reference to "status". It is also not relevant for surface water chemical status since the quality classes for chemical status only cover "good" or "failing to achieve good" (WFD Annex V 1.4.3), but not "high". An example where the second point of Article 4(7) could be relevant is a new urban waste water treatment plant (if it can be judged as a new sustainable human development activity) discharging into a high status

⁵² Available at: http://ec.europa.eu/environment/sustainable-development/SDGs/implementation/index_en.htm

surface water body, where deterioration from high to good ecological status (but not below) would only be allowed in case 4(7) criteria are met.

Note that Article 4(7) does not provide an exemption if deterioration caused by inputs of pollutants from point or diffuse sources drives the water body to a status below good⁵³. This because the first limb of Article 4(7) only addresses new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, but not point or diffuse sources of pollution. Input of pollutants is therefore potentially only covered under the second limb of Article 4(7) - new sustainable human development activities - which only relates to deterioration of surface water bodies from high status to good status.

Table 2: Modifications according to Article 4(7), quality elements and possible effects

Modification / alteration / sustainable human development activity according to Article 4(7)	Surface water bodies				Groundwater bodies	
	Ecological status / potential			Chemical status	Quantitative status	Chemical status
	Biological quality elements	Supporting elements				
		Hydro-morphological quality elements	Chemical and physico-chemical quality elements			
1) Modification to the physical characteristics of a body of surface water	Possible direct and/or indirect effects	Possible direct and/or indirect effects	Possible direct and/or indirect effects	Possible indirect effects	Possible indirect effects	Possible indirect effects
2) Alterations to the level of bodies of groundwater	Possible indirect effects	Possible indirect effects	Possible indirect effects	Possible indirect effects	Possible direct effects	Possible indirect effects
3) New sustainable human development activities*	Possible direct and/or indirect effects	Possible direct and/or indirect effects	Possible direct and/or indirect effects	Not applicable (because no definition of high status)	Not applicable (because not addressed in this specific context)	

* Not further defined, potential effects could therefore be direct or indirect. Groundwater not addressed, only deterioration of surface waters from high to good, therefore not relevant for surface water chemical status since no definition for high chemical status for surface waters. Also not relevant for artificial or heavily modified water bodies and therefore the ecological potential since "new sustainable human development activities" only address deterioration of surface water bodies from high to good.

3.3.1 Considerations regarding the time-span of effects on water body status/potential

An issue to be considered is the time-span with regard to the effects of proposed activities on water body status/potential. Proposed activities can lead to

- i. Temporary effects on quality elements, allowing water body status/potential to recover within a short period of time;
- ii. Permanent effects, where water body status/potential is changed permanently or over a long period of time, and is not expected to recover.

If the status or potential of a water body is affected only temporarily over a short period of time and is expected to recover within a short period of time, such fluctuations do not constitute deterioration of status/potential and the application of an Article 4(7) Test will not be required. If the effects on water

⁵³ CIS Guidance Document No. 20: https://circabc.europa.eu/sd/a/2a3ec00a-d0e6-405f-bf66-60e212555db1/Guidance_documentN%C2%B020_Mars09.pdf

body status/potential are expected to be permanent over a long period of time, such activities should be subject to an Article 4(7) Test.

No definition will be given of "short period of time" or "long period of time". However, the frequencies mentioned for the monitoring programmes⁵⁴ can serve as an indication.

The time-span of effects depends on the nature of the proposed activity. Permanent long-term effects can occur as a result of permanent or ongoing modifications or activities (e.g. deterioration due to substantial hydromorphological changes, deterioration from high to good status due to the continuous discharge of pollutants, deterioration of groundwater status due to continuous groundwater abstraction).

Temporary short-term effects can occur as a result of short-duration human activities, such as construction or maintenance works. For example, temporary effects due to the establishment of the modification during the building phase are not required to be addressed if no deterioration of status or potential could be expected thereafter in the water body.

With regard to maintenance, the frequency can have an influence on the effects on the status or potential of a water body. A shift from frequent maintenance actions to more observing practice and action on demand with only short-term effects can reduce impacts while allowing preserving the use. However, in other cases if maintenance has not been carried out regularly or recently, it might also have the same effects on ecological status/potential as completely new works. In other words, if water body status/potential has recovered/stabilised since the last time maintenance was carried out, the fact it is considered to be 'maintenance' from an engineering perspective does not necessarily mean that it cannot affect water body status. In such cases, 'maintenance' activity should be assessed in the same way as a proposed new physical modification and the Article 4(7) Test may need to be applied.

Note that regular maintenance works (e.g. maintenance dredging) can potentially contribute to a failure to achieve good ecological status. However, whilst discontinued maintenance could enable the water body to reach good status, stopping or constraining maintenance activities in designated heavily modified water bodies could also result in a "significant adverse effect on the use" in the meaning of Article 4(3), for which the designation has been made. In such cases, maintenance works could be taken into account in the process of defining "good ecological potential" and would therefore not be subject to an Article 4(7) Test.

In specific cases temporary negative effects on quality elements might also occur as a result of the implementation of measures according to the Program of Measures meant for the improvement of water body status or potential (e.g. morphological restoration measures). This due to the fact that nature might require time to recover or measures might need time to reach full ecological effectiveness following the intervention to the ecosystem. Such cases might be subject to exemptions according to Article 4(4) based on 'natural conditions' (see chapter 5.5.3) but should not require an Article 4(7) Test.

Finally, the above time-span considerations with regard to effects in the context of Article 4(7) need to be distinguished from 'temporary deterioration' in the meaning of Article 4(6), which is restricted to *natural cause or force majeure* which are exceptional or could not reasonably have been foreseen (e.g. deterioration due to extreme floods or prolonged droughts).

⁵⁴ See WFD Annex V 1.3.4 and 2.2.3

3.3.2 Considerations regarding the size of a modification and water body delineation

The size of a modification, or the obligation to carry out an EIA, is not necessarily a relevant criterion to answer the question whether an Article 4(7) Test is required. The relevant approach is to assess if a given project, whatever its importance is, may result in deterioration of the status/potential of a water body or prevent the achievement of good status/potential. Thus, projects of any size may fall under Article 4(7).

Potential effects of modifications on status/potential of the water body might differ, independently from the size of a proposed modification but depending e.g. whether important habitats for the status of a water body are affected. Therefore, effects might be different for modifications in sections of a water body without significant importance for the ecosystem, compared to very sensitive stretches hosting key habitats e.g. for spawning of a certain fish species.

Another important aspect in this context is the thorough delineation of water bodies. A “water body” should be a coherent discrete and significant element of surface or ground water in the river basin (district) to which the environmental objectives of the Directive must apply. Hence, the main purpose of identifying “water bodies” is to enable the status to be accurately described and compared to environmental objectives⁵⁵. The thorough delineation of water bodies is therefore essential. This is because the results of an assessment of the effects of a certain project on water body status/potential can differ depending whether the water body is properly delineated.

Furthermore, although the size of a modification can be relevant (e.g. the length of a morphological modification or the area where the groundwater level is altered), criteria which are purely considering the share of a water body which is proposed to be modified are not necessarily meaningful. For instance, smaller modifications in a certain sensitive stretch of a water body might have more severe effects compared to larger modifications in a less sensitive stretch of the same water body.

Hence, the relevant criterion is whether or not the proposed modification may affect the status/potential of a water body. Otherwise Member States will be unable to apply the Directive’s objectives correctly. Drawing from experiences gained during the pressures-impacts assessments of existing modifications can be useful in this context.

3.3.3 Projects outside the scope of Article 4(7)

The guidance focuses on projects which are within the scope of Article 4(7) and its applicability. For completeness projects which are outside the scope are here also briefly addressed. Projects which are not considered as new modifications to the physical characteristics of surface water bodies, alterations to the level of groundwater, or new sustainable human development activities, and which are therefore outside the scope of Article 4(7), may affect the status/potential of water bodies. The steps as outlined in the “Article 4(7) Applicability Assessment” can be useful in that wider context for the assessment whether such projects may lead to deterioration or jeopardize the achievement of the WFD objectives.

If the assessment concludes that such projects are not expected to lead to deterioration or jeopardize the achievement of good status/potential of water bodies, authorisation may be granted according to the WFD. Note that if the assessment concludes that deterioration or jeopardizing the achievement of

⁵⁵ Guidance Document No 2 - Identification of Water Bodies; See: <https://circabc.europa.eu/sd/a/655e3e31-3b5d-4053-be19-15bd22b15ba9/Guidance%20No%20-%20-%20Identification%20of%20water%20bodies.pdf>

good status/potential is expected and such projects are outside the scope of Article 4(7), authorization may not be granted according to the WFD.

3.4 Conditions triggering an Article 4(7) Test

The environmental objectives of the WFD are set out in Article 4 of the Directive (for a summary see chapter 3.2). The scope of Article 4(7) and potential effects of projects in the meaning of Article 4(7) – 1) new modifications to the physical characteristics of a surface water body, 2) alterations to the level of groundwater, and 3) new sustainable human development activities – are explained in chapter 3.3. The two key objectives against which such new developments have to be assessed are whether they cause

- Deterioration of status (or potential) of a surface or groundwater body, and
- Preventing the achievement of good groundwater status, good ecological status / potential for water bodies currently failing to achieve this status / potential.

The following clarifications have been provided⁵⁶ on the way in which compliance with the Directive's environmental objectives should be interpreted in the assessment of new developments:

- consent for the development must not be granted by an authorising authority where the project may cause a deterioration in the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down in the directive, unless a derogation is granted;
- “deterioration of the status” of the relevant body of surface water includes a fall by one class of any element of the “quality elements” within the meaning of Annex V of the WFD even if the fall does not result in a fall of the classification of the body of surface water as a whole;
- if the quality element is already in the lowest class, any deterioration of that element represents deterioration of status within the meaning of WFD Article 4(1)(a)(i).

The following chapters aim to illustrate examples and considerations for the practical application of the above outlined principles for surface and groundwater bodies. Note that the practical application of these principles and related assessments whether a planned project is expected to cause deterioration or jeopardise the attainment of good status/potential can be more straightforward and reliable for some projects, but pose greater challenges for other cases. Related practical considerations are also addressed in chapters 3.7 and 4.1 of the guidance.

3.4.1 Practical considerations and examples for surface water bodies

Based on the above clarifications the following practical examples are provided for surface water bodies to illustrate the conditions under which an Article 4(7) Test is triggered for taking a decision regarding authorisation of a new modification or new sustainable human development activity.

Example 1 illustrates a case, where the overall ecological status of a water body may deteriorate due to a proposed new modification, therefore triggering an Article 4(7) Test.

⁵⁶ Case C-461/13 Bund für Umwelt und Naturschutz Deutschland e.V. versus Bundesrepublik Deutschland: <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d6146e624bf57c46808158f287aced950b.e34KaxiLc3eQc40LaxqMbN4Pax8Le0?text=&docid=165446&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=11661>

Table 3: Example 1 - Deterioration of overall status

Example 1									
Starting point: Overall ecological status determined by quality element in worst condition (in this case moderate).									
Effect due to modification: Overall status may deteriorate due to deterioration of individual quality elements (in this example benthic invertebrate and fish fauna), therefore triggering an Article 4(7) Test. The example includes in this case a change in overall status of the water body from moderate to poor.									
Quality elements	Biological quality elements			Hydromorphological quality elements supporting the biological elements			Chem. and phys. chem. quality elements supporting the biological elements		Overall ecological status
	Aquatic flora	Benthic invertebrate fauna	Fish fauna	Hydrology	Morphology	Continuity	General conditions	River basin specific pollutants	
Starting point	2	2	3	worse than 2**	2*	worse than 2**	2*	2	3
Effect due to modification	2	3	4	worse than 2**	worse than 2**	worse than 2**	2*	2	4

1: High; 2: Good; 3: Moderate; 4: Poor; 5: Bad

* Conditions consistent with the achievement of the values specified for good status

** Conditions not consistent with the achievement of the values specified for good status

Example 2 illustrates a case, where the overall ecological status is maintained but one biological quality element may deteriorate due to a proposed new modification, therefore triggering an Article 4(7) Test.

Table 4: Example 2 – Overall status remains but deterioration of a biological quality element

Example 2									
Starting point: Overall ecological status determined by quality element in worst condition (in this case good).									
Effect due to modification: Overall ecological status maintained as good but one biological quality element may deteriorate, in this example fish fauna due to deterioration of the quality elements hydrology and continuity, therefore triggering an Article 4(7) Test.									
Quality elements	Biological quality elements			Hydromorphological quality elements supporting the biological elements			Chem. and phys. chem. quality elements supporting the biological elements		Overall ecological status
	Aquatic flora	Benthic invertebrate fauna	Fish fauna	Hydrology	Morphology	Continuity	General conditions	River basin specific pollutants	
Starting point	2	1	1	1	1	1	2*	1	2
Effect due to modification	2	1	2	2*	1	2*	2*	1	2

1: High; 2: Good; 3: Moderate; 4: Poor; 5: Bad

* Conditions consistent with the achievement of the values specified for good status

Example 3 illustrates a case, where the overall ecological status of a water body may deteriorate from high to good due to a proposed new modification, therefore triggering an Article 4(7) Test.

Table 5: Example 3 - Deterioration from high status to good status

Example 3									
Starting point: Overall ecological status high since all quality elements in high status class.									
Effect due to modification: Individual quality elements may deteriorate (in this example benthic invertebrate fauna, fish fauna and morphology) and hence overall status may deteriorate from high to good, therefore triggering an Article 4(7) Test.									
Quality elements	Biological quality elements			Hydromorphological quality elements supporting the biological elements			Chem. and phys. chem. quality elements supporting the biological elements		Overall ecological status
	Aquatic flora	Benthic invertebrate fauna	Fish fauna	Hydrology	Morphology	Continuity	General conditions	River basin specific pollutants	
Starting point	1	1	1	1	1	1	1	1	1
Effect due to modification	1	2	2	1	2*	1	1	1	2

1: High; 2: Good; 3: Moderate; 4: Poor; 5: Bad

* Conditions consistent with the achievement of the values specified for good status

Example 4 illustrates a case, where the quality element which is already in the lowest class (bad) may further deteriorate. Note that any further deterioration of a quality element which is already in the lowest class is considered as deterioration, therefore triggering an Article 4(7) Test.

In practical terms, considerations with regard to any further deterioration of a quality element which is already in the lowest class can include aspects whether such further deterioration would be measurable, or have detectable adverse effects on the structure and function of the ecosystem based on a reasonable assessment. Furthermore, the overall context of the WFD and the specific requirements of Article 4(7) need to be reflected, i.e. that the **Article 4(7) conditions apply in cases where a proposed modification prevents the achievement of good status/potential**. Further deterioration of a water body which is currently failing to achieve this status or potential, and which is actually in the lowest class, drives the water body further away from achieving the WFD objectives and thus the need to protect, enhance and restore such water bodies. It follows that authorities should be particularly vigilant with regard to further deterioration of a quality element which is already in the lowest class.

Table 6: Example 4 – Deterioration of a quality element of a surface water body which is already in the lowest class

Example 4									
Starting point: Overall ecological status bad since one quality element in bad status class.									
Effect due to modification: The quality element which is already in the lowest class (bad) is further deteriorating (in this example e.g. further loss of composition or abundance of fish fauna due to morphological changes), therefore triggering an Article 4(7) test. Note that any further deterioration of a quality element which is already in the lowest class is considered as deterioration and drives the water body further away from achieving the WFD objectives.									
Quality elements	Biological quality elements			Hydromorphological quality elements supporting the biological elements			Chem. and phys. chem. quality elements supporting the biological elements		Overall ecological status
	Aquatic flora	Benthic invertebrate fauna	Fish fauna	Hydrology	Morphology	Continuity	General conditions	River basin specific pollutants	
Starting point	2	3	5	worse than 2**	2*	worse than 2**	worse than 2**	worse than 2**	5
Effect due to modification	2	3	5↓	worse than 2**	worse than 2**	worse than 2**	worse than 2**	worse than 2**	5

1: High; 2: Good; 3: Moderate; 4: Poor; 5: Bad

* Conditions consistent with the achievement of the values specified for good status

** Conditions not consistent with the achievement of the values specified for good status

Practical considerations for the role of supporting elements

The lists of quality elements for each surface water category are subdivided into 3 groups of 'elements': (1) biological elements, (2) hydromorphological elements supporting the biological elements; and (3) chemical and physico-chemical elements supporting the biological elements (see WFD Annex V).

Hydromorphological elements supporting the biological quality elements

As outlined in CIS Guidance Document No. 13⁵⁷, the values of the hydromorphological quality elements must be taken into account when assigning water bodies to the high ecological status class (and the maximum ecological potential class), i.e. when downgrading from high ecological status (or maximum ecological potential) to good ecological status (or potential). For the other status/potential classes, the hydromorphological elements are required to have conditions consistent with the achievement of the values specified for the biological quality elements. Therefore, the assignment of water bodies to the good, moderate, poor or bad ecological status/potential classes may be made on the basis of the conditions of the biological quality elements.

Note that the conditions of the supporting elements should be consistent with the achievement of the values specified for the biological quality elements and the competent authorities should be in a position to ascertain in a given case whether the supporting quality element has conditions consistent with the values specified for the biological quality elements. Examples 2 and 3 above illustrate cases where biological quality elements are expected to deteriorate because of the deterioration of individual hydromorphological quality elements, supporting the biological elements, due to the proposed modification, therefore triggering an Article 4(7) Test.

⁵⁷ See CIS Guidance Document No. 13, chapter 2 and Figure 1, on the overall approach to the classification of ecological status and ecological potential: [https://circabc.europa.eu/sd/a/06480e87-27a6-41e6-b165-0581c2b046ad/Guidance%20No%2013%20-%20Classification%20of%20Ecological%20Status%20\(WG%20A\).pdf](https://circabc.europa.eu/sd/a/06480e87-27a6-41e6-b165-0581c2b046ad/Guidance%20No%2013%20-%20Classification%20of%20Ecological%20Status%20(WG%20A).pdf)

Also the question whether a new modification may jeopardize the achievement of good status/potential needs to be considered in that context. An example can be a water body which is currently in less than good status/potential, e.g. due to pollution, but the hydromorphological conditions are consistent with the requirements to achieve good status/potential. A planned new modification, which is expected to deteriorate a hydromorphological quality element (e.g. morphology to values consistent only with moderate status/potential), may not immediately deteriorate a biological quality element (which are already in less than good status due to pollution), but may jeopardize the achievement of good status/potential following the implementation of measures for pollution reduction in line with the Program of Measures of the River Basin Management Plan. In such a case an Article 4(7) Test would be required, even though none of the biological quality elements is expected to deteriorate following the execution of the modification.

The above presupposes that assessment methods for the biological quality elements should be able to capture modifications in hydromorphological elements in order to determine whether these would be tantamount to deterioration of the status/potential or a failure to achieve good status/potential on the biological quality elements. If not, a more targeted methodology relating specifically to these supporting quality elements may be necessary.

As pointed out, there is a need that Member States have developed methodologies which allow capturing the expected effects of changed conditions of the supporting quality elements on the biological quality elements. This issue can be of particular relevance for cases where the biological quality elements are for instance in good status/potential, and a hydromorphological quality element is expected to deteriorate from high status to conditions not consistent with the high status class anymore following the execution of the modification. In absence of consistent methodologies it would be prudent to follow a precautionary approach, and therefore performing an Article 4(7) Test during the authorisation process of the planned modification.

Hence, in practical terms, information (i.e. from the monitoring programs) on the existing conditions of the quality elements for a water body, including the supporting elements, and pre-determined hydromorphological standards for different classes (e.g. high, good, moderate, poor, bad) can be instrumental to be able to assess the risk of a proposed new modification to the biology. Deterioration of any of them (hydrology, morphology or continuity) indicates a significant risk to one or more biological quality elements and supports decisions whether a proposed new modification may lead to deterioration and hence require an Article 4(7) Test (see also the respective case study from UK/Scotland).

Case study 1: How hydromorphological standards are used to prevent deterioration of status

Country: UK/Scotland

Under Scotland's [regulatory framework](#), there is a requirement for prior-authorisation for any activity with the potential to adversely affect the water environment, including the abstraction of water; the building of impounding works; and the carrying out of any other building or engineering works in, or in the vicinity of, surface waters.

As a first step in the prior-authorisation process, the regulator ([the Scottish Environment Protection Agency](#)) assesses the risk posed by the proposed activity to the water environment.

This risk assessment involves predicting how:

- (i) the water body's hydromorphological quality elements (hydrology, morphology and continuity) are likely to be altered by the proposed activity; and
- (ii) how those alterations are likely to affect the water body's biological quality elements.

Predicting how the hydromorphological quality elements will be altered requires information on the elements' existing condition. This is provided by SEPA's monitoring and modelling programmes supplemented, if required, by information supplied by the developer. For example, SEPA maintains modelled estimates for all

rivers on the degree to which their flows have been altered by existing abstractions, discharges and impoundments.

To assess the risk to the biology, SEPA compares the changes a proposal will cause to the water body's hydromorphology with pre-determined hydromorphological standards for high, good, moderate and poor. These standards have been set such that a breach of any of them (hydrology, morphology or continuity) indicates a significant risk to one or more biological quality elements. Where SEPA considers that a proposal is likely to result in a breach and hence deterioration of status, it can only [authorise the proposal](#) if the requirements of Article 4(7) are met.

The hydromorphological standards are derived, and updated from time to time, via a nationally-coordinated process bringing together research, data and technical experts from across the UK and beyond. The standards are issued to SEPA in the form of [Ministerial Directions](#). Among other things, the Directions list standards for river flows, lake levels and river morphological condition. In 2017, a major review of the standards for the latter will be completed and revised standards issued to reflect improvements in scientific understanding.

The standards allow SEPA to:

- efficiently and consistently assess the risk of deterioration posed by developments, whether that risk is to a water body's overall status or to the status of individual biological quality elements that are in a higher status class than that of the water body overall (e.g. where the water body is in good status overall but some biological elements are in a high status condition);
- in the case of water bodies that are worse than good status (e.g. because of pollution), assess the risk that the development will compromise the future achievement of good status (e.g. by breaching one or more of the hydromorphological standards for good); and
- assist prospective developers by providing information on the scales of development that are likely to be possible in different parts of the water environment without risking deterioration or compromising the future achievement of good status.

997

998 *Chemical and physico-chemical elements supporting the biological elements*

999 The chemical and physico-chemical quality elements supporting the biological elements include the
1000 general conditions and the river basin specific pollutants. The values of the chemical and physico-
1001 chemical quality elements supporting the biological quality elements must be taken into account when
1002 assigning water bodies to the high and good ecological status classes and to the maximum and good
1003 ecological potential classes (i.e. when downgrading from high status/maximum ecological potential to
1004 good ecological status/potential as well as from good to moderate ecological status/potential). For the
1005 other status/potential classes the chemical and physico-chemical elements are required to have
1006 "conditions consistent with the achievement of the values specified for the biological quality elements"
1007 (see WFD Annex V and CIS Guidance Document No. 13).

1008 The **general conditions** appear to be relevant in the context of Article 4(7) due to the scope of Article
1009 4(7) and related effects (see chapter 3.3). Note that the general conditions form a group of conditions.
1010 In practical terms the general conditions (transparency, thermal conditions, oxygenation conditions,
1011 salinity, acidification status, nutrient conditions) should also be reflected by the status of the biological
1012 quality elements and the competent authorities should be in a position to ascertain in a given case
1013 whether the supporting quality element has conditions consistent with the values specified for the
1014 biological quality elements. Deterioration of any of them indicates a significant risk to one or more
1015 biological quality elements and supports decisions whether a proposed modification may lead to
1016 deterioration and hence require an Article 4(7) Test. Similar considerations as outlined above for
1017 hydromorphological quality elements supporting the biological quality elements may be relevant.

1018 Finally, it cannot be ruled out that concentrations of certain river basin specific pollutants might
1019 increase due to indirect effects of a proposed project (see chapter 3.3). If this was expected to lead to
1020 failure in meeting their (national) environmental quality standards, such failure would be considered as
1021 deterioration, thus triggering an Article 4(7) Test. Any further measurable increase in concentrations of
1022 pollutants already failing to meet their environmental quality standards would also be considered as
1023 deterioration, because it would drive the water body further away from achieving the WFD objectives.

Similar considerations apply in relation to the environmental quality standards set for the priority substances and other pollutants at EU level that determine chemical status.

In this context, it should be recognised that, for an Article 4(7) exemption to be applicable, the deterioration needs to result from activities within the scope of Article 4(7) (new modifications to the physical characteristics of a surface water body, alterations to the level of groundwater, new sustainable human development activities). Article 4(7) does not provide for exemption if deterioration to a status below good is caused by inputs of pollutants from point or diffuse sources unconnected with those activities (see chapter 3.3).

Practical considerations for heavily modified (HMWB) and artificial water bodies (AWB)

A new modification to the physical characteristics of a surface water body might also be planned in water bodies which have been designated as heavily modified or artificial in previous WFD planning cycles (existing HMWB or AWB). In principle, the tables above illustrating examples on the conditions under which an Article 4(7) Test is required for the authorisation of a modification in natural water bodies are also applicable to existing HMWBs and AWBs with reference to their ecological potential and related quality elements.

When assessing the impact of a new physical modification on the ecological potential of a HMWB it is important to be able to distinguish this impact from the impact caused by the existing physical modification which led to the HMWB designation. In practice, this distinction should be possible to do, if there is a proper assessment of the hydromorphological and biological quality elements in the current ecological potential.

Therefore, a precondition for determining during the Article 4(7) Applicability Assessment whether a new modification could lead to a deterioration or non-achievement of good ecological potential due to a new modification is that the environmental objective of the heavily modified or artificial water body (good ecological potential – GEP) has to be clearly defined according to WFD principles.

As explained in chapter 5.5.2, if an Article 4(7) exemption is granted for a new physical modification in an existing HMWB or AWB, the need to re-define the ecological potential of this water body needs to be checked, taking into account the additional physical modification.

3.4.2 Practical considerations and examples for groundwater bodies

In the following, practical considerations and examples are derived for groundwater bodies based on the above outlined principles described for surface water bodies. If the criteria are met, Article 4(7) exemptions can be applied for alterations to the level of groundwater (a physical characteristic of groundwater bodies) which can result in direct effects on groundwater status. **Alterations to the level of groundwater are particularly relevant for failure to achieve good groundwater quantitative status.** Groundwater quantitative status is defined as being either ‘Good’ or ‘Poor’. The definition of good quantitative status is set out in WFD Annex V 2.1.2. Elements of quantitative status assessment are further specified in CIS Guidance Document No. 18⁵⁸. For a groundwater body to be of good quantitative status the following criteria (objectives) covered by the definition of good status must be met:

⁵⁸ For details see Guidance Document No. 18 on Groundwater status and trend assessment: https://circabc.europa.eu/sd/a/ff303ad4-8783-43d3-989a-55b65ca03afc/Guidance_document_N%C2%8018.pdf

- 1) available groundwater resource is not exceeded by the long term annual average rate of abstraction;
- 2) no significant diminution of surface water chemistry and/or ecology resulting from anthropogenic water level alteration or change in flow conditions that would lead to failure of relevant Article 4 objectives for any associated surface water bodies;
- 3) no significant damage to groundwater dependent terrestrial ecosystems resulting from an anthropogenic water level alteration;
- 4) no saline or other intrusions resulting from anthropogenically induced sustained changes in flow direction.

According to Guidance Document No. 18, all relevant tests, considering those elements which are at risk, should be carried out independently of each other, with the results subsequently being combined for an overall assessment of quantitative status. The worst classification among the relevant tests for quantitative status is reported as overall quantitative status, and if any test results in poor status, then this overall classification of the groundwater body will be poor status. It follows that if one (or more) of the relevant groundwater tests could fail as a result of the alteration to the groundwater level, groundwater quantitative status would deteriorate from "good" to "poor" and an Article 4(7) test would be triggered.

For a groundwater body which is already in "poor" quantitative status due to existing conditions causing a failure of one or more of the criteria, failure to reach the objective of achieving "good status" due to further alteration to the level of groundwater is possible. Therefore, in case further alteration to the level of groundwater would lead to *"failure to achieve good groundwater status"*, an Article 4(7) test would be triggered. Note that in case good status cannot be achieved due to prior and further alteration, exemptions according to Article 4(4) or 4(5) will have to be justified in the river basin management planning process according to their distinct conditions (see also chapter 5.5.3).

In the following text, examples are provided to illustrate the conditions under which an Article 4(7) test is required for taking a decision regarding authorisation. The tables are simplified for illustration purposes. CIS Guidance No. 15⁵⁹ should be taken into account for the assessment of the risk for deterioration.

⁵⁹ https://circabc.europa.eu/sd/a/e409710d-f1c1-4672-9480-e2b9e93f30ad/Groundwater%20Monitoring%20Guidance%20Nov-2006_FINAL-2.pdf

1096 **Table 7: Example 5 – Deterioration of overall groundwater quantitative status from "good" to "poor"**

Example 5					
Starting point: Overall groundwater quantitative status is classified as "good" since each criterion meets the conditions for "good". Effect due to modification: Due to the modification one criterion is expected to deteriorate from "good" to "poor" (in this example due to the damage of a groundwater dependent terrestrial ecosystem), as well as the overall quantitative status, therefore triggering an Article 4(7) test.					
	Criteria				Overall quantitative groundwater status
	1) Available groundwater resource is not exceeded by the long term annual average rate of abstraction	2) No significant diminution of surface water chemistry and/or ecology resulting from anthropogenic water level alteration or change in flow conditions that would lead to failure of relevant Article 4 objectives for any associated surface water bodies	3) No significant damage to groundwater dependent terrestrial ecosystems resulting from an anthropogenic water level alteration;	4) No saline or other intrusions resulting from anthropogenically induced sustained changes in flow direction.	
Starting point	G	G	G	G	G
Effect due to modification	G	G	P	G	P

1097 G: Good; P: Poor;

1098

1099 **Table 8: Example 6 – Groundwater body which is already classified as "poor" and one further criterion**
 1100 **does not meet the conditions**

Example 6					
Starting point: Overall groundwater quantitative status is classified as "poor" since one criterion does not meet the conditions for "good" (in this example due to saline intrusions). Effect due to modification: Further alteration to the groundwater level would lead to further deterioration (in this example a terrestrial ecosystem would be damaged) and " <i>failure to achieve good groundwater status</i> ", therefore triggering an Article 4(7) test.					
	Criteria				Overall quantitative groundwater status
	1) Available groundwater resource is not exceeded by the long term annual average rate of abstraction	2) No significant diminution of surface water chemistry and/or ecology resulting from anthropogenic water level alteration or change in flow conditions that would lead to failure of relevant Article 4 objectives for any associated surface water bodies	3) No significant damage to groundwater dependent terrestrial ecosystems resulting from an anthropogenic water level alteration;	4) No saline or other intrusions resulting from anthropogenically induced sustained changes in flow direction.	
Starting point	G	G	G	P	P
Effect due to modification	G	G	P	P	P

1101 G: Good; P: Poor;

Table 9: Example 7 – Further deterioration of a criterion which is already classified as "poor" leading to failure of achieving "good"

Example 7					
Starting point: Overall groundwater quantitative status is classified as "poor" since one criterion does not meet the conditions for "good" (in this example due to the damage of a groundwater dependent terrestrial ecosystem). Effect due to modification: Due to the modification the same criterion which is already failing is further deteriorated (e.g. further damages on the same or additional damage of another terrestrial ecosystem) leading to "failure to achieve good groundwater status" and therefore triggering an Article 4(7) test.					
	Criteria				
	1) Available groundwater resource is not exceeded by the long term annual average rate of abstraction	2) No significant diminution of surface water chemistry and/or ecology resulting from anthropogenic water level alteration or change in flow conditions that would lead to failure of relevant Article 4 objectives for any associated surface water bodies	3) No significant damage to groundwater dependent terrestrial ecosystems resulting from an anthropogenic water level alteration;	4) No saline or other intrusions resulting from anthropogenically induced sustained changes in flow direction.	Overall quantitative groundwater status
Starting point	G	G	P	G	P
Effect due to modification	G	G	P↓	G	P

G: Good; P: Poor;

The consequences for the Article 4(7) case can be very distinct depending on the actual effects of the alteration to the level of groundwater. For instance, in case the proposed alteration would cause deterioration of a quality element of an associated surface water body (see criteria no. 2 above), not only the quantitative status of the groundwater body would deteriorate but also the surface water body. An Article 4(7) test would in such a case have to address both water bodies (see also chapter 3.5 with regard to effects on other water bodies).

With regard to the groundwater balance test (available groundwater resource is not exceeded by the long term annual average rate of abstraction - see criteria no. 1 above), failure of meeting this test indicates over-abstraction and a long-term imbalance, which could lead to a "continuous" lowering of the groundwater table. If continued in the long-term this could lead to a loss of the resource.

Finally, **alterations to the level of groundwater can also cause deterioration of groundwater chemical status**. This can be the case for saline or other intrusion due to groundwater abstraction (see criterion 4 above), leading to failure of both groundwater quantitative status and groundwater chemical status. Alterations to the level of groundwater might also cause **indirect effects** and changes to geochemical processes influencing groundwater chemistry, leading to failure of groundwater chemical status (see Guidance No. 18, chapter 5.3.4). In this context, note that Article 4(7) does not provide an exemption if deterioration caused by inputs of pollutants from point or diffuse sources drives the water body to a status below good.

3.5 Effects on other water bodies

When applying an Article 4(7) exemption to a water body, "a Member State shall ensure that the application does not permanently exclude or compromise the achievement of the objectives of this Directive in other bodies of water within the same river basin district and is consistent with the implementation of other Community environmental legislation" (Article 4(8)).

In practice the modification of a water body might cause impacts in other (adjacent) water bodies, in specific cases even in another river basin district (e.g. an artificial water body that connects two river basins or an adjacent coastal water body in the neighbouring river basin district). Figure 2 illustrates an example for a modification in a water body (e.g. a proposed dam in Surface Water Body B), causing deterioration from good to moderate ecological status. The adjacent surface water bodies (Surface Water Body A and C) are impacted as well (e.g. due to impacts on continuity and important habitats), leading to deterioration of Surface Water Body A and C. Similar other examples can be drawn, e.g. impacts of a modification in a surface water body on the adjacent groundwater body, e.g. due to reduced flow in the surface water body and related drop of the groundwater table (Figure 3).

Figure 2: Example for effects beyond one surface water body

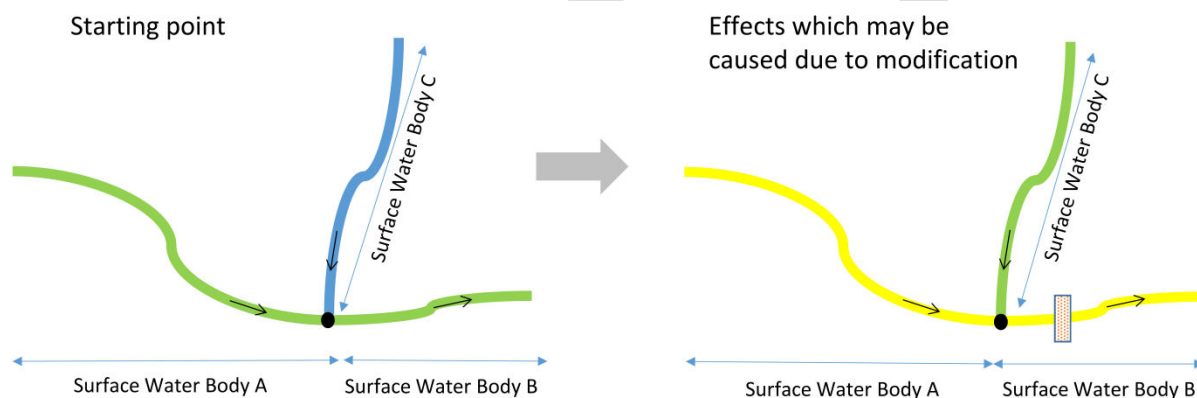
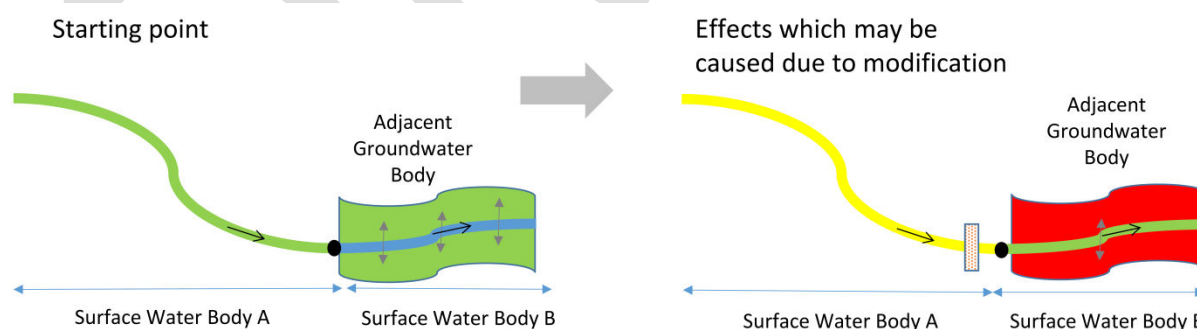


Figure 3: Example for effects beyond one water body in relation to groundwater



In the above examples⁶⁰ and as the result of an Applicability Assessment, an Article 4(7) Test needs to be applied for all water bodies in which deterioration occurs. Similarly, in case modifications are undertaken across several water bodies, an Article 4(7) Test needs to be applied for all water bodies concerned. This might increase the need for justification during the Article 4(7) Test. If the conditions are fulfilled for all water bodies concerned, the project can be authorised (see also Step 4 in Figure 6). Note that the number of water bodies actually requiring an Article 4(7) Test might be lower compared

⁶⁰ Note that the examples are simplified for illustration purposes. Deterioration / non-achievement of good status/potential needs to be understood as outlined in the previous chapters.

to the number of water bodies addressed in the Applicability Assessment. This since as a result of the Applicability Assessment deterioration might not be expected for all water bodies which were assessed.

Under certain circumstances it might also be the case that the water body, where the proposed modification is located, may not deteriorate, but another water body might be affected (to be assessed in the Applicability Assessment). In such a case an Article 4(7) Test needs to be applied for the water body which could deteriorate. In this context it is recapitulated that the Article 4(7) exemption needs to be applied within the limits of its scope, as outlined in chapter 3.3.

Finally, in case other Community environmental legislation is affected (e.g. a Natura 2000 site), it has to be pointed out that an Article 4(7) exemption does not replace the respective procedures and assessments which have to be undertaken according to other regulatory requirements under other Community environmental legislation, although the potential for synergies (i.e. during the Applicability Assessment procedure) can be utilised (see chapter 4).

3.6 Cumulative effects

Whilst a new project might not, on its own, have effects that trigger the application of an Article 4(7) Test, it is possible that two or more such actions could, cumulatively, cause deterioration or affect the ability of the water body to reach the objective of good status/potential. Practical examples can include cumulative effects of several modifications to the morphological features (e.g. flood risk measures) on habitats, multiple transversal structures like dams or weirs on fish migration and sediment transport, several projects of different nature in the same water body, widespread maintenance works, or multiple water abstraction points having commonly a significant effect on groundwater quantitative status. Therefore, in practical terms there is a need to consider effects of cumulative modifications when using Article 4(7)⁶¹. The spatial extent of impacts is a relevant consideration in deciding if this is the case⁶².

The assessment of cumulative effects can be challenging in practical terms due to different reasons, e.g. due to administrative reasons (permitting authorities are not necessarily the water authorities), lack of availability of information on planned projects to the permitting authorities, or timing issues (e.g. simultaneous submission of projects within the same catchment).

A possible entry point for the assessment of cumulative effects of multiple proposed projects can be the screening stage during the Article 4(7) Applicability Assessment (see chapter 4.1). Data from the RBMPs, i.e. information on already existing pressures, planned measures and monitoring data on the current status of water bodies, can shape the starting point for the assessment. In order to be able to consider cumulative effects of multiple proposed projects, information on such proposed developments needs to be available to the permitting authority. Relevant sources can include existing applications for permits, information on planned projects from the flood risk management plans or sectorial development plans (e.g. for hydropower development or agricultural irrigation).

⁶¹ See also WFD & Flood Risk Management, Workshop Manchester (UK) 2008: <https://circabc.europa.eu/sd/a/5fedffc5-e4d1-427c-b9d8-b3047f1cb8d2/Key%20Conclusions%20Workshop%20WFD%20%26%20Flood%20Risk%20Management%20-%20Manchester%20-%20February%202008.pdf>

⁶² Key Conclusions Workshop WFD and Hydropower, Brussels 2011: https://circabc.europa.eu/sd/a/23d94d2d-6b9c-4f17-9e15-14045cd541f3/Issue%20Paper_final.pdf

As a result the permitting authorities can be enabled to come to better informed decisions with regard to the need for Article 4(7) Tests for individual projects which, cumulatively, may cause deterioration or affect the ability of the water body to reach the objective of good status/potential. Note that making full use of the RBMPs as a planning tool - by introducing also potential Article 4(7) cases – can provide the opportunity for authorities to take into account not only information on already existing pressures but also of the effects of potential future developments (see chapter 5.5.1). Also the use of information from SEAs can be of relevance in that context.

Case study 2: Cumulative impact of reservoirs on the aquatic environment. Joint scientific appraisal

Country: France

The creation of new water storage structures raise a whole host of environmental issues, such as the impact of reservoirs on the aquatic environment, particularly in areas where there are already a number of reservoirs and water resources are in high demand. By law, building a new reservoir requires a planning application or government authorization, which require an environmental impact study. Such studies must now assess the cumulative effects of the project together with other known similar projects. The “cumulative” aspect of the impact of water storage structures on a single catchment area is often poorly understood, probably due to a lack of relevant knowledge and methods. Consultants and government services therefore face a lack of operational tools for processing new reservoir applications, which gives rise to other problems around water management planning and the supervision of the development of new reservoirs. In this context, the French Ministry of the Environment, Energy and Marine Affairs (MEEM), supported by ONEMA, requested a joint scientific assessment (ESCO) from Irstea, in partnership with INRA, on the cumulative impact of reservoirs on the aquatic environment. It was produced by around fifteen experts from a range of disciplines and research organizations, and is based on analysis of a thousand or so international scientific articles and reports.

The scientific assessment has revealed a lack of knowledge about the cumulative environmental effect of reservoirs. Very few studies address the cumulative effect of reservoirs on all the different functional characteristics investigated in the assessment, even though there are strong interactions between them. The presence of reservoirs in a catchment area modifies all the functional characteristics. This modification can become problematic when it affects an already vulnerable river. Assessing the significance of effects on a given catchment therefore requires identification of the issues for a catchment, and characterization of its condition with respect to these issues. A two-pronged approach can be used to characterize the entirety of a catchment area by identifying the most vulnerable sub-basins and associated issues before starting to assess the cumulative effects of new projects on these sub-basins.

By analysing the cumulative effects of reservoirs, the processes involved and the influencing factors, the assessment identified the main interactions between the functional characteristics and the need to take them into account when assessing cumulative effects. The variety of contexts encountered in the scientific literature and the lack of data and knowledge noted here restricts the number of relevant indicators and validated methods for immediate characterization of the influence of a set of reservoirs on a catchment area, or indeed forecasting the effect of building one or more new reservoirs: The acquisition of knowledge and orders of magnitude in the hexagonal context remains necessary. The analysis performed can be used to develop a methodological framework to address the issue of cumulative effects of reservoirs on a given catchment area. This forms the focus of the operational phase which is following this scientific appraisal.

Links: t.b.d.

3.7 Managing uncertainty

Uncertainty is an inevitable feature of planning in general and also has to be managed in the context of Article 4(7). Uncertainty can be an issue in particular with regard to the question whether a proposed project is expected to cause deterioration or affect the ability of a water body to reach good status/potential since this assessment has to be undertaken ex-ante (before the implementation of the modification). It is also of relevance regarding the effects of mitigation measures, which should be an inherent element of (the design of) a new project, and the question how far deterioration / non-achievement of good status/potential can be avoided in the first instance due to the application of such mitigation measures.

1201 Some specific actions can be taken in order to reduce uncertainty, including for instance:

- 1202 • Establishment of a solid baseline regarding the current status/potential (which is essential for
1203 the estimation of effects) by using sensitive methods and monitoring designs but also by
1204 having a sensitive classification system (see respective CIS Guidance Documents on
1205 monitoring and status assessment for surface and groundwater bodies⁶³). In case a quality
1206 element is just slightly above a threshold value distinguishing two status classes, deterioration
1207 due to a proposed project can be more likely and/or more difficult to ascertain;
- 1208 • Additional monitoring for the improvement of the baseline regarding the current
1209 status/potential of a water body. This can particularly be an issue for water bodies where
1210 status was assessed based on grouping or where reliable information on certain quality
1211 elements is missing;
- 1212 • Conduction of specific studies or modelling of the expected effects of the proposed project
1213 (e.g. specific studies assessing expected effects on the aquatic biology, application of a
1214 groundwater model for the assessment of the expected effects on groundwater quantitative
1215 status, etc.);
- 1216 • Drawing from experiences on the pressure-impact relationship at existing modifications
1217 (monitoring data at already existing similar modifications);

1218 A proportionate risk-based approach by distinguishing between clear-cut cases (e.g. large
1219 impoundments) from proposed projects where deterioration might be less certain can help to strike a
1220 balance between reducing uncertainty and the required resource input for assessments (e.g. question
1221 how far and which additional studies or modelling is needed – see also chapter 4.1 in that context).

1222 An adaptive approach may also be considered, if applicable in the respective context of the planned
1223 activity, e.g. by issuing time constrained permissions assessed as not likely to cause deterioration.
1224 Any such constrained permission should be supported by an Article 4(7) Applicability Assessment and
1225 measures to control, monitor and assesses effects on water body status/potential from the time
1226 constrained new modification or alteration. Furthermore, follow-up monitoring results (e.g. in the frame
1227 of the project and regular WFD monitoring) can be used to verify effects on water body status/potential
1228 following project execution.

1229 Finally, the application of the precautionary principle (including worst-case considerations) can help to
1230 avoid situations where ex-post evaluations provide evidence that deterioration actually occurred
1231 without applying an Article 4(7) Test. Such situations should be avoided by applying Article 4(7) Tests
1232 also in cases where no reasonable assessment of risk could be made, despite efforts to reduce
1233 uncertainty, and therefore the level of uncertainty about the effects of the planned activity remains
1234 significant. This can also be relevant for such cases in terms of transparency and documenting
1235 evidence which supports decisions by competent authorities whether an Article 4(7) Test needs to be
1236 undertaken.

⁶³ http://ec.europa.eu/environment/water/water-framework/facts_figures/guidance_docs_en.htm

4 ARTICLE 4(7) APPLICABILITY ASSESSMENT AND STREAMLINING WITH OTHER DIRECTIVES

As outlined above, during the authorisation procedure for a new modification, alteration or new sustainable human development activity, it needs to be determined prior to authorisation whether the proposed project is expected to lead to deterioration or affect the ability of a water body to reach good status/potential. This process is called in this context "Article 4(7) Applicability Assessment" and is an important step to determine whether an Article 4(7) Test is required (or not) during the permitting phase of a project.

The WFD does not prescribe specific steps how such an assessment has to be conducted. However, in the absence of such an assessment the question remains how competent authorities can come to a decision whether an Article 4(7) Test has to be performed and therefore – as a result - whether permission for the project can be granted or not. Moreover, the absence of an Applicability Assessment bears the risk of violating WFD requirements since a project might be authorised which leads to deterioration / non-achievement of good status / potential, while the Article 4(7) requirements are not met.

It follows that an "Applicability Assessment" should be an inherent element during the permitting phase of a new project. The results need to be well documented in both cases, when the conclusion is that an Article 4(7) Test is required during the permitting phase, but also in case deterioration / non-achievement of good status / potential is not expected and therefore no Article 4(7) Test has to be conducted. This in particular to ensure transparency of the decision making process, to demonstrate compliance and to avoid potential problems with stakeholders or other competent authorities (e.g. during an audit or check of compliance with WFD requirements).

The investigations undertaken during the "Applicability Assessment" provide the opportunity to utilise synergies with assessments which might be required under other EU environmental legislation, in particular the Environmental Impact Assessment (EIA) Directive and the Habitats Directive (HD). Note that also the provisions of the Aarhus Convention and related EU Directives can be relevant in that context⁶⁴.

4.1 Approach for an Article 4(7) Applicability Assessment

The objective of an Applicability Assessment in relation to Article 4(7) is to determine whether the proposed project is expected to cause deterioration / non-achievement of good status / potential (see chapter 3.4) and therefore require an Article 4(7) Test (see chapter 5) during the permitting phase. The Applicability Assessment provides answers to the following questions:

- Is the project likely to have effects on water body status / potential?
- Is the project expected to cause a deterioration / non-achievement of good status / potential?
- Is an Article 4(7) Test required during the authorisation phase?

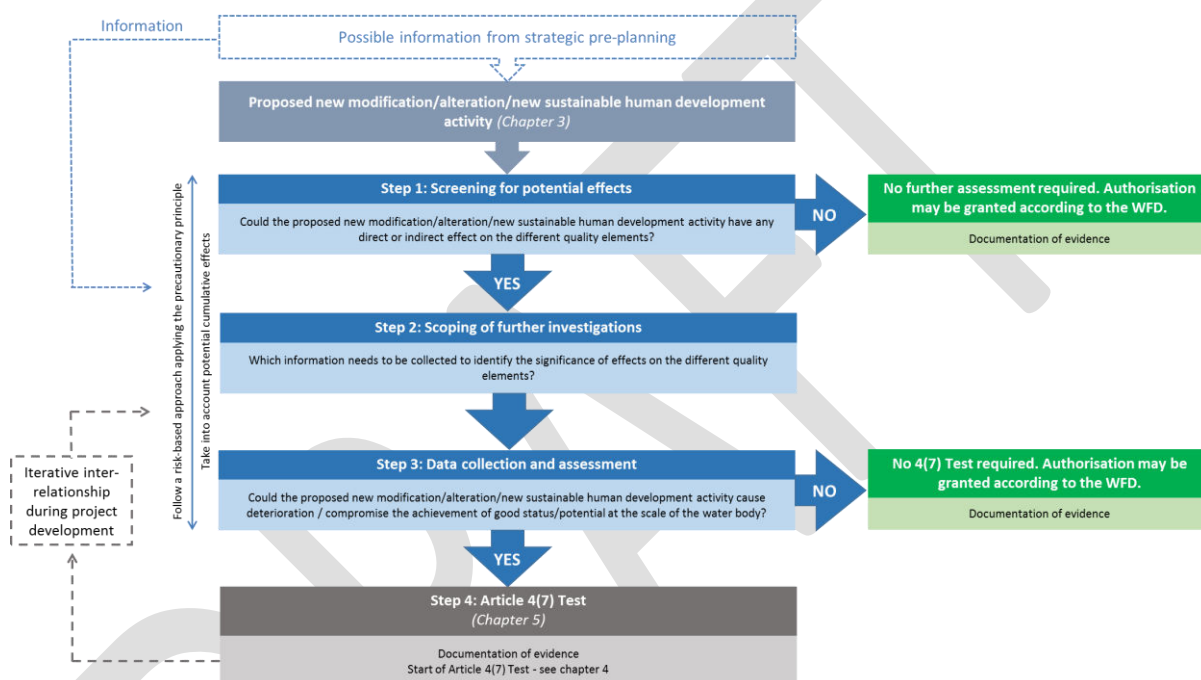
Pre-condition for performing the assessment effectively is the availability of an appropriately sound dataset, in particular with regard to monitoring data on water body status, as well as information on the proposed project in order to predict the effects on status/potential. Project-related data also needs to

⁶⁴ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention); See: <http://www.unepce.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

include information on project-specific mitigation measures, which are an inherent part of the project and which need to be taken into account during the assessment since they are aimed towards reducing the negative effects.

Figure 4 below outlines a step-wise approach for an Applicability Assessment in relation to Article 4(7) which is then described in more detail. If the proposed project is modified (e.g. if it is concluded during an Article 4(7) Test that not all practicable steps are taken to mitigate the adverse effects - see feedback loop on the iterative inter-relationship during project development in Figure 1), relevant steps of the Applicability Assessment might need to be repeated in order to obtain a sound investigation of the expected effects of the proposed project. Possible information from strategic pre-planning (e.g. for specific sectorial development plans and their impacts) and related SEA's may inform the assessment.

Figure 4: Outline for a step-wise approach for an Article 4(7) Applicability Assessment



Note that for groundwater different criteria are applied to determine the status of the groundwater body (see chapter 3.4.2)

Step 1: Screening for potential effects

This is a screening step to determine whether there is a mechanism for any relevant direct and/or indirect effects on the different quality elements determining status/potential of the concerned water body(ies) (see chapter 3.3). The purpose of this step is to broadly filter and "screen out" projects that will clearly not affect water body status/potential and to identify quality elements which require in a second step (scoping) further attention for more detailed investigations. It focuses on identifying potentially affected elements and sub-elements to help ensuring that subsequent assessments are proportionate. Relevant data needs for the screening step can inter alia include the following:

- Information on project design (including alternatives) in sufficient detail and mitigation measures which are applied;
- Identification of potentially affected water bodies, including up- and downstream, as well as adjacent water bodies (e.g. an adjacent groundwater body next to a surface water body, or vice versa);
- Size of each water body;

- 1302 • Existing pressures, current status/potential of relevant surface and groundwater water bodies
- 1303 and related quality elements, including failing elements and information on distance of
- 1304 particular EQRs to threshold values distinguishing two status classes, terrestrial ecosystems
- 1305 directly depending on groundwater, etc.;
- 1306 • WFD objective for the water body / planned mitigation measures;
- 1307 • Other projects which may cause cumulative effects;
- 1308 • Other legislation which might be concerned (e.g. EIA, Habitats Directive or MSFD).

1309 For small projects not falling within the scope of the EIA Directive (2011/92/EU) a more generic
 1310 approach can be considered in order to reduce the assessment burden⁶⁵. The result of Step 1 is a
 1311 conclusion whether the proposed project may affect the status/potential of concerned water bodies
 1312 (i.e. Is there a potential cause-and-effect mechanism?). Pre-determined standards (e.g. for
 1313 hydromorphological modifications and their effects on the biological quality elements) or checklist
 1314 tools, elaborated on a sound scientific basis, can help in assessing whether the project may have
 1315 relevant effects.

- 1316 ➔ If no, then evidence supporting this conclusion should be documented in the frame of the
- 1317 authorisation procedure and no further assessments are required;
- 1318 ➔ If yes or uncertain, then continue to Step 2.

1319 **Step 2: Scoping of further investigations**

1320 Step 2 is a scoping step to identify further data needs and to define the necessary assessments which
 1321 are required for determining the significance of the effects on quality elements. It is a preparatory step
 1322 for Step 3 – data collection and assessment – which has the objective to answer the question whether
 1323 the proposed project is expected to cause deterioration or compromising improvement to good status /
 1324 potential.

1325 Step 2 focuses on the necessary investigations for potentially affected quality elements and sub-
 1326 elements (e.g. the different biological and hydromorphological quality elements, chemical and physico-
 1327 chemical quality elements, criteria determining groundwater quantitative status, etc.). Step 2 also
 1328 allows for the identification of existing data gaps (e.g. absent monitoring data for a certain quality
 1329 element) requiring additional (ad-hoc) data collection and analysis for the completion of the data set.

1330 For quality elements where potential causal mechanisms were identified, Step 2 allows for a first
 1331 differentiation between effects that are expected to be temporary or local in a water body context vs.
 1332 longer term or water body scale effects. For quality elements where no possible causal link was
 1333 identified under Step 1, no further assessments are required. A precautionary approach should,
 1334 however, be taken, which means that in cases where a causal link cannot be excluded with high
 1335 certainty, further assessments should be performed.

1336 At that point the potential for alignment of data collection and assessments which might be required
 1337 under other environmental legislation (e.g. performance of an EIA or necessary assessments under
 1338 the Habitats Directive) should be identified, providing the opportunity to gain from synergies (see
 1339 chapter 4.2).

⁶⁵ See CIS Guidance Document No. 20

Step 3: Data collection and assessment

Under Step 3 the necessary data collection and assessments are performed, as defined under Step 2. The purpose of this step is to determine the expected effect the project (including its mitigation measures) on the status or potential of the concerned water bodies at quality element level (i.e. cause deterioration or compromise expected improvement). A judgment can for instance require investigations performed by experts and/or modelling. The potential for synergies for joint/coordinated data collection and assessments with other environmental legislation (e.g. EIA or Habitats Directive) is utilised under Step 3.

Investigations of the significance of the effects should not only consider the current status/potential but also planned improvements due to the implementation of measures from river basin management planning (e.g. restoration measures) to achieve good status/potential. Therefore, cumulative effects of other interventions may need to be taken into account (see chapter 3.6). The assessment should also conclude on the time-span of effects (see chapter 3.3.1).

If the result of Step 3 is that

- ➔ The proposed project is not expected cause deterioration of the water body at quality element level or compromise improvement, or if the effects are expected to be only temporary short-term, the evidence supporting this conclusion needs to be documented in the frame of the permitting procedure, no Article 4(7) Test is required and authorisation may be granted according to the WFD;
- ➔ If the project is expected to cause deterioration of the water body at quality element level or compromise improvement, proceed to Step 4.

Step 4: Article 4(7) Test

If the project is expected to cause deterioration / compromising the achievement of good status/potential, then evidence should be documented and the Article 4(7) Test needs to be launched. The project can only be authorised if the conditions as outlined under Article 4(7) a) to d) are fulfilled, and hence the Article 4(7) Test is passed. It follows that if the conditions are not fulfilled and the Article 4(7) Test fails, the project cannot be authorised according to the WFD. The conditions and requirements for the Article 4(7) Test are outlined in chapter 5.

Case study 3: A WFD compliance assessment checklist tool developed for JASPERS**Country: /**

Joint Assistance to Support Projects in European Regions (JASPERS) aims at improving the quality of investment supported by EU Funds (European Regional Development Fund, ERDF and Cohesion Fund and IPA Funds). In order to comply with WFD Article 4(7) a four-step approach has been developed:

1. Understand the context: Is there a potential causal mechanism for an effect on ecological or chemical status? If no, keep record for audit but no further assessment required. If yes perform step 2.
2. Determine scope: Consider whether effects are temporary or are not significant at the scale of the water body. WFD assessment required only for elements that could be affected
3. Investigations: data collection; evaluation; consider mitigation measures. Is there a residual effect on WFD status? If yes perform step 4
4. Apply the Article 4(7) tests (as set out in the CIS Guidance Nr. 20)

The approach was used for projects in Poland (for flood protection) and in Latvia (for port development including dredging), and will be further elaborated for wider application in the near future.

Links:

<http://www.jaspersnetwork.org/download/attachments/19464342/WFD%20compliance%20-%20a%20checklist%20tool.pdf?version=1&modificationDate=1434121070000&api=v2>

1368

Case study 4: High Speed 2 Rail Construction scheme – Phase 1 (London to West Midlands)**Country: United Kingdom (UK)**

HS2 is a multimillion pound national government scheme to provide a high-speed rail link from London and the south to the north of England. Phase 1 covers four River Basin Districts (Thames, Anglian, Severn and Humber) and might have an impact on 61 surface waterbodies and 15 groundwater waterbodies.

Of the 61 surface waterbodies originally assessed, no scheme elements were assessed as certain to result in objective non-compliance for the waterbodies. However, 5 have ultimately been assessed as being at risk from deterioration or prevention of achieving GES/GEP due to the construction of HS2 Phase 1. Of the 15 groundwater bodies originally assessed, 4 groundwater waterbodies have been ultimately assessed as being at risk from deterioration or being prevented from achieving GES due to the construction of HS2 Phase 1. The remaining surface and groundwater waterbodies were discounted as being assessed as not being at risk, or due to the inclusion of mitigation measures and other measures brought about by 'Additional Provisions'.

A WFD Compliance Assessment Review document was published in March 2016 providing more details on the reasons why deterioration may occur for each of the waterbodies, along with generic mitigation measures, and providing information on how the four tests for Article 4.7 can be met. The assessment follows a precautionary risk based approach and was advocated by the Environment Agency to ensure that all potential adverse effects were to be reported and detailed, even where the likelihood an effect occurring was very low, or the extent of that effect was limited; the primary driver being to ensure that WFD effects continued to be considered and addressed through the design development and into the consenting phase.

Links:

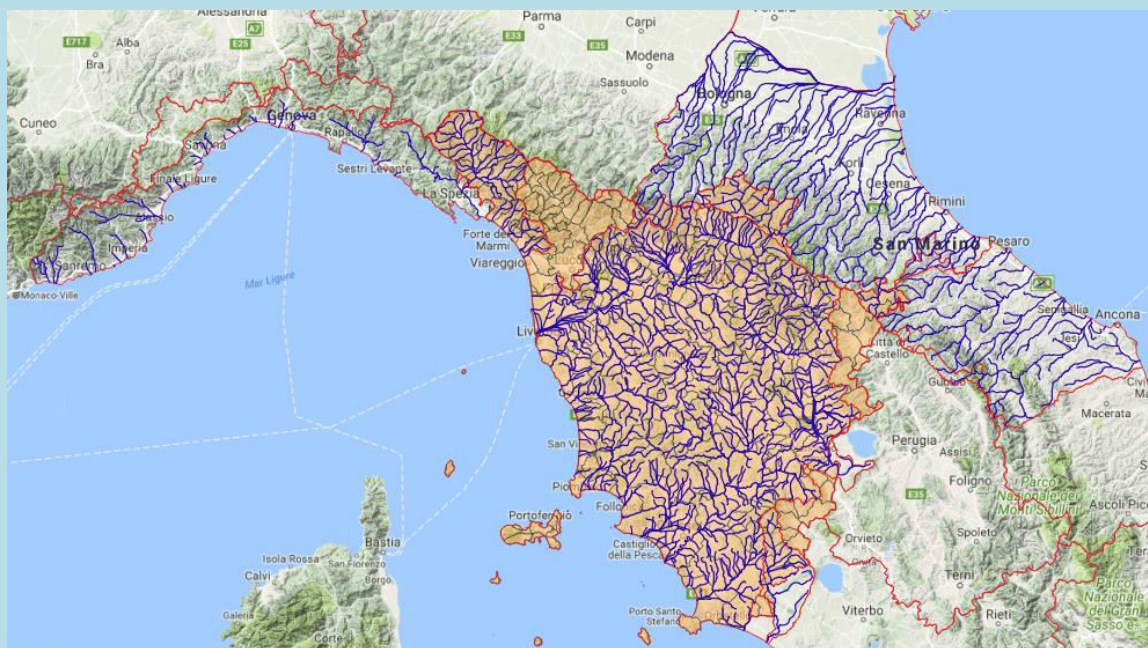
<https://circabc.europa.eu/sd/a/e9885e5b-9638-4ff6-baee-2815c6300ce8/22 - MS United Kingdom - 4.7 Case Study.pdf>

<https://www.gov.uk/government/publications/water-framework-directive-compliance-assessment-review>

1369

Case study 5: Flood Risk Management Plan (FRMP) measures' impact evaluation for the assessment of Art. 4(7)**Country: Italy**

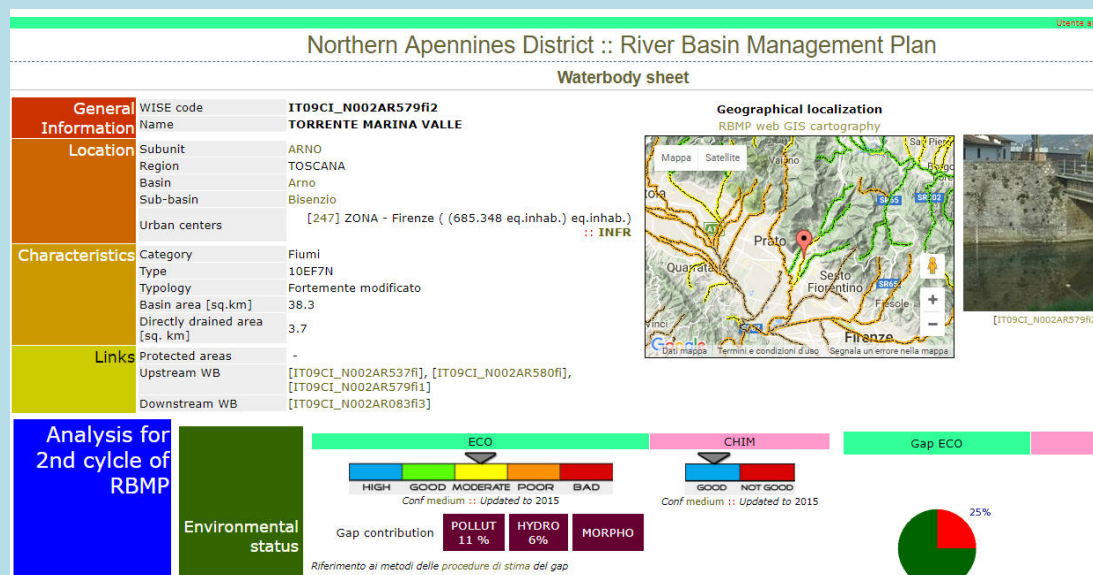
The case study area is located in the Northern Apennines District (ITC), specifically in the area of the Region of Tuscany (about 20.000 sq.km, 60% of District's surface). The aim is to estimate the impacts of a structural measure of the FRMP on water status/potential.



The procedure has been applied to all surface waterbodies in the area ranging from small rivers with about 10 sq.km to main river channels like the Arno river (downstream reach), about 8.000 sq.km basin area.

The structural measures of the FRMP might cause a physical alteration of water body as it might embrace longitudinal or transversal rivers' modification, including levees' restoration, dams' elevation, diversion spillways, expansion areas with related inlet / outlet culverts, river bank restoration.

In order to pre-asses the possibility of Art. 4(7) application, the 2nd cycle RBMP of Northern Apennines Basin District includes a detailed analysis of FRMP's structural measures. Each intervention based on a physical alteration of river or lakes was georeferenced and related to one or more water bodies. The list of flood defences' interventions is reported in a specific section of WB's reporting sheet in the Executive Information System of RBMP (see below).



Extract from EIS – Executive Information System for the ITC RBMP. Top portion of WB's sheet.

Since the linked interventions are mainly planned measures to be defined in terms of hydraulic solutions and structural details, the aim of the proposed list, related to each water body, is to focus the attention on the future potential application of Art. 4(7) for the interested water bodies. The real impact in terms of physical alteration will be tested in the evolution of planned activities, applying common criteria for the evaluation morphological alteration and Art. 4(7) eligibility.

The described procedure has brought general benefits for an effective and coordinated analysis of RBMP and FRMP relationship. Reporting in an official information sheet all structural interventions potentially altering the physical characteristics of WBs allows public and private stakeholders to be aware of potential application of Art. 4(7). The discussion on the real impact of flood defence measures can be applied already in a preliminary project's phase, in order implement a more inclusive process regarding technical solutions' choices, and a specific awareness on the exemption to WFD's objectives.

As critical aspect, financial coverage issues can alter or invalidate technical analysis, bringing to incomplete or only partially useful project choices.

Links. <http://www.appenninosettentrionale.it/eis/>

1370

1371 4.2 Streamlining of assessments with the EIA and Habitats Directive

1372 A proposed project might not only require assessments in the context of WFD Article 4(7) but also,
1373 depending on the size, nature and location of the project, an Environmental Impact Assessment (EIA)
1374 under the EIA Directive or appropriate assessments under the Habitats Directive in relation to Natura
1375 2000 sites affected (see chapter 2.8). Compliance with other relevant legislation must be ensured (see
1376 also WFD Article 4(1)(c)). As such grouping of assessments and streamlining can be efficient (e.g. in

terms of data collection and public participation)⁶⁶, providing the opportunity to utilise synergies and reduce the work load in the assessments required for a proposed project under different legislation.

While such a streamlining is mandatory – ‘where appropriate’ – as regards the EIA and the ‘appropriate assessment’ under the Habitats Directive, it is up to the individual Member States to decide whether to apply it to the EIA Directive and the Water Framework Directive⁶⁷.

Referring to the approach and different steps for an "Applicability Assessment" in relation to WFD Article 4(7) as described in the previous chapter, equivalent steps are required under the EIA and the Habitats Directives that could be taken alongside with the steps under the WFD. This refers particularly to "Screening", "Scoping" and the necessary data collection. Such a streamlined approach can lead to significant cost and time savings, notably in relation to the data collection stage which can be jointly performed once the data requirements under each Directive are clarified during the previous steps.

However, it should be borne in mind that the focus of the various tests is quite distinct in each Directive, so the various steps of the process should be carried out in accordance with the requirements for each Directive⁶⁸. If the conditions of one Directive are fulfilled but not of the other, then the authorities may not authorise the project because in such a case the project would still infringe EU legal provisions. Instead, it should be examined whether amendments can be made to the project so that it satisfies the requirements of all relevant directives.

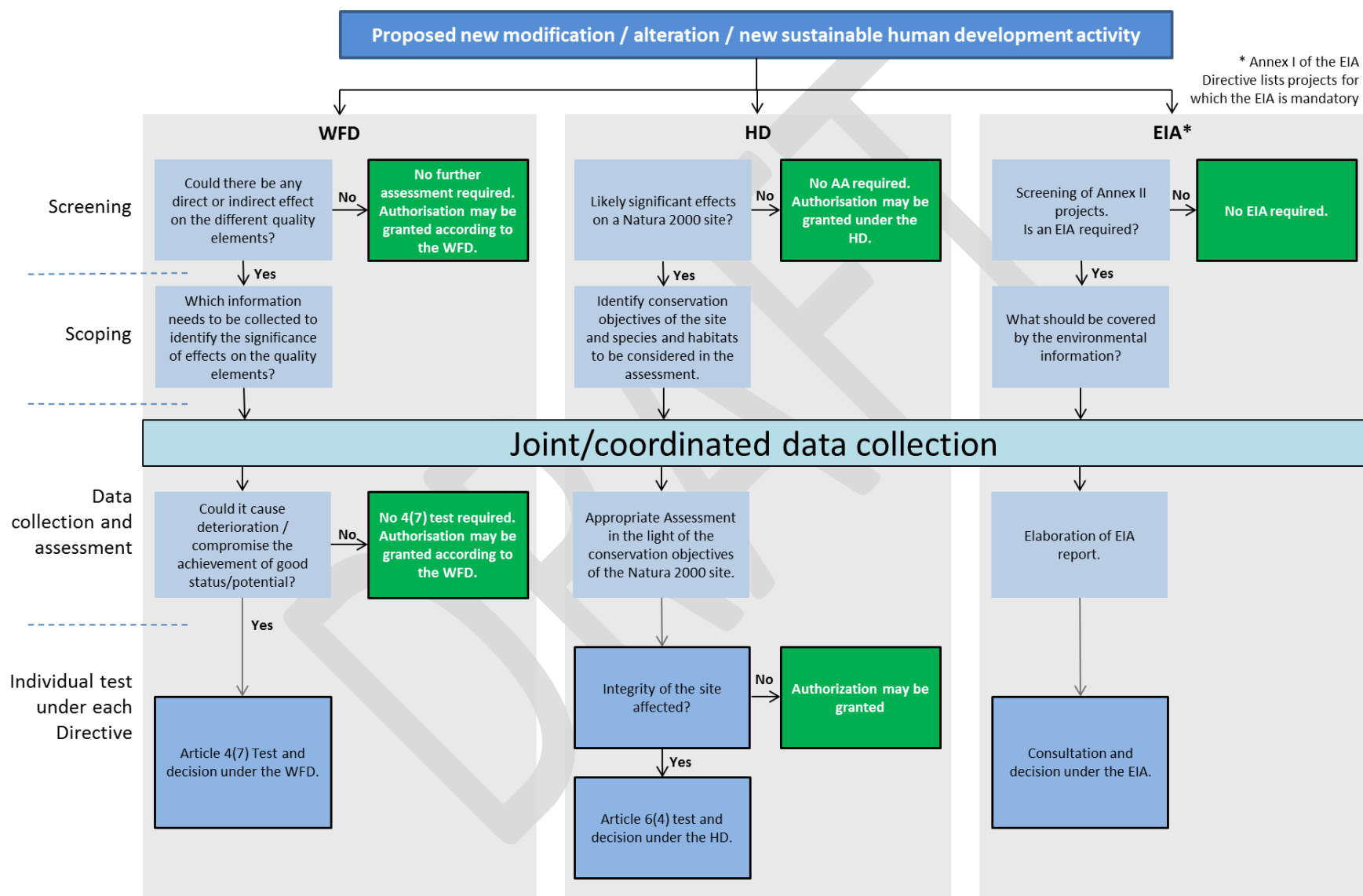
Figure 5 outlines the steps for an "Applicability Assessment" in relation to WFD Article 4(7), and the equivalent steps under the EIA and Habitats Directives. Following, the main requirements under the EIA and Habitats Directives, and the relationship and linkages with Article 4(7) are described in more detail. Further information can also be drawn from chapters 2.8.2 (EIA), 2.8.3 (Habitats Directive) and Annex A (comparative overview table).

⁶⁶ See for instance Guidance on Streamlining environmental assessment procedures for energy infrastructure Projects of Common Interest (PCIs), http://ec.europa.eu/environment/eia/pdf/PCI_guidance.pdf; Commission guidance document on streamlining environmental assessments conducted under Article 2(3) of the EIA Directive <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:273:FULL&from=DE>

⁶⁷ See Commission guidance document on streamlining environmental assessments conducted under Article 2(3) of the EIA Directive <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:273:FULL&from=DE>

⁶⁸ Where possible, synergies could still be used, for instance regarding the search for alternatives or mitigation measures.

1400 **Figure 5: Streamlining of assessments under the WFD, HD and EIA Directive**



1401

1402 **Projects which are subject to an EIA**

1403 The EIA Directive aims to ensure that projects which are likely to have a significant effect on the
 1404 environment are adequately assessed before they are approved. Before any decision is taken to allow
 1405 such a project to proceed, the possible impacts it may have on the environment (both from its
 1406 construction, operation or demolition) need to be identified and assessed.

1407 An assessment is obligatory for projects listed in Annex I of the Directive, which are considered as
 1408 having significant effects on the environment (for example: dams and other installations designed for
 1409 holding back or permanent storage of water, where a new or additional amount of water held back
 1410 exceeds 10 million cubic metres (p.15, Annex I).

1411 Other projects, listed in Annex II of the Directive (for example inland waterways, projects not included
 1412 in Annex I, canalization and flood-relief works; urban development projects, etc.), are not automatically
 1413 subject to an EIA procedure. The Member States have a margin of discretion to decide on a case-by-
 1414 case basis or according to thresholds or criteria (for example size), location (sensitive ecological areas
 1415 in particular) and potential impact (surface affected, duration) whether these projects are likely to have
 1416 significant environmental effects and if they have to be liable to the EIA procedure. The process of
 1417 determining whether Annex II projects may have significant effects on the environment and therefore
 1418 be subject to an assessment is called "*screening*" under the EIA Directive. Scoping is not mandatory,
 1419 but accepted as good practice.

1420 EU law can sometimes require several assessments for a single project. Each assessment is
 1421 designed to maximise environmental protection of a specific kind. However, the multiple statutory
 1422 requirements and parallel assessments can lead to discrepancies, delays, duplication and
 1423 administrative uncertainties. The EIA Directive provides for enhanced assessment procedures, leading
 1424 to more effective and efficient outcomes (Article 2(3), EIA Directive, as revised).

1425 The following potentials for synergies and streamlining of assessments required under the EIA and
 1426 Article 4(7) have been identified:

- 1427 • Assess whether the project may lead to deterioration of the status/potential of a water body or
 1428 relevant quality element (WFD Article 4(7)). This assessment might be part of the assessment
 1429 of the factor water (EIA Article 3);
- 1430 • Defining mitigation measures to reduce the adverse effects;
- 1431 • Assess the project specific component of the assessment of better environmental options
 1432 according to WFD Article 4(7)(d) and Article 5(1)(d) EIA;
- 1433 • Synergies in terms of consultation prior to a project's approval by using the EIA process for
 1434 public consultation in case a project should be approved within an RBM cycle.⁶⁹

1435 In this context it is important to note that the level of detail in the environmental report required under
 1436 the EIA may be less than what would be required for assessments in relation to WFD Article 4(7). An
 1437 EIA does not require (but also does not prevent) an assessment on quality element level but rather the

⁶⁹ See page 11 and 12 of the PCI Guidance: http://ec.europa.eu/environment/eia/pdf/PCI_guidance.pdf

likely significant impact of the project on water (Article 3 EIA)⁷⁰. This can be explained by the fact that an EIA assesses the impacts of a project on the environment, while an Article 4(7) assessment addresses the impacts on a water body. In other words, carrying out an EIA does not guarantee fulfilment of Article 4(7), but it could contribute if the assessments are streamlined.

In cases where a project is subject to an EIA, under good practice this could be done in close coordination with the Article 4(7) Applicability Assessment during the data collection and assessment stage⁷¹. In doing so Member States may nationally establish an EIA procedure/approach investigating all requirements of Article 4(7) where all projects potentially deteriorating water or precluding achievement of water environmental objectives will be assessed, even if they fall outside Annex I & II. Their integration offers the opportunity to adopt a new approach to optimize the mutual synergies and minimize conflicts between them.

Case study 6: Development of an Article 4(7) assessment framework and linkage to EIA

Country: Croatia (HR)

The Article 4(7) assessment in the Republic of Croatia is linked to the environmental impact assessment in order to decrease administrative burden and simplify procedures for new development. It is clear that EIA and Article 4(7) assessment have coinciding elements such as data collection and public participation processes.

In an integrated procedure, the competent authorities are given a possibility to reach a single decision based on the agreed pool of data and taking account of all environmental protection aspects (not only the achievement of objectives in terms of the WFD). The availability of complete information is extremely important particularly in the event of larger projects which have significant impacts and for which the justification required for the application of WFD Article 4(7) needs to be provided. As such, the author of an environmental impact study is required as part of the study to analyse the project's impacts on water bodies (in terms of the achievement of WFD objectives), thus identifying the scope and significance of such impacts. When required, they shall collect data and justify the application of the provisions of WFD Article 4(7).

It has to be noted that, if EIA is not required, a comparable procedure for Article 4(7) assessment is envisaged in the Water Act as a part of water-permitting procedure. It should be mentioned that the same procedure is followed for the Plans and Programmes that are subject to the SEA.

The overall procedure related to the identification of project impacts on the water status in terms of WFD objectives is based on the data and information contained in the current River Basin Management Plan, which – according to the provisions of the Water Act – contains a Flood Risk Management Plan adopted by the Croatian Government. In that way, the status of water bodies identified and the programme of measures foreseen by the current RBMP were made the starting point for the identification of potential impacts of future activities and projects in the basin. This has also enabled continuous communication and exchange of information between the RBMP and the (planned) developments in the basin, and the authors of the RBMP are given a better insight and sound background data for the RBMP updates.

Insights into the whole process leads to the following key conclusions:

- Data about water bodies collected for the purposes of RBMP is valuable resource for both EIA and Article 4(7) assessments and there is a significant need for such data.
- It seems convenient to have the Article 4(7) assessment “back to back” with EIA and sharing some elements of procedure.

Links: RBMP (including FRMP) and supporting documents are published at <http://www.voda.hr/hr/plan-upravljanja-vodnim-podrucjima>

⁷⁰ Art 3 EIA states: The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project (...).

⁷¹ For more detailed information of such approaches see e.g. Guidance on Streamlining environmental assessment procedures for energy infrastructure Projects of Common Interest (PCIs), http://ec.europa.eu/environment/eia/pdf/PCI_guidance.pdf Commission guidance document on streamlining environmental assessments conducted under Article 2(3) of the EIA Directive <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:273:FULL&from=DE>

1450 **Projects with relevance for Natura 2000 sites**

1451 The Birds and Habitats Directives aim to contribute towards ensuring biodiversity through the
 1452 conservation of natural habitats and wild fauna and flora. The establishment and sound management
 1453 of sites under the Natura 2000 network is a key tool for that. Article 6 of the Habitats Directive lays
 1454 down the requirements for the management and protection of the Natura 2000 sites, which are the
 1455 "Sites of Community Importance" (SCIs) (subsequently designed by the Member States as Special
 1456 Areas of Conservation (SACs)) under the Habitats Directive and the Special Protection Areas – SPAs
 1457 – classified under the Birds Directive 2009/147/EC.

1458 Both the WFD and the Habitats Directive allow for the use of exemptions, although there are some
 1459 differences in the procedures and conditions. Under the Habitats Directive, Article 6(3) and 6(4)
 1460 establish a procedure for the assessment and authorisation of plans or projects that may affect Natura
 1461 2000 sites. In particular, the aim of Article 6(3) is to avoid adverse effects of plans and projects on
 1462 Natura 2000 sites and thereby maintain the integrity of the Natura 2000 sites and the coherence of the
 1463 network and its features. Hence an appropriate assessment (AA) must be made of any plan or project
 1464 likely to have a significant effect on a site in the light of the conservation objectives of the site.

1465 The step of the Article 6(3) process where it is determined whether a project or a plan is likely to cause
 1466 significant effects to a Natura 2000 site, either alone or in combination with other plans and projects,
 1467 corresponds to what is commonly called "screening". If it cannot be excluded, following the screening,
 1468 that the plan or project will have a significant effect on the site, an AA is required.

1469 Similarly, even though not explicitly mentioned, scoping is accepted as good practice and aims to
 1470 precisely identify the potential issues that the AA should cover, as well as the appropriate information
 1471 to gather. The focus of the AA is on the conservation objectives of the site. Any possible mitigation
 1472 measures (e.g. in relation to location of the project, timing, construction method, etc.) may be
 1473 considered in the context of the AA so as to avoid adverse effects on the integrity of the site.

1474 In case of a negative conclusion of the AA, the provisions of Article 6(4) may apply still if the relevant
 1475 conditions are met (lack of alternative solutions, presence of imperative reasons of overriding public
 1476 interest, implementation of compensation measures). Further detailed information can be obtained
 1477 from the flow chart on the specific Article 6(3) and Article 6(4) procedure according to the Habitats
 1478 Directive which is provided in Annex B⁷².

1479

⁷² See relevant guidance, documentation and jurisprudence on the implementation of Article 6(3) and 6(4) at http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm

5 ARTICLE 4(7) TEST AND RELATIONSHIP TO THE RBMPs

If, as a result of the "Applicability Assessment" in relation to Article 4(7) (see chapter 4), a new modification, alteration or new sustainable human development activity is expected to cause deterioration or compromise the ability of the water body to reach the objective of good status/potential, an "Article 4(7) Test" needs to be performed during the authorisation procedure.

Via the Article 4(7) Test it is determined whether permission for a proposed project can be granted despite it may cause deterioration / compromise the achievement of good status/potential. This is the case if the relevant conditions as outlined in the WFD are fulfilled, which are described in more detail in the following chapters. If the conditions are not fulfilled, then the project cannot be authorised.

5.1 Step-wise approach for an Article 4(7) Test

An Article 4(7) Test requires a number of assessments which need to be performed. These are presented in Figure 6 below in a stepwise approach. This flow chart aims to be a practical tool illustrating the different steps and relationships of assessments when considering the application of an Article 4(7) Test for the affected water body(ies). It follows the basic logic of an earlier flow chart elaborated for CIS Guidance Document No. 20⁷³ and was further developed. The different steps of the Article 4(7) Test are specified in more detail, and the iterative relationship with the Applicability Assessment in relation to Article 4(7) is indicated, following the basic logic that modifications to the project can lead to changes with regard to the effects it may cause on the status/potential of water body(ies), which might require to be re-evaluated under the Applicability Assessment. Under specific circumstances a modified or re-design project may even not lead to deterioration or compromising the achievement of good status/potential, thus making an Article 4(7) Test obsolete.

The order of the different steps representing different requirements under the WFD is not strictly following the order of the text in the WFD. This was done for different reasons. For instance, the considerations under Step 1 (mitigation) and 2 (better environmental option), but potentially also step 3 (weighing process), may result in adaptations of the project. In such a case a re-assessment of relevant elements, also in the frame of the Applicability Assessment, may be needed in an iterative manner. This is not necessarily the case for later steps in the process.. Like all WFD exemptions, Article 4(7) cannot be applied when the provisions of Articles 4(8) and 4(9) are not fulfilled. In other words, the use of exemptions is only allowed when they guarantee at least the same level of protection as existing EU legislation and provided that they do not permanently exclude or compromise the achievement of the wider objectives of the WFD in other bodies of water within the same river basin district. The requirements for compliance with these provisions were further specified under Step 4 and 5.

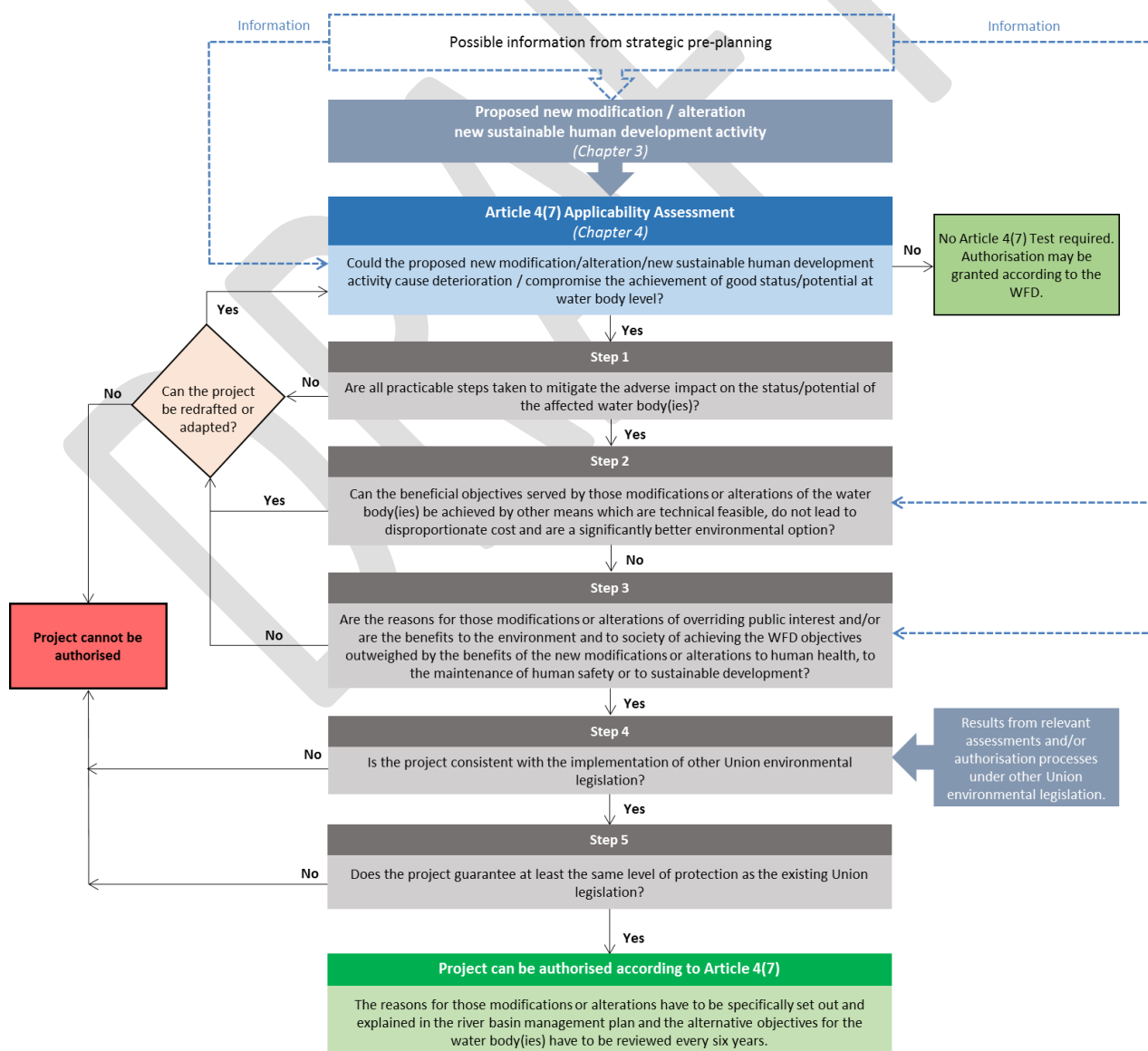
Where a project also causes effects on other bodies of water, it can only be authorised if exemptions can also be justified for these other affected water bodies. In such a case it can be considered as reasonable to apply the Article 4(7) Test for the affected water bodies within the same procedure (see also chapter 3.5). Information on the results from relevant assessments and/or permission processes under other EU legislation, where relevant, allows performing Step 4 of the Article 4(7) Test (e.g. relevant assessments under an EIA or appropriate assessment under the Habitats Directive – see

⁷³ See CIS Guidance Document No. 20, Figure 4

chapter 4.2). Finally, the Article 4(7) Test can be concluded and the project authorised in the case the conditions are fulfilled, including also the requirement that the reasons for those modifications or alterations have to be specifically set out and explained by the competent authority in the river basin management plan and the alternative objectives for the water body(ies) have to be reviewed every six years.

Note that strategic pre-planning mechanisms (e.g. for specific sectorial development plans) may inform the elaboration and selection of projects, WFD related assessments and overall the decision making process, including different steps of the Article 4(7) Test. Furthermore, the different steps, as outlined in Figure 6, do not necessarily have to be followed in a strict sense and the most appropriate order can depend on the approach and level of planning. For instance, for some projects it might be more reasonable to perform step 2 (better environmental option) before step 1 (mitigation measures), e.g. in case strategic pre-planning mechanisms are in place. However, it has to be ensured that the different requirements of Article 4(7) are fulfilled.

Figure 6: Example for a step-wise approach for an Article 4(7) Test and the iterative relationship with the Article 4(7) Applicability Assessment



1535 In the following chapters, the different steps and considerations of the Article 4.7 Test are explained in
1536 more detail.

1537 **5.2 Taking all practicable steps to mitigate adverse impacts**

1538 One of the conditions for granting an exemption under Article 4(7) is that "*all practicable steps are*
1539 *taken to mitigate the adverse impact on the status of the body of water*" (Article 4(7)(a)). In other
1540 words, this condition requires taking all practicable actions leading to less deterioration of the
1541 conditions in the impacted water body.

1542 Unlike the EU Habitats Directive where the terms mitigation and compensation are strictly
1543 differentiated⁷⁴, the WFD neither defines nor constrains the definition of mitigation measures. The
1544 'practicable steps to mitigate the adverse impact on the status of the water body' required under Article
1545 4(7)(a) can therefore cover a wide range of actions. What matters is that **the objective of these**
1546 **actions is to avoid or reduce an identified potential effect on the status** of a WFD quality
1547 element. In other words, the measure will minimise or even prevent the risk of deterioration or the
1548 compromising of an otherwise expected improvement in status.

1549 The most appropriate type of action to mitigate the adverse effect will vary according to the specific
1550 local circumstances. For those not familiar with the requirements of the EU Habitats and EIA
1551 Directives, it is worth providing clarification on the following important points:

1552 ***Compensatory measures under the Habitats Directive***

1553 As the final part of the Article 6(4) 'tests', the Habitats Directive requires that compensatory measures
1554 be provided to offset the negative effects of a plan or project so that the overall ecological coherence
1555 of the Natura 2000 network is maintained. In the context of the Habitats Directive, this typically means
1556 restoring or recreating habitat on a new or enlarged site that is subsequently incorporated into the
1557 Natura 2000 network as compensation for the impacts on an existing site caused by a project
1558 authorised under the Article 6(4) exemption.

1559 There is no equivalent requirement for such compensatory measures under Article 4(7) of the Water
1560 Framework Directive. Rather the WFD accepts that – if it can be demonstrated that the requirements
1561 of the Article 4(7) Tests are met – there will be a residual adverse effect on the status of the water
1562 body in question.

1563 ***Mitigation measures in the context of the EIA Directive***

1564 Unlike the Habitats Directive, the EIA Directive does not define or explicitly differentiate between
1565 mitigation and compensation measures⁷⁵. Nonetheless, when different types of mitigation actions
1566 under EIA are being considered, evolving good practice – supported by the various references in the

⁷⁴ This distinction is highlighted in CIS Guidance Document No. 20, which notes that mitigation measures aim to minimise or even cancel the adverse impact on the status of the body of water, whereas compensatory measures aim to compensate in another body of water the "net negative effects" of a project and its associated mitigation measures.

⁷⁵ For example, Directive 2014/52/EU refers in various places to the 'measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment' and notes that Member States 'should ensure that mitigation and compensation measures are implemented'.

EIA Directive to measures that 'avoid, prevent or reduce and if possible offset' adverse impacts – favours measures taken at source (on-site) over those 'off site' and promotes the application of the so-called 'mitigation hierarchy'.

When a potential adverse impact is identified this hierarchy therefore emphasises the need, in order of priority, to:

1. Avoid adverse impacts, for example by changing the location, method or timing of the activity or by the use of other preventative measures at source;
2. Take measures at source or as close as possible to the source of the effect, which aim to minimise or reduce adverse impacts to negligible, low or otherwise acceptable levels;
3. Where there are residual adverse effects (i.e. impacts that are unavoidable or cannot be reduced further on site), to remedy, offset or otherwise compensate for these effects by taking measures elsewhere that help to reduce the net adverse impact to negligible, low or otherwise acceptable levels.

Whilst there is no specific requirement to apply the mitigation hierarchy when considering practicable steps to mitigate the adverse impact on the status of the water body in the context of the WFD, it is nonetheless recommended that good practice is applied and that all practicable measures that avoid, minimise or reduce effects at source are implemented before other, off site measures.

Mitigation measures in WFD Article 4(7)(a)

The notion of "steps" as outlined in Article 4(7)(a) addresses potentially a wide range of measures in all phases of development, including facilities' design, maintenance and operation conditions,, restoration and creation of habitats.

The wording "all practicable steps", in analogy with the term "practicable" used in other legislation, suggests those mitigation measures should be technically feasible, not disproportionate costly and compatible with the new modification, alteration or new sustainable human development activity. Requirements for mitigation measures for different types of modifications can be set out in guidance documents (e.g. guidance for fish migration aids) or specific recommendation documents (e.g. Best Environmental Practice (BEP), Best Available Techniques (BAT)). Mitigation measures aim at minimising or even cancelling the adverse effects on the status of a water body and should be an integral part of the project. As such, these measures might also be taken in other water bodies as long as their effects occur in the water body for which Article 4(7) is applied. Depending on their scope, some mitigation measures might, in some cases, even allow the improvement of status. If all practicable mitigation measures are not taken, an exemption under Article 4(7) cannot be granted. If it is assessed that implementing all practicable mitigation measures would lead to avoidance of deterioration or failure to achieve good status/potential, there is no need to apply an Article 4(7) Test, as a result of the Article 4(7) Applicability Assessment (see iterative feedback loop in Figure 6).

As an example for mitigation measures, in the case of a new hydropower plant important mitigation measures normally include the construction of functional fish migration aids for relevant fish species and/or the establishment of ecological flows. Examples for related types of mitigation measures are

addressed in the frame of the CIS (e.g. work on Good Ecological Potential – Water Storage⁷⁶). In the case of a new abstraction of groundwater, next to the limitation of the amount of groundwater allowed to be abstracted, mitigation measures might include natural water retention measures (NWRM) for additional groundwater recharge and therefore supporting to maintain a balance of groundwater abstraction and recharge.

Mitigation measures do not necessarily need to be only of hydromorphological nature. In some cases, e.g. for projects including water abstraction, mitigation measures might also include the reduction of pollution from point or diffuse sources in order to address the reduced dilution capacity of a water body due to the abstraction and hence avoiding increased concentrations of pollutants.

Bearing in mind the wide range of possible projects, impacts and types of mitigation, dealing with all the different types of mitigation measures to be considered under Article 4(7)(a) would exceed the scope of this guidance. Therefore, this section of the guidance concentrates on how and when all practicable mitigation measures should be considered, established and monitored in the Article 4(7) assessment procedure and permitting process for new projects.

Consideration of mitigation during the project design stage

Mitigation measures need to be considered both in the initial Article 4(7) Applicability Assessment to determine whether the project may cause deterioration / non achievement of good status/potential and therefore trigger an Article 4(7) Test, as well as in the Article 4(7) Test itself to determine whether the conditions for granting an exemption under Article 4(7) are met. Mitigation measures to reduce adverse effects can be required as conditions of the authorisation (permit/license) for a new project, including also requirements for the maintenance and monitoring of the effectiveness of mitigation measures (for example to ensure the functioning of fish migration aids) and for potential adaptation needs.

It is reasonable to consider "all practicable steps to mitigate adverse impacts" already in the early project design stage for the following reasons:

- To reduce or even eliminate impacts on water bodies;
- For consideration in the initial Article 4(7) Applicability Assessment - if deterioration / non-achievement of good status / potential can be avoided in the first instance, no Article 4(7) Test and therefore no Article 4(7) exemption will be required;
- If deterioration / non-achievement of good status / potential cannot be avoided – for the Article 4(7) Test itself since taking "all practicable steps to mitigate the adverse impacts" is an integral part of the requirements to allow for an Article 4(7) exemption;
- To avoid protracted discussions and uncertainty over the project which could unduly delay its authorisation;
- And finally, since the integration of mitigation measures is usually cheaper and easier in the early project design stage compared to exploring mitigation options once the design is already fixed, what can have several advantages, i.e. in terms of cost-savings but also in terms of efficiency gains for the administrative procedures during the project authorisation phase.

⁷⁶ Common understanding of using mitigation measures for reaching Good Ecological Potential for heavily modified water bodies - Part 1: Impacted by water storage: <https://ec.europa.eu/jrc/en/publication/working-group-ecostat-report-common-understanding-using-mitigation-measures-reaching-good-ecological>

During the Article 4(7) Test, competent authorities will have to evaluate whether all practicable steps to mitigate adverse impacts are included as part of the proposed project, or whether additional practicable mitigation measures will be required (additional to those proposed by the project owner) in order to further reduce the impacts. This may lead to modifications of the initial project design and therefore have an influence on the results of the Article 4(7) Applicability Assessment. Therefore, taking the effects of mitigation measures into account can be an iterative process, which may lead to an updated evaluation of the effects the project may have on the status / potential of a water body due to mitigation.

For defining specific mitigation measures, synergies can be gained with the process of an EIA for projects under its scope, but it is important to note that the Article 4(7) Test needs to be carried out in a distinct way.

Knowledge gained from monitoring results on the effects of mitigation measures implemented as part of the programs of measures in previous planning cycles can be useful for selecting relevant and effective mitigation measures. Possible mitigation requirements are usually set out in guidance documents used in authorisation processes or catalogues of measures elaborated at national level which list and describe state-of-the-art measures and Technology / Best Available Technology / obligatory minimum requirements for different types of modifications. The latter (catalogues of measures) are also relevant for other steps in WFD implementation such as the HMWB designation process and the consideration of mitigation measures when defining ecological potential.

Mitigation measures considered in the definition of good ecological potential (GEP) (measures that do not have significant adverse effects on the use of the HMWB or on the wider environment) are also relevant for the definition of practicable mitigation measures under Article 4(7)(a). They should be considered as a starting point, but the range of mitigation measures under Article 4(7) is potentially wider compared to mitigation measures for GEP definition of an existing HMWB. This because it can be easier to integrate mitigation measures already in the project design phase compared to the implementation of measures on existing infrastructure. Another important reason why GEP mitigation measures are only a sub-set of those that could be applied in the case of Article 4(7) is that construction methods can be modified to reduce impacts, whereas there is no construction phase for ongoing operations and activities.

Where practicable mitigation measures exist, but for some of them there is uncertainty about the magnitude or timing of their effects on status, adaptive management principles might be applied.

The adaptive management concept provides a potentially useful way forward in such situations (i.e. where there are residual uncertainties) because decisions on the need for and implementation of actions required to manage or mitigate the residual effects of a project or activity can be informed by the outcomes of an agreed programme of monitoring. Adaptive management can therefore be relevant in situations where:

- there is a reasonable level of understanding about the likely implications of the project or activity in question and
- the risks are negligible or low and/or there is high certainty in the ability of the proposed management actions (or mitigation measures) to address the effects.

Case study 7: City water supply development and mitigation**Country: Finland (FI)**

New abstraction of ground water by pumping has been planned to secure drinking water supply of a large city depending on one water source, the nearby river. Of the designated water bodies at the proposed site, a few small lakes and a smaller amount of rivers were estimated to be possibly at risk due to water abstraction. There are also springs and brooks, not designated as water bodies, at the area.

- A. The waterworks initially applied for a permit for abstraction of 32,500 m³/day. The application was rejected due to impacts on areas protected by the habitats directive. The process restarted with survey on the alternatives for other water intake areas within a radius of 80-100 km from city centre.
- B. Based on the options found, an interactive multi-criteria decision analysis was carried out. The target was not only to find an economically, technically, socially and ecologically sustainable option, but also to support open discussion between parties. Two alternative options were eventually recommended by the project group; one of them being the original area, but, with a considerably smaller water abstraction volume. Uncertainty on the quantity and quality of ground water and also a considerably longer time period required for the implementation of the project were seen as major weaknesses of the alternative option.
- C. As mitigation means at the original site it was decided to relocate the water pumping sites, reduce their number and decrease the daily intake by two thirds, to 11,000 m³/day, which would be the lowest possible intake needed for raising the security level status for the city from low to medium. Also the regulation of water level at a lake was abandoned. The ground water flow modelling showed that in spite of these actions, changes in water quality would be observed in some lakes and brooks, especially during the low flow periods. Therefore, additional means of diminishing the impacts were suggested: directing water from some pumping stations to watersheds and reducing the intake of certain stations during low flow. Also blocking of forest drainage ditches in certain areas has been suggested.
- D. To compensate the losses for springs at the impact area, a large number of springs outside it will be restored.
- E. E. Natura 2000 impact assessment report for the renewed project and reports of field and modelling surveys have been forwarded together with the permit application to the authorizing body. During the permitting procedure, it will assess whether the methods and results are reliable and whether the mitigation and compensation actions are sufficient with respect to e.g. nature conservation act, water act and Art 4(7).

Links:

<http://www.ymparisto.fi/download/noname/%7B5DC260B6-B2EC-468B-9E83-90DC9F2C28EE%7D/78444>

Practicability of mitigation

As mentioned above, practicable mitigation measures should be technically feasible, should not lead to disproportionate costs and should be compatible with the new modification, alteration or new sustainable human development activity.

Assessing which mitigation measures are practicable can be done on the basis of good-practice principles to be applied to all projects of a certain type. Nevertheless, the selection of practicable mitigation measures also has a case-specific component. Certain mitigation measures may not be technically feasible in a specific location or may not be reasonable due to type-specific natural conditions. For example, in the case of hydropower plants, ensuring ecological flow and the installation of fish migration aids are usually required as mitigation measures for water bodies within fish regions. The installation of fish migration aids will not be reasonable in water bodies outside of such regions where natural fish habitats have not existed. Note that fish habitats could be restored if they got lost due to an existing pressure.

5.3 Assessing significantly better environmental options

According to Article 4(7)(d) *"the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option"*. It is therefore necessary to assess "alternative means" for proposed new modifications, alterations or new sustainable human development activities.

Guidance Document No. 20 already outlines in this context that those means or alternatives solutions could involve alternative locations, different scales or designs of development, or alternative processes. Alternatives should be assessed in the early stages of development and at the appropriate geographical level (e.g. EU, national, RBD) against a clear view of the beneficial objectives provided by the modification. For projects under its scope, the use of the requirements of the EIA Directive can help to assess the different possible alternatives, but might not always be sufficient.

Technical infeasibility is justified if no technical solution is available. With regard to disproportionate costs, "disproportionality" is a judgment which has a political, technical and social dimension informed by economic information and analysis of costs and benefits⁷⁷.

The scope for "alternative means" can include two dimensions – the strategic level and the project specific level, whereas assessments at the strategic level can feed into the project-specific assessment for decision making.

5.3.1 Strategic level

For judging significantly better environmental options strategic components need to be considered, going beyond the local level. Examples for "other means" for the beneficial objectives served by those modifications can for instance include:

- Other forms of renewable energy generation, measures to increase energy efficiency or alternative locations for hydropower generation, other forms to balance energy supply and demand;
- Assessment of capacities and possibilities for other forms of transport, e.g. rail and/or road for navigation;
- Possibilities and effects of water retention measures with regard to flood protection;
- Potentials for water saving measures for drinking water supply or irrigation projects;
- etc.

Depending on the nature of the new modification, alteration or new sustainable human development activity, consideration of relevant sector policies is crucial in this context, including for instance the Renewable Energy Action Plans, TEN-T Programme, Flood Risk Management Plans, Rural Development Programmes, etc. (see Chapter 2). In other words, a strategic level assessment taking account of a range of possible options is required for an informed judgement on whether deterioration / non achievement of good status / potential can be justified or not. Life cycle considerations (such as

⁷⁷ For more details see CIS Guidance Document No. 1 Economics and the environment: [https://circabc.europa.eu/sd/a/cffd57cc-8f19-4e39-a79e-20322bf607e1/Guidance%20No%201%20-%20Economics%20-%20WATECO%20\(WG%202.6\).pdf](https://circabc.europa.eu/sd/a/cffd57cc-8f19-4e39-a79e-20322bf607e1/Guidance%20No%201%20-%20Economics%20-%20WATECO%20(WG%202.6).pdf)

energy demand) may also have a part to play in the decision process⁷⁸. Consideration of the strategic component also helps to improve policy coherence. The results of Strategic Environmental Assessments according to the SEA Directive, which applies to plans and programmes, can be useful in this context, but might not always be sufficient.

Finally, there is a need to consider potential cumulative effects of modifications (see Chapter 3.6). Since the spatial extent of impacts is a relevant consideration, the strategic level can be the appropriate scale for related assessments.

Case study 8: ICPDR Guiding Principles on Sustainable Hydropower Development

Country: International Commission for the Protection of the Danube River (Danube River Basin, including the 9 EU Member States AT, BG, CZ, DE, HR, HU, RO, SI, SK and 5 non EU Member States BA, MD, ME, RS and UA)

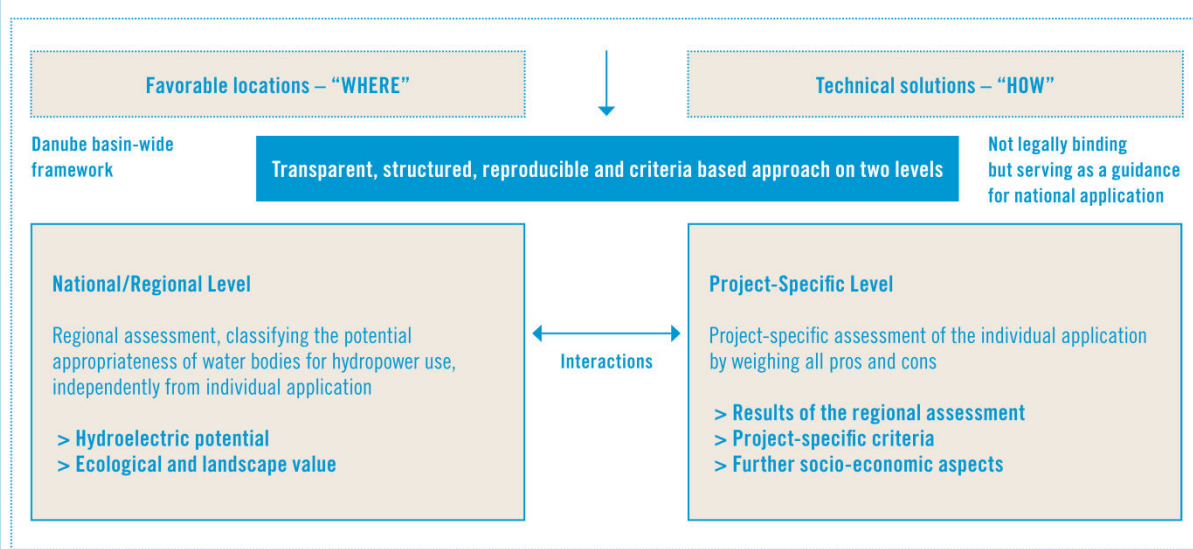
Countries in the Danube River Basin are planning new hydropower development in order to increase the share of renewable energy. At the same time countries are committed to meet the environmental protection objectives, including the WFD.

Acknowledging the challenge of sustainable hydropower development in the frame of the existing legal and policy framework, the ICPDR elaborated "Guiding Principles on Sustainable Hydropower Development". The Guiding Principles recommend the application of a strategic approach, including the strategic (national/regional) and project specific level. Criteria for both levels are included in the document. This is also due to the fact that the required assessments and acquisition of data is only feasible on the respective levels. Therefore, a two-level assessment is suggested for the strategic planning approach as illustrated below.

The Guiding Principles which have been developed by an interdisciplinary team, including representatives from authorities (energy and environment), the hydropower sector and NGOs, were finalised and adopted in June 2013 and recommended by the ICPDR for application at national level.

Strategic planning approach – national/regional and project-specific assessments

FIGURE 13



Links: <http://www.icpdr.org/main/activities-projects/hydropower>

⁷⁸ See Royal Commission on Environmental Pollution (1988): 12th report: Best Practicable Environmental Option

5.3.2 Project level

At the project level alternatives have to be assessed against the criteria whether other means can serve the same purpose while being a significantly better environmental option. This includes for instance different project designs which are technically feasible and not disproportionate costly. Also other legislation (e.g. EIA or Habitats Directives) can require the assessment of alternative means⁷⁹.

Potential synergies can be gained with assessments according to the EIA Directive (if applicable) for determining environmental impacts of a planned project, prescribing a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment⁸⁰. It has to be clarified in this context that neither the EIA (nor SEA) procedures prescribe the design of projects, nor recommend its improvement or change.

5.4 Weighing interests: Overriding public interest / benefits versus impacts

A further condition which needs to be complied with is that *"the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development"* (Article 4(7)(c)). To comply with this test at least one of the two criteria of Article 4(7)(c) has to be fulfilled (overriding public interest or the weighing test) by the new modification, alteration or new sustainable human development activity, or both⁸¹.

5.4.1 Overriding public interest

In EU legislation the public or general interest can serve as a ground for justifying derogations. A range of "public interests" exist within the EU and at national level such as energy security, food security, economic activities and job creation, environmental protection, etc. Since not all public interests can automatically be "overriding", it is important to distinguish between "public interest" and "overriding public interest" which is addressed by Article 4(7)(c). "Overriding" practically means that the other interest overrides achieving the objectives of the WFD. Member States must be allowed a certain margin of discretion for determining whether a specific project is of such interest⁸².

CIS Guidance Document No. 20 outlines that a similar concept is also used in the Habitats Directive (92/43/EEC) ("Imperative Reasons of Overriding Public Interest") and other EC law. The European Commission's "Guidance on the provisions of Article 6 of the Habitats Directive 92/43/EEC"⁸³ may bring some clarification. It is reasonable to consider that the reasons of overriding public interest⁸⁴ refer to situations where plans or projects envisaged prove to be indispensable within the framework of:

⁷⁹ See for instance Case C-239/04 Castro Verde special protection area - Lack of alternative solutions: <http://curia.europa.eu/juris/liste.jsf?language=en&num=c-239/04>

⁸⁰ See EIA Directive Article 5.1(d)

⁸¹ See also Austrian National High Administrative Court Decision (VwGH 24.11.2016, Ro 2014/07/0101), ruling that the fulfilment of one criteria of Article 4(7)(c) is sufficient, thus overriding public interest or the weighing test, and not necessarily both.

⁸² See Case C-346/14 Commission v Austria:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=177722&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=320623>

⁸³ See Guidance on Article 6(4) and Methodological guidance on Assessment of Plans and Projects significantly affecting Natura 2000 sites available at: http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm; See Chapter 2.7

⁸⁴ Note that the consideration of "overriding public interest" only applies to the first part of Article 4(7) c, not to the second part.

- 1774 • Actions or policies aiming to protect fundamental value for citizen's lives (health, safety,
1775 environment);
- 1776 • Fundamental policies for the state and the society;
- 1777 • Carrying out activities of an economic or social nature, fulfilling specific obligations of public
1778 services.

1779 Case law from the European Court of Justice on the application of this concept to the Habitats
1780 Directive can bring further clarification⁸⁵. Furthermore, public participation can contribute considerably
1781 in determining overriding public interest.

1782 The following additional sources of information can help to provide further clarification on the question
1783 what to consider as "public interest" or "overriding public interest"⁸⁶:

- 1784 • The CIS Guidance Document No. 1 (WATECO)⁸⁷ outlines a number of key elements which
1785 need to be considered (e.g. to fulfil public interests, not all types of public interest can apply,
1786 aim to protect fundamental values for citizens' lives and society (e.g. health, safety), within the
1787 framework of fundamental policies for the State and society).
- 1788 • The EU court has clarified⁸⁸ that irrigation and the supply of drinking water may⁸⁹ constitute an
1789 overriding public interest that can justify a water diversion project in the absence of alternative
1790 solutions (for considerations relating to human health or beneficial consequences of primary
1791 importance for the environment). It has also noted⁹⁰ that the construction of a hydropower
1792 plant may in fact be an overriding public interest.
- 1793 • In the relation to hydropower projects, within the CIS process it was concluded that a
1794 hydropower activity is not automatically of overriding public interest just because it will
1795 generate renewable energy⁹¹.
- 1796 • In relation to the EU Habitats Directive (Natura 2000 sites which might also be affected by a
1797 new modification), Article 6(4) first subparagraph stipulates that imperative reasons of
1798 overriding public interest include those of social or economic nature, while the second
1799 subparagraph mentions human health, public safety and beneficial consequences of primary
1800 importance for the environment as examples of such imperative reasons of overriding public
1801 interests⁹².

⁸⁵ See "Article 6 of the Habitats Directive - Rulings of the European Court of Justice" at:

http://ec.europa.eu/environment/nature/legislation/caselaw/index_en.htm

⁸⁶ Note that the references provided do not claim completeness as new decisions might appear.

⁸⁷ [https://circabc.europa.eu/sd/a/cffd57cc-8f19-4e39-a79e-20322bf607e1/Guidance%20No%201%20-%20Economics%20-%20WATECO%20\(WG%202.6\).pdf](https://circabc.europa.eu/sd/a/cffd57cc-8f19-4e39-a79e-20322bf607e1/Guidance%20No%201%20-%20Economics%20-%20WATECO%20(WG%202.6).pdf)

⁸⁸ <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d679e412f3db944bbd8ceeb4d91f8fe99e.e34KaxilC3eQc40LaxqMbN4Pah4Te0?text=&docid=126642&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=55628> ;

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d679e412f3db944bbd8ceeb4d91f8fe99e.e34KaxilC3eQc40LaxqMbN4Pah4Te0?text=&docid=111201&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=55628>

⁸⁹ Please note it is stated that such activities may be of "overriding public interests", what is important in the context of the whole judgment, and, by analogy, in the context of WFD 4(7)

⁹⁰ <http://curia.europa.eu/juris/document/document.jsf?text=&docid=177722&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=320623>

⁹¹ https://circabc.europa.eu/sd/a/23d94d2d-6b9c-4f17-9e15-14045cd541f3/Issue%20Paper_final.pdf

⁹² Please note that the WFD does not use the term "imperative" as it is used in Article 6.4 of the Habitats Directive, what is important to be considered for a comparison. As regards the "other imperative reasons of overriding public interest" of social or economic nature, it is clear from the wording that only public interests, irrespective of whether they are promoted either by public or private bodies, can be balanced against the conservation aims of the Directive. Thus, projects developed by private bodies can only be considered where such public interests are served and demonstrated.

- On the national level, additional issues related to the application of WFD Article 4(7) might also play a role such as military security (e.g. causing Article 4(7) cases on coastal areas)⁹³.

Based on the above sources which summarize approaches to distinguish "public interests" from "overriding public interests", it can be reasonably considered that a simple declaration without further well-grounded assessments is not sufficient to declare a planned new modification or new sustainable human development activity as "overriding public interest". A broad and transparent discussion process underpinning such assessments with involvement of relevant authorities and stakeholders can help in this regard, including a transparent and clearly documented decision making process for each case. Guidance on the different levels of public participation and how to organise public participation can be found in CIS Guidance No. 8 - Public Participation in Relation to the Water Framework Directive.⁹⁴

Results from an SEA on relevant plans and programs can also be helpful in this regard, next to the public participation process required under WFD Article 14 which can support the debate to determine overriding public interests. However, it should be noted that a specific project context will in most cases be needed as Article 4(7) cases can have a different scale, different timing and different stakeholder groups which might need to be involved compared to the consultation process of the RBMPs.

5.4.2 Weighing benefits of the modification versus foregone benefits and opportunities

The second part of Article 4(7)(c) addresses the question whether *"the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development"*.

An analysis of the costs and the benefits of the project adapted to the needs of the Directive is necessary to enable a judgement to be made on whether the benefits to the environment and to society of preventing deterioration of status or restoring a water body to good status are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development. The benefits of achieving the environmental objectives of Article 4 include⁹⁵:

- In case of deterioration of status, those benefits and opportunities foregone as a result of the deterioration of status (e.g. loss of biodiversity, loss of ecosystem services); and
- In case of failure of reaching good status or potential, those benefits that would be provided if the achievement of good status or good ecological status were not prevented (e.g. drinking water supply is no longer possible⁹⁶ or the foregone benefits due to the necessary increase in the level of purification treatment; if a water body may deteriorate from moderate to poor the gap between good and poor).

⁹³ See Treaty on European Union Art 42 (3)

⁹⁴ <https://circabc.europa.eu/sd/a/0fc804ff-5fe6-4874-8e0d-de3e47637a63/Guidance%20No%208%20-%20Public%20participation%20%28WG%202.9%29.pdf>

⁹⁵ For an extended list see Annex I: Costs & Benefits of CIS Guidance No. 20

⁹⁶ Note that WFD Article 7(3) requires that Member States shall ensure the necessary protection for the bodies of water identified with the aim of avoiding deterioration in their quality in order to reduce the level of purification treatment required in the production of drinking water.

The "water costs" (negative benefits) have to be put in balance with the potential benefits and other costs (increased use of other natural resource, including global impacts) of the new modifications and alterations to human health, to the maintenance of human safety or to sustainable development⁹⁷. Thus, other categories of possible benefits and costs will have to be considered and - if possible – calculated, taking into account the specific quality element which is expected to deteriorate or be compromised to improve.

In addition, CIS Guidance Document No. 1⁹⁸ outlines the following steps:

1. Investigating issues similar to those considered in analysing the "sustainability status" of new activities. These include: improvement in human health, improvements in human safety (e.g. in the case of flood protection projects), increase in economic activity or production.
2. Assessing the foregone benefits resulting from the failure to achieve the environmental objectives of the Directive, based on the evaluation of the environmental, economic and social water-related benefits. In both cases, it should be attempted to quantify and express benefits or foregone benefits in monetary terms so as to make both parts of the analysis comparable. In many cases, however, it will be difficult to express and quantify all benefits or foregone benefits in monetary terms. Thus, the different benefits and impacts should be presented, whether in monetary terms, quantified or assessed qualitatively, in a multidimensional table.

Hence, this does not mean that it will be necessary to monetise or even quantify all costs and benefits to make such a judgement as this might be methodologically challenging. The appropriate mix of qualitative, quantitative and, in some cases, monetised information should depend on what is necessary to reach a judgement and what is proportional and feasible to collect⁹⁹. In this context and due to the range of expertise which may be needed for such assessments, close cooperation of the relevant competent authorities is considered as good practice.

The challenge in quantifying and monetizing the environmental benefits and losses arise in an economic assessment. Thus one could perform a multi-criteria analysis which might produce more relevant information and results than a cost-benefit analysis. This method can enable to consider a wide range of criteria¹⁰⁰, with not only monetary indicators, and can therefore lead to better informed decisions. In the event of two analyses being performed separately to assess the benefits and losses to the environment and the welfare effects, one should keep in mind that a methodology will need to be designed in order to compare the results of both analysis and perform the final judgement on the overall benefits. Regardless of the methodology and assessment tool which is applied to make a judgement, it should be noted that the assessment of economic and social welfare is linked to the environmental one, and its justification needs to be transparent and accountable.

⁹⁷ http://ec.europa.eu/environment/sustainable-development/SDGs/implementation/index_en.htm

⁹⁸ <http://ec.europa.eu/environment/water/water-framework/economics/pdf/Guidance%201%20-%20Economics%20-%20WATECO.pdf>

⁹⁹ For assessing benefits or comparing benefits, inspiration can be found in the Guide to Cost-Benefit Analysis of Investment Projects - Economic appraisal tool for Cohesion Policy 2014-2020: http://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/cba_guide.pdf

¹⁰⁰ Also the use of results from mapping and assessment of ecosystems and their services (MAES process), if available, may be useful in that context; See: <http://biodiversity.europa.eu/maes>

Case study 9: Criteria Catalogue for Hydropower

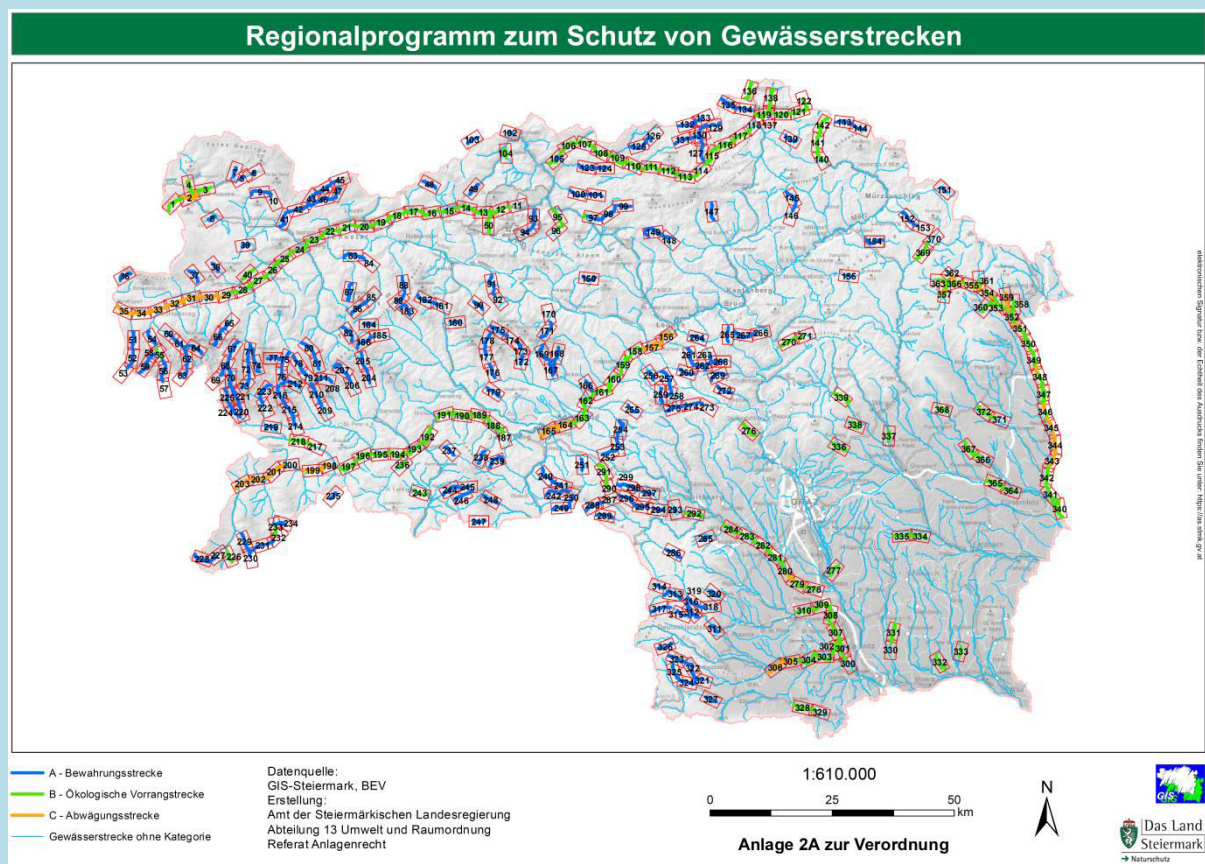
Country: Austria (AT)

Austria has laid down principles for hydropower development in the first RBMP as well as the “Criteria Catalogue for new hydropower development” (Österreichischer Wasserkatalog: Wasser schützen – Wasser nutzen. Kriterien zur Beurteilung einer nachhaltigen Wasserkraftnutzung) which is a decision support system as basis for regional planning. The main goals of the catalogue are:

- to assist water authorities in weighing the diverse public interests
- to summarise technical knowledge on most relevant aspects (energy management, ecology and other relevant water management aspects)
- give information on the criteria to assess the ecological value of WBs
- to ensure an Austrian wide common understanding and application of Art. 4 (7) test
- to assist transparency
- supporting tool - not forestalling the final decision of authorization body
- additional support for the assessment of better environmental options
- basis for further strategic planning for hydropower development on regional level
- will help hydropower planners to evaluate at a very early stage the chances of a new project to get an approval before detailed project planning is done

In order to implement this approach, in a first step the development of the criteria catalogue was included as a measure in the Program of Measures (PoM) of the 1st River Basin Management Plan to be used for weighing public interests in case of status deterioration (Article 4(7) WFD) as well as a basis for regional planning of hydropower development. The catalogue was published by the Ministry and provided to the regional authorities as an order for application (Erlass).

As an example for the second step (practical application), the regional program from the provincial government of Styria is provided, outlining "preservation stretches", "ecological priority stretches", and "weighing stretches" (see map).



Links:

https://www.bmlfuw.gv.at/wasser/wasser-oesterreich/wasserrecht_national/planung/erneuerbareenergie/Kriterienkatalog.html and <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrStmk&Gesetzesnummer=20001250>

5.5 Relationship to the River Basin Management Plans

Article 4(7) exemptions are linked to a number of issues with the River Basin Management Plans. The main ones are outlined as follows.

5.5.1 Reporting in the River Basin Management Plans

Article 4(7)(b) includes a general provision that *"the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years"*. Furthermore, WFD Annex VII A.5, A.7 and B1 is referring to Article 4(7) exemptions and the need to report them in the RBMP. The core rationale behind these requirements is to support the public participation process and to ensure that the use of exemptions is made transparent and traceable, allowing for public scrutiny. The public participation process can also be useful in other terms, e.g. for determining overriding public interest due to feedback provided by relevant actors and stakeholders if potential Article 4(7) cases are included in the draft RBMPs.

Guidance Document No. 20 outlines in this context that this is a reporting obligation and does not mean that Member States must wait until the publication of the River Basin Management Plan before allowing a new physical modification or new sustainable development activity to proceed. In many cases projects will be developed within the RBMP six year cycle.

For modifications and alterations within the scope of the Environmental Impact Assessment Directive, Member States must ensure that the public concerned is given the opportunity to express an opinion before the project is initiated.

Even if timing of a project is such that consultation on the RBMPs will not provide the opportunity for interested parties to express their views in advance of those decisions, Article 14 requires Member States to encourage the active involvement of all interested parties in the implementation of the Directive. It is recommended that Member States ensure that such opportunities¹⁰¹ are provided in relation to projects that are outside the scope of the Environmental Impact Assessment Directive but likely to result in deterioration of status or to prevent the achievement of good ecological status, good ecological potential or good groundwater status.

The information provided through such consultations will help Member States in reaching a judgment on whether the exemption conditions are met and will reduce the likelihood that interested parties will challenge the subsequent decision.

If a modification or alteration goes ahead part way through a river basin management planning cycle, the reason for that modification or alteration must be set out in the subsequent (update of the) RBMPs.

Furthermore, the PCI Guidance¹⁰² for energy infrastructure Projects of Common Interest, which is a Commission Guidance, provides some further direction, outlining that *"where a project is put forward in the middle of the 6 years cycle and was not included in the previous RBMP, under strict and short time limits, Member States will be de facto amending their RBMPs and with no public consultation."*

¹⁰¹ Note that the provisions of the Aarhus Convention can be relevant in that context.

¹⁰² Guidance on Streamlining environmental assessment procedures for energy infrastructure Projects of Common Interest (PCIs), https://ec.europa.eu/energy/sites/ener/files/documents/20130919_pci-en-guidance.pdf

Therefore, the preferred course of action would be to formally update the existing RBMPs. An alternative would be to rely on a proper ad hoc public consultation, e.g. using the EIA process or other proper consultation. (...) Failing to carry out a proper public consultation could run the risk that Member States lose sight of the links between the proposed project and other water uses in the basin or that citizens are partly deprived of their right to be consulted as provided under the WFD. It is therefore recommended that time limits for the consultations are sufficient to allow a proper consideration of the project in the RBMP context. In cases where the projects are developed in the middle of the WFD planning cycle, they will then need to be included in the subsequent RBMP, which will be subject to public consultation in its entirety."

In addition, the following information can be considered as useful to be included the RBMPs (and the draft RBMPs) that is available at the time of publishing the plans:

- Potential 4(7) cases before the project is assessed or where assessment is ongoing, e.g. flood protection measures outlined in the FRMP, other infrastructure projects (e.g. navigation, hydropower, irrigation schemes) which may be subject to an Article 4(7) Test, or other projects for which an authorisation procedure was launched;
- Other projects which may have effects on water body status/potential but which may not trigger, individually, an Article 4(7) Test;
- Information on potential interaction with existing pressure and uses in the basin;
- Information and links to relevant background documents;

An added value can also be information in the RBMP about projects where an Article 4(7) Test was not required (since the proposed project was assessed to not cause a deterioration / non-achievement of good status / potential). This information can inter alia be relevant for the update of the review of the environmental impact of human activity and the economic analyses required under WFD Article 5 and Annex III. Here in particular for the identification of pressures, the assessment of impacts and the risk of failing to achieve the environmental objectives. It can also be useful for transparency reasons, i.e. if information is requested by interested parties¹⁰³.

Case study 10: Instruction of the Spanish Water Director in relation to Article 4(7)

Country: Spain (ES)

Spain has developed technical Instruction that applies to all interregional RBDs in the country. The instructions establish a technical procedure to analyse new modifications of physical characteristics of water bodies, new sustainable human development activities and alterations to the level of groundwater bodies that could lead to the consideration of possible art 4(7) exemptions. For each potential Art 4(7) case a fact sheet needs to be filled out.

The final factsheet that has to be included in the RBMP as a summary of the 4(7) evaluation. It can be used as a summary (that can be used in the public participation process) but also as a check list for water planning officers to follow all the steps of a complete analysis. Furthermore, it enables to compile all the information as structured data in a computer system.

Links: <https://circabc.europa.eu/sd/a/f72ae44f-23e3-4cb6-9cba-74a79bf5c331/19> - MS Spain - 4.7 Case Study 1.pdf

¹⁰³ See for example Court Case C-75/08, concerning the EIA Directive, available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=73330&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=194020>

5.5.2 Article 4(7) and the designation of heavily modified water bodies (HMWB)

If Article 4(7) is applied for a new modification to the physical characteristics of a surface water body (hydromorphological alteration), a water body might then qualify to be designated as HMWB in the next RBMP where the water body is deteriorated / cannot reach Good Ecological Status.

Guidance Document No. 20 outlines in this context that after a new hydro-morphological alteration has occurred, it may be that the water body qualifies for designation as a heavily modified water body in accordance with Article 4(3) in the next planning cycle. There is no requirement that the designation has to wait until the publication of the next River Basin Management Plan. However, water bodies cannot be designated as HMWBs before the new modification has taken place because of the anticipation of the significant hydro-morphological alteration.

After the application of Article 4(7) and in case of designation of new HMWBs, the step by step approach developed within the HMWB guidance document should be applied without the "provisional identification-step".

There are similarities between the Article 4(7) exemption and HMWB designation test, addressing e.g. physical modifications or requiring mitigation measures. CIS Guidance Document No. 4 already outlines that HMWB designation tests according to Article 4(3) can become relevant for newly modified water bodies, for instance for water bodies that have become substantially changed in character as a result of the application of the Article 4(7) derogation¹⁰⁴. Therefore it can be reasonable to ensure coherence between the required assessments under Article 4(7) and the tests according to Article 4(3). At the same time, a new hydro-morphological alteration will not always lead to a designation of the respective water body as heavily modified (e.g. in case of deterioration from high to good).

Once a water body is designated as HMWB following the Article 4(7) exemption and Article 4(3) test, HMWB designation needs to be checked every 6 years in subsequent RBMPs whether the requirements for HMWB designation and GEP are achieved. This is required for proving if new approaches and possibilities for mitigating impacts might have emerged which have to be considered.

In case an Article 4(7) exemption is granted for a new physical modification in an existing HMWB (see chapter 0), the ecological potential of this water body might subsequently need to be re-defined based on the WFD 6-years planning cycle to take account of the additional physical modification.

5.5.3 Relationship of Article 4(7) to Article 4(4) and 4(5)

In case the Article 4(7) criteria are met it is possible to apply Article 4(7) exemptions under the first limb (new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater) to water bodies which are already subject to exemptions under Article 4(4) or 4(5). This question is not relevant for exemptions under the second limb (new sustainable human development activities) since it only applies to deterioration of surface water bodies from high to good status, for which there is no need to consider the application of exemptions under Article 4(4) or 4(5).

¹⁰⁴ See chapter 8.3.2 of CIS Guidance Document No. 4: [https://circabc.europa.eu/sd/a/f9b057f4-4a91-46a3-b69a-e23b4cada8ef/Guidance%20No%204%20-%20heavily%20modified%20water%20bodies%20-%20HMWB%20\(WG%202.2\).pdf](https://circabc.europa.eu/sd/a/f9b057f4-4a91-46a3-b69a-e23b4cada8ef/Guidance%20No%204%20-%20heavily%20modified%20water%20bodies%20-%20HMWB%20(WG%202.2).pdf)

There can be cases where the application of Article 4(4) or 4(5) exemptions may need to be justified following the application of an Article 4(7) exemption and modification of a water body. An example can be to apply an Article 4(7) exemption for a new modification which deteriorates water status, followed by an Article 4(4) exemption based on natural conditions since it takes the ecosystem longer to recover although the necessary mitigation measures to reach good status are implemented (see also chapter 3.3.1 in this context). Similarly, in case Article 4(7) is applied for an alteration to the level of groundwater, exemptions according to Article 4(4) or 4(5) will have to be justified in the following river basin management planning process according to their distinct conditions and reviewed every 6 years. Therefore it can be reasonable to ensure coherence between the required assessments and tests under Article 4(7) and the required assessments according to Article 4(4) or 4(5).

Take note that the application of Article 4(7) exemptions on water bodies which are subject to Article 4(4) or 4(5) exemptions does not obviate the need for measures to improve status. The drivers and pressures that underpin the application of Article 4(4) or 4(5) still need to be addressed what may or may not be influenced by a new modification for which an Article 4(7) exemption is applied.

Inter-relations with existing pressures from other uses on a water body need to be considered. A typical example could be a water body where an Article 4(4) exemption is applied due to nutrient pollution from agriculture (for a phased implementation of measures taken by the polluter addressing the existing pressure) and at the same time an Article 4(7) exemption is applied for a new modification. Generally the impacts of nutrient pollution may not be affected but in some cases, and depending on the nature of the new modification, it may actually make impacts of pollution worse (e.g. hydromorphological changes that affect the capacity of the ecosystem to absorb nutrients). Therefore, it should be considered how mitigation measures for a new project can be combined and interact with other measures necessary to improve status (e.g. a fish ladder combined with morphological measures for habitat recreation and ecological flow requirements).

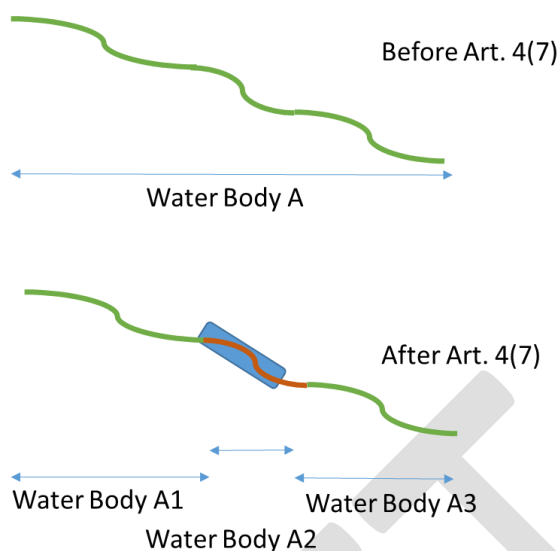
5.5.4 Change in water body delineation and/or typology due to an Article 4(7) exemption

Once the project is implemented, a change in water body delineation might be required (for subsequent RBMPs). According to CIS Guidance Document No. 2¹⁰⁵, physical features (geographical or hydromorphological) that are likely to be significant in relation to the objectives of the Directive should be used to identify discrete elements of surface water. It further makes clear that HMWBs should be designated as single water bodies. In other words, depending on the water body size before the application of Article 4(7), a further split into water bodies might be needed. For the water bodies that result from the split, a reassessment in terms of objectives and exemptions is needed, considering what was applied in the previous RBMP.

¹⁰⁵

<https://circabc.europa.eu/sd/a/655e3e31-3b5d-4053-be19-15bd22b15ba9/Guidance%20No%20-%20Identification%20of%20water%20bodies.pdf>

2004 **Figure 7: Changing water body designation due to the application of Article 4(7)**



2005

2006 In cases where water bodies are grouped, such a grouping might not be longer possible after a

2007 modification has taken place as the criteria for grouping (contiguous elements of surface water within a

2008 type are of the same status)¹⁰⁶ will not be longer given.

2009 Note that the need for an update of the typology might also stem from measures for the improvement

2010 of water body status, e.g. by re-introducing natural processes (e.g. removal of a sluice, re-introducing

2011 tidal processes) leading to a change of the water body type.

2012 **5.5.5 Article 4(7) in a transboundary context**

2013 Transboundary coordination is a key issue for international river basins and addressed by the WFD.

2014 Article 3.4 outlines that *“Member States shall ensure that the requirements of this Directive for the*

2015 *achievement of the environmental objectives established under Article 4, and in particular all*

2016 *programmes of measures are coordinated for the whole of the river basin district. For international*

2017 *river basin districts the Member States concerned shall together ensure this coordination and may, for*

2018 *this purpose, use existing structures stemming from international agreements”*.

2019 This is of particular relevance in cases where a proposed project requires Article 4(7) assessments for

2020 water bodies which form the border between two countries, where the water body is crossing the

2021 border, or where the proposed project might cause transboundary impacts in more than one water

2022 body. Practical examples might be flood protection measures, hydropower plants or water abstraction

2023 from transboundary groundwater bodies. In such cases the Member States concerned need to

2024 coordinate the Article 4(7) Applicability Assessment as well as Article 4(7) Test, ensuring that

2025 common/coordinated procedures, thresholds and methodologies are used. Bilateral and multilateral

2026 transboundary river basin commissions might act as facilitators of such coordination¹⁰⁷.

¹⁰⁶ See Guidance document number 2, available at: <https://circabc.europa.eu/sd/a/655e3e31-3b5d-4053-be19-15bd22b15ba9/Guidance%20No%20-%20Identification%20of%20water%20bodies.pdf>

¹⁰⁷ See also the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes and the UN Watercourses Convention in that context.

2027 **6 OUTLOOK AND FOLLOW-UP**

2028 The guidance aims to further clarify different aspects in relation to the practical application of
2029 exemptions to the environmental objectives according to WFD Article 4(7). While many issues gained
2030 in clarity and understanding, the constraints of the CIS process are also recognised, since for many
2031 aspects no "one-size-fits-all approach" can be elaborated in the frame of the CIS, requiring more
2032 specific attention, methodologies, tools and suitable approaches at Member State level.

2033 Therefore, the practical application of the guidance would benefit from further follow-up activities,
2034 potentially covering a range of topics. These can include for instance the following:

- 2035 • Exchange on experiences with assessments whether a planned project is expected to cause
2036 deterioration or jeopardize the achievement of the WFD objectives (Applicability Assessment);
- 2037 • Assessments of the cause-and-effect relationships between modifications/alterations and
2038 different quality elements;
- 2039 • Exchange of practical experiences on aspects related to the Article 4(7) Test itself, e.g.
2040 exchange on mitigation measures for different modifications, assessing alternative options,
2041 weighing of interests/overriding public interest, etc.;
- 2042 • Strategic planning approaches for different sectors and linkage to the WFD and Article 4(7)
2043 assessments, including sector-specific workshops;
- 2044 • Streamlining of assessments with other Directives;
- 2045 • Administrative settings at Member State level for project authorisation.

2046 The CIS process can provide an appropriate framework for such potential follow-up activities.
2047 Therefore some of these issues may be given specific attention when developing the next CIS work
2048 programme. However, it may also be explored whether other coordination mechanisms and supporting
2049 tools might provide opportunities for a continued follow-up exchange and capacity building.

2050

2051

2052

2053

2054 **ANNEX A: Comparative overview table WFD, HD, EIA and SEA Directive**

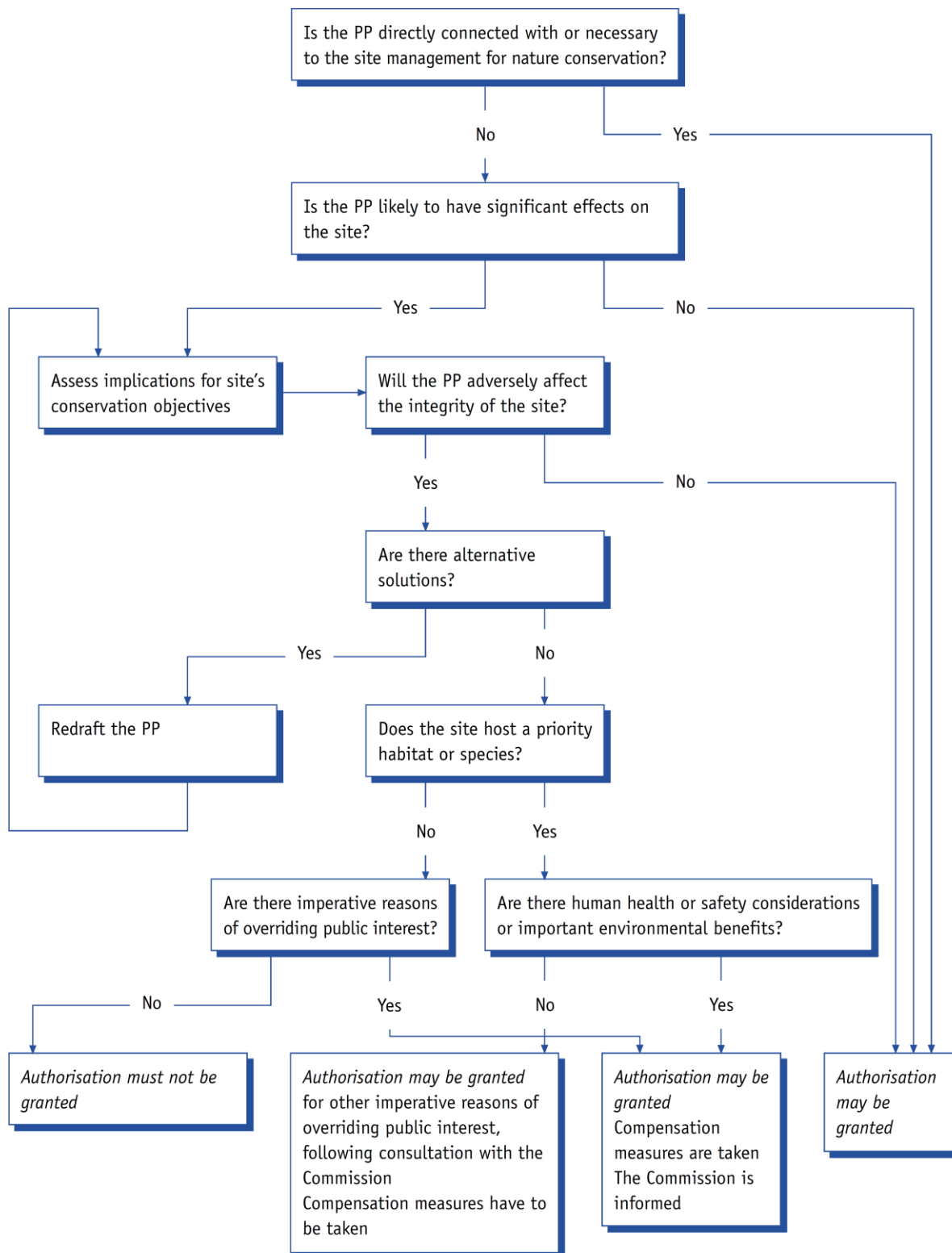
Legislation	WFD 2000/60/EC	Habitats Directive 92/43/EEC	EIA Directive 2011/92/EU	SEA Directive 2001/42/EC
Aims of the procedure	The Directive aims at maintaining and improving the aquatic environment. The Directive requires that Member States implement measures to prevent deterioration of the status and to achieve good status of all water bodies. The planning of "new modifications" requires the carrying out of an assessment of the impacts on the status of the affected water bodies. If the new modification is liable to cause deterioration or prevent the achievement of good status, the competent authority needs to ensure that the conditions of Article 4.7, but also 4.8 and 4.9, are met before granting the project authorisation.	The Habitats Directive aims to contribute towards ensuring biodiversity through the conservation of natural habitats and wild fauna and flora. It requires Member States to take measures to maintain or restore habitats and species to a favourable conservation status, including through the establishment and conservation of sites (SCIs and SACs) for the Natura 2000 network. The Birds Directive 2009/147/EC contains similar provisions for wild birds. SPAs classified under the Birds Directive form part of the Natura 2000 network. Art. 6 of the Habitats Directive lays down the requirements for the management and protection of the Natura 2000 sites. Art. 6(3) and (4) establish a procedure for the assessment and authorisation of plans or projects that may affect Natura 2000 sites. The aim to maintain the integrity of the Natura 2000 sites and the overall coherence of the network.	To ensure a high level of protection of the environment and of human health, through the establishment of minimum requirements for the environmental impact assessment of projects. Hence, Member States shall adopt all measures necessary to ensure that, before development consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment (Article 2(1)).	To provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment (Article 1).
Types of developments covered	Any project and activity that can lead to deterioration or otherwise affect the status/potential of a water body. Article 4(7) allows under certain conditions for exemptions for new modifications to the physical characteristics of a surface water body, alterations to the level of a groundwater, or new sustainable human development activities. Even if certain projects are not covered by the EIA Directive, Article 4(7) may apply. The determining factor is whether the project is liable to cause deterioration of the status/potential of the affected water bodies or prevent the achievement of good status/potential. Some measures to improve status may fall within the scope of the EIA Directive and hence require an EIA (e.g. urban waste water treatment plants).	Any plan or project likely to have adverse effect on a Natura 2000 site	Projects listed in Annex I, EIA Directive. Annex II projects determined on a case by case basis and/or through thresholds or criteria.	All plans and programmes and their modifications: (a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to the EIA Directive or (b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of the Habitats Directive. Other plans and programmes (P/P), P/P for the use of small areas at local level or minor modifications to P/P determined on a case by case basis and/or by specifying types of P/P.
Screening	No specific prescription, however, the step of the Art. 4(7) process where it is determined whether a new modification/alteration/new sustainable human development activity may affect water body status/potential. If the results of the screening step indicate that no significant effects are to be expected, there is no need to carry out further assessments.	The step of the Art. 6(3) process where it is determined whether a project or a plan is likely to cause significant effects to a Natura 2000 site, either alone or in combination with other plans and projects, corresponds to what is commonly called "screening procedure". If the results of the screening step indicate that no significant effects are to be expected, there is no need for an AA to be carried out.	Annex I of the EIA Directive lists projects for which the EIA is mandatory. For projects listed in Annex II of the Directive, the Member States have to determine if an EIA should be undertaken, based on the characteristics of the project; through a case-by-case examination and/or setting thresholds or criteria⁷. This is known as "screening procedure". The screening have to take into account the criteria set in Annex III, i.e. the characteristics of the project; its location, and the characteristics of the potential impact.	Identify whether a plan or programme is a "plan or programme" as defined by Article 2(a) and whether it is likely to have significant environmental effects (Article 3(4)). If the answer to both of the above is "yes" then the plan or programmes will require SEA.

Legislation	WFD 2000/60/EC	Habitats Directive 92/43/EEC	EIA Directive 2011/92/EU	SEA Directive 2001/42/EC
Scope and level of detail of the environmental information	No specific prescription, however, scoping aims to identify the assessments which are needed to determine the effects on water body status/potential at quality element level.	Although not explicitly mentioned, scoping is accepted as good practice and aims to precisely identify the issues that the AA should cover, as well as the appropriate information to gather.	Scoping is not mandatory, but accepted as good practice.	Mandatory requirement to consult designated authorities on the "scope and level of detail of the information which must be included in the environmental report"(Article 5(4)).
	Information is needed about the status of the quality elements that form the definition of ecological status (e.g. fish, macroinvertebrates, etc.) and the potential impact of the project on those. This is the first assessment that needs to be carried out, to assess whether the project may deteriorate status or prevent the achievement of good status. If this is the case, then the project cannot be authorised unless the conditions in article 4(7) are fulfilled. In Article 4.7 it is indicated that it is necessary to demonstrate that the beneficial objectives served by the modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option. Those means or alternative solutions could involve alternative locations, different scales or designs of development, or alternative processes. Alternatives should be assessed in the early stages of development and at the appropriate geographical level against a clear view of the beneficial objectives provided by the modification. For projects under its scope, the use of the requirements of the EIA Directive can help to assess the different possible alternatives. Additional conditions are that the project is of overriding public interest (similar concept as used in the Habitats Directive) or that the projects benefits outweigh the impacts of not achieving the WFD objectives. In addition, all practicable mitigation measures need to be included in the project. Again the EIA procedures can be helpful to identify adequate mitigation measures. It is important to realise that the WFD is only concerned about permanent impacts at water body level, whereas the EIA also deal with local impacts of temporary nature.	If it cannot be excluded, following the screening, that the plan or project will have a significant effect on the site, an Appropriate Assessment is required. The focus of the AA is on the conservation objectives of the site, which relate to the species and habitat for which the site was designated. (NB: Although the HD does not specify the content of the AA, this is clarified through relevant Commission guidance drawing on Court rulings). All kinds of effects, including cumulative, have to be assessed. Any possible mitigation measures (e.g. in relation to location of the project, timing of operations, construction method, etc.) can be considered in the context of the AA so as to avoid adverse effects on the integrity of the site. In case of a negative conclusion of the AA, the provisions of Art. 6(4) may apply and they define key elements to be considered (alternative solutions, imperative reasons of overriding public interest, compensation measures). (NB: These elements are clarified in relevant Commission guidance on Article 6 of the Habitats Directive. The examination of alternatives does not fall within the scope of Article 6(3) but within the scope of Article 6(4) (C-441/03, C-241/08).	The environmental impact assessment report to be provided by the developer for a project should include a description of reasonable alternatives studied by the developer which are relevant to that project, including, as appropriate, an outline of the likely evolution of the current state of the environment without implementation of the project (baseline scenario), as a means of improving the quality of the environmental impact assessment process and of allowing environmental considerations to be integrated at an early stage in the project's design (Article 5(d), Annex IV, EIA Directive as amended).	The environmental report shall be prepared and it shall identify, describe and evaluate "reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme" (Article 5(1)).
Public participation and consultation	One of the conditions of article 4(7) is that the reasons for the project are specifically set out and explained in the river basin management plan, which is compulsory subject to a 6 months public consultation. This provision allows consultation of the project in the context of the plan, which enables the assessment of interactions with other	Not obligatory in the context of decision making under Art. 6(3) but encouraged ("if appropriate").	The authorities likely to be concerned by the project by reason of their specific environmental responsibilities or local and regional competences are given an opportunity to express their opinion on the information supplied by the developer, and on the request for development consent. The public shall be informed electronically and by	The draft plan or programme and the environmental report shall be made available to (i) the authorities which by reason of their specific environmental responsibilities are likely to be concerned by the environmental effects of implementing the plans and programmes and (ii) the public. The

Legislation	WFD 2000/60/EC	Habitats Directive 92/43/EEC	EIA Directive 2011/92/EU	SEA Directive 2001/42/EC
	new projects and existing water uses in the basin.		public notices or by other appropriate means. (Article 6(1)-(2)). The public concerned shall be provided with access to the information described in Article 6(3) (a)-(c) within reasonable time-frames. The public shall be given early and effective opportunities to participate in the environmental decision making procedures.	authorities and the public shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme (Article 6 (1)-(2)).
Decision-making	The environmental objectives are binding for plans and projects. This means that if a new project is liable to cause deterioration of status or prevent the achievement of good status in the affected water bodies, the authorities are bound to refuse the authorisation unless the conditions in article 4(7) are fulfilled.	The results of the AA are binding, i.e. the competent authorities can authorise the plan or project only if the AA concludes that it will not adversely affect the integrity of a Natura 2000 site. However, if the AA concludes that adverse effects cannot be ruled out, the competent authority must be satisfied that all conditions set out in Article 6(4) are met (there are no alternative solutions, there are imperative reasons of overriding public interest, compensation measures for damage have been found to ensure coherence of the Natura 2000 network. In that case the Commission must be informed, and, in specific circumstances, give an opinion.	The objective of an EIA is to describe the potential environmental impacts of a project, to ensure that results of consultations and information gathered during the EIA process is duly taken into account in the decision making process and to inform of the final decision taken. (Article (8), (8a) and (9)).	The environmental report, the opinions expressed and the results of any transboundary consultations, shall be taken into account during the preparation of the plan or programme and before its adoption or submission to the legislative procedure (Article 8). When a plan or programme is adopted Member States shall ensure that the authorities which by reason of their specific environmental responsibilities, the public and any Member State consulted in a transboundary consultation are informed and the information described in Article 9(1) (a)-(c) is made available.
Monitoring	The WFD includes the requirement to establish monitoring programmes for the monitoring of water status in order to establish a coherent and comprehensive overview of water status within each river basin district (Article 8 and Annex V).	Considered good practice. In particular, monitoring of the mitigation or compensation measures will be important to ensure their effectiveness with regard to their objective (respectively no adverse effects on the integrity of the site, or maintenance of the coherence of the network).	Member States shall ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are implemented by the developer, and shall determine the procedures regarding the monitoring of significant adverse effects on the environment. The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment. Existing monitoring arrangements resulting from Union legislation other than this Directive and from national legislation may be used if appropriate, with a view to avoiding duplication of monitoring. (Article 8a(4)). Where appropriate the monitoring measures shall be incorporated in the decision to grant development consent (Article 8a (1)(b)).	Member States shall monitor the significant environmental effects of the implementation of plans and programmes in order, inter alia, to identify at an early stage unforeseen adverse effects, and to be able to undertake appropriate remedial action" (Article 10(1)). The Environmental Report shall include "a description of the measures envisaged concerning monitoring" (Annex I (i)). Monitoring allows the actual significant environmental effects of implementing the plan or programme to be tested against those predicted. It thus helps to ensure that any problems which arise during implementation, whether or not they were foreseen, can be identified and future predictions made more accurately. As good practice monitoring can be integral to compiling baseline information for future plans and programmes, and to preparing information which will be needed for EIAs of projects.

ANNEX B: Flow chart of the Article 6(3) and 6(4) procedure of the Habitats Directive

CONSIDERATION OF A PLAN OR PROJECT (PP) AFFECTING A NATURA 2000 SITE



Feedback Form on CIS Guidance Document on Art 4(7) – Draft 2

Dear expert,

A **second draft version of CIS Guidance Document on Article 4(7)** was provided to you for feedback and consultation.

Please use this form for the provision of feedback and comments on the second draft version. For the further elaboration and treatment of your comments, it is important that all your requests for modification are duly justified and argued. Other ways of feedback will not be considered.

For logistical reasons allowing processing the feedback, please note that **only comments can be considered which were provided via this commenting form**. Please send this form only in word format.

Please also indicate in the feedback form **in case you are able to provide specific practical experiences and case studies** on particular elements as input for the further elaboration of the Guidance.

You are asked to send your comments via this form **latest by 7 July 2017** to Raimund.MAIR@ec.europa.eu and thomas.dworak@fresh-thoughts.eu.

Your comments will be taken into account for the elaboration of a third draft version of the Guidance, which is planned to be provided in Autumn 2017 and further discussed at the next meeting of the Ad-hoc Task Group (ATG) on the Article 4(7) Guidance.

Many thanks for your efforts.

Co-chairs of the ATG on Article 4.7

Member State:	Germany
Organisation:	BDI
Contact person:	Catrin Schiffer
Contact Email for queries:	catrin.schiffer@bdi.eu
Phone number:	0049 30 2028 1582

Comments

[please add rows as appropriate]

Line nr. in draft 2 of the guidance	Comment/change request	Justification of the comment/change request
General comment on the second draft	The Guidance Document must not be drawn up on a one-sided basis by representatives of environmental authorities and associations. Rather, representatives of the affected industrial sectors must also be involved in the drafting process so that they can also input their experience and know-how in coming to grips with the exemption situations regulated in article 4(7). Only in this way can the Guidance Document be drafted in a balanced way, and this is precisely what is set out in the terms of reference for the CIS Adhoc Task Group (ATG) Guidance on implementation of article 4(7) under the heading “working method”. The composition of ATG should meet this self-imposed requirement and we therefore wish that stakeholders from the affected industrial sectors will be included in ATG and their insights taken into consideration.	The primary expectation of a Guidance Document with such a title is that it will highlight ways in which the conditions for an exemption as specified in article 4(7) of the EU Water Framework Directive (WFD) can be met. This expectation obtains all the more since ECJ handed down a strict interpretation of the deterioration ban in its ruling of 1 July 2015 (C-461/13, known as the Weser dredging ruling) in relation to a surface water body (SWB) and decided additionally that a deterioration ban and an enhancement requirement are conditions for the authorisation of every individual project. In this regard, the strict interpretation is significant with a greater degree of relevance for water-related projects. As a result, these projects are highly dependent on the presence of the conditions for an exemption. The draft Guidance Document does not live up to this expectation. Instead, it gives the impression that it actually wants to restrict the applicability of article 4(7) EU WFD. Furthermore, the ECJ ruling of 4 May 2016 (C-346/14, known as the Schwarze Sulm ruling) points in the direction of Member States being granted wide discretion for the application of article 4(7) EU WFD. The draft Guidance Document also gives the impression of wanting to go beyond questions linked to implementation of EU WFD – in contrast to the original idea of the Common

		Implementation Strategy (CIS). Some of the ideas discussed go well beyond the rules governing article 4(7) EU WFD. The Guidance Document must not be drawn up on a one-sided basis by representatives of environmental authorities and associations. Rather, representatives of the affected industrial sectors must also be involved in the drafting process so that they can also input their experience and know-how in coming to grips with the exemption situations regulated in article 4(7). Only in this way can the Guidance Document be drafted in a balanced way, and this is precisely what is set out in the terms of reference for the CIS Adhoc Task Group (ATG) Guidance on implementation of article 4(7) under the heading “working method”. The composition of ATG should meet this self-imposed requirement and we therefore wish that stakeholders from the affected industrial sectors will be included in ATG and their insights taken into consideration.
115 ff.	The statement “This document aims at guiding experts and stakeholders in the implementation of the Directive 2000/60/EC establishing a framework for Community action in the field of water policy - the Water Framework Directive (WFD)” is misleading inasmuch as the document addresses the existence of exemption situations in accordance with article 4(7) WFD whereas an analysis of management objectives is not taken into consideration. However, the scope of and conditions for exemptions cannot be determined in a sensible way without a position being taken on the regulatory content of the management objectives.	
178ff.	It is wrongly postulated that the environmental objectives in isolation are the core of EU WFD. Rather, it is correct that the environmental objectives are subject to the express	

	reservation of the exemption situations regulated in article 4(4) to (7), as specified in article 4(1). Hence, the exemptions form part of the environmental objectives	
238 ff. Chapter 2	In the list of bullet points the following should be added: • Industry policies such as [...] • Policies regarding the extraction of raw materials in Europe – i. e. The Raw Material Initiative. Consequently under chapter 2 subsections for the industry and the raw material extraction should be introduced. With respect to energy supply, it is not only renewable energies that should be addressed in their own sub-chapter (cf. chapter 2.2), as these are not safely available in the sense of the EU Energy strategy defined in the preceding sentence. It should rather be explained that conventional energies and energy generation installations (power plants and domestic energy extraction) will also be needed as a back-up form of energy for the foreseeable future in order to guarantee a secure energy supply and thus that impacts for bodies of water are also unavoidable.	EU programmes with a focus on security of energy supply, industry, raw material extraction, agriculture and jobs are missing from the list of bullet points. With respect to energy supply, it is not only renewable energies that should be addressed in their own sub-chapter (cf. chapter 2.2), as these are not safely available in the sense of the EU Energy strategy defined in the preceding sentence. It should rather be explained that conventional energies and energy generation installations (power plants and domestic energy extraction) will also be needed as a back-up form of energy for the foreseeable future in order to guarantee a secure energy supply and thus that impacts for bodies of water are also unavoidable.
430-432	Lines 430-432 should be deleted.	At the beginning of chapter 2.6. a new paragraph on COP Paris has been introduced. This is a political statement and has nothing to do with the Water Framework Directive. Therefore the new paragraph under lines 430-432 should be deleted.
563 - 567	The statement “it follows that if the conditions are not fulfilled and the article 4 (7) test fails, the project cannot be authorized under the WFD.” fails to acknowledge that under certain circumstances, it must also be possible to grant a derogation	The statement “It follows that if the conditions are not fulfilled and the article 4 (7) test fails, the project cannot be authorized under the WFD.” Is not acceptable. It disregards the fact that an exemption must also be possible under

	on proportionality grounds in respect of the literal wording of Art. 4(7) if the management goal requirements and prohibitions are to be interpreted very narrowly. Clarification in this regard should be introduced into the Guidance Document.	certain circumstances for reasons of proportionality, beyond the narrow wording of article 4 (7) WFD. As a general rule, European Union law allows exemptions beyond the wording of the text of a directive. ECJ has confirmed this in its case law. Inter alia in its case law on conservation of natural habitats: In the case of the Finnish wolf in particular (Case C-342/05), the ECJ, following Advocate General Kokott, recognized the possibility of a derogations that goes beyond the wording of the Natural Habitats Directive. The advocate general opined that the court had already decided in respect of the law on nature conservation that exceptional grounds may justify detriment to legally protected interests in the natural world even if this would not be possible according to the text of the relevant directive provisions. She added that in practical terms, it is a question of applying the principle of proportionality, which is not restricted, with regard to the possible objectives of derogations, to the list of grounds set out in the directive (opinion delivered on 30 November 2006, Case C-342/05, juris, paragraph 52 ff.).
581 ff.	Once again, the environmental objectives are presented in isolation as overriding principles without incorporation of the expressly reserved exemption provisions (see chapter 1.3).	
601/602 Chapter 3.1.	Under line 601 the text should be modified as follows: “In contrast to surface water bodies, chemical status of groundwater bodies is not only defined by conductivity and concentrations of pollutants. Moreover, it has additionally to	The statement relating to groundwater “Quantitative status is defined by the groundwater level regime and chemical status by conductivity and concentrations of pollutants” is incomplete. It disregards the fact that, when the chemical status of a ground water body is assessed – and hence when a chemical alteration is evaluated in connection with the

	be taken in to account the extent to which increased pollutant content in the groundwater impacts on communicating bodies of surface water, on abstraction of drinking water or on terrestrial ecosystems dependent on the groundwater and leads to significant damage to these protected resources. ”	deterioration ban - the test is not merely about whether or not the relevant limit values are met (see line 972 – 981). This is different from the situation when the chemical status of a surface water body (SWB) is assessed. Rather, it is necessary to verify additionally the extent to which increased pollutant content in the groundwater impacts on communicating bodies of surface water, on abstraction of drinking water or on terrestrial ecosystems dependent on the groundwater and leads to significant damage to these protected resources (see WFD Annex 5, Chapter 2.3.2.). By contrast, the statement currently contained in the draft would mean an unacceptable equal treatment of SWB and GWB narrowed down exclusively to pollutant content, despite the clearly expressed wish of the European legislator that WFD should distinguish clearly between the level of protection for groundwater and for surface water (cf. Council common position 4/2006 of 23 January 2006 OJEU 2006, C 126E/1, page 14). An additional statement on the importance of the chemical status of GWB should be included in the text accordingly.
643 ff.	The restriction of “Modifications to the physical characteristics of surface water bodies” to “modifications to their hydro-morphological characteristics” is too narrow. It should be clarified in lines 643 seq. that if a chemical modification is a consequence of a physical modification of water body or of an alteration of the ground water level, this chemical modification – also in a corresponding waterbody – it can very well fall under a “modification to the physical characteristics” lead to the application of article 4 paragraph 7 first indent WFD.	The restriction of “Modifications to the physical characteristics of surface water bodies” to “modifications to their hydro-morphological characteristics” is too narrow. Such a restriction is in contradiction to the wording of the WFD. The English adjective “<i>physical</i>” can mean both morphological changes and changes relating to physical properties. Article 4(7) EU WFD refers to “<i>new modifications to the physical characteristics</i>”; annex V EU WFD talks about “<i>indicative physico-chemical quality elements</i>”. Restriction of the meaning to the “hydro-morphological quality elements” is neither appropriate nor acceptable.

		Further the exemption covers also modifications of the water quality as a consequence of physical modifications of a surface water body (and as a consequence of modifications of the groundwater level). Lines 645-647 say that the impacts may result directly from changes brought about by the modification (result) or from the modification (activity) or - - from changes in the water quality that have been caused by the modification or the modification's result. Also table 2 (under line 712) sets out in the heading "modifications to the physical characteristics of a body of surface water" for the supporting physical-chemical quality components "potential direct and/or indirect effects" and for the chemical status "potential indirect effects". Also, in the line "alteration to the level of bodies of groundwater" the table sets out potential indirect effects" for the supporting physical-chemical quality components as well as the chemical status of the surface water bodies and the chemical status of the groundwater bodies. Corresponding statements can be found in the text under the line 688/689 and 693/694. If a chemical modification is a consequence of a physical modification of water body or of an alteration of the ground water level, this chemical modification – also in a corresponding waterbody – it can very well lead to the application of article 4 paragraph 7 first indent WFD. This should be clarified. For the rest, the remarks beyond on the analogous application of article 4 para. 7 WFD (line 706-711) would also apply to the above mentioned cases.
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706 - 711. Chapter 3.2.	The paragraph “Note that Article 4(7) does not provide an exemption if deterioration caused [...] from high status to good status” should be deleted. Instead we propose a clarification: “Regarding the input of pollutants Article 4(7) provides an exemption for surface water bodies if deterioration from high status to good ecological status is caused by a new sustainable human development activity. Moreover Article 4 (7) may also provide an exemption on grounds of proportionality if deterioration caused by inputs of pollutants from point or diffuse sources drives a water body to status below good. This applies for the ecological and chemical status of surface water bodies and groundwater bodies as well.”	Since the issue under discussion here is a deterioration to a status below good, this sentence can relate only to article 4 (7) first indent EU WFD. Without any justification, it is postulated here that this exemption provision would not be applicable for any deterioration resulting from inputs of pollutants from point or diffuse sources. Such a narrow interpretation has to be rejected by reasons of proportionality. Also, it is not justified by any water management reasons. Therefore the exemption of article 4 para. 7 should – beyond its wording – also cover deterioration of the chemical status of groundwater and surface water bodies by input of pollutants from point and diffuse sources. Otherwise infringements of the deterioration ban through serious modifications to physical water properties (e.g. impoundments) could be permitted whereas infringements triggered by small inputs of pollutants from point or diffuse sources would be subjected to a blanket ban. This unjustified imbalance becomes all the more visible, that – according to line 684 ff and 692 ff, impacts on the chemical status are covered by Art. 4 (7) when caused by new physical modification of surface water bodies and alterations to the level of groundwater. A reasonable justification for such different treatment of activities with similar impacts is not obvious. It is therefore to be assumed that the European legislator would have foreseen an exemption provision also for deterioration of the chemical water properties by inputs from point and diffuse sources in the knowledge of the stringent application of the deterioration ban on chemical quality elements and/or substances flowing on from the ECJ ruling. This at least justifies analogous application of article 4(7) WFD if deterioration for the chemical status of groundwater
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		and surface water bodies is caused by input from point and diffuse sources.
717 ff.	The clarification should be widened to include projects which cause a modification which lasts longer than 6 years but is nevertheless not permanent.	It is good to make a distinction between temporary (clarification that this is not a deterioration and that it is not necessary to invoke article 4(7)) and permanent modifications (article 4(7) necessary). However, the clarification should be widened to include projects which cause a modification which lasts longer than 6 years but is nevertheless not permanent. Here, too, article 4(7) is necessary.
Line 966 Chapter 3.3.2.	This chapter should be amended to make it clear that ECJ's findings in the Weser dredging ruling cannot be transposed directly on to groundwater bodies without further discussion.	The ECJ ruling of 1 July 2015 (C-461/13, so-called Weser dredging ruling) which related to SWB is transposed directly on to GWB without any further discussion. This is inappropriate, at least in this form. ECJ's findings cannot be transposed to a deterioration in the chemical status of groundwater bodies with no questions asked. ECJ has still not established any definitive principles for determining a deterioration of the chemical status. Until this issue is clarified – by ECJ, for instance – it will continue to be the task of authorities and project promoters to find benchmarks for it. Behind this lies the issue that the probability of a GWB deterioration (only 2 status classes) is higher and hence the need for an exemption is also higher than with SWB (5 status classes). It should also be clarified that the courts have not yet decided the conditions under which a deterioration of the quantitative status of a GWB can be assumed. The Guidance Document should make an express reference to the differences in the evaluation of the ecological status of SWB on the one hand and the quantitative (and chemical) status of GWB as well as

		to the associated questionability of transposing ECJ case law.
1028 - 1030	The sentence “In this context, note that Article 4(7) does not provide an exemption if deterioration caused by inputs of pollutants from point or diffuse sources drives the water body to a status below good” should be deleted. We propose a clarification that exemptions for point and diffuse sources are also possible under certain circumstances: “Note that Article 4(7) may also provide an exemption on grounds of proportionality if deterioration of the groundwater chemical status is caused by inputs of pollutants from point or diffuse sources.”	See rationale on our comment on 706 ff
1064 ff. Chapter 3.5.	By contrast with what is specified in article 6(3) FFH, no obligation to make a cumulative assessment can be inferred from article 4(7) EU WFD and this difference should be articulated here.	This chapter is very difficult for project promoters to come to grips with. BDI is very critical of the announcement that further approaches may be added in the future on which, clearly, it is not possible for us to take a position here. However, by contrast with what is specified in article 6(3) FFH, no obligation to make a cumulative assessment can be inferred from article 4(7) EU WFD and this difference should be articulated here.
1263 et seq. 3.7.2.	This chapter should be deleted. At least it should be clarified that these are the personal ideas of the authors but not an interpretation of the provisions of WFD with practical relevance for water authorities.	All in all, numerous instruments and requirements from European environmental impact assessment and nature protection legislation are transposed on to the thematic content of WFD in this chapter, even though there is no legal basis for this in WFD.

1402-1404 Figure 6	The graphic needs to be revised. The alteration of the groundwater level needs to be included.	The graphic was adapted. By doing this, the exemption regarding the “alteration of the groundwater level” has been partly forgotten. Therefore the graphic needs to be revised and the alteration of the groundwater level should be included.
1597 et seq. 4.4.	Also economic activities should be considered as possible overriding public interest. “Raw material security” is one example for “public interests” and should be included in the list.	This section of the Guidance Document relates to the interpretation of the condition set out in article 4(7)(c): <i>“the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment or to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety and to sustainable development, and”</i> . On the question of what constitutes an overriding public interest, the draft Guidance Document refers in the first line to the FFH directive as well as the corresponding ECJ case law. In taking the approach of the FFH directive as a basis, the draft Guidance Document comes to the conclusion that it would be appropriate to include in the concept of overriding public interest uses relating to the fundamental values of citizens (health, security, environment) and fundamental policies for state and society, and actions performed to meet specific obligations of public services. By contrast, uses which serve economic activities are not set out in the draft Guidance Document. This is unacceptable and should be fundamentally revisited.

1627 - 1647	This list should be deleted in its entirety.	This list is not very helpful here because it only mentions a few examples and omits other essential examples. This gives the user of this CIS document the impression that these examples are highlighted deliberately or are even the only valid examples.
1651 to 1655	Delete these lines	It is stated here in a way that is at least misleading that a separate public consultation is necessary or appropriate for exemptions in accordance with article 4(7) or to determine the overriding public interest. However, there is specifically <u>no</u> statutory provision for public participation in the context of article 4(7) EU WFD. There is therefore a danger that the reader will be given a completely false idea of the legal situation. These passages should therefore be deleted.

General Comments

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
In general	- The new draft has developed positively in comparison with draft 1. - The guidance is still rather theoretical, though it explains the necessary assessments and processes well. Practical examples are still missing. - The paper is rather lengthy and contains a lot of already known information. Focusing it on the main issues concerning Art. 4 (7) would improve its readability and applicability. Some parts of the text are quoted from other guidance documents, e.g. from the CIS-Guidance-Document No. 20. For the purpose of streamlining this CIS-GD it's perhaps possible to refer to the other CIS-GD instead of repeating the text, e.g. lines 1716-1742.	Some formulations of the WFD are repeated quite often in the document, analyzing them from different points of view, but without new scope of action. After all Figure 4 and Figure 6 seem to be the central outcome of the document.	DE	Several requests for practical case studies have been launched. The relevant ones received have been added. The document aims to compile relevant information. Although some information might already be available in other Guidance, e.g. Guidance No. 20, it is considered as useful to have it compiled in one document in order to avoid the need to switch between several documents. Finally not all relevant actors (e.g. those not continuously involved in the CIS process) might be familiar with all other relevant documents which are available, including the contents.
General Comment on the second draft	The Guidance Document must not be drawn up on a one-sided basis by representatives of environmental authorities and associations. Rather, representatives of the affected industrial sectors must also be involved in the drafting process so that they can also input their experience and know-how in coming to grips with the exemption situations regulated in article 4(7). Only in this way can the Guidance Document be drafted in a balanced way, and this is precisely what is set out in the terms of reference for the CIS Adhoc Task Group (ATG) Guidance on implementation of article 4(7) under the heading "working method". The composition of ATG should meet this self-imposed requirement and we therefore wish that stakeholders from the affected industrial sectors will be included in ATG and their insights taken into consideration.	The primary expectation of a Guidance Document with such a title is that it will highlight ways in which the conditions for an exemption as specified in article 4(7) of the EU Water Framework Directive (WFD) can be met. This expectation obtains all the more since ECJ handed down a strict interpretation of the deterioration ban in its ruling of 1 July 2015 (C-461/13, known as the Weser dredging ruling) in relation to a surface water body (SWB) and decided additionally that a deterioration ban and an enhancement requirement are conditions for the authorisation of every individual project. In this regard, the strict interpretation is significant with a greater degree of relevance for water-related projects. As a result, these projects are highly dependent on the presence of the conditions for an exemption. The draft Guidance Document does not live up to this expectation. Instead, it gives the impression that it actually wants to restrict the applicability of article 4(7) EU WFD. Furthermore, the ECJ ruling of 4 May 2016 (C-346/14, known as the Schwarze Sulm ruling) points in the direction of Member States being granted wide discretion for the application of article 4(7) EU WFD. The draft Guidance Document also gives the impression of wanting to go beyond questions linked to implementation of EU WFD – in contrast to the original idea of the Common Implementation Strategy (CIS). Some of the ideas discussed go well beyond the rules governing article 4(7) EU WFD. The Guidance Document must not be drawn up on a one-sided basis by representatives of environmental authorities and associations. Rather,	BDI (Business Europe)	Representatives to the Article 4(7) Ad-hoc Task Group were nominated by the Strategic Coordination Group (SCG), which is the central coordinating body of the CIS, involving representatives from Member States and stakeholders. Sector representatives (e.g. from energy, transport) are actively participating in the activity since the beginning and contributing with practical experience for a balanced document. Relevant Court rulings providing further clarification are clearly referenced and taken on board in the document. The linkage to other relevant policies and legislation is outlined, as requested in the Terms of Reference for the activity.

		representatives of the affected industrial sectors must also be involved in the drafting process so that they can also input their experience and know-how in coming to grips with the exemption situations regulated in article 4(7). Only in this way can the Guidance Document be drafted in a balanced way, and this is precisely what is set out in the terms of reference for the CIS Adhoc Task Group (ATG) Guidance on implementation of article 4(7) under the heading "working method". The composition of ATG should meet this self-imposed requirement and we therefore wish that stakeholders from the affected industrial sectors will be included in ATG and their insights taken into consideration.		
General	Going forward, we wish to join the ATG and have our insights taken into consideration in future drafts.	The mining industry, in-particular, has experience and know-how in coming to grips with the exemption situations regulated in article 4(7), on which it relies for the continuation of domestic raw-material supply within the EU.	Euromines	Representatives to the Article 4(7) Ad-hoc Task Group were nominated by the Strategic Coordination Group (SCG), which is the central coordinating body of the CIS, involving representatives from Member States and stakeholders. Euromines, being a member of the CIS, is welcome to join the activity.
General	See below	The current title of the Guidance Document suggests that it should highlight ways in which the conditions for an exemption as specified in article 4(7) of the EU Water Framework Directive (WFD) can be met. Since the ECJ handed down a strict interpretation of surface water body deterioration in its ruling of 1 July 2015 (C-461/13, known as the Weser ruling), development projects are more dependent on the granting of such exemptions and updated guidance is therefore needed. The current draft, however, appears to be focussed on restricting the applicability of article 4(7) of the WFD – notably detailing ways in which Member States may wish to exceed the requirements of the WFD, without similarly detailing the wide discretion that the WFD leaves to Member States for fulfilling its objectives.	Euromines	Relevant Court rulings providing further clarification are clearly referenced and taken on board in the document. The linkage to other relevant policies and legislation is outlined, as requested in the Terms of Reference for the activity. This in order to further clarify the context. Relevant practical case studies, as far as provided, are included in order to assist in the practical application of Article 4(7).
General remark	If possible, Provide more detailed guidelines and Examples / case studies related to the implementation of Article 4.7 in coastal water to be included in the Guidance.		BG	"Tidal regime" added in section describing the meaning of "new modifications to the physical characteristics". Generally the same principles apply for coastal water bodies as for other surface water bodies. Further practical case studies have been requested from MS. The relevant ones received have been added.
General	To what extent would it be useful for the document also to present a framework for assessing activities and projects that		JB, CHAIR NAVI TG	Sub-chapter added, addressing projects outside the scope of

	will not trigger Article 4(7) but could still affect water body status – for example the widening of a road alongside a waterway could affect the chemical status of the water body through the input of PAHs even though there is no physical modification of the water body itself; similarly a development in the marine environment outside the WFD offshore limit could affect the status of an adjacent coastal water body ... This could be dealt with through the inclusion of a short new section explaining the issue and highlighting the potential usefulness of the steps set out in the so-called ‘Article 4(7) applicability assessment’ process in this wider context?			Article 4(7).
General	Suggest we say ‘proposed project or licensable activity will affect ...’ AND then (to avoid adding the words ‘and activities’ throughout the document, add a footnote to say that ‘In the remainder of this document, the term project should be taken to include other types of licensable activity with the potential to affect WFD status’		JB, CHAIR NAVI TG	Added.
General	See comments on line 855 explaining that it can be difficult to determine whether there has been a status class change, especially if the magnitude of change is very small and the existing status is close to the status class boundary.		JB, CHAIR NAVI TG	Addressed.
General comment	We welcome the initiative and the work that has been done for the preparation of draft CIS guidance document no. 35. For the guidance to be used in practice it would be helpful to make a better distinction between the context which is directly linked to the requirements of WFD directive and the context that goes beyond the requirements of WFD directive. The latter represent higher standard if a Member state chooses to take such an approach.		SI	The Guidance aims to clarify requirements and to outline good practice. The obligation to ensure legal compliance is within the responsibility of the Member States.
General	Please clarify or add	Is it necessary to apply the exemption under Article 4.7 before the realization of the project, when it was not really possible to actually detect the actual deterioration of the water body status?	CZ	The chapter on the applicability assessment provides an outline for a step-wise approach to assess whether an Article 4(7) Test is required.
General	At the end we recommend, as described above, rationalizing and effectively streamlining the requirements for the assessment of the significance impacts, on the status/potential of water bodies, on the significant new and permanent changes by introducing limit criteria, that predetermine the significance of the impact on the water body, with considering to the size of the impact of the new modification in relation to the total area or total length of the water body and its importance in relation, for example - to the existence of a site with rare species of aquatic habitats or habitats bound to water, spawning grounds, further with considering to the existing modifications in the water body - cumulative impacts etc.		SK	It seems unrealistic to agree on such criteria at EU level since it can be specific for the different MS conditions. The request for practical case studies intended to provide practical examples helping in developing appropriate criteria at MS level.

general technical comment on the figures		The figures and schemes are very important, especially those which shows the concrete steps. But comparing to the text, its' letters are too small to read. The size of them should be enlarged.	WWF	Planned to be addressed during the final editing.
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INTRODUCTION

A Guidance Document: What for?

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
115 ff.	The statement "This document aims at guiding experts and stakeholders in the implementation of the Directive 2000/60/EC establishing a framework for Community action in the field of water policy - the Water Framework Directive (WFD)" is misleading inasmuch as the document addresses the existence of exemption situations in accordance with article 4(7) WFD whereas an analysis of management objectives is not taken into consideration. However, the scope of and conditions for exemptions cannot be determined in a sensible way without a position being taken on the regulatory content of the management objectives.		BDI (Business Europe)	WFD objectives are outlined in chapter 1.3. The context to other policies is set in chapter 2.
115-117	The aim of the document should include guiding on how to account for the management objectives to which Article 4.7 exemptions pertain.	Actually, the document seems only to focus on the exceptional circumstances referred to in Article 4.7 of the WFD, whereas the stricter the interpretation of the WFD's requirements, the more important it is to apply the Principle of Proportionality to the implementation of Article 4.7.	Euromines	WFD objectives are outlined in chapter 1.3. The context to other policies is set in chapter 2. The concept of weighing interests is addressed in chapter 4.
117	<i>[Add after "It focuses on exemptions under Article 4(7) of the WFD." Article 4(7) is the only exemption that that justifies a deterioration of the water status.</i>	Clarification at the beginning –Art. 4(7) is difficult to grasp, so it is important to have a very short introduction if the context at the beginning	EEB	Separate sub-chapter on projects outside the scope of Article 4(7) added.
117-118	It focuses on applicability assessment of exemptions under Article 4(7) and on exemptions under Article 4(7) of the WFD. Article 4(7) addresses new modifications to the physical characteristics of a surface water body, alterations to the level of bodies of groundwater and new sustainable human development activities, which can lead to failure of achieving the WFD objectives.	The scope of this guideline is broader than exemptions under WFD Art.4.7. by themselves.	RO	The proposed terminology is not yet introduced in this part of the document and would therefore be confusing.
118	<i>Add "only" before "addresses" OR change to "Article 4(7) only applies to new modifications..."</i>	See above	EEB	Added.
128	<i>Replace Member States are TO "If Member States use their own methods</i>	Clarification	EEB	Using the

	<i>and approaches, they should check if they are in compliance with the requirements of the WFD".</i>			outlined approaches does not necessarily ensure legal compliance, also because in practice more detailed methodologies and approaches can be needed at national level.
p. 1 footnote 1	Please cite WFD and other directives fully (in footnotes) when citing them for the first time. This is not common practice throughout the guidance yet.	The WFD as well as later the Floods Directive and other acts should be cited once fully in footnotes, like other EU legal acts in this paper, too, see e.g. page 9 footnote 26 or page 12 footnote 38.	DE	Adapted.

WFD and the Common Implementation Strategy (CIS) process

No comments received.

Setting Article 4(7) into context

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
178 ff.	It is wrongly postulated that the environmental objectives in isolation are the core of EU WFD. Rather, it is correct that the environmental objectives are subject to the express reservation of the exemption situations regulated in article 4(4) to (7), as specified in article 4(1). Hence, the exemptions form part of the environmental objectives		BDI (Business Europe)	Clarified that Article 4 outlines the environmental objectives. The exemptions are also addressed in the chapter.
179	Change to "The environmental objectives of the WFD <i>including their limitations as set out in Article 4 paragraphs 4-7</i> are the core of this EU legislation providing for a long-term sustainable water management on the basis of a high level of protection of the aquatic environment."	Paragraphs 4-7 of Article 4 are inextricably linked to paragraph 1 and themselves form part of the core objectives of the WFD.	Euromines	Clarified that Article 4 outlines the environmental objectives. The exemptions are also addressed in the chapter.

195	Insert: “.. achieve good status <u>or potential</u> must ...”	All other lines in this part of the text (192, 200 ..) mention GES and GEP. Another solution would be to mention somewhere in an attention box that “GES” always means “GES or GEP”	BE	Adapted.
204-205	Change “Justification” to “explanation” or “stated”	The WFD uses as wording for exemption the terms “mentioned”, “set out and explained” or “stated”. “Justification” gives a far stronger impression.	BE	Adapted.

INTEGRATION OF SECTOR POLICIES AS PREREQUISITE FOR POLICY COHERENCE

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
229-544	Specify that it only considers sector policies which are subject of active European policy, or insert separate sub-section for other (less European) sector policies: land use planning, housing etc.	Cf. discussions during the the ATG Meeting	BE	Adapted.
229-544	Possible inclusion: it might be relevant to mention the rural development programmes under Pillar 2 of the Common Agricultural Policy as another relevant policy ?		BE	CAP is mentioned in the bullet points and specifically the Rural Development Programs in chapter 2.5.
229 ff	Explicitly cover in a sub-section of this chapter, the EU Raw Materials Strategy and the Mine Waste Directive (2006/21/EC). In the list of bullet points the following should be added: Industry policies such as [...] Policies regarding the extraction of raw materials in Europe – i. e. The Raw Material Initiative.	EU programmes with a focus on employment, inward investment and security of raw material supply are missing from the list of bullet points. With regard to the raw materials in particular the Raw Material Initiative should be mentioned. Moreover also the specific regime of the Mine Waste Directive needs to be considered. The Mine Waste Directive (2006/21/EC) was adopted to provide a legal framework that would exempt management of extractive waste from inappropriate provisions of the landfill directive while laying down special regulations. This specific regime, desired politically and prescribed by law, regarding the disposal of extractive waste should also be taken into account when applying Article 4(7) of the WFD.	Euromines	Point and sub-chapter added.
233	Omit “the fulfilment of”	Often it’s policy choices, not necessities, therefore confusing	EEB	Adapted.
234	Add “climate protection and adaption”		EURELECTRIC	This para only provides a couple of examples and is not exhaustive. Climate change is mentioned in the bullet points and there is a specific sub-chapter included under chapter 2.
235-237	<i>Instead of “integration of the WFD etc.” Decisions in those policy sectors have to respect/adhere to European Union legislation, inter alia the Water Framework Directive. Therefore, a coordinated approach that keeps the objectives of the Water Framework Directive and if necessary, the conditions for exemptions, especially Article 4(7), in mind is strongly recommended</i>	Clarification	EEB	The objectives of the different policies have to be achieved and integration is mutual. The existing text seems to be balanced.
238 ff.	In the list of bullet points the following should be added:	EU programmes with a focus on security of energy supply, industry, raw material extraction, agriculture and jobs are missing from the list of bullet	BDI (Business Europe)	Point and sub-chapter added.

	- Industry policies such as [...] - Policies regarding the extraction of raw materials in Europe – i. e. The Raw Material Initiative. Consequently under chapter 2 subsections for the industry and the raw material extraction should be introduced. With respect to energy supply, it is not only renewable energies that should be addressed in their own sub-chapter (cf. chapter 2.2), as these are not safely available in the sense of the EU Energy strategy defined in the preceding sentence. It should rather be explained that conventional energies and energy generation installations (power plants and domestic energy extraction) will also be needed as a back-up form of energy for the foreseeable future in order to guarantee a secure energy supply and thus that impacts for bodies of water are also unavoidable.	points. With respect to energy supply, it is not only renewable energies that should be addressed in their own sub-chapter (cf. chapter 2.2), as these are not safely available in the sense of the EU Energy strategy defined in the preceding sentence. It should rather be explained that conventional energies and energy generation installations (power plants and domestic energy extraction) will also be needed as a back-up form of energy for the foreseeable future in order to guarantee a secure energy supply and thus that impacts for bodies of water are also unavoidable.		Text on continuous role of conventional energy added.
245	Other environmental directives and policies, in particular the SEA, EIA, ~~and~~ Habitats Directives and UWWT Directive	UWWT Directive is an important and relevant piece of legislation	RO	Added.
249	Should say 'and hence <i>the possibility of deterioration ...</i> ' i.e. it is not inevitable that these types of development / activity will lead to deterioration; it is possible that they will		JB, CHAIR NAVI TG	Added.
255	Should say 'including <i>effects on water</i> '		JB, CHAIR NAVI TG	Added.

Transport policy

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
260 - 280	Chapter 2.1 Transport policy should be revised. Other transport infrastructure, beside only navigation in inland waterways, should be summarized.	Chapter describes Transport policy and TEN-T program which was established to support construction and upgrade of transport infrastructure. The program covers different aspects of transport including railway transport. In Chapter 2.1 Transport policy, where a general overview of different transport aspects should be covered, only navigation in inland waterways is considered (Line nr. in draft 2 of the guidance 268 – 274). Although on p. 38 a case study for high speed rail is presented.	SI	TEN-T covers different modes of transport. The aspect of other modes of transport, i.e. railway and road transport, was added, in addition to the existing text on navigation.
260-280	In Chapter 2.1 „Transport Policy“ states that „Rivers, canals and lakes are maintained so as to preserve good navigation status, while respecting the applicable environmental law.“ <i>It is the duty of the state within the framework of international treaties and agreements and furthermore the duty arising from national legislation, operational orders of water structures and the basic obligation</i>		SK	The text is a citation from the TEN-T Regulation. Transport is an important objective, as well as environmental protection. In practical

	<i>of watercourses administrator. It cannot be questioned in any way including conditionality by derogation (Article 4(7) WFD), respectively time requiring and difficult process of proving of fulfilment of the conditions, which in the given case they have no real meaning in relation to higher interests – to ensure navigability.</i>			terms it often very much depends how transport infrastructure projects are planned, designed, implemented and justified, requiring the related assessments.
266-268	Add: “... and so also navigation by covering certain inland waterways ...”	Add “certain”, because not all inland waterways belong to TEN-T, not all are mentioned in the Regulation (EU) No 1315 (2013). An integrated approach for a coherent implementation of EU water and EU transport policy is indeed important. Germany is looking forward to the efforts of the EU Commission to unify both policies. It should be taken into account that certain waterways - in particular those belonging to TEN-T - are also subject to legal requirements concerning navigational aspects such as the minimum requirements mentioned in the Regulation (EU) No 1315 (2013) or the minimum requirement for “class IV waterways”. Meeting these requirements and those stipulated by the WFD in parallel is quite a challenge for certain waterways such as the Rhine.	DE	Text was further specified.
268-274	Please clarify	If river canal not comply with the minimum requirements for class IV waterway (but it should), dredging must be carried out, is there necessary to make 4(7) test? According to line 750-757 the answer is yes if this waterway is designate as heavily modified.	CZ	No general answer can be provided since this can be case-specific, depending on different factors as outlined in the document.
275-277	Please include (if not here, then maybe elsewhere in the document) a discussion on the topic if an Art. 4.7 test is really necessary if deterioration is due to the fulfillment of other EU obligations.	There might be clear cut cases in which achieving TEN-T objectives will necessarily result in deterioration of status. Using Art. 4.7 in these cases to justify this, would mean a lot of work without having certainty that a 4.7 exemption can indeed be granted, in which case a Member State would be in deadlock. Wouldn't it be more in line with the Make it Work initiative to avoid such a process and instead automatically exempt a Member State because of aiming to achieve other obligations of EU law (and of course including mitigation where possible)?	NL	Both, transport and water policy are valid, without a particular hierarchy. A respective remark has been added.
276	Add after deterioration “or failure to achieve good ecological status/potential”		EEB	Added.

Energy policies including renewable energy policy

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
283	“these targets” or “the latter target”		EURELECTRIC	Adapted.
286 - 288	The statement “new renewable energy target of at least 27% of final energy consumption in the EU as a whole by 2030” should be revised taking into account that the new directive has not been adopted.	The statement should be revised taken into account that the targets “new renewable energy target of at least 27% of final energy consumption in the EU as a whole by 2030” are subject of a Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the promotion of the use of energy from renewable sources (recast) which will replace the Directive 2009/28/EC.	SI	The text refers to the Council Conclusions from 23 and 24 October 2014 which is now referenced. Info on the COM Directive proposal is added.

300	This part should address also the differences as regards different capacity - what hydropower capacities count at EU level for the RES share.		WWF	The text already outlines that hydropower constitutes an important renewable energy source, although the share of contribution from other sources of renewable energy is increasing. There is no justification provided why the text would benefit from such additions.
301-304	Biased argument without relevant evidence		SK	The impacts of hydropower are outlined in a number of COM publications and RBMPs.

Flood risk management

No comments received.

Marine Strategy Framework and Maritime Spatial Planning Directives

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
364	Add "or with an impact on this area" after "flood protection taking place within this area"	Physical modifications in an area adjacent to the WFD one nautical mile area may significantly affect the status of the WFD coastal water body	BE	Added.

European Funding Instruments

European Structural and Investment Funds

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
402	"WFD" instead of "WDF"		EURELECTRIC	Adapted.

Connecting Europe Facility (CEF)

Minor adaptations based on feedback by DG REGIO.

Instrument for Pre-Accession

Minor adaptations based on feedback by DG REGIO.

Climate change policy including adaptation and mitigation as a cross-cutting issues

Line Nr.	Comment/Change request	Justification of the comment/change	CIS Member	Comment by drafters
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		request		
428-445	• In chapter 2.6 <u>“Climate change policy including adaptation and mitigation as a cross-cutting issue”</u> which is aimed to reduce the sensitivity to climate change or mitigate greenhouse gas emissions, may start a system of measures, of which have already in advance exhaustively define measures "Counterproductive to the objectives of the WFD" e.g. store tanks – tanks for controlled/regulated water accumulation, which are from the point of view of securing water needs not only for water abstraction but also in the framework of providing e-flow and also the protection of ecosystems dependent on water, in times of drought or lack of water appear to be the most effective measure to mitigate the effects of climate change. • Like measures to adapt and mitigate the consequences of climate change we perceive the implementation of flood protection measures in accordance with the requirements of the Directive on flood risk management In particular with regard to the State's priority interest to ensure the protection of lives and health of its inhabitants against floods, where is the interest of the state and its inhabitants crosses the requirements of WFD and EC in relation to the priority to achieve a good water status. • The most important problem of interpretation of Art. 4(7) We consider the fact that the requirement for „Article 4(7) Applicability Assessment of WFD“ without proper assessment of the effectiveness of such assessing the significance of the impact i.e. cost benefit analysis extends from the proposed new infrastructure projects respectively new sustainable human activities with significant impact to achieve a good status/water potential or deterioration from status very good to good (as provided in Article 4(7) of WFD) to a flat-rate assessment of all projects, regardless of the fact , whether it is obvious, that they have no effect (because they don't even touch of the water body) or are clearly temporary – the short-term or medium-term impact (which is no longer permanent) or have only local influence (in relation to the length or area of the water body is insignificant). <u>For example: „Article 4(7) Applicability Assessment of WFD”</u> for the project such as: - inverted siphon, laying of the pipeline through the bottom of the watercourse (crossing of pipeline and watercourse), - increasing of the protective dams of the watercourse in municipalities within the flood protection, - reassessment of the permit for water abstraction, which remains unchanged or the water abstraction in the new application for permission is reduced, - restoration/reconstruction of an existing water structure that does not change the purpose/size/shape of the original structure (the effects of reconstruction/restoration are even often benefit to improve hydrological, morphological or continuity conditions – whether in relation to modify the fortification of the bottom and banks of the watercourse), - but especially in activities related with normal, regular maintenance of watercourses and with maintenance and repair of existing water structures, which the administrator or owner		SK	The relevance of certain projects shall be taken into account in the Article 4(7) Test. The step-wise approach for the Applicability Assessment (screening, scoping, and assessment) aims at balancing the administrative burden. Projects which are not posing a risk to deteriorate status shall not require a detailed assessment. Point added to text that respective checklist tools may be elaborated at national level.

	performs in accordance with valid legislative regulations of the Slovak Republic (of which such an obligation directly arise) and in accordance with approved operation and manipulation rules, especially in the interest to provide water services, protect the health and life of humans, their assets, cultural heritage , economic activities and the environment against flood disasters and providing of navigation conditions in accordance with international agreements and conventions – this obligation cannot be confronted at the same time with the requirement to assess the significance of the impact of these mandatory activities on the status of waters and certainly not with proving of justification of these activities with the fulfilment of the conditions under Article 4(7) of WFD as a possible exception from achieving of environmental objectives. Access to "Article 4(7) and Applicability Assessment" is the decision of the Member State, including responsibility for the consequences of the selected approach, but despite that, we consider that recommended practices should be effective and targeted focused on projects and activities, for which there is assumption of significant impact on the status/potential of water bodies and not to the potential risk, which in applied assumptions in the assessment of the significance of the impact is always present. For the above reasons and in the interest of a pragmatic approach to the application of Article 4(7) WFD without unnecessary ineffective burden of the Member States in relation to increasing staffing to ensure the required mega-system for several steps assessment, another financial burden on investors and long-time requirements for project assessment and testing, with a negative impact on the possibility of the use EU funds to ensure the measures set out in the Member States' planning documents - we therefore recommend to focus attention on significant/large projects and new human activities, and their significance was determined by the criteria for assessment the significance of the impact, similarly as established in the case of Environmental Impact Assessment (EIA).			
430-432	Lines 430-432 should be deleted.	At the beginning of chapter 2.6. a new paragraph on COP Paris has been introduced. This is a political statement and has nothing to do with the Water Framework Directive. Therefore the new paragraph under lines 430-432 should be deleted.	BDI (Business Europe)	Reference to international agreements was requested during the first commenting round and therefore added.
433	Should say 'strategies respectively have been' i.e. delete 'plans'		JB, CHAIR NAVI TG	There are strategies and plans in place.
437	It has to be clearly explained what kind of hydropower can be used for water storage and in what conditions. Otherwise, it can be understood that hydropower in general (including SHP using diverting pipes) can be a solution for climate change adaptation and mitigation. Moreover, there should be a clear difference between measures for adaptation and measures for mitigation (putting them in the same box, can create confusion because some measures aiming to mitigate climate change (e.g. hydropower) can actually diminish the potential of that specific water body an its ecosystems to adapt to climate change).		WWF	Proposal deemed too specific since the chapter aims to simply point out the relevance of the subject. More detailed info can inter alia be found in

				other documents (e.g. reference to CIS Guidance No. 24).
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Other environmental policies

Strategic Environmental Assessment (SEA) Directive

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
486-488	Interpretation of requirements according to Art. 4(7) of WFD at plan level is just demonstrative, as there are no aims specification at the measures level and without their elaboration cannot be evaluated points according to Art. 4(7). Such interpretation is only demonstrative and general.		SK	The opportunities but also constraints of an SEA in relation to Art. 4(7) are already explained in the bullet points of the chapter.

Environmental Impact Assessment (EIA) Directive

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
501 et sqq.	Change line 513: "Assess whether project deteriorates water status <i>status of a water body</i> (WFD Article 4 (7) and EIA Article 3). <i>This assessment may be part of the assessment of the factor water (EIA Article 3).</i>	Clarification of the Art. 4 (7) assessment which concerns the status of a water body. This assessment may be part of the assessment of the factor water (EIA Article 3). The current reference to "water status" in the context of Art. 4 (7) is misleading.	DE	Amended.
511-515	In addition to listed issues, EIA description contains mitigation measures to decrease negative impacts which might have synergies. At least in Finland.		FI	Added.
513	Assess whether project <u>might lead to a deterioration of</u> ~~deteriorates~~ water status WFD Article 4(7) and EIA Article 3)	It is a prediction, a forecast about the impact on water body status	RO	Amended.
513	"deteriorates water status or relevant quality element"	In line with ECJ definition of deterioration	EURELECTRIC	Amended.
513	Inadequate methods or not selecting adequate methods to detect ecological status deterioration is one of the fundamental reasons for Art. 4.7 not being applied. Example of Elbe is very illustrative in this respect - the project of the deepening and widening of the Elbe with the greatest possible impact on the Elbe water bodies did not trigger Article 4 (7). This	The guidance needs to stress more that this problem exists and that not detecting deterioration does not amount to being compliant with the WFD, but the opposite. Guidance needs to be clearer on that. Moreover, more guidance should be given on how to	WWF	The requirement of having appropriate methodologies in place is a general issue for WFD implementation. See also uncertainty section in that context.

	project should clearly trigger Article 4 (7), therefore the questions has to be raised on where the assessment went wrong?	overcome this problem.		
515	You should refer to art. 5(1d.) of EIA		FI	Amended.
516-518	Regional authorities didn't understand the content of those sentences.		FI	Amended for improved clarity.

Habitats Directive

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
528-552	Some examples of habitats should be added.	Paragraph is focused only on species; Habitats Directive covers also habitats.	WWF	Added.
541	Should say 'related data collection and assessments, which ..'		JB, CHAIR NAVI TG	Added.
542	The NATURA 2000 directives are linked to specific areas and must therefore be assessment carried out in the case of planned activities in their scope. Assessment of WFD is linked to water bodies throughout the area and therefore, the assessment under 4(7) must be limited not to area, but substantively respectively by the size of the assessed projects.		SK	Not every project might be relevant for the Natura 2000 Directives. This is pointed out in chapter 3.7.2.
544	Further guidance/clarifications are required with regards to which types of developments qualify for an article 4(7) Test. A chapter (possibly between chapters 2 and 3) with detailed guidance, as was discussed in the meeting, would help in guiding us further on how to apply Article 4(7). Such additional guidance can consider the identification of potential criteria that would enable a consistent approach towards the application of this article.	Further guidance would help the implementation of Article 4 (7) in a consistent manner, as well as the development of a system at a National scale that would capture all relevant proposals for screening purposes in terms of Article 4 (7).	MT	The guidance does not intend to provide an ultimate list of types of developments which require an Article 4(7) test. This can be very case-specific.

SCOPE OF ARTICLE 4(7) AND APPLICABILITY ASSESSMENT

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
545	The appropriateness or otherwise of the term 'Article 4(7) applicability assessment' depends on the response to what we do or do not want to achieve in response to the comment on line 117 above. I would favour 'WFD project compliance		JB, CHAIR NAVI TG	A sub-chapter on projects outside the scope of Article

	assessment' to enable the process set out in Section 3 to applied more widely			4(7) was added.
545-1360 (Chapter 3)	Please add	Applicability assessment is the most important phase of the using Article 4(7) application. We would appreciate a specific description of the assessment itself.	CZ	The "applicability assessment" is described in chapter 3.7.
545-1827 (Chapter 3 and 4)	Please clarify	Is it correct to assume that if the project causes... <i>failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater</i> and it is not <i>result of new modification to the physical characteristic of a surface water body or alterations to the level of bodies of groundwater</i> <i>or</i> <i>failure to prevent deterioration from high status to good status of a body surface water</i> is not <i>the result of new sustainable human development activities,</i> ...this project cannot be realized under any conditions?	CZ	Correct. Sub-chapter added, addressing the issue of projects outside the scope of Article 4(7).
545-579 In relation with whole Guidance and mainly with bullet points: 2.7.1 SEA Directive 4.3.1 Strategic level (for assessing significantly better environmental options and 4.5 Relationship to the River	<i>A modification of Figure 1 is proposed (see figure below at the end of this document).</i> <i>Following that figure subsequent changes need to be done through all the text of the document.</i> <i>The change proposed tries to take into account article 4(7) as early as possible during the decision process and if possible during SEA of water related plans. The guidance already considers in lines 1755 to 1763 as something useful to take into account the information that is available at the time of publishing the RBMP. This is correct, but we propose a more mandatory description. RBMPs should include an inventory of possible new modifications included in water related plans. With this approach all those new modifications proposed by other plans (i.e FMP) could be assessed and tested at an stage where strategic decisions can still be taken.</i> If we wait till those initiatives or measures included in a plan become a project, it will probably be to late to consider appropriate alternatives which are a conceptual different	Lines 491-495 What the guidance says in lines 491-495 about the link of article 4(7) and Strategic Environmental Assessment (SEA) Directive, can be understood in the way the first part of the figure (Planning phase of an activity or project) proposes. A first 4(7) Applicability assessment and if needed a 4(7) Test can be developed for measures before they are included in the specific plan. In some cases, when developing a plan, measures can be still just ideas about what has to be done. In other cases those ideas are already developed as a draft project or even a project. Depending on the degree of development of the measure, the 4(7) evaluation included in the RBMP, of measures proposed in specific plans, can be a rough estimate or a proper assessment and test. In the last case, after the approval of the plan, in the moment the project is going to be implemented authorities issuing a permit or authorizing a project can invoke the assessment included in the RBMP to skip the 4(7) evaluation during the permitting phase. Lines 1562-1586 Strategic level (assessing significantly better environmental options)	ES	The proposal includes a "pre-check" for an Article 4(7) Assessment during the planning phase. Draft 2 of the document did not contradict such an approach. However, aspect of strategic pre-planning was now added in the figures and graphs.

Basin Management Plans	solution and not just variations in the design of the project (alternatives such as height width or materials)	The 4(7) guidance on its second draft includes a chapter (4.3.1) about assessing significantly better environmental options at Strategic level. The schema proposed above can provide some clues about a practical way to put this in practice. Line 1715 4.5.1 Reporting in the River Basin Management Plans Lines 1723-1726 Guidance Document No. 20 outlines in this context that this is a reporting obligation and does not mean that Member States must wait until the publication of the River Basin Management Plan before allowing a new physical modification or new sustainable development activity to proceed. In many cases projects will be developed within the RBMP six year cycle. Lines 1743- 1754 Furthermore, the PCI Guidance⁹¹ for energy infrastructure Projects of Common Interest provides some further direction, outlining that "where a project is put forward in the middle of the 6 years cycle and was <i>not included in the previous RBMP, under strict and short time limits, Member States will be de facto amending their RBMPs and with no public consultation. Therefore, the preferred course of action would be to formally update the existing RBMPs. An alternative would be to rely on a proper ad hoc public consultation, e.g. using the EIA process or other proper consultation. (...) Failing to carry out a proper public consultation could run the risk that Member States lose sight of the links between the proposed project and other water uses in the basin or that citizens are partly deprived of their right to be consulted as provided under the WFD. It is therefore recommended that time limits for the consultations are sufficient to allow a proper consideration of the project in the RBMP context. In cases where the projects are developed in the middle of the WFD planning cycle, they will then need to be included in the subsequent RBMP, which will be subject to public consultation in its entirety.</i>" Line 1755: In addition, the following information is considered as useful to be included in the RBMPs (and the draft RBMPs) that is available at the time of publishing the plans:		
546-579	<i>Include the text in a separate chapter which could follow chapter 3.2</i>	Modification would facilitate the reading of the document as the provisions of article 4(7) would first be described and only afterwards the applicability assessment and the article 4(7) test.	LU	Adapted.
550-551	Could add "new modifications/alterations to the physical characteristics might lead...".	Clarifies the text.	FI	Adapted.
554-562	<i>There are some alterations that obviously cannot produce a significant effect/impact on water body status because of its</i>	A previous step to a proper "Applicability assessment" is suggested for alterations that obviously do not produce impact on water bodies (a more	ES	It is considered to be difficult to

	<i>importance (in terms of size and water body status/sensitivity). For these cases, some thresholds could be established to avoid the effort/burden of a proper "Applicability assessment" process. This would make possible what is said in lines 770-797 and 1196-1197.</i>	generic approach). Some thresholds of the importance of the alteration (in terms of size and water body status/sensitivity) could be established and alterations under these values should not require a proper "Applicability Assessment" nor Art. 4.7 Test.		establish such thresholds at EU level since this can be very case specific.
555	Inadequate methods or not selecting adequate methods to detect ecological status deterioration is one of the fundamental reasons for Art. 4.7 not being applied. Example of Elbe is very illustrative in this respect - the project of the deepening and widening of the Elbe with the greatest possible impact on the Elbe water bodies did not trigger Article 4 (7). This project should clearly trigger Article 4 (7), therefore the questions has to be raised on where the assessment went wrong?	The guidance needs to stress more that this problem exists and that not detecting deterioration does not amount to being compliant with the WFD, but the opposite. Guidance needs to be clearer on that. Moreover, more guidance should be given on how to overcome this problem.	WWF	The requirement of having appropriate methodologies in place is a general issue for WFD implementation. See also uncertainty section in that context.
556-557	<i>The sentence "... This since it is essential to assess how a proposed project will affect the environmental objectives of the affected water bodies..." to be edited :</i> a) To be added the missing content : <i>„This since it is essential to assess how a proposed project will affect the environmental objectives of the affected water bodies..“</i> <u>or</u> b) Needless words to be removed : <i>“.. ...This since it is essential to assess how a proposed project will affect the environmental objectives of the affected water bodies...”</i>	The sentence is not clear: it seems to be incomplete (something seems to be omitted) <u>or</u> some meaningless words left from a previous version.	BG	Adapted.
563-567	Also here a footnote with reference to the Weser-ruling could be added (cfr. Line 606 etc.)	This is an interpretation of the Weser-ruling and although everyone agrees on it, it may be more correct to make this clear	BE	This is still a section of the document describing the general principles. The Weser ruling is

				specified later on in the text.
563-567	The statement “it follows that if the conditions are not fulfilled and the article 4 (7) test fails, the project cannot be authorized under the WFD.” fails to acknowledge that under certain circumstances, it must also be possible to grant a derogation on proportionality grounds in respect of the literal wording of Art. 4(7) if the management goal requirements and prohibitions are to be interpreted very narrowly. Clarification in this regard should be introduced into the Guidance Document.	The statement “It follows that if the conditions are not fulfilled and the article 4 (7) test fails, the project cannot be authorized under the WFD.” Is not acceptable. It disregards the fact that an exemption must also be possible under certain circumstances for reasons of proportionality, beyond the narrow wording of article 4 (7) WFD. As a general rule, European Union law allows exemptions beyond the wording of the text of a directive. ECJ has confirmed this in its case law. Inter alia in its case law on conservation of natural habitats: In the case of the Finnish wolf in particular (Case C-342/05), the ECJ, following Advocate General Kokott, recognized the possibility of a derogations that goes beyond the wording of the Natural Habitats Directive. The advocate general opined that the court had already decided in respect of the law on nature conservation that exceptional grounds may justify detriment to legally protected interests in the natural world even if this would not be possible according to the text of the relevant directive provisions. She added that in practical terms, it is a question of applying the principle of proportionality, which is not restricted, with regard to the possible objectives of derogations, to the list of grounds set out in the directive (opinion delivered on 30 November 2006, Case C-342/05, juris, paragraph 52 ff.).	BDI (Business Europe)	Article 4(7) clearly restricts its applicability to the physical alterations of surface water bodies, alterations to the level of groundwater, and new sustainable human development activities (from high to good).
568-570	Cut: Assessment of applicability for evaluation according to the generally valid regulation for reaching/exceeding limit values. When exceeded follows: Assessment of applicability on the basis of expert opinion.		SK	Unclear comment.
571	Please add ‘at the scale of the water body’ at the end of the second box		JB, CHAIR NAVI TG	Added.
573-574	Please indicate here – for clarity - that 4.8 and 4.9 tests are incorporated in the 4.7 test further on in the document.		NL	Added.

Recap of the WFD Environmental Objectives and Article 4(7)

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
581 ff.	Once again, the environmental objectives are presented in isolation as overriding principles without incorporation of the expressly reserved exemption provisions (see chapter 1.3).		BDI (Business Europe)	Whole Article 4, including exemptions, was already described in chapter 1.3.
582	Change to “The objective of the Water Framework Directive is to prevent further deterioration of any water body and	Paragraphs 4-7 of Article 4 are inextricably linked to paragraph 1 and themselves form part of the core objectives of the WFD.	Euromines	Whole Article 4, including exemptions,

	<i>achieve good status/potential of all water bodies by 2015 or otherwise within naturally and technically feasible timescales without incurring disproportionate costs or preventing new sustainable human development activities."</i>			was already described in chapter 1.3.
589	<i>'Chemical status is defined by the environmental quality standards for chemicals set at EU level in Directive 2008/105/EC amended by Directive 2013/39/EU (priority substances and certain other pollutants)'.</i>	Definition of 'good surface water chemical status' given by the WFD.	ES	Added.
596-598	The sentence: <i>„...Quantitative status is defined by the available groundwater resource not exceeding the long-term annual average rate of abstraction..."</i> To be edited as follows: <i>„Quantitative status is defined by the available groundwater resource, not exceeded by the long-term annual average rate of abstraction..."</i>	The current wording of the sentence is not correct and changes the meaning of the "good GW quantitative status" <i>(see also line No 975 and line No 1004 – Example5, Criterion 1)</i>	BG	Amended.
596-602	An additional statement on the importance of the chemical status of groundwater bodies should be included to better reflect the combined requirements of the WFD and Groundwater Directive. The text of lines 601-602 should be modified as follows: "In contrast to surface water bodies, chemical status of groundwater bodies is not only determined by conductivity and concentrations of pollutants. Rather, it is necessary to verify additionally the extent to which increased pollutant content in the groundwater impacts on communicating bodies of surface water, on abstraction of drinking water or on terrestrial ecosystems dependent on the groundwater and leads to significant damage to these protected resources. Against this background, the exceedance of a limit value does not automatically lead to a groundwater chemical being assessed as below good status."	The statement "Quantitative status is defined by the groundwater level regime and chemical status by conductivity and concentrations of pollutants" ignores that the chemical status of a body of groundwater is evaluated differently from the chemical status of a surface water body – and consequently, it does not exclusively entail a review of whether the relevant thresholds are being complied with or not. Instead, it is a matter of determining to what extent a change in groundwater chemistry has an impact on the surface water it interacts with, on the potable water supply, or on groundwater dependent terrestrial ecosystems. The WFD clearly distinguishes between protection levels for groundwater and surface waters. The German approach of preventing any change to groundwater is not followed by a majority of Member States and is in disagreement with the requirements of the GWD and previous EU guidance on the subject.	Euromines	The text provides a brief summary, not only for groundwater but also for surface water bodies. Reference for further details is included (WFD Annex V and the Groundwater Directive). Later on reference is made to CIS Guidance on groundwater.
601-602	Under line 601 the text should be modified as follows: "In contrast to surface water bodies, chemical status of groundwater bodies is not only defined by conductivity and concentrations of pollutants. Moreover, it has additionally	The statement relating to groundwater "Quantitative status is defined by the groundwater level regime and chemical status by conductivity and concentrations of pollutants" is incomplete. It disregards the fact that, when the chemical status of a ground water body is assessed – and hence when a chemical alteration is evaluated in connection with the deterioration ban - the test is not merely about whether or not the	BDI (Business Europe)	The text provides a brief summary, not only for groundwater but also for surface water bodies. Reference for further

	to be taken in to account the extent to which increased pollutant content in the groundwater impacts on communicating bodies of surface water, on abstraction of drinking water or on terrestrial ecosystems dependent on the groundwater and leads to significant damage to these protected resources. "	relevant limit values are met (see line 972 – 981). This is different from the situation when the chemical status of a surface water body (SWB) is assessed. Rather, it is necessary to verify additionally the extent to which increased pollutant content in the groundwater impacts on communicating bodies of surface water, on abstraction of drinking water or on terrestrial ecosystems dependent on the groundwater and leads to significant damage to these protected resources (see WFD Annex 5, Chapter 2.3.2.). By contrast, the statement currently contained in the draft would mean an unacceptable equal treatment of SWB and GWB narrowed down exclusively to pollutant content, despite the clearly expressed wish of the European legislator that WFD should distinguish clearly between the level of protection for groundwater and for surface water (cf. Council common position 4/2006 of 23 January 2006 OJEU 2006, C 126E/1, page 14). An additional statement on the importance of the chemical status of GWB should be included in the text accordingly.		details is included (WFD Annex V and the Groundwater Directive). Later on reference is made to CIS Guidance on groundwater.
604, footnote 43	This footnote can be deleted, since its contents is already encompassed in lines 606-608.		NL	Deleted.
605	failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities <i>failure to prevent deterioration from high status to good status of a body of surface water is the result of the fact that the exploitation of the small hydro sector is less than 70% in a specific country.</i>	Countries that are in the South of Europe have started much later to exploit their small hydro plant sector, and as a result, they have water bodies of perfect quality. We believe that this fact must be taken into consideration and - up to the certain 70% exploitation of their small hydro plant sector - any worsening of the quality of their water bodies should not be in breach of the WFD Article 4(7).	GR	Article 4(7) outlines the requirements under which deterioration/non-achievement is allowed.
606-608	Member States are required — unless ~~the conditions of an exemption under~~ Article 4(7) ~~are fulfilled~~ ~~is granted~~ — to refuse authorisation for an individual project where it may cause deterioration of a water body or failure to achieve good status or potential.	The term granted looks to be inappropriate- exemption under 4.7. is not granted- it is applicable only if its conditions are fulfilled	RO	The wording is taken from the Weser ruling.
608	<i>Good ecological status or potential of a surface water body or the good status of a groundwater body</i>	See wording of Article 4(7) t, chemical status of surface water bodies is not included	GR	The used terminology addresses both, surface and groundwater bodies. The scope is further specified in chapter 3.3.
610	I think this should be 'irrespective of' rather than 'independently'		JB, CHAIR NAVI TG	Amended.
613-615	Delete 613 to 615.	Renewal or review of existing permits: the existing permits of authorized activities are reviewed under strict conditions specified in an appropriate	EURELECTRIC	"change of" activities added to clarify.

		legal framework		
613-617	Text could describe more clearly that update of license or project necessitates exemption only when impacts are <u>clearly</u> changing. In our legal system, it might even require new license.		FI	"change of" activities added to clarify.
613-617	It is debatable whether the mere renewal of permits should not be eligible for a 4(7) applicability assessment test. Continuous operation of a project does not cause "new modifications" to the project itself, but there might be "new modifications to the physical characteristics" of a water body, esp., if cumulative effects and the principle of precaution are taken into account		WWF	Existing facilities should already be addressed via the pressures/impacts analysis and PoM of the RBMPs.
613-625	Please indicate here explicitly that the application of Art. 4.7 is dependent on a project being subject to authorization and that authorization does not necessarily have to take the form of a permit.	The current text suggests that an authorization of a project is always applicable, and even that this is in the form of a permit. This however, may not always be the case and depends greatly on the legal system of the Member States. The WFD does not require that all projects are individually subject to authorization. For instance, Art. 11.3.g specifically leaves open the option to use a registration based on general binding rules, instead of prior authorization. This point also came up in the discussion during the second ATG meeting and it would be better to avoid such discussions by clarifying the text somewhat.	NL	Term "authorisation or licensed activity" used to broaden.
614-615	Add: "... - if the conditions of the permit are changed and the change of activities undertaken according to the renewed permit could cause deterioration."	It should be specified, that the requirement of an Article 4 (7) test only concerns changed activities resulting from a renewed permit, not already existing activities of the permit.	DE	Added.
616	Presumably Member State implementing legislation therefore needs to make explicit provision for this 'timely review'? I don't think the UK legislation does this (although the Habitats Regulations do require such a review) ...		JB, CHAIR NAVI TG	A review of permits does not necessarily result in a change of permits, but amendments can be needed in case mitigation measures need to be implemented.
621	<i>Good ecological status or potential of a surface water body or the good status of a groundwater body</i>	See wording of Article 4(7) t, chemical status of surface water bodies is not included	GR	The used terminology addresses both, surface and groundwater bodies. The scope is further specified in chapter 3.3.

622	As discussed in the meeting, this sentence is difficult to understand, appears to suggest that competent authorities should expect Article 4(7) to be applied to all activities or projects unless there is evidence to the contrary, and makes no mention of the level of risk. My suggestion is that we delete the sentence here as it is much too early in the document and, if we retain the sentence later, clarify that consideration should be given to: - whether an adaptive management approach can be taken (see comment on line 1505) and - the level of risk (a moderate to significant residual risk might indeed justify the application of the precautionary principle but a negligible to minor residual risk is unlikely to do so)		JB, CHAIR NAVI TG	"risk-based approach" added.
622 - 625	One case study could be added in that sense.	One case study could be included for a better understanding of 'no reasonable scientific doubt'.	ES	Request for case studies has been sent to MS.
622 - 625	Nearer clarification and description would be useful how the "no reasonable scientific doubt" can be proofed by the applicant or/and the competent authority in a specific project authorization. Is it just an assumption or even the requirement of creating a specific expert opinion document in the context of the permitting procedure to underline that there is no minimum possibility of being a deterioration case.		AT	Issue further addressed in the section on the Applicability Assessment.
622-624	The term "reasonable scientific doubt" is unclear and should be specified or changed as suggested below. <i>Following the precautionary principle, competent authorities may authorize an activity in absence of an Article 4(7) Test only if there is reasonable justification that it will not cause deterioration or compromise the achievement of good status.</i>	There may be situations where scientific proof is unavailable or scientific conclusions are inconsistent or questionable (if based e.g. on status assessment from grouping) and the decision on absence of an Article 4(7) can be taken on the basis of other similar projects/developments. The term "scientific" is very complex and it is not clearly specified what exactly it is expected/requested in this regard	PL	Issue further addressed in the section on the Applicability Assessment.
622-624	If the impact of modification/changes is project specific, general scientific assessments cannot be applied. If it is possible on the basis of monitoring and classification of water bodies to set a common rules for impact assessment, so the setting is possible of general threshold values for individual types of water bodies and modifications/changes/new activities.		SK	Issue further addressed in the section on the Applicability Assessment.
622-624	Change: The term 'precautionary principle' should NOT be	The 'principle' applies only when major issues are at stake: tipping points	NAVI TG	Adapted.

	used here. Rather this should refer to the precautionary approach Also, the sentence with the double negative should absolutely be taken out, whether it is here or further on: the ECJ made a mistake in its wording, but that should not be repeated in the Guidance.	in climate change, nuclear safety issues, long term effects of sea level rise. A preliminary judgement whether or not a boundary class may be crossed is an entirely different matter. What is intended here is to say that one should be prudent in drawing conclusions: this is called the precautionary approach. This comment applies whether the statement remains here or it is made in a different form further on in the report (i.e. as suggested by Jan Brooke)		
623	competent authorities may authorise only if there is no reasonable scientific doubt/	Who and how defines what is “no reasonable Scientific doubt”? The competent authorities’ haven’t scientific support when they have to decide and, In most cases, they do not have feasible alternatives to decide. It could be a good idea to have, perhaps at circa, example’s and cases of decisions taken by authorities where no reasonable Scientific doubt was considered, in order to support decisions on other countries.	PT	Issue further addressed in the section on the Applicability Assessment.
623	“may authorise an activity in advance”	Cf. discussion during ATG Not all activities require a formal permit or authorisation procedure	BE	The term authorisation is considered in the broader context, not necessarily a permit. In case a project, which could cause deterioration, can go ahead without the need of authorisation, this bears the question how the system of a MS allows to meet the Article 4(7) conditions.
623-624	Clarification of the text needed.	Here you are suggesting that authority can authorize an activity without going through Art 4.7 requirements if there is no reasonable scientific doubt that the impact doesn’t occur, if we understand this correctly. Who decides what a reasonable scientific doubt is? What type of studies (if at all) is necessary to show that (word ‘evidence’ has now indication on how comprehensive such evidence would need to be).	WWF	Issue further addressed in the section on the Applicability Assessment.
623-625	no reasonable (scientific) doubt. Scientific between brackets	Due to gaps in knowledge and uncertainty predictions might be best guesses or expert judgements with a scientific base.	BE	Issue further addressed in the section on the Applicability Assessment.
623-625	Following the precautionary principle, competent	The term “ scientific” is very complex and it is not clearly specified what	RO	Issue further

	authorities may authorise an activity in absence of an Article 4(7) Test only if there is ~~no a~~ reasonable ~~scientific doubt~~ <u>justification</u> that it will not cause deterioration or compromise the achievement of good status. Such evidence should be documented.	exactly it is expected/requested in this regard		addressed in the section on the Applicability Assessment.
624-625	It should be further developed where, how and for how long the evidence justifying absence of Art. 4(7) test should be documented.		PL	Detailed specification, i.e. where and how, depends on the authorisation system which can be different between MS, but the principle should be evidential.
633	Delete "or new sustainable human development activity"	"New sustainable development" is referred only in conjunction with the deterioration from high ecological status to good ecological status. This is not applicable in the case of HMWBs which are referred to the high/good ecological potential term. Line 633 should be corrected accordingly.	EURELECTRIC	Deleted.

Scope of Article 4(7)

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
638 ff.	Include a reference to the remaining possibility to grant an Article 4.7 exemption also for chemical modifications on proportionality grounds.	In light of the stringent interpretation of deterioration by the ECJ, the limitation of exemptions under article 4(7) to hydro-morphological modifications is no longer acceptable for reasons of proportionality.	Euromines	Also prior to the Weser ruling 4(7) was only applicable to hydromorph. modifications, next to alterations to the level of groundwater and new sustainable human development activities (from high to good).
642-705	Please clarify	How to proceed if the proposed project causes failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater <u>as the result of</u> new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, <u>and at the same time</u> this project is the <u>result of new sustainable human development activities</u> ?	SI	If it is a hydromorphological alteration or alteration to the level of groundwater then the first limb of 4(7) applies. If it is not, then the second limb. The second limb (new sustainable human

				development activities) is therefore mainly relevant for the input of pollutants (as outlined in the document), whereas deterioration is for such cases only allowed from high to good.
643-653		This means that any modification, however small or insignificant, will be required to pass the Applicability Assessment. This is too stringent, particularly for small HPPs and abstractions for water supply of small rural communities	EURELECTRIC	The Applicability Assessment includes different stages, where it is also pointed out that for small projects a more generic approach can be considered.
643-658	1. Please clarify further that a 'modification to hydro-morphological characteristics' is broadly interpreted. Please also address the question if an Art. 4.7 test is required if a change of physical characteristics results in a change in water body typology.	1. That this is indeed meant broadly, became clear in the discussion during the second ATG meeting, in which for instance also changing a turbine in a hydropower plant qualified as such. It is questionable if such an activity indeed changes 'hydrological regime, river continuity, morphological conditions' (examples mentioned in lines 644-645) and thus it would be worthwhile to state explicitly that these are only examples and that these examples are not meant to be exhaustive. To give an example: a freshwater lake used to be part of a transitional watersystem. If we want to bring it back from a heavily modified lake to a heavily modified transitional water body, some parameters might deteriorate if this were to remain a freshwater lake. However, if the water body were to be retyped as a transitional water body, these parameters would not be 'worse', just different and probably more appropriate. How to deal with that in the context of art 4.7? Is an appeal to (the requirements of) 4(7) necessary in such a case?	NL	Clarified that non-exhaustive examples The given example on HMWB, bringing it actually closer to the natural state, appears to fall under the review of HMWB designation (every six years according to Article 4(3)) and shall not be an issue for Article 4(7).
643 ff.	The restriction of "Modifications to the physical characteristics of surface water bodies" to "modifications to their hydro-morphological characteristics" is too narrow. It should be clarified in lines 643 seq. that if a chemical modification is a consequence of a physical modification of water body or of an alteration of the ground water level, this chemical modification – also in a corresponding waterbody – it can very well fall under a "modification to the physical characteristics" lead to the application of article 4 paragraph 7 first indent WFD.	The restriction of "Modifications to the physical characteristics of surface water bodies" to "modifications to their hydro-morphological characteristics" is too narrow. Such a restriction is in contradiction to the wording of the WFD. The English adjective " <i>physical</i> " can mean both morphological changes and changes relating to physical properties. Article 4(7) EU WFD refers to " <i>new modifications to the physical characteristics</i> "; annex V EU WFD talks about " <i>indicative physico-chemical quality elements</i> ". Restriction of the meaning to the "hydro-morphological quality elements" is neither appropriate nor acceptable. Further the exemption covers also modifications of the water quality as a consequence of physical modifications of a surface water body (and as a consequence of modifications of the groundwater level). Lines 645-647 say that the impacts may result directly from changes brought about by the modification (result) or from the modification (activity) or - -	BDI (Business Europe)	The term "physical" (alterations) is used in the definitions under WFD Article 2(9) in the context of HMWB designation, which is clearly addressing hydromorphology. Annex V talks about "physico-chemical" quality elements, what is different. "Physical

		from changes in the water quality that have been caused by the modification or the modification's result. Also table 2 (under line 712) sets out in the heading "modifications to the physical characteristics of a body of surface water" for the supporting physical-chemical quality components "potential direct and/or indirect effects" and for the chemical status "potential indirect effects". Also, in the line "alteration to the level of bodies of groundwater" the table sets out potential indirect effects" for the supporting physical-chemical quality components as well as the chemical status of the surface water bodies and the chemical status of the groundwater bodies. Corresponding statements can be found in the text under the line 688/689 and 693/694. If a chemical modification is a consequence of a physical modification of water body or of an alteration of the ground water level, this chemical modification – also in a corresponding waterbody – it can very well lead to the application of article 4 paragraph 7 first indent WFD. This should be clarified. For the rest, the remarks beyond on the analogous application of article 4 para. 7 WFD (line 706-711) would also apply to the above mentioned cases.		characteristics" were already specified as "hydromorphology" by the Water Directors in CIS Guidance Document No. 20.
643-680, 684, 708	Do not use the terms "physical" and "hydro-morphological" as synonyms but stick to the term "physical" which is in the WFD.	Reference to the old CIS No. 20 is not a sufficient reason for using both terms as having the same meaning.	DE	The term "physical" (alterations) is used in the definitions under WFD Article 2(9) in the context of HMWB designation, which is clearly addressing hydromorphology. Annex V talks about "physico-chemical" quality elements, what is different. "Physical characteristics" were already specified as "hydromorphology" by the Water Directors in CIS Guidance Document No. 20.
644	<i>There was an oral request to change it (Germany) – keep it – that's the wording of the directive and earlier CIS documents!</i>		EEB	See answer to previous comment above.
645	Add tidal regime	Cfr. Annex V for transitional and coastal waters	BE	Added.
647 - 648	<i>'There is no requirement here regarding the size of the modifications brought about by the project. Also relatively small modifications are</i>	A first selection of modifications by setting thresholds according to the size of the project allows reducing the burden in the authorization process.	ES	Now addressed in the section on the

	covered by this provision'. After that, it could be added: <u>Member States may set thresholds according to the size of the project and the vulnerability of the water body affected, for taking into account the most meaningful.</u>			Applicability Assessment.
648	What is a "relatively small modifications" in contrast to e.g. a "small modification"?		DE	"relatively" deleted and "spatial extent" added. The sentence simply aims to clarify that the size is not necessarily the determining factor. Also a relatively small project (e.g. a small dam) can interrupt continuity and deteriorate status.
648 – 650	Revision of the text needed.	The statement on "small modifications" and then the examples imply that hydropower, bottom sills and dykes produce small modifications and impact, which is not the case.	WWF	Sentence shifted to provide clarity.
652	Additional text "...and in the downstream river (see chapter 3.4)"	Improve cross referencing to section on effects on other water bodies	UK	Added.
653	be different from those in an unmodified water body. The SHPPs are - by definition - run off river. This means that they do not change the hydromorphology of the water body. Moreover, the existence of the turbine increases the level of oxygen into the water, after it passes from the turbine. Finally, the existence of ecological flow means, that there is no problem in the river continuity, since there is enough water left in the river. Moreover, both the fish ladders and the fact that there is not a dam built mean that there is no problem in the river continuity.	All the facts that we mention make clear the big differences between the SHPPs and the big hydro power plants. It is obvious that the SHPPs do not damage the hydro-morphological characteristics or the river continuity. This very important conclusion must be taken into consideration and facilitate the design and built of SHPPs.	GR	One can distinguish run off river SHPPs from diversion SHPPs, whereas for the latter a lack of ecological flows (and therefore impact on hydrology) can be an issue. River continuity can for instance be interrupted by the dam/weir of run off river SHPPs. A fish migration aid mitigates impacts on continuity, but a certain pressure remains. These modifications can deteriorate status, i.e. from high (undisturbed) go good. Hence, SHPPs can impact water bodies in many ways and are therefore relevant for

				Article 4(7).
659	Suggested additional text after line 659 “New modification or alteration also includes the application for the renewal or re-issue of a temporary (including time constrained) permission authorising an activity which affects the physical characteristics of a surface water body or level of a groundwater body. Where the renewal or re-issue of a permission, on its own, maintains modifications or alterations that adversely affects the status or breaches objective of good status/potential then the competent authority can apply Article 4(7) tests. Where the water body is adversely affected by cumulative impact and the renewal or re-issue of a temporary permission may not, on its own, have effects that trigger the application of Article 4(7) tests then the competent authority will take into account planned measures and monitoring data to shape the assessment of impact (see chapter 3.5).“	There needs to be clarity on the definition of “new modification or alteration” where it relates to renewal of permissions authorising activities that could affect attainment of WFD objectives.	UK	If the renewal of a permit is not connected with a new modification/alteration but just a prolongation of the activity, then this might rather be an issue for the RBMP, PoM and potential application of other exemptions (e.g. 4(4)).
664	Please clarify	What is covered by “ <i>sustainable development</i> ” under Article 4.7 (c), should anyone decide about it? Authorize it?	SI	As outlined, there exists no clear definition of “new sustainable human development activities”. The existing text aims to outline some considerations. See in this context also point 3 further below in the Guidance.
665-669	The category needs to be clearly defined otherwise it is not possible to fulfil the obligations specified in WFD, respectively will force to ineffective evaluation or penalties for non-application.		SK	See answer to previous comment.
669	Please adapt this sentence to clarify how involved stakeholders or information available could change the sustainability character of a project. If not possible to clarify, then it would be better to delete the sentence.	Time and scale (also mentioned in the sentence) can clearly influence whether or not a project is sustainable (doing the project at another moment (eg. not during migration) or elsewhere (eg. not in a vulnerable ecosystem) clearly have effects on sustainability parameters. This is, however, not at all evident for who operates/influences the project (stakeholders involved), let alone for what we know about a project (information available).	NL	Quote from CIS Guidance No. 20. An explanation can be a balance of involvement of relevant stakeholders. Inter-sectorial cooperation processes (e.g. on inland navigation projects or hydropower master plans) work with stakeholder involvement from various sides (authorities, industrial sector, NGOs) to find a

				balanced approach.
672	Along with the other principles, add the principle of “sustainable development”.	The principle of sustainable development is also in the EC Treaty with equally importance (article 3).	EURELECTRIC	Added.
674	Please add ‘Guiding principles on sustainable development can be found in the UN Sustainable Development Goals as articulated, for example, via the Communication ...’		JB, CHAIR NAVI TG	Added.
684-712	Could clarify more relationship to chemical status (where no deterioration of status also exists)		FI	Addressed in addition in chapter on conditions triggering an Article 4(7) Test.
690	and therefore increase concentrations). The SHPPs are - by definition - run off river. This means that they do not change the hydromorphology of the water body. Moreover, the existence of the turbine increases the level of oxygen into the water, after it passes from the turbine. Finally, the existence of ecological flow means, that there is no problem in the river continuity, since there is enough water left in the river. Moreover, both the fish ladders and the fact that there is not a dam built mean that there is no problem in the river continuity.	All the facts that we mention make clear the big differences between the SHPPs and the big hydro power plants. It is obvious that the SHPPs do not damage the hydro-morphological characteristics or the river continuity. This very important conclusion must be taken into consideration and facilitate the design and built of SHPPs.	GR	See answer to previous comment (line 653).
690	Include “Note that for surface water bodies, Article 4(7) only allows a failure to achieve good ecological status or potential	Wording	EEB	Clarified in paragraph before table 2.
693	Change ‘in case’ to ‘in some cases’.		NL	Adapted.
706 - 711.	The paragraph “Note that Article 4(7) does not provide an exemption if deterioration caused [...] from high status to good status” should be deleted. Instead we propose a clarification: “Regarding the input of pollutants Article 4(7) provides an exemption for surface water bodies if deterioration from high status to good ecological status is caused by a new sustainable human development activity. Moreover Article 4 (7) may also provide an exemption on grounds of proportionality if deterioration caused by inputs of pollutants from point or diffuse sources drives a water body to status below good. This applies for the ecological and chemical status of surface water bodies and groundwater bodies as well.”	Since the issue under discussion here is a deterioration to a status below good, this sentence can relate only to article 4 (7) first indent EU WFD. Without any justification, it is postulated here that this exemption provision would not be applicable for any deterioration resulting from inputs of pollutants from point or diffuse sources. Such a narrow interpretation has to be rejected by reasons of proportionality. Also, it is not justified by any water management reasons. Therefore the exemption of article 4 para. 7 should – beyond its wording – also cover deterioration of the chemical status of groundwater and surface water bodies by input of pollutants from point and diffuse sources. Otherwise infringements of the deterioration ban through serious modifications to physical water properties (e.g. impoundments) could be permitted whereas infringements triggered by small inputs of pollutants from point or diffuse sources would be subjected to a blanket ban. This unjustified imbalance becomes all the more visible, that – according to line 684 ff and 692 ff, impacts on the chemical status are covered by Art. 4 (7) when caused by new physical modification of surface water bodies and alterations to the level of groundwater. A reasonable justification for such different treatment of activities with similar impacts is not obvious. It is therefore to be assumed that the European legislator would have foreseen an exemption provision also for deterioration of the chemical water properties by inputs from	BDI (Business Europe)	Justification is provided in the same paragraph.

		point and diffuse sources in the knowledge of the stringent application of the deterioration ban on chemical quality elements and/or substances flowing on from the ECJ ruling. This at least justifies analogous application of article 4(7) WFD if deterioration for the chemical status of groundwater and surface water bodies is caused by input from point and diffuse sources.		
706-711	The sentence in lines 706-707 should be deleted. Instead, include a reference to the remaining possibility to grant an Article 4.7 exemption also for chemical modifications on proportionality grounds. For example: “Note that an exemption for deterioration of status caused by inputs of pollutants from point or diffuse sources may also be provided on grounds of proportionality consistent with the intent of Article 4(7).”	Since the issue under discussion here is deterioration to a status below good, this sentence can relate only to article 4 (7) first indent EU WFD. It is suggested here without any justification that Article 4.7 would not be applicable for any deterioration resulting from inputs of pollutants from point or diffuse sources. Such a narrow interpretation has to be rejected by reasons of proportionality. Also, it is not justified by any water management reasons. Therefore the exemption of article 4 para. 7 should – beyond its wording – also cover deterioration of the chemical status of groundwater and surface water bodies by input of pollutants from point and diffuse sources. Otherwise infringements of the deterioration ban through serious modifications to physical water properties (e.g. impoundments) could be permitted whereas infringements triggered by small inputs of pollutants from point or diffuse sources would be subjected to a blanket ban. This unjustified imbalance becomes all the more visible in that – according to line 684 ff and 692 ff, impacts on the chemical status are covered by Art. 4 (7) when caused by new physical modification of surface water bodies and alterations to the level of groundwater. A reasonable justification for such different treatment of activities with similar impacts is not obvious. In the case of an extractive waste facility covered by the Mine Waste Directive, for example, derogation in connection with the disposal of mining waste has been envisaged by the EU Legislator and should remain possible following the ECJ’s subsequent interpretation of surface water body deterioration.	Euromines	Justification is provided in the same paragraph.
707-710	Change sentence: “This because the first limb of Article 4(7) only addresses new modifications to the physical characteristics of a surface water body hydromorphological alterations and alterations to the level of bodies of groundwater, but not point or diffuse sources of pollution.”	See remark to lines 643 et sqq.	DE	Adapted.
709-711	Input of pollutants (esp. when it implies failure to prevent deterioration from high to good status) cannot be reasonably considered “new sustainable human development activity”; therefore, the application of 4(7) in this case is a non-starter		WWF	Considered as a statement.
712	Change, see above		EEB	Clarified in paragraph before table 2.
712, Table 2	The term “Potential” inside the table elements should be substituted because it interferes with “potential” in the table heading with a complete other meaning. Alternative: Possible? Feasible?		DE	Adapted.

Considerations regarding the time-span of effects on water body status/potential

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
717-769	- Chapter 3.2.1 „Considerations regarding the time-span of effects on water body status/potential“ states: „Construction or maintenance works can lead to temporary short-term effects, therefore not requiring an Article 4(7) Test. However, if maintenance has not been carried out regularly or recently, it can have the same effects on ecological status/potential as completely new works. In other words, if water body status/potential has recovered/stabilised since the last time maintenance was carried out, the fact it is considered to be “maintenance” from an engineering perspective does not mean it cannot affect water body status. In such cases, <u>‘maintenance’ activity should be assessed in the same way as a proposed new physical modification</u>“. - We do not agree with this approach in the interests of care for state property and ensuring its safe and sustainable operability, in the interests of ensuring all purposes for which this state property or water structure was intended and likewise on which the watercourses serve. Making a lengthy assessment represents a serious risk to threats to security of property and safety of life, health and property of people, who are dependent on safe continuous operation. - In the chapter 3.2.1 „Considerations regarding the time-span of effects on water body status/potential“ is also stated: “If effects on water body status/potential are temporary but in a medium-term and enable them to be captured by the monitoring programs and thus determined as leading to deterioration of water body status/potential during status assessment for river basin management planning, <u>such modifications should require the application of an Article 4(7) Test</u> and the reasons for those modifications or alterations should therefore be set out and explained in the River Basin Management Plan.” It is not clear, whether the Article 4(7) Test will be require additionally/repeatedly, following the status for the next planning cycle, respectively despite that, that before approving of the project, as a result of which the monitoring showing medium-term effects on the status of the water body, this has been assessed and tested according to the Article 4(7) and this medium-term impact has been identified.		SK	Chapter was revised and simplified based on the comments received.
717-740		Linking with the monitoring cycle would imply a 3-years-period (cf. part 1.3.4. of annex V of WFD) as limit value for “short term” ? Also, looking at part 50 from the Weser Judgement: “It follows that, unless a derogation is granted, any deterioration of the status of a body of water must be prevented, irrespective of the longer term planning provided for by management plans and programmes of measures”, this would argue that deterioration within the planning period of a RGBM should be looked at ?	BE	Chapter was revised and simplified based on the comments received.
717 ff.	The clarification should be widened to include projects which cause a modification which lasts longer than 6 years but is nevertheless not permanent.	It is good to make a distinction between temporary (clarification that this is not a deterioration and that it is	BDI (Business Europe)	Chapter was revised and

		not necessary to invoke article 4(7)) and permanent modifications (article 4(7) necessary). However, the clarification should be widened to include projects which cause a modification which lasts longer than 6 years but is nevertheless not permanent. Here, too, article 4(7) is necessary.		simplified based on the comments received.
717 – 769	To relate the definition of short term effects to the criterium not to be detectable by monitoring program is not appropriate because in that case the date of action within the monitoring cycle will be crucial and not the time length of the negative effect. Examples and the proposal for short/medium-term effects made by Jan Brooke may help for a clearer definition.		AT	Chapter was revised and simplified based on the comments received.
722-740		The question is whether the capturing by regular water body monitoring intervals is a reliable indicator for short vs. medium term effects because the result will be dependent on the relative timing. If a short term effect occurs shortly before the next monitoring assessment it would be captured and therefore wrongly classified as “medium term effect”.	EURELECTRIC	Chapter was revised and simplified based on the comments received.
725	<i>Is it really necessary to introduce the concept of “temporary medium-term effects”? Maybe it would be easier to differentiate only between temporary and permanent effects.</i>	The concept of temporary medium-term effects may lead to confusion. If it will be maintained in the guidance document it needs to be further elaborated and clarified.	LU	Chapter was revised and simplified based on the comments received.
725 - 740	As a general remark the considerations on capturing of deterioration by the monitoring programmes it is suggested to be presented having in view that this process is actually a prediction, a forecast with many variables (confidence degree, pressures etc). For example „Temporary medium-term effects, allowing the water body for natural or facilitated recovery, but it takes longer than the monitoring frequency for the affected quality elements and deterioration is therefore <u>might be</u> captured by the WFD monitoring programs; If effects on water body status/potential are temporary but in a medium-term and <u>might</u> enable them to be captured by the monitoring programs and thus determined as leading to deterioration of water body status/potential during status assessment for river basin management planning, such modifications should require the application of an Article 4(7). Test and the reasons for those modifications or alterations should therefore be set out and explained in the River Basin Management Plan.		RO	Chapter was revised and simplified based on the comments received.
725-727 and 736-742	Point <i>ii</i> - <u>Temporary medium-term effect of changes on the status of water bodies - used justification is not sufficient.</u>	Monitoring of most biological quality elements has a frequency of 1 times in 3 years. Detection the effects of the implementation of a new project / construction on the status / potential of water bodies by monitoring will	SK	Chapter was revised and simplified based on the comments

		mainly depend in which the time between two monitoring dates the building or individual building objects will be executed. The identification of the effects of the building construction on the status / potential of the water bodies will also depend on the significance of the temporary change and the extent of the water body that can be affected by this change. The natural renewal of the water body may take a longer period, with respect to the time-course of the works during the construction of individual buildings (projects are usually carried out for several years). But if this change is not significant or the extent of the change is not great, it may not be manifested in the state / potential of the water body as a whole. We recall that the ecological status / potential is assessed based on the results of the monitoring at a representative sampling site.		received.
725-731	Delete reference to temporary medium term effects and permanent effects from the guidance. Refer just to the short term temporary effects, which would not be considered deterioration under WFD.	Whilst the guidance is trying to be helpful in providing more clarity on duration of effects we feel that in fact the additional definitions potentially cause more confusion and difficulty for regulators and competent authorities. This guidance should retain the definitions given in CIS Guidance Note 20. Any drop in status class which is longer than a 'short term temporary effect' should be considered as deterioration. Consideration of the duration of a deterioration, and the significance and importance of that, should be built in to the balance test (benefits versus impacts) within Art 4.7 to aid decisions being made by the regulator or competent authority. There is therefore no need to further distinguish between 'medium-term' and longer term effects.	UK	Chapter was revised and simplified based on the comments received.
725-727	Rephrase in order to make clear that the observed/projected effects do not necessarily constitute 'deterioration'. This could be done by changing 'deterioration is therefore captured' by 'these effects are therefore captured'.	If there are temporary effects, this does not mean that these effects are 'deterioration' (in which case Art. 4.7 should be applied in order to allow for these effects). See our remarks concerning line 2012 (proposal for dealing with temporary effects).	NL	Chapter was revised and simplified based on the comments received.
Discussion proposal on "medium-term effects" (line 2000-2012)	Text not required	Given our previous comments on lines 725-731, we don't believe this additional text is needed.	UK	Chapter was revised and simplified based on the comments received.
Discussion proposal on	not to be "inserted as such" in text Guidance No 35	Looking at this, for me this is confusing (and	BE	Chapter was revised and

"medium-term effects" (line 2000-2012)		possibly misdirecting) regarding the river basin planning proces vs. a project developer permit request, regarding estimating an effect during the permit proces and future follow-up in the RBMP-cycles, regarding the wording "proven" vs. "all practicable" in WFD ...		simplified based on the comments received.
Discussion proposal on "medium-term effects" (line 2000-2012)	As a remark, the potential approach for discussion on dealing with medium-term effects is too complicated with requests insufficiently explained e.g. :point 2 and 3 – what risks are about, point 5 – it is difficult to discuss about a commitment in this stage when we analyse if Art.4.7. will be applied or not, etc. We suggest that the approach be simple, concise and pragmatic in order to be useful for analysis.		RO	Chapter was revised and simplified based on the comments received.
Discussion proposal on "medium-term effects" (line 2000-2012)	Spain fully supports the idea of giving a specific treatment in the guidance to temporary effects or short-term effects on WB status. We can support the proposed approach in general terms but bullet point 4 cannot be considered a serious proposal. Six years is a period that should be considered as permanent. At least for a RBMP cycle of six year it is. Temporary deterioration should typically refer to a period that can be measured in days or in some cases weeks, but never months. In the current version of the guidance (lines 719-720) this temporal effect is linked to the monitoring frequency and whether the effects on water body status/potential are captured by the monitoring programs according to the WFD. It should be bear in mind that operational monitoring frequency as mentioned in Annex V 1.3.4 should be such "as to provide sufficient data for reliable assessment of the status of the relevant quality element. As a guideline, monitoring should take place at intervals not exceeding those shown in the table...". This means that if a project is foreseen to have adverse effects on status, being they temporal or not, operational monitoring frequency should be such so as to capture those effects. This means that the provision of the current text in the guidance can only happen if operational programmes are not working properly. Using a parallel approach with traffic speed limits could lead us to consider that those speed limits should only be respected where there is a radar (monitoring program) that can catch us. With all those considerations it could be concluded that this is a good proposal which is also lacking two aspects: A competent authority should validate all the different steps, and in order to ensure transparency, access need to be given t the public to this documents with a sufficient period of time to comment on them and to participate in the decision. What is understood as short-term effects needs further discussion. In our opinion, it should refer to a period of days or few weeks, less than a month in general.		ES	Chapter was revised and simplified based on the comments received.
Discussion proposal on "medium-term effects" (line 2012)	Change this sentence into: 'If YES to ALL, there is no deterioration of status and hence an Article 4(7) Test does not need to be applied'.	Make clear that the Member State is not in breach of the WFD. For this it is insufficient to state that Art. 4.7 won't be applied, because this application is an exemption to an obligation. Without application a breach would still be a	NL	Chapter was revised and simplified based on the comments received.

		breach. Therefore, it should be stated clearly that in these circumstances, there is no breach of the Directive.		
732 - 735	It could be added any indicative period for 'short-term effects'.	Could it be understood as a short-term the period in between the WFD monitoring programs? Temporary deterioration should typically refer to a period that can be measured in days or in some cases weeks, but never months. [Using a parallel approach with traffic speed limits could lead us to consider that those speed limits should only be respected where there is a radar (monitoring program) that can catch us] <i>What if article 4 (7) test is not be required (due to water body is affected only temporarily over a short period of time) and after all, there is a deterioration in the status of a body of surface water?</i>	ES	Chapter was revised and simplified based on the comments received.
732-740	<i>If the status or potential of a water body is affected only temporarily ~~over a short period of time~~ and recovers ~~within a short period of time~~ without the need for any restoration measures, such fluctuations do not constitute deterioration of status/potential and the application of an Article 4(7) Test will not be required.</i> <i>If effects on water body status/potential are temporary ~~but in a medium term~~ and enable them to be captured by the monitoring programs and thus determined as leading to deterioration of water body status/potential during status assessment for river basin management planning, such modifications should require the implementation of restoration measures but would not require the application of an Article 4(7) Test. ~~and the reasons for those modifications or alterations should therefore be set out and explained in the River Basin Management Plan.~~</i>	If effects were considered as being temporary, they wouldn't lead to the application of an article 4(7) test. Only those modifications leading to permanent effects would be subject to an article 4(7) test.	LU	Chapter was revised and simplified based on the comments received.
736-740	As discussed in the meeting, and proposed in the already submitted text, it can be argued that temporary but medium term <u>residual</u> ¹ effects should NOT be subject to the (potentially onerous) Article 4(7) tests as long as the answer to all of the questions is yes. If a response is no, the residual risk that there could be an effect on water body status remains, and the activity or project should be subject to the Article 4(7) tests.		JB, CHAIR NAVI TG	Chapter was revised and simplified based on the comments received.
736-740	Cyclical works are carried out in a different time cycle from several times a year to once in a few years and their current application close to monitoring profiles may seem to evoke a major impact on the elements. It is not right to draw conclusions on the basis of such results. Cyclical works does not fall under the definition of activities, which are evaluated under Article 4(7) of WFD.		SK	Chapter was revised and simplified based on the comments received.
736	Delete the part in bold	The text says 'If effects on water body status/potential are temporary but in a medium-term and enable them to be captured by the monitoring programs and thus	WWF	Chapter was revised and simplified

¹ Residual effects allow for effects remaining after all practicable mitigation measures are implemented (if, indeed, such measures are required. This principle of allowing time for 'natural recovery' is consistent with discussions ongoing about the extension of deadlines beyond 2027

		determined as leading to deterioration of water body status/potential /.../. The part in bold doesn't make sense. How often does monitoring have to take place? And how often is it done in reality? Often there's only a monitoring for the most sensible quality element and there isn't one for one or more quality elements. This means that effects cannot be captured by monitoring programs due to their lack of quantity and quality surveys. It all boils down to a prediction from experts (who are paid by the project sponsors) and the above will almost never be the case.		based on the comments received.
738	Omit should	It's already stated at the beginning that it's only a guidance	EEB	Chapter was revised and simplified based on the comments received.
738		Short-term and medium-term are not clearly distinguished and this might lead to confusion regarding the Applicability Assessment. This might be improved if the six year planning period were invoked as a criterion instead of the monitoring frequency.	EURELECTRIC	Chapter was revised and simplified based on the comments received.
739	Change 'should' into 'might'	If Art. 4.7 needs to be applied depends on the specific procedure still to be determined for temporary effects (see the proposal for dealing with temporary effects) and of the outcome of this procedure.	NL	Chapter was revised and simplified based on the comments received.
743-757	It is necessary to specify which maintenance work may be subject to the punishment of Art. 4.7, and which do not.	Maintenance may also have a positive impact on the status / potential of the water bodies concerned. For example, under the maintenance of a damaged part of the bank fortification, they can be replaced by a more ecological type of fortification or invasive plant species can be removed from the banks of the watercourse, etc. Therefore, it is necessary to specify which maintenance work may be subject to the test of Art. 4.7, and which do not. Water buildings can be found also in water bodies which have been designated as natural water bodies with hydro-morphological influences. After remediation measures in these water bodies the environmental goals / good water state can be achieved. If regular maintenance work will be a	SK	In case maintenance works leads to the improvement of status, then no Article 4(7) Test is required. If regular maintenance works leads to failing to achieve good status, it might be

		reason to define a water body as HMWB, the number of HMWBs can increase disproportionately.		considered in the HMWB designation process as described in the text.
743-749		Please note that maintenance may have been taken into account when setting the GEP and MEP, even if it is not done yearly or even within each RBMP-period.	BE	Text was adapted.
743-749	Text could describe more clearly that update of license or project necessitates exemption only when impacts are <u>clearly</u> changing. In our legal system, it might even require new license.		FI	Chapter was revised and simplified based on the comments received.
743-749		From the wording of the directive maintenance should only be subject to Article 4(7) test if it can be considered as a new modification of physical characteristics with at least medium term effect.	EURELECTRIC	Chapter was revised and simplified based on the comments received.
743-749	Relevant is the classification of the water body according to the water plan, not its instant condition, so that the maintenance does not deteriorate the condition of the water body and don't prevent the achievement of a better condition.		SK	
743	Insert between 'therefore' and 'not': 'not constituting deterioration of status and'.		NL	Added.
743-744	Add sentence: "Construction or maintenance works can lead to temporary short-term effects, therefore not requiring an Article 4(7) Test. Maintenance works, as a rule, can be considered as only having such short-term effects. However a case-by-case review should be conducted if maintenance ... "	The different forms of maintenance work may show different effects on water bodies, so it has to be emphasized, that this CIS-GD cannot replace a case-by-case review. Due to this the paragraph is rather vague.	DE	Chapter was revised. Aspect as proposed below on adaptive maintenance practice added.
745-749	Statement is tendentious because neglected maintenance does not automatically mean a better environmental status/potential – such statement is only a conjecture and therefore the water body must fulfil the purpose for which it was classified into the relevant category.		SK	Chapter was revised. Practical example on positive effects of maintenance on status would be welcomed.
749	Add sentence: "In other cases an infrequent maintenance may stabilize or even improve the status of a	With a view to achieving WFD objectives in German inland waterways amending maintenance practice	DE	Added.

	water body.”	(compared to existing practice) is in progress. The shift from frequent actions to more observing practice and action on demand allows spontaneous development of biotopes and biodiversity. Alternative maintenance practice should not be hampered.		
750-751	Delete “maintenance dredging”. “Note that regular maintenance works (e.g. maintenance dredging) can lead to failure of achieving good ecological status.”	In the given context referring to maintenance dredging only would not take into account that there are other examples for regular maintenance works which may likewise lead to failure of achieving good ecological status.	DE	Maintenance dredging is given as a practical example, which does not exclude other forms of maintenance works.
750-755	I suggest the following changes to improve the English / clarify the message: Note that regular maintenance works (e.g. maintenance dredging) can potentially contribute to a failure to achieve good status. However, whilst discontinuing maintenance could enable the water body to reach good status, stopping or constraining maintenance activities in designated heavily modified water bodies could also result in a significant adverse effect on the use for which the designation has been made. In such cases, regular maintenance works should be taken into account in the process of defining “good ecological potential” and would not therefore be subject to the Article 4(7) tests.		JB, CHAIR NAVI TG	Adapted.
754-757	Cyclical maintenance in watercourses such as dredging, or maintenance of the flow profile are also carried out on natural water bodies, whereby they do not change its status against the classified status, either because they have a marginal range compared to the size of the body and also because they are carried out in frames according to which the body was categorized.		SK	Impacts can be case specific, depending on the kind of maintenance and activity.
756	The sentence beginning ‘Works going beyond regular maintenance and causing changes in hydromorphology ...’ largely repeats the message of lines 744-749. I therefore suggest deleting this sentence and adding ‘and the Article 4(7) tests may need to be applied’ to the end of line 749. Line 749 would then read ‘...assessed in the same way as a proposed new physical modification and the Article 4(7) tests may need to be applied.’		JB, CHAIR NAVI TG	Adapted.
758-765	“.. the implementation of ~~mitigation~~ measures according to the POM <u>solely meant</u> for the improvement of water body status ...”	This paragraph provides a “blank pass” for some projects. Deleting “mitigation” because this would refer also to measures from a new project going through an art 4.7 test, Adding “solely meant” because measures out of the POM may contain objectives other than aiming at good status only.	BE	Adapted.

760	Restoration instead of restauration (typo)		EURELECTRIC	Adapted.
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Considerations regarding the size of a modification and water body delineation

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
770-797	<i>There are some alterations that obviously cannot produce a significant effect/impact on water body status because of its importance (in terms of size and water body status/sensitivity). For these cases, some thresholds could be established to avoid the effort/burden of a proper "Applicability assessment" process. This would make possible what is said in lines 770-797 and 1196-1197.</i>	A previous step to a proper "Applicability assessment" is suggested for alterations that obviously do not produce impact on water bodies (a more generic approach). Some thresholds of the importance of the alteration (in terms of size and water body status/sensitivity) could be established and alterations under these values should not require a proper "Applicability Assessment" nor Art. 4.7 Test.	ES	"necessarily" added.
771-776		While agreeing with the logic presented, "not relevant" may be worded a bit too extreme ? Additionally; locating this subject here in 3.2.2 feels a bit early; it might as well relocate to chapter 3.3 as part of the applicability assessment ?	BE	"necessarily" added. Clarification that the size of a project does not necessarily matter is a principle issue which might be appropriate to be pointed out early.
773	Change text from "whatever its importance is, will result in deterioration.." to "whatever its importance is, may result in deterioration.."	Consistency in text; "will" indicates a higher level of certainty that the project will result in a deterioration than elsewhere in the guidance where "may" or "likely" are used. "May" is also more consistent with the language of the Weser judgment.	UK	Adapted.
775	Delete 'or cause deterioration from high status to good status of a body of surface water'.	Redundant because already comprised in line 773.	NL	Adapted.
775	Addition of "may" into sentence "groundwater status or may cause deterioration from high status to good status..."	Consistent with terms used elsewhere in guidance on level of certainty required	UK	Adapted.
778	The phrase „important habitats for the status of a water body“ should be revised in order to follow the provisions of the Water framework directive	The WFD determine, among other, the ecological status of surface water bodies. Normative definitions for high, good and moderate ecological status classifications are outlined in Annex V (point 1.2). The definitions signify descriptions for classification of the values for the biological quality elements, hydromorphological quality elements and physico- chemical quality elements. In that context the definition of "important habitats for the status of a water body" is not specified or included in the text. We recommend that the terms set out in article 1 of the WFD, are used.	SI	Habitats are mentioned as a practical example in this context.
782-793	Please clarify where to assess the impact?	It is not clear whether to assess the impact on a representative monitoring site or project site. It can be far apart and if it was at the project site, we do not have relevant data from the time the project was not there for comparison.	CZ	The effect at the level of the water body is relevant, as mentioned in the text.
782-	Further description of water body (SW a GW) beyond WFD definition		CZ	This can be

793	would be beneficial			obtained from the specific CIS Guidance on WB designation. See footnote with reference.
770-797	The decision on the significance or the share of the modification of the water body in which the construction is to be carried out should be left to the discretion of the individual Member States.	Based on the experience gained in defining significantly modified water bodies, the length of the affected section by the new modification is significant. If, for determining the significance of the impact, the critical criterion would be only whether important biotopes for the status of the water body or very sensitive areas are affected, then, if at the site of the new modification such biotopes or sensitive areas are not found, the extent of the change could exceed any length of the water body. The new modifications, even if they do not interfere with important biotopes or sensitive zones, may lead to changes in the hydro-morphological characteristics of the water body, which may have an impact on the benthic fauna and may cause deterioration of the ecological status of the water body. Therefore, as a criterion of significance, the Slovakia used an estimate of the effect of the building on the changes in the habitat of the affected water body, which should not exceed 10% of its total length. This limit is, in our expert opinion, strict enough to expect that the proposed modification will not cause failure to achieve good status / potential of surface water bodies concerned. Account should also be taken of the fact that the ecological status of water bodies is determined on the basis of monitoring results at representative sampling points. If the extent of the affected important habitats will be small, it may not occur at all on the environmental condition of the water body as a whole. There will be a local impact that will need to be addressed by the project or if it is a biotope of European importance, the solution is a compensatory measure. Based on our experience to date, if arises a situation that a biotope of European significance is threatened, project modifications or compensatory measures are already addressed in the EIA process.	SK	Considered as a statement.
771-772	Statement is incorrect. Modification size is essential parameter. This value can be determined on the basis of „scientific“ results, in particular from monitoring respectively from the classification of water bodies and may be determined by a generally binding regulation, which passes through the public debate in the approval process which ensure public interest.		SK	"necessarily" added.
776	Yes, but they can be assessed within the „filter“ within the first year of exercisable assessment.		SK	Statement not clear.
779-781	The principle is based on the assessment of the entire water body and not its sections!! The water body is a representative unit with elements that in the whole extent correspond to its categorization and therefore the effect is always evaluated against the entire body.		SK	"of the water body" added in the beginning of the para to further clarify.
782-788	On the relationship between new projects and water body delineations; can this part be elaborated further to be more explicit about situations where a WB is too large (due to a political decision) that 1 project, which would normally deteriorate the WB, will not have significant effect on the large WB, just because of the huge area. In such cases the the Art 4.7 assessment results could lead to different delineation. Not sure this is		WWF	This should be covered by the descriptions in the existing text.

	covered in the current text.			
789-793	The provision is in conflict to the fact how the water bodies are characterized by the reference values for the profiles / sections, which correspond to the whole water body.		SK	Para mentions already that the size of a modification can be relevant.

Relationship of Article 4(7) to Article 4(4) and 4(5)

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
798 et sqq.	Clarify relationship between Art. 4(5) and Art. 4(7).	The text does not clearly state if an Art. 4(5) assessment and decision is necessary after an Art. 4(7) exemption has already been granted. An explanation would be helpful that: - Option 1: when an Art. 4(7) exemption is granted, it can be assumed that the requirements for Art. 4(5) are met as well (only exception: When a water body is changed significantly so that a change of type occurs) Option 2: after an exemption is granted, less stringent objectives have to be included in RBMP (without further Art. 4(5) decision).	DE	Aspect added.
798-826	Although worthwhile in contents, this section doesn't concern the 'scope' of Art. 4.7 and thus should be moved to a different part of the document.		NL	Chapter moved.
801	Should say '...water bodies which are already subject to ...		JB, CHAIR NAVI TG	Added.
805-806	If a water body needs to be designated as heavily modified because of a new physical modification, permitted under Art 4.7, then would it be expected that the mitigation measures required in order to meet good ecological potential in that new HMWB should all be in place as a result of having met the "all practicable steps to mitigate adverse impacts" test under Art 4.7. In other words, all possible mitigation for the designated use of the new HMWB should have been taken in order to meet Art 4.7 requirements in the first place?	Clarity needed	UK	Issue addressed under chapter 4.5.
805-812	Relationship between 4(7) and 4(4-5) exemptions could be specified and separated more clearly.		FI	Aspect of coherence of assessments added.
807-809	Given that we have now clarified (provided a test for) temporary medium term effects (see comments on lines 736-740, it would be useful to clarify that the use of an Article 4(4) exemption may be appropriate [for example] ... (i) where uncertainty about the effects of a project or activity effects or about available mitigation options triggered the application of the Article 4(7) tests, or (ii) where ecosystem recovery following a project or activity is		JB, CHAIR NAVI TG	Introducing temporary medium-term effects caused significant controversies (see

	expected to take more than six years.			respective comments).
817 et sqq.	Clarify that contemporary measures to mitigate nutrient pollution should be taken mainly by the polluter. In addition mitigation measures regarding morphology should take into account the nutrient situation.	The example implies, that exemptions under Art 4(4) are granted without contemporary measures to cease releases of nutrients or at least to implement mitigation measures whereas on the other hand projects derogating morphology (in combination with the poor eutrophication status) lead to an Art 4(7) test focusing all mitigation measures to that project.	DE	Added.
817-825	As written, this text does not sit comfortably following on from lines 813-816		JB, CHAIR NAVI TG	Chapter moved.

Conditions triggering an Article 4(7) Test

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
827-1032 3.3 Conditions triggering an Article 4(7) Test Tables 2 to 8. Examples 1 to 6	Add an example (number 7) where the new modification generates a change in water body category. In this case there is a change in the QE to be monitored so deterioration will follow the same approach as in the rest of the examples. The status before and after modification could not be compared at QE level because of an obvious change in category.	Sixty percent of 4(7) cases in Spain are such that there is an obvious change in category. The most common example is a reservoir where a natural river is transformed in something “similar” to a lake. (in general reservoirs are a specific category that can use some QE from lakes but are also quite different from lakes)	ES	The assessment whether the project may cause deterioration needs to be made within the current category, not the expected status under the new category compared to the status under the current category.
827-1032 (Chapter 3.3)	Please add brief information about water body status principles and definition and one-out-all-out principle	There are different definition in water body status (ecological – biological + supporting phys.-chem. and hymo parameters, chemical and quantitative status)	CZ	Definition of status for surface and groundwater addressed in chapter 3. Addressing the one-out-all-out principle is for overall status classification and might lead, if addressed here, to confusion since deterioration at quality element level is the relevant aspect for Article 4(7).
834	For HMWB which have kept their original properties the basis for assessment of deterioration should be the impact of a project on the “status” and not on the	To define the basis for the assessment there should be a differentiation between HMWB, which lost their original properties (eg a river which has been dammed by human activities) and HMWB which were intensively used, but have kept their	WWF	HMWB/AWB is a specific water body category with its own

	“potential” of surface or groundwater bodies.	original properties (a deepened river). For the former one the “ecological potential” is relevant as a basis for assessment, however as regards the latter one “ecological status” should be used. We reconfirm our comments on draft 1 as regards this aspect.		classification scheme. Apart from the related legal questions of this proposal, it is not clear how a line should be drawn in practical terms between the first and second example.
835	Ecological, see 276		EEB	Adapted.
839-846	Change the order of these two bullet points.	The judgement comprises two parts: 1) authorization of projects and 2) clarification of deterioration. The second part is now contained in bullet points 1 and 3 (and thus split up) and the first part is placed at the second bullet point. Changing this would make for a more logical order.	NL	Amended.

Practical considerations and examples for surface water bodies

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
849	<i>It should be highlighted in the text that it is not always very easy to predict the effects of modifications on the status of a water body. How should Member States proceed if their evaluation didn't predict a deterioration of the status but if the project leads to a deterioration after its implementation?</i>	Even if a precautionary approach is chosen by the Member States to evaluate the risks, it could be possible that the evaluation leads to a wrong conclusion.	LU	Aspect and reference to respective chapters added.
849-499		The examples and explanations assess change in biological quality elements themselves, and not the supporting elements (this starts on 900). Maybe “biological” should always be added when mentioning “quality element”, as a precaution when text would be copied out of the context of the guidance ?	BE	In the examples the biological quality elements change due to changes of the supporting elements. Role of supporting elements further clarified later on in the chapter.
855	I agree with the point made during the meeting that it can in some cases be very difficult to be sure that a status class boundary has been crossed (i.e. that the assessed impact causes a change in status at element level). I understand, of course, that this is what the Directive anticipates ... but it is not always possible in practice, particularly if the projected change is very small. It would be useful to find a way to acknowledge this and to encourage the user of the guidance		JB, CHAIR NAVI TG	Aspect and reference to respective chapters added.

	to look at easily applied, cost-effective mitigation measures in such situations to avoid getting tied up in sometimes complex and often costly investigations trying to prove or disprove what is essentially a very small effect.			
855 - 895	It is necessary to develop a system of classification with five classes for the supporting quality elements for all types of surface water bodies.	See our comments on draft 1	WWF	This is already pointed out in the text (paragraph before case study from Scotland).
855-898	Tables 3-6: In Table 5, please change expected effect on overall ecological status from "2" to "1". Please modify supporting text for each table accordingly.	Hydro-morphological and physico-chemical elements do not automatically decide the classification of biological quality elements. A restriction of the exemption in article 4.7 to hydromorphological modifications is not justified (see comments to line 706-707 above). According to our understanding of the court rulings, even if the hydromorphological component changes to an inferior status, there is no deterioration of overall ecological status provided that the biological components don't change.	Euromines	In draft 2 of the document, table 5 (with example 3) includes also deterioration of biological quality elements.
858	Please clarify or add text	What do you mean by " <i>conditions not consistent for hydromorphological and physical-chemical quality elements supporting biological elements</i> " - are these cases where the status is worse than the good status?	CZ	This is wording from WFD Annex V (normative definitions).
872	<i>Could you add an example where the overall status as well as the evaluation of the biological quality elements remain but where a deterioration of a physico-chemical quality element respectively a hydromorphological quality elements occurs?</i>	Inclusion of these two examples would facilitate the understanding of the role of the supporting elements.	LU	Added under practical considerations and role of supporting elements.
885	There has to be a reliable prognosis of changes of relevant parameters which serves as a basis for an assessment. Arguing that changes have to be measurable means that deteriorations will often not be ascribed to projects.	Referring to "Practical considerations for any further deterioration of a quality element which is already in the lowest class can be whether such further deterioration would be measurable ." The argument that an impact is not measurable is used in some cases frequently to waive the effect and to negate any possible deterioration.	WWF	Aspect added.
886	Add new sentence "...such further deterioration would be measurable. For such a change to constitute deterioration it has to be detectable, and adversely affect the structure and function of the ecosystem."	Provide greater context on changes in status of elements already in the lowest status class.	UK	Aspect added.
894	Please clarify or add text	Is the deterioration of the status of WB if indicators deteriorate but do not lead to a change in the existing class?	CZ	Deterioration is considered between classes, but in the lowest class any deterioration is considered as

				deterioration. See clarification provided already earlier in the document in chapter 3.3 of draft 2 and Court ruling C-461/13.
895	The example in Table 6 (<i>Example 4 – Deterioration of a quality element of a surface water body which is already in the lowest class</i>) cannot be considered as deterioration of status of surface water body. This case cannot be an example for Art. 4.7.	As written in the draft guidance further deterioration of a quality element, which is already in the lowest class, is not measurable. Also WFD only requires that Member states define the thresholds between different classes used for assessing the status of a water body. In other words WFD does not require from Member states to develop a methodology to assess such instances. Considering the fact, that Art. 4 of the WFD deals with the status of water body and Art. 4.7 deals with deterioration of status of a water body, Art. 4.7 cannot be implemented in such cases when the deterioration occurs within the class or when the deterioration occurs in the lowest quality class (there is no lower class of a water body than the lowest quality class)	SI	Deterioration is considered between classes, but in the lowest class any deterioration is considered as deterioration. See clarification provided already earlier in the document in chapter 3.3 of draft 2 and Court ruling C-461/13.
900	Add “so called” supporting elements	As those elements are not always only supporting, e.g. for the determination is a status is very good	EEB	WFD terminology is used.
900 ff	<u>re-include Table with former Example 4</u> (Overall ecological status high) and specify that – according to Weser – already the deterioration of one of the three HyMo quality elements (or phys. chem. elements, resp.) supporting the biological elements triggers an Art 4(7) assessment.	The textual clarification of the role of supporting elements is highly appreciated . However, it is regarded vital to <u>support this clarification by a descriptive table</u> to further stress the consequences of the <u>deterioration of a single supporting element</u> in high status.	EEB	This would be a special case where the conditions for the biological quality elements are not consistent with the hydromorphological quality elements.
900-944	Section 3.3.1 gives a clear and almost exhaustive overview of all possible changes in quality elements and their relation to deterioration of status. However, one question remains: does a change of status class of one of the <i>supporting</i> quality elements, also constitute deterioration? Please address this question somewhere in this text.	Lines 942-944 do state ‘Deterioration of any of them indicates a significant risk to one or more biological quality elements and supports decisions whether a proposed modification may lead to deterioration and hence require an Article 4(7) Test’, which would suggest a change of class of a supporting element would not constitute deterioration of status if the supported element does not change class. However, this should be stated more explicitly, if this is indeed the case.	NL	Further considerations added.

909-910	Please clarify or add text	The hydromorphological elements and phys. chem. quality elements should correspond with the biological quality elements – does it mean 5 classes like in case of the biological quality elements?	CZ	See footnote with link to CIS Guidance No. 13 where this question is explained in greater detail for status assessment. For the assessment of expected effects on biology of new modifications a multi-class system can be considered as instrumental. See also case study from UK/Scotland.
911,912	Change sentence: “Therefore, the assignment of water bodies ... ~~may be~~ is made ...”	The biological quality elements are binding for the classification of the water bodies. The term “may be made” implies, that the member states are allowed to do the assignment of water bodies on the basis of other parameters.	DE	Text from CIS Guidance No. 13. In addition the supporting quality elements can be taken into account.
913	Add “to assess, whether there is a deterioration of the water body”	As this tackles only the question of deterioration	EEB	Further aspects added further below.
916-918	Add a case (under 3.3.1) when biological QE don't deteriorate but Hymo do for example.	This does not cover the case when biological QE don't deteriorate but Hymo do for example (this happens in practice and should be covered)	WWF	Descriptive text added.
918	Add “Note that hydromorphology plays an important role in achieving the objective of a good status/potential. Therefore, even if there is no immediate deterioration of the biological quality elements, it has to be assessed whether changes in hydromorphology may hinder the objective to achieve good ecological status/potential. E.g., if a water body is already in poor condition due to pollution but in good hydromorphological status, a change in the hydromorphology may not be visible in the biological quality elements, as they are already bad. But it certainly is a violation of the objective to achieve good ecological status/potential.	The second objective – achievement of good ecological status/potential is missing! It cannot be that extensive measures are taken e.g. to eliminate pollution, but by the time the pollution is eliminated, the hydromorphology has changed and the status is still poor, now due to hydromorphology. That's the reason for the lawmaker to include not only the principle of no deterioration, but also failure to achieve good status/potential!	EEB	Added.
919	Add as introduction “At the moment uncertainty governs the questions if and how biological quality elements will deteriorate. Therefore it is highly recommend to look closer	The discussion should be included. The requirement Nr. 3 that we agreed upon in the “ medium term effects” should be include as well.	EEB	Aspect of the need for reliable methodologies

	at the changes in hydromorphology. There must be sufficient scientific evidence, that the biological quality elements will not be affected.			further explained in the text.
919 to 926	Delete.	If there is no change in the quality elements; supporting elements shouldn't be considered as a reason for determining whether there is a deterioration and be used to trigger an article 4.7 test. Not relevant.	EURELECTRIC	The conditions of supporting elements are closely linked to the biological quality elements as outlined in the text. See also case study from Scotland.
921	Please change to: “... are instrumental to be able to assess the risk of a proposed new modification to the biology.”	The risk assessment is only possible based on qualified information on the existing conditions of the QE and pre-determined HyMo standards for different classes.	EEB	Text seems to be balanced.
927 et sqq.	Add: “ Chemical and physico-chemical elements supporting ...”	Insert “Chemical and” throughout the paragraph to be in line with the directive. In line 929 river specific pollutants are mentioned but their specific role (one out, ecological status cannot exceed moderate) is not addressed.	DE	Adapted.
927 et sqq.	Explain how river basin specific pollutants have to be taken into account if ecological status/potential is “moderate” or below.	Lines 937 et sqq. explain that general conditions appear to be relevant in the context of Art. 4(7). Does this not apply to river basin specific pollutants? The text states in lines 928 et sqq. that physico-chemical quality elements include both, general conditions and river basin specific pollutants.	DE	Aspect added.
929-926	Strengthen the text on importance of assessing so called ‘supporting’ QE.	As above, this text can lead to the assumption that deterioration only occurs if there is deterioration in biological QE (as above such statement does not capture a case where biological QE deterioration is not identified, but there is deterioration in Hymo QE nevertheless). This also suggests that classification according to Hymo or Phys. chem. QE is not encouraged.	WWF	Further explanation on the role of supporting elements added.
942-944		The wording shouldn't suggest that any deterioration of a supporting element would require an art 4.7-test, as this would mean that supporting elements would be evaluated far more stringent than the biological quality elements themselves, where you need deterioration of a class	BE	Term "supports decisions" is used. The conditions of supporting elements are closely linked to the biological quality elements as outlined in the text. See also case study from Scotland.
944	Similar to the chemical stats, every change in the river basin		EEB	Aspect added.

	specific pollutants is relevant (reference EuGH, Judgment . 01.07.2015, C-461/13 at 66,). In this context, note that Article 4(7) does not provide an exemption if deterioration caused by inputs of pollutants from point or diffuse sources drives the water body to a status below good (see chapter 3.2).			
944	Include similar paragraph as under 918 - Note again, that even if the changes in physical-chemical elements are not a deterioration,		EEB	Further text and references added under this section.
961-963		To our opinion, re-definition of the EP should be compulsory. See also 4.5.2.	EURELECTRIC	Adapted.

Practical considerations and examples for groundwater bodies

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
966	This chapter should be amended to make it clear that ECJ's findings in the Weser dredging ruling cannot be transposed directly on to groundwater bodies without further discussion.	The ECJ ruling of 1 July 2015 (C-461/13, so-called Weser dredging ruling) which related to SWB is transposed directly on to GWB without any further discussion. This is inappropriate, at least in this form. ECJ's findings cannot be transposed to a deterioration in the chemical status of groundwater bodies with no questions asked. ECJ has still not established any definitive principles for determining a deterioration of the chemical status. Until this issue is clarified – by ECJ, for instance – it will continue to be the task of authorities and project promoters to find benchmarks for it. Behind this lies the issue that the probability of a GWB deterioration (only 2 status classes) is higher and hence the need for an exemption is also higher than with SWB (5 status classes). It should also be clarified that the courts have not yet decided the conditions under which a deterioration of the quantitative status of a GWB can be assumed. The Guidance Document should make an express reference to the differences in the evaluation of the ecological status of SWB on the one hand and the quantitative (and chemical) status of GWB as well as to the associated questionability of transposing ECJ case law.	BDI (Business Europe)	Clarified in the text that practical considerations for groundwater bodies are derived based on the previously outlined principles for surface water bodies.
966	Explicit reference should be made to the differences in the	We are not aware of any court rulings that clarify when the volume	Euromines	Clarified in the text that

	evaluation of the ecological status of a surface water body on the one hand and the volume and chemical status of a groundwater body on the other hand.	status of a groundwater body has been deteriorated. This Chapter looks like a direct read-across of ECJ rulings on surface water bodies to groundwater bodies, which is not acceptable or justified. For example, as there are only two possible classes of groundwater body status, the potential for application of Article 4.7 exemptions may be greater for groundwater bodies.		practical considerations for groundwater bodies are derived based on the previously outlined principles for surface water bodies. Difference in status assessment is described in the text.
1004-1011	Please add	Deterioration of groundwater chemical status due to alterations to the level of groundwater is not specified.	CZ	See last paragraph of the chapter where chemical status is briefly addressed. Since Article 4(7) addresses alteration to the level of groundwater, groundwater quantitative status considered to be of main relevance.
1011	The example in Table 9 (<i>Example 7 – Further deterioration of a criterion which is already classified as "poor" leading to failure of achieving "good"</i>) cannot be considered as deterioration of status of surface water body. This case cannot be an example for Art. 4.7.	As written in the draft guidance further deterioration of a quality element, which is already in the lowest class, is not measurable. Also WFD only requires that Member states define the thresholds between different classes used for assessing the status of a water body. In other words WFD does not require from Member states to develop a methodology to assess such instances. Considering the fact, that Art. 4 of the WFD deals with the status of water body and Art. 4.7 deals with deterioration of status of a water body, Art. 4.7 cannot be implemented in such cases when the deterioration occurs within the class or when the deterioration occurs in the lowest quality class (there is no lower class of a water body than the lowest quality class).	SI	The guidance clarifies earlier that any further deterioration of a quality element which is already in the lowest class is considered as deterioration (according to the Court ruling). Also because it drives the water body further away from the WFD objective of good status. In practical terms for applying this provision, such changes should be measurable to consider as deterioration.
1019-1022	'With regard to the groundwater balance test (available groundwater resource is not exceeded by the long-term annual average rate of abstraction - see criteria no. 1 above), failure of meeting this test would mean over-abstraction and a long-term imbalance, which could lead to a "continuous" lowering of the	The addition of, 'if continued' is being suggested in order to be more specific.	MT	Added.

	groundwater table. If continued in the long-term this could lead to a loss of the resource’.			
1020-1022	Change to: “Failure of this test could indicate over-abstraction, and a long-term imbalance, or a "continuous" lowering of the groundwater table.”	Since temporary imbalances can occur for relatively long periods through human intervention (e.g., mining operations), not every shortfall in the water balance results in the permanent loss of a water resource. Article 4.7 exemptions may still be applicable.	Euromines	Adapted.
1028-1030	The sentence covering lines 1028-1030 should be deleted. We propose a clarification that exemptions for point and diffuse sources are also possible under certain circumstances: “Note that an exemption for deterioration of status caused by inputs of pollutants from point or diffuse sources may also be provided on grounds of proportionality consistent with the intent of Article 4(7).”	see comments to line 706-711	Euromines	See earlier reflection on this comment.
1028 - 1030	The sentence “In this context, note that Article 4(7) does not provide an exemption if deterioration caused by inputs of pollutants from point or diffuse sources drives the water body to a status below good” should be deleted. We propose a clarification that exemptions for point and diffuse sources are also possible under certain circumstances: “Note that Article 4(7) may also provide an exemption on grounds of proportionality if deterioration of the groundwater chemical status is caused by inputs of pollutants from point or diffuse sources.”	See rationale on our comment on 706 ff	BDI (Business Europe)	See earlier reflection on this comment.
1030	Delete reference to chapter 3.2	No Art. 4(7) exemption can be granted for a deterioration of the status of a ground water body caused by inputs of pollutants due to the text of WFD (it only mentions alterations of the level of bodies of groundwater) – this has nothing to do with the information in chapter 3.2 which refers to surface water bodies.	DE	Deleted.

Effects on other water bodies

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1033	All rules for the assessment of other water bodies are valid only in case if the elements of these other water bodies are also affected!		SK	Considered as a statement.

1040	Suggest we add '(e.g. an artificial water body that connects two river basins or an adjacent coastal water body in the neighbouring river basin district.'		JB, CHAIR NAVI TG	Added.
1051		First and also; an applicability assessment should be performed for all water bodies affected	BE	Added.
1051	Change 'affected' into 'in which deterioration occurs'.	'Affected' is too broad and could also comprise water bodies with effects not constituting deterioration.	NL	Adapted.
1051-1055	Chapter 3.4 seems to suggest that article 4(7) may be applied to several water bodies of the same basin that are impacted by the project (in theory, even all). It is debatable whether 4(8) allows this: 4(8) seems to allow the application of 4(7) exemptions only to one water body (or, at most, a small number of adjacent water bodies).		WWF	The WFD objectives are outlined in Article 4, including exemptions which can also apply to other water bodies.
1052-1055		The wording suggests that it is necessary perform an art 4.7 test on all water bodies concerned. In case several waterbodies are possibly affected, it is clear that the applicability assessment should be carried out on each water body. In case there is an effect, the art 4.7 test might be more focused on a smaller number of water bodies than compared with the assessment step ? Still, everything should be done to prevent effects on whichever waterbody.	BE	Added.
1057	Add text to end of sentence "...may not deteriorate, but another water body might be impacted."	Additional text for clarity	UK	Added.
After 1058	Additional text to provide examples of effects that would <u>not</u> be covered by Art 4.7 would be helpful in reinforcing this point. For example, by reiterating that any downstream effects must be related to the new physical modification and not result from, for example, a new discharge of a pollutant once the new modification was 'operational' (except in the circumstances of a new sustainable human development activity causing deterioration from high to good status).	Greater clarity on scope of Art 4.7 in relation to downstream effects in particular.	UK	Reference to scope added.

Cumulative effects

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1064 et sqq.	Chapter 3.5 has to be changed. With regard to the achievement of good status the WFD does not demand an examination of cumulative effects on	Chapter 3.5 is rather vague. There are no authoritative guidelines considering which projects have to be examined or which planning stage the projects need to have. The competent authority for permitting a project and assessing an Art. 4 (7) Test is not necessarily the water authority. Only at the planning level of the RBMPs the	DE	Practical challenge recognised and added to the text. However, the issue seems to be of relevance (e.g. for multiple groundwater abstraction

	the project level of Art. 4 (7). Cumulative effects are (only) to be considered on the planning level of the RBMPs.	planning water authority has the knowledge of all projects and other impacts to the relevant water body. In the case "Elbvertiefung" the Federal Administrative Court of Germany has judged that with regard to the achievement of good status the WFD does not demand an examination of cumulative effects on the project level of Art. 4 (7) (BVerwG-Urteil vom 09.02.2017, 7 A 2.15, Rn. 594).		points). Also since it was pointed out several times in the frame of the CIS. Other MS may also have more central planning approaches in place, allowing a better consideration of cumulative effects.
1064 ff.	By contrast with what is specified in article 6(3) FFH, no obligation to make a cumulative assessment can be inferred from article 4(7) EU WFD and this difference should be articulated here.	This chapter is very difficult for project promoters to come to grips with. BDI is very critical of the announcement that further approaches may be added in the future on which, clearly, it is not possible for us to take a position here. However, by contrast with what is specified in article 6(3) FFH, no obligation to make a cumulative assessment can be inferred from article 4(7) EU WFD and this difference should be articulated here.	BDI (Business Europe)	This issue of cumulative effects was raised several times in the frame of CIS process. The issue therefore seems to be relevant, as also explained in the text. Practical challenge now addressed in the text.
1064	Cumulative effects – text should be further detailed (more concrete) to consider concrete situation on the ground (e.g. by adding an example)	For example, what would the guidance recommend in the case of a larger WB with many projects with very different project owners (HP investor, flood infrastructure project owner, navigation improvement initiator, etc.)? Who should do what exactly as part of Art. 4.7 process and related other assessment processes (SEA, EIA, etc.)? Which institution and how will calculate/assess the cumulative effect (e.g in the case of several local authorities)? What is the concrete task of the project owners, and the different authorities in case of calculating cumulative effect? Etc.	WWF	Case study added.
1072	Please change "is" to "may be".	No obligation to make a cumulative assessment can be inferred from article 4(7) EU WFD.	Euromines	"in practical terms" added. Challenge now also pointed out in the text.
1075-1083	There is a timing inconsistency in the proposal to assess cumulative effect of new modifications on the basis of existing RBMPs, because at the time of assessment the information in RBMPs can be already out of date (especially at the end of the planning cycle).	In case of multiple developments in one catchment (e.g. due to EU founding possibilities) different projects can be prepared and submitted for assessment simultaneously and the only possibility to assess the cumulative effect seems to be at the stage of strategic environmental assessment of the update of RBMP that includes those projects.	PL	Practical challenge recognised and added.
1078	Water body condition according to the valid Water Plan.		SK	Information on water body status from River Basin Management Plan addressed.
1081	Clarify which planning stage the projects need to have to be considered.		DE	The text is not prescriptive. Practical challenge added and examples are pointed out, including e.g. permits, information on planned projects from the flood risk management plans or sectorial development plans.
1081	Add that the information also needs to be available for all relevant		WWF	Reference to SEA included, which has public consultation requirements, next

	stakeholders, including environmental NGOs.			to other examples (e.g. FRMPs which require public consultation). However, practical challenge seems to be availability of information.
1086	affect the ability of the water body to reach the objective of good status/potential. The permitting authorities should not only decide in favor of public interest activity, thus excluding other activities such as SHPPs, but should take into consideration the coexistence of more than one, parallel activities.	The permitting authorities must not favor one activity against other activity, because all activities might have positive and negative impacts. The correct way to view it is the perfect coexistence of all activities where the positive impacts of one activity will erase or eliminate the negative impacts of another activity. In that way, the permitting authorities should focus in a win-win solution where the summation of the positive impacts will increase and the summation of the negative impacts will eliminate to zero (offsetting one another).	GR	Unclear comment why SHPPs are not considered to be also of public interest.

Managing uncertainty

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1092-1127		“Managing uncertainty” gives advice on what to do when evaluating a project proposal. After deciding on it (using art 4.7 or not), there is also the aspect of managing/follow up of the uncertainty the following years, which may result in additional mitigating measures of may not, and for wich the 6-years cycle of the RBMPs can also be used ? (possible link with 1502-1510 ?) Additionally, It might be a good practice to state what are the gaps in the knowledge and uncertainties and be transparent about it ?(f.i. during public consultation)	BE	Considerations added.
1093-1126	MT highlights the importance of this section in relation to uncertainties.	Section 3.6 acknowledges ‘uncertainty’. However, this document also recommends some actions which could reduce these uncertainties (pg 33) such as the need to carry out specific studies or models and an establishment of a solid baseline. MT deems that uncertainties can only be addressed in the longer term in view of the absence of a solid baseline, hence the need to consider them throughout the application of Article 4(7).	MT	Considered as a comment.
1100	Add ‘or alternatives’ at the end of the sentence.		WWF	Text addressed mitigation.
1105	Include: Without that baseline, no predictments can be made	Clarification	EEB	Added.
1105	<i>Edit note: New paragraph after “in case”</i>		EEB	Text after in case is linked to

				previous text.
1106	Add to this bullet ‘...can be more likely and/or more difficult to ascertain.’		JB, CHAIR NAVI TG	Added.
1116	In reality some of these decisions come down to expert judgement: maybe this should be acknowledged here?		JB, CHAIR NAVI TG	Some further aspects added.
1116	<i>Changes in hydromorphology and general physical-chemical components are an important indicator for changes in the biological component. If a change can be observed there, there must be sufficient scientific evidence, that the biological quality elements will not be affected.</i>	See requirement Nr. 3 that we agreed upon in the “medium term effects” should be include as well.	EEB	See controversial comments on “medium-term effects”.
1116	Delete this bullet “Others”	The bullet list from 1102 to 1115 is introduced as „including for instance” and so is clearly not intended to be exhaustive, so simply adding „Others” at 1116 does not contribute anything meaningful.	UK	Deleted.
1117	Suggest add ‘A proportionate risk-based approach ...’		JB, CHAIR NAVI TG	Added.
1120	Suggested additional text from end of line 1120: “Where there is insufficient monitoring data to establish certainty of background impacts from existing modifications or alterations, the competent authority may consider an adaptive approach to the issuing of time constrained permissions, where any such permission is assessed by the competent authority as not likely to cause deterioration of the water body (either individually or cumulatively). Any such constrained permissions must be supported by Article 4(7) test screening, a detailed monitoring programme with additional measures that will allow cessation of the temporary new modification or alteration to avoid temporary or long term deterioration in the status of a water body. The additional monitoring data must be included in the assessment if there is to be an application for a permission for a new modification or alteration.”	There can be sufficient uncertainty on environmental responses to pressure and impacts from new modifications or alterations and with further monitoring, it may be possible to issue the permission with certainty on environmental impact. There should be flexibility to allow the competent authority, with the project developer, a time constrained period to consider measures to control and monitor and then assesses environmental impact from the time constrained new modification or alteration.	UK	Text added.
1121 - 1126	It would be useful if the paragraph could be upgraded with additional information or case study regarding how to proceed in the case where ex-post evaluations provide evidence that deterioration actually occurred without applying an Article 4(7) Test.	Paragraph (lines 1121 – 1126) state that precautionary principle can help to avoid situations where ex-post evaluations provide evidence that deterioration actually occurred without applying an Article 4(7) Test. For the purpose of better understanding of the 4(7) provisions we recommend that information how to proceed in these cases is provided and added to the existing text.	SI	Text further developed.
1123-1124	Replace “Such situations should be avoided by applying 4(7) Tests also in cases where deterioration is uncertain” with “Such situations should be avoided by applying 4(7) tests also in cases where no reasonable assessment of the risk of deterioration	Provide greater clarity on what is meant by “uncertain”	UK	Text adapted.

	could be made, even using expert judgment, and therefore the level of uncertainty about the impact of the project remains high."			
1124	As with my comments on line 622, it seems reasonable to ask a project owner to apply the Article 4(7) tests if deterioration is uncertain and the residual risks are moderate to high, but is such an approach justified if the risks are negligible or minor?		JB, CHAIR NAVI TG	Text adapted.
1126	Add sentence: <i>"On the other hand situations should be avoided that projects which cause no relevant impacts are overburdened with precautionary investigations."</i>	Only a suspicion is not enough. There has to be a scientific sufficient probability, that the cause-and-effect mechanism causes relevant impacts in the environment.	DE	"Proportionate" risk based approach and some further aspects added.

Article 4(7) Applicability Assessment and streamlining with other Directives

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1128 to 1223	Merge step 1 and step 2: "Which quality elements could be significantly affected by the proposed activity and which information needs to be collected to evaluate if the proposed new modification/... could cause..."	The proposed 3-step approach does not seem fully useful for practical application: Without a "significance" threshold the step 1 can hardly deliver a selective function, i. e. rather every water related project which needs a permit can be expected to have "any" (not necessary significant) direct or indirect effect on a quality element	EURELECTRIC	Wording adapted and potential use of pre-determined standards added.
1128 - 1359	The guidance should recommend that article 4(7) applicability assessments should be always subject to public consultation, notice and judicial review (if they are not part of an EIA or a SEA). Such recommendation can be based on article 4(9) and the Aarhus convention. It should recommend that AA is required before the conclusion of the article 4(7) applicability assessment.	The article 4(7) applicability assessment ("trigger test") is a procedure with significant legal consequences. If it is negative, then the project is considered WFD-compliant (probably, this conclusion cannot be changed by a subsequent EIA/AA). Although the draft guidance suggests that the procedure must be documented (line 625), it is silent about public consultation, notification and access to justice. If the project is not subject to an EIA, AA or SEA, this is a significant omission. In the same vein, a negative article 4(7) applicability assessment is a decision by which the competent authority "agrees" to certain aspects of the project. The competent authority must "agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public...": therefore, an AA is required before the conclusion of the article 4(7) applicability assessment.	WWF	Reference added.
1144	<i>"Applicability Assessment" has to be an inherent element during the permitting phase of a new project.</i>	Instead of <i>has to be</i> , it would be preferable to say <i>should be</i> because the obligation has to be supported by national legislation	PT	Amended.

Approach for an Article 4(7) Applicability Assessment

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
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1160	Rephrase to “Is an exemption possible?”	If the answer to the previous question is “yes”, the test is always required. However, unless an exemption can be granted for this project, it would fall outside the scope of the article 4.7	BE	The question whether an exemption is possible is addressed by the Article 4(7) Test, not the Applicability Assessment. The third bullet simply delivers the conclusion from the second bullet point.
1161	The guidance should make clear that art. 4(7) exemption is not applicable to water bodies of unknown status, or to water bodies which are not monitored in accordance with WFD. This follows from the requirement of an appropriate data set.		WWF	The need for an appropriate data set is already pointed out.
1163	In order to avoid possible confusion with GEP mitigation measures (about which information is also required to understand whether the achievement of good status might be compromised), I suggest the following re-wording ‘... needs to include information on project-specific mitigation measures, which are an inherent part of the project and which ...’		JB, CHAIR NAVI TG	Added.
1173	See comment on line 622. Given that there will almost always be some level of uncertainty when undertaking an applicability assessment, a pragmatic approach would be to link the application of the precautionary principle to the level of risk. I therefore suggest we amend the comment ‘Follow the precautionary principle’ to read ‘Follow a risk-based approach applying the precautionary principle as appropriate’		JB, CHAIR NAVI TG	Amended.
1173		There still a bit of overlap between figure 6 and some parts of figure 8, certainly in case the redrafting of a project (including mitigating measures) results indicate that there’s no risk anymore (deterioration or not reaching objectives), you’re the supposed to “slip out” of art 4.7 somewhere via figure 4 ? It might be better to include the whole of figure 4 in figure 6 ?	BE	Figure amended.
1173		Article 4.7 Applicability assessment: this stage corresponds in reality to the assessment of the existence of a deterioration which will then be followed by an assessment of the applicability of Article 4.7 therefore the wording of this stage needs to be changed. We also question the logic of the step wise approach as data collection should be the first step in the process before screening and scoping	EURELECTRIC	At this stage it is checked whether Article 4(7) is applicable/even relevant. The need for basic data is pointed out within Step 1, the screening stage. The data collection step is for the in-depth assessment during stage 3.

1173	Increase size of figures 4 and 6, or use larger font size.	Diagrams are useful but font size is too small to be easily legible	UK	Will be done for the final editing.
1176-1252	Step by step approach is good in theory, but in practice there might be differences. For example, in Finland, it is often a question of existing data.	Could you see possible to try to proportion this approach more into practice? There is require of case study and it certainly helps.	FI	Request for case studies was sent.
1182	elements and sub-elements to help ensuring that subsequent assessments are proportionate. For example, in the case of SHPPs, the existence of the ecological flow (due to each country's legislation) ensures that the quality of the river body is kept constant, and as a result the screening step to determine any direct or indirect effects on the quality elements of the concerned water body can be avoided.	This legally established ecological flow mechanism is enough to avoid the screening step or any other second steps (scoping) in the case of SHPPs.	GR	Even with the application of mitigation measures status can deteriorate, e.g. from high to good.
1184	Delete "(including alternatives)".	There is no legal basis in the WFD for requiring assessment of alternatives.	Euromines	Better environmental options are mentioned in Article 4(7). Furthermore it is considered good practice to look into alternatives.
1190 - 1192	It could be added: In case of groundwater bodies, existing dependent terrestrial ecosystems. Mixing zones designated in the river basin management plan.	More relevant data to bear in mind for the screening step.	ES	Added.
1195	Include MSFD in between the brackets, i.e. (e.g. EIA, MSFD and Habitats Directive).	MSFD assessments can also contain relevant data for the screening step	BE	Added.
1195	Delete: "Other legislation which might be concerned (e.g. EIA or Habitats Directive)"	Other legislation is not to be screened for analyzing potential impacts of a project on the achievement of WFD objectives. Of course assessments for WFD, EIA und Habitats directive shall be streamlined, but that is content of chapter 3.7.2	DE	Already during the screening of a project proposal in case be useful to check in the beginning whether other legislation is concerned (e.g. whether it is located within a Natura 2000 site). In order to improve the links it is suggested to keep this part.
1196-1199	We have a reservation on this statement and don't support having a generic approach in those cases.	All potential situations should be described and solutions should be given in all situations. For example, there might be a case of a project in a Natura 2000 site which cannot go through an EIA due to its size (smaller than the EIA Directive requirements), however, an appropriate assessment (AA) under Natura 2000 Directives should be conducted; in which case the Art 4.7 assessment and AA could be cumulated.	WWF	The text is not questioning the need for an Article 4(7) assessment. It simply recognises that assessments for large

		However, in many cases, if no EIA and AA is required, an art. 4.7 assessment should still be required (e.g. the case of a small HPP affecting a water body outside N2000).		projects might need to be more exhaustive.
1196-1197	<i>There are some alterations that obviously cannot produce a significant effect/impact on water body status because of its importance (in terms of size and water body status/sensitivity). For these cases, some thresholds could be established to avoid the effort/burden of a proper "Applicability assessment" process. This would make possible what is said in lines 770-797 and 1196-1197.</i>	A previous step to a proper "Applicability assessment" is suggested for alterations that obviously do not produce impact on water bodies (a more generic approach). Some thresholds of the importance of the alteration (in terms of size and water body status/sensitivity) could be established and alterations under these values should not require a proper "Applicability Assessment" nor Art. 4.7 Test.	ES	Aspect to use pre-determined standards to assess risk for deterioration added under Step 1 in the descriptive text.
1199	Add sentence: "... (i.e. is there a potential project cause-and-effect mechanism? Add: Will the effect be observable or measurable?)"		DE	Added.
1200	.. should be documented in the frame of the permitting procedure	As pointed out before and during ATG, not all projects are subject to a "permitting procedure"	BE	Adapted.
1209-1213	Please consider and add	There is a summary of the parameters needed for the investigation and quantification of the influence in general. For a qualified estimate of the impact of the project, a special monitoring program will need to be ensured quite often, which may lead to a significant delay in realization of the project and it will also increase costs. How will the expected impact be compared with the monitoring and assessment system in the 6 year cycle?	CZ	The potential need for data collection as outlined in this paragraph addresses the closing of data gaps (e.g. for the current status), complementing status information.
1214	mechanisms should be plural	spelling error	BE	Corrected.
1214	Please explain the term <i>causal mechanism</i> and its determination.		CZ	Causal relationship between two issues. A modification causing an impact. This should already be clear from RBM Planning. How can otherwise a Program of Measures be set up addressing existing pressures.
1215	Please clarify or add text	What does mean the <i>local effects in a water body context</i> ?	CZ	Effects which do not cause deterioration at the level of the water body.
1224-1231	Please add	There is no indication how to quantify the effect on the WB status or the WB potential at the level of individual quantitative elements. Expert judgment or modelling would be appropriate, or give an example or a	CZ	See description under step 3. Also CIS Guidance on status assessment

		case study that will contain a procedure of above mentioned.		contains relevant information.
1224-1236 Related also to 1092-1127	<i>To determine the impact of a hydro-morphological alteration on water body status could be very challenging. As many as possible good example-case studies (related to Investigations, Modelling, Experts criteria, etc.), would be welcome. Additional research in this field should be carried-out.</i>	As many as possible good examples (Investigations, Modelling, Experts criteria), and additional research on determining the impact of a hydro-morphological alteration on water body status, would be welcome. Uncertainty on the impact of a hydro-morphological alteration on water body status has to be managed in the context of Article 4(7).	ES	Request for case studies was sent. Furthermore, under the CIS an activity on the linkage between BQEs and supporting elements is ongoing.
1238	Should be '... or compromise improvement' (not compromised)		JB, CHAIR NAVI TG	Corrected.
1238-1240	Please clarify	There is no more the <i>local effects in a water body context</i> , but just time perspective and temporary short term effect.	CZ	"water body" added. The relevant level is the water body.
1245	Member States should have the opportunity to accumulate the testing steps into their procedures when the principles and testing steps in their determined assessment steps will be preserved.		SK	Considered as a statement. The Guidance points out principles of good practice.
1246	If the user of the guidance has got to this point it is not because the project 'may' cause deterioration or compromise the achievement of good status/potential, but rather that it is now that the 'project is expected to cause deterioration or compromise the achievement of good status/potential'. 'May' is the language used during screening and scoping. I therefore suggest/request this change in wording.		JB, CHAIR NAVI TG	Adapted.
1246-1247	Please add	What does the project documentation must contain (if the project causes the deterioration)? Do you have any examples of steps of this?	CZ	Further case studies have been requested.
1252	Could the Jaspers examples in Poland and Latvia be explained in more detail, especially with regard to Art. 4(7) application?		DE	Case study requests have been sent to MS. The relevant ones received are included. Work is ongoing on the further elaboration of the checklist tool (presentation foreseen for the ATG Meeting).
1252	This case study box should acknowledge that the method considers whether an effect is temporary or only local (in the context of the water body) as part of Step 2. So, for example, under 2. in the box we could say 'Determine scope. Consider whether effects are temporary or are not significant at the scale of the water body. WFD assessment required only for		JB, CHAIR NAVI TG	Added. We used the slides for the preparation of the case study.

	elements that could be affected.’ But as I am not sure who prepared this box, it would be best to ask JASPERS maybe?			
1252	Also to confirm with JASPERS: suggest add after ‘...Latvia (for port development including dredging), and will be further elaborated for wider application in the near future.’		JB, CHAIR NAVI TG	Added. To be checked with Jaspers.
1252	Case study 2: A WFD compliance assessment checklist tool developed for JASPERS; We recommend that in the box “links” a link to the document is provided rather than a link to the power point presentation, which summarizes the original document.		SI	The document is not yet officially available. However, work is ongoing on the further elaboration of the checklist tool (presentation foreseen for the ATG Meeting).
1252	These case study seems problematic	For example, point 2 assessment limited only to QE they expect to be affected; there is no indication on how this decision is or should be made (ie of which QE will be affected). Moreover, does the case study suggest that PL case of Art 4.7 application as regards flood management is a good case example of Art 4.7 application? We would have a reservation on that.	WWF	The case study provides a summary of the presentation held at the first ATG Meeting. Work is ongoing on the further elaboration of the checklist tool (presentation foreseen for the ATG Meeting).

Streamlining of assessments with the EIA and Habitats Directive

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1263 et seq.	This chapter should be deleted. At least it should be clarified that these are the personal ideas of the authors but not an interpretation of the provisions of WFD with practical relevance for water authorities.	All in all, numerous instruments and requirements from European environmental impact assessment and nature protection legislation are transposed on to the thematic content of WFD in this chapter, even though there is no legal basis for this in WFD.	BDI (Business Europe)	Addressing synergies with other Directives is part of the mandate, therefore requested and very relevant in practical terms for streamlining and reducing the assessment burden.
1263	The draft guidance highlights “synergies” with EIA directive. However, it stops short of stating that an EIA is required before an article 4(7) applicability assessment: in fact, the main position is that all procedures should be applied “alongside” (line 1276). However, EIA precedence seems inevitable. With respect to article 4(7) applicability assessment (cf. §3.3, §3.7), not only the project must be defined, but there must be some		WWF	With regard to streamlining see the Commission guidance document on streamlining environmental assessments conducted

	evidence of “deterioration of status” of affected water bodies (with separate references to biological, hydro-morphological, etc. elements) and some knowledge of cumulative effects. With respect to article 4(7) test per se (cf. §4), information about mitigating measures, alternative technically feasible options, the justification of the project and its impact on other water bodies must also be available. There is also another problem – it is unclear what happens if an AA or an EIA rejects the article 4(7) test afterwards.			under Article 2(3) of the EIA Directive as cited. The document also clearly points out that the focus of the significance tests of the different Directives is very distinct.
1271	The term „mandatory“ should be replaced with “beneficial” or “useful” in order to follow the provisions of the Water framework directive and avoid misinterpretation.	Streamlining with EIA directive or with Habitat directive is beneficial for reducing administrative burdens and useful for achieving common understanding of directives provisions, however it cannot be mandatory. As it is written in the guidance (line 1271) it would exceed the requirements of the WFD directive and could lead to misinterpretation.	SI	"Mandatory" is a citation and relates to the EIA and the Habitats Directive. See footnote.
1273	Delete ‘EIA Directive and the’.		NL	Statement relates to the EIA and the WFD.
1281	Insert footnote indicating that where possible, synergies could still be used, for instance regarding the search for alternatives or mitigation measures.	The current ‘independently’ in this line is too strict. Both/all tests should be performed in their entirety, but could still – for some aspects – be performed jointly.	NL	Text slightly revised and footnote added.
1291	It might be useful to add a ‘bar’ across the page (like that used to illustrate ‘Joint / coordinated data collection’) to indicate ‘Common mitigation measures’ (i.e. before the boxes dealing with the individual tests under each Directive)		JB, CHAIR NAVI TG	
1291	In figure change text in the second last box of EIA. It is environmental impact assessment report” (tai “EIA report”) instead of environmental report.		FI	Adapted.
1291	Figure 5 should be revised	What are the connections among the 3 paths? And which one overrules or more dominant, then the other. The figure could show this as well.	WWF	The connection is the joint/coordinated data collection. No legislation overrules the other one, as pointed out in the text.
1293 to 1358		The references to the EIA and Habitats Assessment are rather descriptive (which is partly redundant to chapter 2.7.2 and 2.7.3), the concrete linkages and potential synergies which are expected here are missing (deleted from the previous version, why?) or only high level (“cooperation ... during the data collection and assessment stage”)	EURELECTRIC	Concrete linkages shifted from chapter 2 to this chapter.
1317	<i>An EIA does not require an assessment on quality element level but rather the likely significant impact of the project on water</i>	<i>EIA does not require an assessment on quality element as it evaluates the likely significance of the project’s impact on water but it could contribute to this assessment</i>	PT	Adapted.

1321	<i>in other words, carrying out an EIA does not guarantee fulfilment of article 4(7)</i>	<i>in other words, carrying out an EIA does not guarantee fulfilment of article 4(7) if an quality element assessment is not deseveloped in the EIA.</i>	PT	Adapted.
1323	I think this should read ‘in close cooperation with the Article 4(7) applicability assessment during the ...’		JB, CHAIR NAVI TG	Adapted.
1324-1328	Delete the text from “In doing so Member States,...” through to “,...and minimize conflicts between them”.	As there is no EU legal basis for an EIA procedure covering all projects, it is not appropriate to recommend it in Guidance of the European Commission.	Euromines	The paragraph informs about the possibility.
1324-1327		Establishing an EIA procedure where it is out of scope of EIA annex I & II in order to investigate the requirements of 4(7) does not look like streamlining/synergy, but like creating extra work by an additional formal EIA procedure. Why not just investigate the requirements of 4(7) by their own? Please explain the streamlining benefit of the extra EIA procedure.	EURELECTRIC	The paragraph informs about the possibility.
1326-1327	Reconsider using word “even”. It makes whole sentence little unclear.		FI	Even intends to clarify that this is possible even for projects which are outside the scope of an EIA.
1330-1357	Could cover more relationships between precorporial preconditions of WFD article 4(7) and HD article 6(4).		FI	Main potential for synergies seen for Applicability Assessment. Article 4(7) Test and HD 6(4) Test can be very distinct.
1346	Should say ‘indicate that no likely significant effects...’		JB, CHAIR NAVI TG	Text revised.

ARTICLE 4(7) TEST AND RELATIONSHIP TO THE RBMPs

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1362	Change “my cause deterioration” to “may cause deterioration”	Typing error	UK	Changed to "expected to" (as the result of the Applicability Assessment).

1362	As with comment on line 1246, this should say ‘... development activity is expected to cause deterioration ...’		JB, CHAIR NAVI TG	Adapted.
1363	<i>an "Article 4(7) Test" needs to be performed during the permitting procedure/</i>	This obligation needs to be introduced at the national legislation so it would be advice to recommend it.	PT	To meet the WFD requirements an Article 4(7) Test is needed.
1363	Change ‘affect’ into ‘endanger’ or ‘compromise’		NL	Adapted.

Step-wise approach for an Article 4(7) Test

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1373-1375	This procedure can be transferred to the approval process for granting of derogation and therefore a project that does not meet all the defined requirements cannot be approved. The application will be submitted until the time the project is modified so that a derogation can be granted.		SK	Considered as a statement.
1392-1393	Amend wording to “Where a project also causes effects on other bodies of water, it can only be authorized if exemptions can also be justified for these other affected water bodies (Step 4; see also chapter 3.4).”	Slight rewording for clarity	UK	Adapted.
1398		Wrding ? When a project is authorised under art. 4.7 it should be mentioned in the RBMP, but this obligation is for the competent authority and not the project initiator nor the permit authority. It should be made clear that the RBMP-condition does not suspend the authorization.	BE	"by the competent authority" added. Clarification that this is a reporting requirement is provided in chapter 4.5.1.
1402-1404 Figure 6	The graphic needs to be revised. The alteration of the groundwater level needs to be included.	The graphic was adapted. By doing this, the exemption regarding the “alteration of the groundwater level” has been partly forgotten. Therefore, the graphic needs to be revised and the alteration of the groundwater level should be included.	BDI (Business Europe)	Added.
1402-1404	Fig. 6: The graphic needs to be revised. The alteration of the groundwater level needs to be included.	The graphic was adapted. By doing this, the exemption regarding the “alteration of the groundwater level” has been partly forgotten.	Emines	Added.

		Therefore the graphic needs to be revised and the alteration of the groundwater level should be included.		
1402	Figure 6: step 5: We suggest different wording of the step 5 "Does the project guarantee at least the same level of protection as the existing union legislation?"	It is not the WFD requirement to check whether is the project consistent with other EU legislation.	CZ	The requirements outlined under step 5 stem from WFD Article 4(8) and 4(9).
1402		There still a bit of overlap between figure 6 and some parts of figure 8, certainly in case the redrafting of a project (including mitigating measures) results indicate that there's no risk anymore (deterioration or not reaching objectives), you're the supposed to "slip out" of art 4.7 somewhere via figure 4 ? It might be better to include the whole of figure 4 in figure 6 ?	BE	Flow chart was adapted.
1402-1403	Figure illustrates very well different phases of the process.		FI	Appreciated. The flow chart was further developed and adapted based on the comments received.
1402-1404	1. Please adapt the figure to indicate that steps 1 and 2 are not fixed in order (2 could happen before 1) and that they could be part of an iterative process between themselves. Please split step 5 into two different steps, as in the previous version of the document.	1. As discussed during the second meeting of the ATG, there are benefits to both steps being the first to be performed and it will mostly come down to an iterative cycle of doing steps 1 and 2 several times in no specifically predetermined order. For clarity. These are two very different tests which deserve to be depicted as such.	NL	Flow chart was adapted.
1402	Figure 6 should be revised	Alternatives (better env. options) should be considered before or at the same time as the mitigation measures to ensure avoidance of the impact. The need for strategic approach is not reflected in this figure.	WWF	Flow chart was adapted.
1403	Regarding the Figure 6 (<i>Example for a step-wise approach for an Article 4(7) Test and the iterative relationship with the Article 4(7) Applicability Assessment</i>) our opinion is that performing steps 1 to 5 in a consecutive way is not always practical. Taking into account the justification of the comment we propose that for Figure 6 is at least complemented with a note	In our opinion the process of testing (justifying) of exemptions under Article 4(7) could be more efficient if steps 1 to 3 were not considered as consecutive steps but rather as parallel activities. The approach for implementing steps 1 to 3 differs when the steps are used for assessing strategic level projects, where larger areas, basins, regions are assessed, or for assessing project level, where more detailed planning is required. For example, strategic level planning primarily provides results for provisions under 4(7)(d) and 4(7)(c) (steps 2 and 3 in Figure 6). The results of this two steps represent the basis for	SI	Flow chart was adapted and comment added in text.

	that the order of applying different steps depends on the level of planning.	implementation of provisions of 4(7)(a) (step 1 in Figure 6) and for preparation of possible mitigation measures² for a certain river stretch or water body and type/extend of modification. In the continuation of the procedure when the modification of the specific part of river stretch is planned in more detail, an additional verification of this modification is performed. Regarding steps 4 and 5, in practice, it is more efficient that provisions required under steps 4 and 5 are considered and taken into account during implementation of steps 1 and 2. In that way the overall process can be more efficient and time saving. As it is represented now in the figure 6, after step 3 the Member state has to repeat the process already performed in steps 1 and 2, that is to find suitable solutions to reduce or eliminate the impact on other water bodies. It is our opinion that the water body concerned and all the water bodies that may be affected should be considered in by the same procedure.		
1403	Increase size of figures 4 and 6, or use larger font size.	Diagrams are useful but font size is too small to be easily legible	UK	Will be addressed in the final editing.
1403	In Figure 6 after Step 3 should also lead to the possibility of redrafting the project, otherwise in some situations Step 1 and Step 2 will be a useless effort if the project is going to be rejected in Step 3. Moreover, some types of project may never have justification of overriding public interest so verification of this condition should be considered in the beginning of Art. 4.7 Applicability Assessment		PL	Flow chart was adapted.
1403	Figure 6, Step 1: Substitute "... status of the body of water?" with "... status of the affected water bodies?"	Impacts to other water bodies should be included.	DE	Flow chart was adapted.
1404	<i>We suggest switching step 1 and step 2.</i>	Once you answer question 2 with "No" you need to define mitigation measures for the planned project. In our view it would be more logical to start the assessment with step 2.	LU	Flow chart was adapted and comment added.
1404	In step 4: "within the same river basin district" should be erased.	There is possibility that within one project, water bodies of neighbouring RBDs are affected (water transfer from RBD to RBD for the purposes of electric production etc).	HR	Flow chart was adapted.

²As written in the draft 2, for example Common understanding of using mitigation measures for reaching Good Ecological Potential for heavily modified water bodies - Part 1: Impacted by water storage: <https://ec.europa.eu/jrc/en/publication/working-group-ecostat-report-common-understanding-using-mitigation-measures-reaching-good-ecological>

1404	<i>Step 4 should be put after the step 1 and if answer is “yes” there should be possibility to redraft project</i>	It is quite clear that one project can affect multiple water bodies. It also seems reasonable to have one article 4(7) procedure for one project, no matter how many waterbodies are affected. Also there should be possibility to redraft project having in mind impacts to all waterbodies (Mitigation measures on one water body can influence other water body) Step 3 should be triggered after all project redrafting has been done and project is on “yes or no” level. As alternative: in step 1: “impact on the status of water body” can be replaced with “impacts on statuses of all water bodies affected”	HR	Flow chart was adapted.
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Taking all practicable steps to mitigate adverse impacts

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1407	Please clarify	Who (which authority) decides whether the proposed “ <i>all practicable steps</i> ” under Article 4.7 a) are sufficient?	CZ	Depends on the respective authorisation system of the Member States.
1408-1422	I suggest we <u>replace lines 1408 to 1422</u> with the following, and that we then also <u>delete lines 1456 to 1466</u> (as I believe the following text also covers the points made herein) <i>Unlike the EU Habitats Directive where the terms mitigation and compensation are strictly differentiated³, the WFD neither defines nor constrains the definition of mitigation measures. The ‘practicable steps to mitigate the adverse impact on the status of the water body’ required under Article 4(7)(a) can therefore cover a wide range of actions. What matters is that the objective of these actions is to avoid or reduce an identified potential effect on the status of a WFD quality element. In other words, the measure will prevent or minimise the risk of deterioration or the compromising of an otherwise expected improvement in status.</i> <i>The most appropriate type of action to mitigate the adverse impact will vary according to the specific local circumstances</i> <i>For those familiar with the requirements of the EU Habitats and EIA Directives, however, it is worth providing clarification on two important points:</i>		JB, CHAIR NAVI TG	Added.

³ This distinction is highlighted in Guidance Document 20, which notes that mitigation measures aim to minimise or even cancel the adverse impacts on status [within the] body of water, whereas compensatory measures aim to compensate the net negative effects of a project plus its associated mitigation measures, but in another body of water.

Compensatory measures under the Habitats Directive <i>As the final part of the Article 6(4) ‘tests’, the Habitats Directive requires that compensatory measures be provided to offset the negative effects of a plan or project so that the overall ecological coherence of the Natura 2000 network is maintained. In the context of the Habitats Directive, this typically means restoring or recreating habitat on a new or enlarged site that is subsequently incorporated into the Natura 2000 network as compensation for the impacts on an existing site caused by a project authorised under the Article 6(4) exemption.</i> <i>There is no equivalent requirement for such compensatory measures under Article 4(7) of the Water Framework Directive. Rather the WFD accepts that – if it can be demonstrated that the Article 4(7) tests are met – there will be a residual adverse effect on the status of the water body in question.</i> Mitigation measures in the context of the EIA Directive <i>Unlike the Habitats Directive, the EIA Directive does not define or explicitly differentiate between mitigation and compensation measures⁴. Nonetheless, when different types of mitigation actions under EIA are being considered, evolving good practice – supported by the various references in the EIA Directive to measures that ‘avoid, prevent or reduce and if possible offset’ adverse impacts – favours measures taken at source (on-site) over those ‘off site’ and promotes the application of the so-called ‘mitigation hierarchy’.</i> <i>When a potential adverse impact is identified this hierarchy therefore emphasises the need, in order of priority, to:</i> <i>1. Avoid adverse impacts, for example by changing the location, method or timing of the activity or by the use of other preventative measures at source</i> <i>2. Take measures at source or as close as possible to the source of the effect, which aim to minimise or reduce adverse impacts to negligible, low or otherwise acceptable levels</i> <i>3. Where there are residual adverse effects (i.e. impacts that are unavoidable or cannot be reduced further on site), to remedy, offset or otherwise compensate for these effects by taking measures elsewhere that help to reduce the net adverse impact to negligible, low or otherwise acceptable levels.</i> <i>Whilst there is no specific requirement to apply the mitigation hierarchy when considering</i>			
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⁴ For example, Directive 2014/52/EU refers in various places to the ‘measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment’ and notes that Member States ‘should ensure that mitigation and compensation measures are implemented’.

	<i>practicable steps to mitigate the adverse impact on the status of the water body in the context of the WFD, it is nonetheless recommended that good practice is applied and that all practicable measures that avoid, minimise or reduce effects at source are implemented before other, off site measures. This box could benefit from examples</i>			
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Distinction between mitigation and compensatory measures

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1412	<i>Even though it is very helpful to clarify the distinction between mitigation and compensatory measures, we think that it is important to implement such measures whether or not they are mitigation or compensatory measures.</i>	As indicated in lines 1410-1411, it is important to reduce the negative impact of a project on the status of a water body. In our view, it is of secondary importance if the measures mitigate the adverse impacts are so-called mitigation or compensatory measures but we should focus on their effect on the status of the water body.	LU	Text was revised.
1416	Add “of the body or bodies of water”	More than one water body can be affected (up-, downstream, adjacent groundwater body)	EURELECTRIC	The chapter on effects on other water bodies should already clarify the potential plural.
1417-1418	The bullet point, as it is written, could result in misinterpretation. The term “compensatory measures” is not defined or used in WFD. Given that the bullet point is not a direct quote of Guidance Document No. 20, we recommend, that explanation “....which aim to compensate in another body of water the “net negative effects” of a project and its associated mitigation measures” is revised in order to follow the provisions of the Water framework directive, or deleted. In case the explanation is deleted a link to paragraph “Clarification of compensatory measures” (line 1456 of the draft 2 of the guidance) could be added.	The term “compensatory measures” is not used in WFD as stated in line 1461 of the draft 2 of the guidance. The bullet point should be deleted or revised in terms that the guidance would explain the relationship between Habitats directive “compensatory measures” and WFD measures in the scope of article 4(8).	SI	Text was revised.
1419-1422	Please re-phrase.	It is inappropriate to guide that authorities "also ask for" things that are not provided for in the WFD, but "might be" in other Directives.	Euromines	Text was revised.
1423-1466	When redrafting this section as was discussed during the second meeting of the ATG, please consider the outcome to meet the following goals: what matters is if the measures taken reduce the effect on the quality elements affected in the water body as much as possible, independently from where (in another		NL	Text was revised.

	water body, in another place in that water body, outside of the 'project location') or by whom (by the owner of the project, by the Member State, ...) they are taken. • no confusion of terminology. No different meaning of 'mitigation'/'compensation' in the WFD from what these words mean in the Habitats Directive. • Stay close to the wording of the WFD itself: the word 'compensation' doesn't occur there and the word 'mitigation' only in few languages. Use these words only if they are needed to achieve the clarification required by the first bullet point.			
1425	<i>Wide range of measures in all phases of development, including maintenance and operation conditions, facilities' design, restoration and creation of habitats./</i>	In most cases Creation of habitats is a compensatory measure and compensatory measures are not considered at WFD.	PT	There can be cases where the creation of habitats can make sense to mitigate the adverse effects.
1425	Delete!!! Repairs and maintenance does not carried out a new mitigation measures because the repair maintain the existing state. If they should create mitigation measures, they create new assets, making them new investments with reconstruction character, whereas create changed object parameters on watercourse and etc.		SK	Maintenance is not automatically excluded from potential Article 4(7) relevance.
1426	The term „habitats“ should be revised in order to follow the provisions of the Water framework directive. The definition of “important habitats for the status of a water body” is not used in WFD. To our opinion the terms, set out in article 1 of the WFD, should be used.	The WFD determine, among other, the ecological status of surface water bodies. Normative definitions for high, good and moderate ecological status classifications are outlined in Annex V (point 1.2). The definitions signify descriptions for classification of the values for the biological quality elements, hydro-morphological quality elements and physico- chemical quality elements. In that context the definition of “important habitats for the status of a water body” is not specified or included in the text. To our opinion the terms, set out in article 1 of the WFD, should be used.	SI	The Guidance aims to illustrate good practice. Habitats are in practical terms very relevant for water management, and therefore for the implementation of the WFD.
1427-1430 and 1491-1493	Can it be elaborated how a regulator can consider when “all practicable steps are taken to mitigate adverse impact...”? What is the practical differentiation between “all practicable steps are taken to mitigate adverse impact” and “all practicable mitigation”?	Elaboration would help clarity and application of the guidance.	UK	The term "all practicable steps" used in Article 4(7) is potentially broader because more possibilities for mitigation exist compared to existing infrastructure, as described in the

				chapter. Certain margin of discretion.
1428	Suggest change to: '... should be technically feasible, not disproportionately costly, and compatible with ...'		JB, CHAIR NAVI TG	Adapted.
1428	Omit "disproportionate costs"	Wording of the directive! Whenever the costs are relevant, the lawmaker referred to them, see e.g. Art. 4. 7 d WFD "the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option."	EEB	Economic considerations can be relevant. Reference to BEP and BAT added.
1431	Mitigation measures aim at minimising or even cancelling the adverse effects on the status of a water body and should be an integral part of the project.	It should be clearly indicated the definition/meaning of the mitigation measures under sub-chapter 4 - ARTICLE 4(7) TEST AND RELATIONSHIP TO THE RBMPs , because if through the mitigation measures the adverse effects on the water body status is canceled, the test of Art.4(7) is not applicable. An alternative solution could be to indicate under sub-chapter 4 that if through the mitigation measures the adverse effects on the water body status is canceled, the test of Art.4(7) is not applicable.	RO	It is already indicated that in case status is not deteriorating due to the mitigation measures then not Article 4(7) Test is needed.
1431-1433	See comment on 1408 onwards re. priority being given to on-site vs. off-site measures		JB, CHAIR NAVI TG	On-site vs. off-site added above.
1435-1436		The term "all practicable mitigation measures" is vague and the risk that this could lead to a disproportionate or unreasonable process with measures not related to the best practices applicable should be limited.	EURELECTRIC	Wording of Directive. Some clarification provided above.
1441	Revise the text: Mitigation measures should (instead of "might" include) the construction of " functional " fish migration aids " adapted to all relevant fish fauna " (very important to add).		WWF	Text adapted.
1447 et sqq.		Mitigation measures related to pollution are described but in the entire document the chemical status is not addressed.	DE	Addressed e.g. in table 2 – indirect effects.
1451-1455	Insert best-practice examples for mitigation measures, as appropriate in an annex.	Giving best-practice examples for the integration of mitigation measures into a project would really be a practical help for designing new projects; to make WFD applicable.	DE	Request for case studies has been sent. Reference to GEP activity is included, where a compilation of mitigation measures is under development.
1462	Authorities are not prohibited to ask for <u>voluntary</u> compensatory measures		AT	Text revised.
1464	Change text from "...another then the water body which may	Typing error ("then") and clarity of meaning	UK	Text revised.

	be affected by the project)...” to “...another water body than the one which may be affected by the project)...”			
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Consideration of mitigation during the project design stage

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1492	Suggest insert ‘... adverse impacts are included as part of the proposed project’		JB, CHAIR NAVI TG	Added.
1492-1493		The term “all practicable mitigation measures” is vague and the risk that this could lead to a disproportionate or unreasonable process with measures not related to the best practices applicable should be limited.	EURELECTRIC	This is the terminology from Article 4(7). Reference to best practice and lists of mitigation measures is provided later on in the text.
1506	In my experience, adaptive management is mainly used not where the outcome of mitigation measures is uncertain but rather where there is residual uncertainty about the effect of the project or activity. I therefore suggest that, after ‘...might be applied.’ on line 1506, the remaining text of this paragraph is deleted and the following text is inserted instead: The adaptive management concept provides a potentially useful way forward in such situations (i.e. where there are residual uncertainties) because decisions on the need for and implementation of actions required to manage or mitigate the effects of a project or activity are informed by the outcomes of an agreed programme of monitoring. Adaptive management is therefore particularly relevant in situations where: - there is a reasonable level of understanding about the likely implications of the project or activity in question and - the risks are negligible or low and/or there is high certainty in the ability of the proposed management actions (or mitigation measures) to address the effects.		JB, CHAIR NAVI TG	Text was revised.
1506	Change: The use of the adaptive management concept should be extended to beyond project implementation in order to deal	Concerning adaptive management: this is simply the idea that an iterative process should be applied in order to find the best solution. This is already implied under art 4 of the WFD: if the consequences are estimated to be too severe then mitigative	NAVI TG	Text was revised.

	with any residual risk	measures should be considered prior to granting a permit. This is not a new idea under the directive, but an extension of its use. In environmental assessment there is always an element of uncertainty thus implying residual risk. For proper decision-making a more sophisticated tool is needed to deal with this reality, other than just not providing a permit.		
1506-1508	Proposal : “further implementation on other sites to be determined or prompted by monitoring of the measure at pilot sites”	Confusing: how can a measure be monitored when it is not implemented?	EURELECTRIC	Text was revised.
1511	<i>Omit could</i>	clarity	EEB	Unclear to what the comment refers to.
1523-1528	Insert lines 1525 to 1528 after the sentence ending “...existing infrastructure”.	The last sentence (starting “Another important...”) connects better to the sentence ending “...existing infrastructure” because both refer to reasons why 4(7) can have a wider scope than GEP mitigation measures.	EURELECTRIC	Adapted.
1523-1525	More explanation why it is narrower would be helpful		AT	Deleted since repetition of what was already said in other words before.
1524	Presumably this (narrower in scope) means because measures would need to be retrofitted to existing infrastructure rather than designed in from the outset? If so, it would be helpful to make this clear		JB, CHAIR NAVI TG	Deleted since repetition of what was already said in other words before.
1528	ongoing operations and activities. Concerning SHPPs, such mitigation measures are mainly fish ladder & ecological flow. Changing the water intake position or the place of the small hydro power station are not mitigation measures, because these two alterations change substantially the MW of the SHPPs and its energy efficiency. We must mention that in the EIA all mitigation measures have been taken into consideration, thus the received Environmental Permission has already tackled the mitigation measures.	The SHPPs, by nature, can accept only two/three mitigation measures, while none of them includes change of the position of the water intake or the position of the small hydro power station, because these alterations will change substantially the SHPPs as a whole. Moreover, in the EIA all mitigation measures has been taken into consideration.	GR	Example for typical mitigation measures for hydropower is already provided in the next sub-paragraph.
1529 (Case study 5)	<i>“There are also 7 springs and some small brooks, not designated as water bodies, which could be impacted.”</i>	Does it mean that water body is just main watercourse?	CZ	The WFD applies to all water bodies. With regard to the designation

				of WBs see CIS Guidance No. 2.
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Practicability of mitigation

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1538		The example is good but it doesn't help to have a better understanding of the "practicability" concept;	EURELECTRIC	Considered as a statement.
1542	lost due to an existing pressure. Furthermore, note that in the SHPPs there must not exist high barriers (e.g. dams), so fish habitats to be able to travel upwards and downwards the river.	The SHPPs use only water intake installations and not high dams to collect the amount of water they use. In case of existence of fishes, fish ladders must be constructed. So, it is obvious that they don't create any problems about fish migrations.	GR	SHPPs are not only diversion plants but can also have small dams, interrupting fish migration.

Assessing significantly better environmental options

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1544-1561	Please clarify	How to assess a <i>better environmental option</i> , how to document it, and who (which authority) should decide about it?	CZ	Some guidance is provided in the document (see sub-sections of the chapter). The competent authority is subject to MS decision.
1555 and 1583	Clarification that it can help/be useful, but might not be always sufficient		AT	Added.
1556-1559	Not emphasize too much political dimension of assessment of disproportionate costs	There is legal requirement in the Directive for disproportionate assessment.	FI	Slightly rephrased.
1557	Complete the sentence : " is a political, technical, social... decision "	Disproportionality is not only a political assessment, several elements have to be taken into account.	EURELECTRIC	Added.
1558-1559	Delete the sentence starting with "It is important to note"	This is already a bias. Reference should be made to the guide n°1 "Economics and Environment". Correct footnote n°68 with reference to guide n°1 previously	EURELECTRIC	Adapted and reference to

		mentioned.		WATECO added.
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Strategic level

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1562	Delete whole of section 4.3.1.	Neither SEA nor WFD require an examination of alternative projects.	Euromines	The guidance addresses good practice. See also practical case studies.
1564	Revise the text: add after 'going beyond the local level' ' and assessing case by case '.		WWF	Project-specific assessment is addressed in the next section.
1566-1568		HEP authorization is thus referred to the strategic planning of the electricity sector. No problem provided that the electricity sector strategic planning is comprehensive and detailed, to the extent that it conciliates with the local planning at the water district level.	EURELECTRIC	Considered as a statement.
1569	Delete reference to navigation	Rail and road are alternatives (other forms of transport) to navigation (so navigation cannot be one of the examples).	WWF	Could also be navigation for a road project along a river, but clarified as an example.
1577	Is a strategic level assessment based on sectoral policies (alone) enough to justify a possible effect on status? It seems that this is what is being said, but I am not sure that I agree		JB, CHAIR NAVI TG	The strategic level can feed decision making at the project-specific level. Clarified in the chapeau of the chapter.
1579	/ non achievement of good status / potential can be justified or not. Each country must be differentiated in the implementation of the WFD when the penetration of the	It is not fair, developed EU countries that have already exploited such as 90% of their SHPPs capacity, and as a result worsened the quality of their water bodies to end the growth of the small hydro plant sector for all Europe. Especially, for countries that are	GR	Conditions between countries can

	SHPPs is low. A special measure can be institutionalized/established stating that for countries that have less than 70% of their SHPPs capacity exploited, all measures of the WFD can be surpassed until the reaching of the 70% limit.	in the South of Europe and they started much later to exploit their small hydro plant sector, and as a result they have perfect quality of their water bodies. We don't believe that these less developed countries should end up to 90% exploitation, but we set - at least - the 70% limit as a mean and logical target to counterbalance SHPPs exploitation and good quality of water bodies.		differ, feeding also into the decision making process.
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Project level

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1590	"technically feasible"	Typing error	UK	Adapted.
1592-1595	The context of the paragraph is not completely clear. In our opinion further elaboration is needed.		SI	Descriptive footnote moved to the main text to better clarify.
1595	<i>ICPDR case study out</i>	There was a massive critic from NGOs	EEB	Considered as a viable example for strategic planning and classification of appropriateness of river stretches for hydropower, including no go areas. NGOs were directly involved in the elaboration of the ICPDR Guiding Principles.
1595	Wouldn't case study 6 be more appropriate as an example for strategic level (4.3.1) instead of project level (4.3.2) although it also includes the project specific level?		AT	Moved.

Weighing interests: Overriding public interest/benefits versus impacts

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1597 et seq.	Also economic activities should be considered as possible overriding public interest. "Raw material security" is one example for "public interests" and should be included in the list.	This section of the Guidance Document relates to the interpretation of the condition set out in article 4(7)(c): <i>"the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment or to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety and to sustainable development, and"</i>. On the question of what constitutes an overriding public interest, the draft Guidance Document refers in the first line to the FFH directive as well as the corresponding ECJ case law. In taking the approach of the FFH directive as a basis, the draft Guidance Document comes to the conclusion that it would be appropriate to include in the concept of overriding public interest uses relating to the fundamental values of citizens (health, security, environment) and fundamental policies for state and society, and actions performed to meet specific obligations of public services. By contrast, uses which serve economic activities are not set out in the draft Guidance Document. This is unacceptable and should be fundamentally revisited.	BDI (Business Europe)	The list of interests is not exhaustive but provides a couple of examples, including also economic activities. However, "economic activities" specifically included now.

1597 and following	It should be made clear that under the WFD, development activities by the private sector can also be of an overriding public interest.	On the question of what constitutes an overriding public interest, the draft Guidance Document refers in the first line to the Habitats Directive as well as the corresponding ECJ case law. The concept, objective and consideration of the courts of “imperative reasons of overriding public interests” are different to those applicable for the WFD. In taking the Habitats Directive as a basis, the draft Guidance Document fails to consider sufficiently “new sustainable human development activities” that may also be undertaken by the private sector, which according to the WFD it must do. This section of the draft is unacceptable and should be fundamentally revisited.	Euromines	The list of interests is not exhaustive but provides a couple of examples, including also economic activities. However, “economic activities” specifically included now.
1597 ff.		General comment : On the question of “overriding public interest”, the Schwarze Sulm judgment has made clear that the development of hydropower projects is of great public interest and likely to be an overriding interest in many cases as it serves fundamental policies of the EU especially regarding RES and climate policies. For each step/requirement there should be more “Case study type references” to the assessments the Austrian authority has performed in the “Schwarze Sulm” case because those assessments have been recognized as adequate by the ECJ.	EURELECTRIC	Bullet point and reference is included, pointing out that the construction of a hydropower plant may in fact be an overriding public interest.
1597	It is not explained what is the <u>overriding public interest</u> (hydro-energy - renewable energy sources), who will decide, document, justify it in the authorization process?		CZ	Considerations are outlined in the text. There cannot be a general statement for one particular activity being automatically overriding. E.g. environmental protection cannot be automatically overriding, likewise for certain economic activities.

Overriding public interest

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1605	Building additional safeguards in defining “overriding public interest” is necessary; it needs to be clearly emphasised that it needs to be properly and extensively evaluated if potential overriding public interest is really justified. It cannot merely be stated that something is of overriding public interest. Please address this in the new draft.	See our comments on draft 1	WWF	The text outlines already that a simple declaration without further well-grounded assessments cannot be sufficient.
1610	<i>Overriding practically means... Replace with overriding interests are only those public interest, which are of particular importance of the state</i>	Look at the wording in other languages – it’s not about weighing –e.g. french „un intérêt général majeur „un intérêt public supérieur” (in preamble) - di prioritario interesse pubblico”, „motivi di interesse pubblico di primaria importanza” (in preamble)	EEB	The sentence only explains the word “overriding”. Further clarification is provided afterwards.
1616-1625	This paragraph needs to make clear that the Habitats Directive deals not with ‘overriding public interest’ but with ‘imperative reasons of overriding public interest’. This is a subtle but important difference.		JB, CHAIR NAVI TG	Clarification that “Imperative Reasons ...” added.

	We should therefore urge caution in reading across directly from the Habitats Directive, particularly as the WFD offers the alternative weighing and balancing test which also implies that the OPI test could be less stringent than under the Habitats Directive (which offers no such alternative)			
1620	Add “rational utilisation of natural resources”	See article 191 of the Treaty	EURELEC TRIC	Text refers to info from Guidance. See footnote.
1621	Add at the end of the bullet as for the previous line examples as follows “.... society (climate and RES policies...)”		EURELEC TRIC	Text refers to info from Guidance. See footnote.
1624-1626	Further stress should be made on the need for transparent public participation to take place in order to determine “overriding public interest”. Please address this in the new draft.	See our comments on draft 1	WWF	The benefit of public participation is stressed in the text following the bullet points.
1625-1626		How can public participation contribute considerably to determining overriding public interest? Are there examples?	BE	This is a quote from Guidance No. 20. In general terms, public's voice can be useful in determining the public interest.
1625-1626	Delete the sentence starting with “Furthermore, public participation “or replace the terms “public participation” by “relevant stakeholders”	The public might often not be best qualified in deciding or defining what is an overriding public interest. Their active involvement at the level of permitting procedures is welcomed and is in practice throughout Europe. Public has already the opportunity to comment during preparation of different national plans (RBMPs, future energy and climate plans...) see lines 1652, 1656 to 1661.	EURELEC TRIC	Quote from Guidance No. 20. Public's opinion can be useful, not only at project level, but also at strategic level (see e.g. SEA requirements).
1627 - 1647	This list should be deleted in its entirety.	This list is not very helpful here because it only mentions a few examples and omits other essential examples. This gives the user of this CIS document the impression that these examples are highlighted deliberately or are even the only valid examples.	BDI (Business Europe)	Considered as relevant references.
1635	generate renewable energy ⁷⁹ . In certain countries such as Greece the SHPPs and in general RES are considered by special laws as overriding public interest projects (e.g. Law 2941/2001).	This clarification has to do with the point of view that each country uses in order to determine whether the RES in general are very important for the country itself. Since in Greece the energy protection of supply is of much importance for the country, because Greece does not produce any oil, natural gas and nuclear energy, the RES are meant to be in the highest public interest.	GR	Quote from Water Directors. Text also already outlines that MS have certain margin of discretion.
1639-1640	Add at the end of the sentence : “hydropower plant may in fact be an overriding interest as the promotion of renewable energy sources is a high priority for the European Union ”	The message that a “hydropower plant may in fact be an overriding interest” seems rather weak against the background of the ECJ judgement: “Moreover, the promotion of renewable energy sources, which is a high priority for the European Union, is justified in particular because the exploitation of those energy sources contributes to environmental protection and sustainable development, and can also contribute to security and diversification of energy supply and make it possible to meet more quickly the targets of the Kyoto Protocol, annexed to the United Nations Framework Convention on Climate Change (judgment of 26 September 2013 in IBV & Cie, C-195/12, EU:C:2013:598, paragraph 56). It would be good to change the order of the list of sources as Court decisions are of higher legal value than guides.	EURELEC TRIC	Quotation from line addressing overriding public interest. The sentence stops after “interest”. Reference to full ruling provided. Order changed, starting with WATECO since providing more general guidance, followed by court rulings on specific uses, Water Directors particularly on hydropower and the HD.
1641-1645	Delete second-last bullet-point.	The concept, objective and consideration of the courts of “imperative reasons of overriding public interests” are different to those applicable for the WFD.	Euromine s	Clarified in footnote.
1648-	It would be very beneficial to elaborate/exchange	Overriding public interest test comes quite late in 4(7) procedure when significant	HR	Case studies from Member

1655	experiences/work/provide case studies more on issue of “overriding public interest”	efforts have already been put in the development and redrafting of the project/plan. Therefore, there should be as much as possible transparency in overriding public interest procedure to enable developer to assess likelihood to pass that test from the as early stages of the project development as possible. Also, more uniform procedure/guidance or some kind of generic approach for smaller project would help Competent Authorities to be more objective in taking such decision. It is clear that practice in different member states is quite different but some guiding principles would help.		States have been requested.
1648 ff	Please <u>specify</u> what “well-grounded assessments” includes or, alternatively, what is not sufficient to be regarded as “well-grounded assessments”	Clarification by adding “well-grounded” is highly appreciated! However, please be even more specific.	EEB	Considered difficult to provide general guidelines on a wide range of potential projects.
1648	The term “distinguish” is not suitable. In our opinion the sentence should be updated in a way that “...distinguish...” is replaced with, for instance, “...summarizes different approaches used for distinguishing....”.	The term “distinguish” should be revised to avoid misinterpretation. Bullet points in lines 1629 – 1647 in draft 2 of the guidance, to which the sentence in line 1648 is referring to illustrate the different approaches used for distinguishing public interests from overriding public interests”.	SI	Adapted.
1651 to 1655	Delete these lines	It is stated here in a way that is at least misleading that a separate public consultation is necessary or appropriate for exemptions in accordance with article 4(7) or to determine the overriding public interest. However, there is specifically <u>no</u> statutory provision for public participation in the context of article 4(7) EU WFD. There is therefore a danger that the reader will be given a completely false idea of the legal situation. These passages should therefore be deleted.	BDI (Business Europe)	The wording "can help" is used, which should be clear enough.
1652 ff	Please make clear that a broad and transparent discussion process not only “can help” but is <u>essential</u> , especially concerning projects currently outside the scope of an EIA.	Creating a clear link to the <u>need</u> and the benefits of public participation is essential, referring to a clean implementation of the Aarhus convention.	EEB	Considering other comments text is considered to be balanced.
1653	Insert: <i>“Noting that consultation of the public is not a legal requirement when assessing possible use of Article 4.7 exemptions, guidance on the different levels,...”</i>	There is no public consultation process for assessment of Article 4.7 exemptions provided in the law.	Euromine s	The wording "can help" is used, which should be clear enough. Public participation is considered as a relevant element in relation to projects.
1656	Where a policy has been subject to an appropriate level of consultation, this can also be important, particularly with development types that are prone to ‘NIMBYism’ (yes, in principle, but Not In My Back Yard). Care should be taken to ensure that NIMBYism does not unduly influence a decision on OPI. Maybe the document should include some words to this effect?		JB, CHAIR NAVI TG	The text seems to be balanced and open enough.
1656	Same here: Please change from “can also be helpful” to “is essential”		EEB	Considering other comments text is considered to be balanced.
1658-1661	Delete text ~~“a specific project context will in most cases be needed as”~~ and delete ~~“which might need to be involved compared to the consultation process of the RBMPs”~~ .	There is no public consultation process for assessment of Article 4.7 exemptions provided in the law.	Euromine s	Article 4(7) cases have to be included in the RBMPs, which are subject to public

				consultation. The text aims to highlight the differences in case public consultation is used during the decision making process.
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Weighing benefits of the modification versus foregone benefits and opportunities

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1663-1709	<i>Weighing benefits of a new modification is really challenging task. All good case-studies</i>	As many as possible good examples-case studies on Weighing benefits of a new modification would be welcome.	ES	Case studies have been requested.
1668-1670	The guidance refers to Guidance Document No. 20 saying that “an analysis of the costs and the benefits of the project adapted to the needs of the Directive is necessary to enable a judgement....” This is, however, later downgraded in the guidance document by saying “this does not mean that it will be necessary to monetise or even quantify all costs and benefits” (lines 1697-1698). The reason for this is that the analysis of costs and benefits is “challenging”.	As cost and benefits analysis might be too challenging to conduct in all the projects, in large and environmentally influential projects it should be carried fully out to reveal the true costs and benefits of the project.	FI	The challenge to monetise or quantify costs is a general issue in environmental economics.
1672-1685	To be consistent with the Weser ruling and what is now unequivocal (i.e. that the applicability assessment should be focused at element level), this text should also somehow remind the user that the ‘foregone benefits and opportunities’ to be weighed and balanced relate specifically to the element level deterioration or compromised improvement – and not to all of the (other) benefits that might be realised if the water body were to achieve good status. In other words, the weighing and balancing exercise might – in reality – be triggered by a very small change in a single quality element that happens to have crossed a status class boundary even though – in EIA terms – the magnitude of the change might be deemed ‘negligible’. The effort put into the weighing and balancing process must be proportionate; it must reflect the nature and magnitude of the specific effect that has triggered the consideration. I’m not sure this really comes through in the text as written here.		JB, CHAIR NAVI TG	Quality element considerations added.
1681	Replace the words “water costs” by a better known concept.	Avoid introduction of another fuzzy cost term “water costs” (equivalent to “environmental and resource cost”?)	EURELECTRIC	"water costs" already put under quotation mark since it's not strictly a legal language. ERC is related to Article 9.
1694-1696	In relation to the existing text: „...In many cases, however, it will be difficult to express and quantify all benefits or foregone benefits in monetary terms. Thus, the different benefits and impacts should be presented, whether in	The adding of the proposed examples will facilitate the practical use of the guidance.	BG	Request for case studies was sent. One for a hydropower criteria

	<i>monetary terms, quantified or <u>assessed qualitatively, in a multidimensional table....</u></i> If possible, more detail guidelines and examples for such qualitative / non-monetary assessment to be included, incl. exemplary "multidimensional table". The examples could be hypothetical, not necessarily real "case studies".			catalogue is included. Issue of potential follow-up exchange added in last chapter (outlook).
1697-1698	Integrate a statement on recommending the use of results from the national/regional/local mapping and assessment of ecosystems and their services (the MAES process), if available.		WWF	Added in the footnote.
1697 to 1709		In context of CBA or weighting interest in general it should be suggested as good practice that different authorities cooperate to bring in all relevant and necessary expertise. For example a water authority can hardly evaluate the benefits of a hydropower project for the energy system.	EURELECTRIC	Added.
1698	"methodologically challenging"	Typing error	UK	Corrected.
1700-1702	The sentence "The challenge in....cost-benefit analysis" does not make sense. Can it be rewritten to be clearer?	Greater clarity needed on meaning of this sentence	UK	Text revised.
1700-1707	I would suggest to change this part in the following way (the modifications are underlined) : "The challenge in quantifying and monetizing <u>the benefits of achieving the objectives of the Directive in terms of water status</u> arises in an economic assesment thus <u>one could chose to perform a multi-criteria analysis which</u> might produce more relevant information and results than a cost-benefit analysis. <u>In fact, this method enables to consider a wider range of criteria, with not only monetary indicators, and therefore can lead to a better informed public decision.</u> <u>In the event of two analysis being performed separately to asses the benefits and losses to the environment and the welfare effects, one should keep in mind that a methodology will need to be designed in order to compare the results of both analysis and perform the final judgement on the overall benefits.</u> Regardless of the assessment tool it should be noted that the assessment of social welfare is linked to the environmental one."	The purpose here is to asses the benefits of achieving the objectives of the Directive in terms of water status and compare them to the benefits of the new modification/activity in terms of human health, human safety or sustainable development. One should therefore consider environmental, economic and social benefits of the achievement of good status/potential. An economic analysis, such as a CBA or a MCA, does assess these 3 types of benefits, including the environmental ones. It is precisely through these types of analysis that the economist is going to try and give a value to nature (and therefore to its change of status). In order to be comparable with marketed goods, it will provide a qualitative, and when possible quantitative and monetised estimates of all possible benefits. Moreover, environmental criteria can be directly included in a multi-criteria analysis. That is to say there can be monetary indicators alongside with non-monetary ones (such as the water body status for example). I do not completely understand why there would be a need to distinguish social, economic and environmental benefits in two separate analysis, nor the type of additional information an environmental assessment could provide. However, if mentioned, this split in two analysis raises the question of how the link will be done between these two types of analysis in order to make the final judgement on the overall benefits. That is to say how the results from these two analysis can be compared. Moreover, this part may suggest that an additional environmental assessment needs to be performed on top of the other steps of Article 4(7) Test.	FR	Adapted.
1703	Splitting the benefits to society and to the environment seems to be an over-simplification. Some benefits to society are difficult to quantify; some benefits to the environment are relatively easy to quantify. The key is to use the approach best suited to the situation, recognising that not everything can be quantified.		JB, CHAIR NAVI TG	Text revised.
1710; 56 Box Case Study 7		The link below the case study box is identical to case study 6. Check if correct.	EURELECTRIC	Corrected.
1710	Text of Austrian example to be revised because the <u>catalogue of</u>		AT	Corrected.

	criteria was <u>not</u> published as an <u>ordinance</u> (Verordnung). The development of the criteria catalogue was included as a measure in the POM of the 1st RBP to be used for weighing public interests in case of a status deterioration (Art. 4.7 WFD) as well as a basis for regional planning of hydropower development. The catalogue was published by the Ministry and provided to the regional authorities as an order for application (Erlass).			
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Relationship to the River Basin Management Plans

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1712-?	Please add relation between National RBM plans and International RBM plans	The WFD gives the members states the duty: <i>3(4) Member States shall ensure that the requirements of this Directive for the achievement of the environmental objectives established under Article 4, and in particular all programmes of measures are coordinated for the whole of the river basin district.</i> It is not clear when to coordinate the 4.7 application during the planning cycle. Does it mean that 4.7 applied at the national level is automatically accepted at the international level?	CZ	Please see specific sub-chapter on transboundary context which hopefully helps to clarify.

Reporting in the River Basin Management Plans

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1724-1727	We see very positive that relationship between exemptions, authorization and River Basin Management Plans is expressed clearly.		FI	Appreciated.
1734	<u>Exchange</u> "It is recommended that Member States ensure ..." with "Member States shall ensure ..." and <u>mention obligations</u> according to the Aarhus convention .	In the light of the Aarhus convention, all interested parties must be guaranteed active involvement and access to justice in energy projects, regardless of the applicability of an EIA. Several provisions of the Aarhus convention may be applicable with regard to access to justice concerning energy projects, - either Art 9 (3) or even Art 6 (1)(b) in conjunction with Art 9 (2), the latter providing environmental NGOs with legal standing de lege. Background information: According to the Communication from the Commission of 28.4.2017 on Access to Justice in Environmental Matters, C(2017) 2616 final, by way of judgment in the case	EEB	Footnote to Aarhus Convention added.

		C-243/15 LZ II, the CJEU clarified that the requirements of Art 9(2) of the Aarhus Convention in conjunction with Art 47 of the Charter of Fundamental Rights might also apply to those areas of environmental law which do not contain specific access to justice requirements (see point 70). The Commission even comes to the conclusion that the rationale behind the CJEU's interpretation lends itself to be applied by analogy to decision-making processes in other sectors of EU environmental law such as water (!) (see again point 70). It is also to be mentioned that there is a preliminary procedure pending before the CJEU in the case of a Tyrolian hydro power installation ("Tumpen-Habichen"), which is not subject to an EIA procedure and where the question of legal standing of environmental organizations is at stake. The judgment is awaited by the end of 2017. Further conclusions have to be made then.		
1743 - 1754	The paragraph should be revised. Although the paragraph represents a quotation of PCI Guidance, it should not be included in the CIS guidance document no. 35. Speciality, the statement ".....Member States will be de facto amending their RBMPs and with no public consultation. Therefore, the preferred course of action would be to formally update the existing RBMPs." Represent misinterpretation of the WFD directive and in such a form exceeds the provisions of the WFD directive.	Speciality, the statement ".....Member States will be de facto amending their RBMPs and with no public consultation. Therefore, the preferred course of action would be to formally update the existing RBMPs." exceeds the requirements of the WFD directive which are specified in Article 4(7)(b) of the WFD directive. The article 4(7)(b) determine, that the objectives are reviewed every six years. This can be done only by taking into account new information regarding water status assessment, which is carried out over a six-year cycle and represents the basis for the review and update of RBMP. WFD determines that the exemptions have to be reviewed and updated but it does not require doing that during the six-year cycle. According to WFD, revision of the RBMP (including revision of exemptions) is required only every six years. Possible revision during these six years of particular cycle is not impossible and can be done, but only and a subject of the Member States' decision.	SI	The document seems to have relevance. The fact that it is a Commission Guidance is now clearer pointed out in the text.
1746 et sqq.	Delete: "An added value interested parties."	The information mentioned in this paragraph may be useful for the water management in general, but it will overburden the RBMPs. To collect information about all projects which do not require an Art. 4 (7) test will cause a heavy bureaucratic burden for the approving authority as well as the water authority. The transparency interests are met by other instruments, e.g. Directive 2003/4/EG.	DE	Further explanations and considerations added. Considered to be sufficiently open formulated.
1755-1756	<i>It would be smart to set and explain in RBMP certain clear "baseline" for the "potential 4(7) cases to be listed (in terms of their level of development).</i>	Listing of all possible plans and (private) projects (sometimes developed on the level of the ideas and often incompatible) without clear criterion in terms of their adoption/authorizing can: • produce quite complicated situation for compilation to Competent Authorities, • Rush to "reserve" water resources and get acknowledgment in document adopted by Government (RBMP) to project/plan developers (something comparable to thoughts "to designate HMWB in advance") • Very complicated SEA of RBMP Therefore in order to produce more reliable and useful list, certain baseline should be welcomed such as, for example administrative decision on the initiation of procedure or administrative decision on the completion of procedure of:	HR	Aspect of authorisation procedure added. Certain margin of discretion for deciding what is reasonable to be included.

		• 4(7) applicability assessment or/and • EIA/SEIA procedure or/and • water permitting procedure other?		
1755-1763	The guideline on what should be included in RBMPs should be consistent with Annex VII of the WFD. Annex VII does not foresee a possibility to freely extend the scope of RBMPs. It is stated: "River basin management plans shall cover the following elements" which means that the scope of RBMPs is limited to the elements that are on the enumeration list.	A clear reference to annex VIII of WFD is especially important in case of countries where RBMPs have form of legally binding documents (i.g. a regulation of the Council of Ministers) which impose obligations (i.g. measures to achieve good status) on various entities. A scope of legally binding document is determined by an act of higher law and can't be freely extended.	PL	Annex VII outlines what shall be covered in the RBMPs, but does not restrict the RBMPs in case Member States aim to use the RBMPs in a broader and e.g. more integrated way and planning tool. See also WFD Article 13(5) in that context, and further explanation in relation to Article 5 and Annex III.
1755-1763	The guideline on what should be included in RBMPs should be in line with the most up-to-date version of WFD Reporting Guidance and the structure of SWB, GWB and RBPMPoM Schemas.	Present structure of reporting data model allows for reporting art. 4.7 exemptions only in relation to pressures (element SWEcologicalExemptionType/swEcologicalExemptionPressure) and quality elements (element QualityElement/qeEcologicalExemptionType). Any additional information on art. 4.7 exemptions can't be included in the reporting data base and can't be easily processed by the EC.	PL	RBMPs are not, and in fact should not, be restricted to include only the information required for WISE Reporting. Member States can aim to include more information in the RBMPs. The paragraph points out this possibility, but does not claim that this information has to be reported in WISE. See further considerations which were added in that context.
1755 – 1763	Regarding the context of including potential Article 4(7) cases in the RBMP, the guidance should specify the WFD provisions for including them in the RBMP. As defined in Annex II, point 1.5 (Assessment of Impact) WFD requires that Member States shall use the information from pressure analysis and any other relevant information including existing environmental monitoring data, to carry out an assessment of the likelihood that surface waters bodies within the river basin district will fail to meet the environmental quality objectives set for the bodies under Article 4. So therefore potential 4(7) cases which may be subject to an Article 4(7) Test and other projects which may have effects on water body status/potential, should be included in the	The guidance should be updated with the relevant WFD provisions which are the basis for incorporating the potential 4(7) cases and other projects which may have effects on water body status/potential, into RBMP.	SI	Aspects added.

	RISK assessment as appropriate.			
1757-1759	I think this means to say '... before the project is assessed, e.g. flood ... The point here is that the RBMP can usefully make reference to (major) projects where it is not immediately clear from the information available at the time of preparing the RBMP whether or not the Article 4(7) tests will need to be applied, but where it is clear than an 'applicability assessment' will need to be undertaken.		JB, CHAIR NAVI TG	Adapted.
1763	Background documents are fine, but we do not recommend adding links to all relevant background documents.	Add text "when you can make sure the links are operational thr whole RBMP cycle. "	FI	The bullet points indicated what can be useful to be included in the RBMPs. Indeed links only make sense in case they are maintained, not only for background documents, but generally.
1768	interested parties ⁹² . In the situation that a SHPP is comply with the existing River Basin Management Plans or the existing Spatial Planning, it can be designed and constructed even in case that the existing River Basin Management Plans or the existing Spatial Planning are under review.	The existing River Basin Management Plans or the existing Spatial Planning are legal documents that permit the design and construction of specific SHPPs. If a specific SHPP has been already initiated by an investor than it must not stopped even if the existing River Basin Management Plans or the existing Spatial Planning are under review. The above opinion is very important for the protection for any investor has based its decisions to existing legislation.	GR	In the second paragraph of the chapter it is already indicated that the Article 4(7) reporting obligation does not mean that Member States must wait until the publication of the River Basin Management Plan before allowing a new physical modification or new sustainable development activity to proceed. In many cases projects will be developed within the RBMP six year cycle.

Article 4(7) and the designation of heavily modified water bodies (HMWB)

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1771 - 1797		A clarification should be included for the case that a new modification is added to an existing HMWB. For consistency with HMWB designation the GEP which was defined before (and not having significant adverse effects on the existing activities) has to be revisited/redefined in order to also cover the effect of the new modification (which also must not be significantly affected by GEP measures).	EURELECTRIC	Please see last paragraph of the chapter addressing this issue.
1788-1790	In relation to the existing text: „...At the same time, a new hydro-morphological alteration will	The proposed additional explanations will contribute to the right understanding of the Art.4 (7) implementation and will facilitate the practical	BG	Text added that it is reasonable

	<i>not always lead to a designation of the respective water body as heavily modified. This decision is dependent on the outcome of the designation tests according to Article 4(3)..."</i> If possible, a little more details to be provided on how to proceed in such cases for the next RBMP - if for a project an Article 4(7) exemption have been justified (due to expected adverse effect on one or more QEs), but after the implementation of the project the criteria of Article 4(3) test are not met and the SWB is not designated as HMWB? (<i>e.g. how to deal with the status assessment, especially how to justify the not-achievement of good status for the QEs, affected by the project for which Article 4(7) is applied? Could Article 4(5) be applied in this case and in what timeframe?</i>)	use of the guidance.		to ensure coherence between the Article 4(7) Test and the tests according to Article 4(3).
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Change in water body delineation and/or typology due to an Article 4(7) exemption

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1798	This section could also usefully make reference to changes which are in the spirit of the WFD in terms of re-introducing natural processes but where this will lead to a water body type change (e.g. where a sluice is removed, re-introducing tidal processes and saline waters into a previously impounded transitional water body)		JB, CHAIR NAVI TG	Aspect added.

Article 4(7) in a transboundary context

Line Nr.	Comment/Change request	Justification of the comment/change request	CIS Member	Comment by drafters
1819-1826	This is not clear enough. Leaving MS to coordinate on their own might be challenging for big infrastructure projects (significant conflicts may arise).	See our comments on draft 1	WWF	Member States host the competent authorities and have the obligation for coordination. This also in order to avoid conflicts.
1826	transboundary river basin commissions might act as facilitators of such coordination. Certain rules for mutual exchange of hard data concerning	This will help all countries that are stakeholders in the transboundary water body / river basin, to have access to common set of data, mutual gaining	GR	Reference to requirements

	the transboundary water body / river basin must be established.	transparency of the hard data and facilitate the decision process.		of the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes and the UN Watercourses Convention added.
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OUTLOOK AND FOLLOW-UP

Line Nr.	Comment/Change request	Justification of the comment/change request	MS	Comment by drafters
1828	It would be very beneficial to elaborate/exchange experiences/work/provide case studies more on issue of “overriding public interest”	Overriding public interest test comes quite late in 4(7) procedure when significant efforts have already been put in the development and redrafting of the project/plan. Therefore there should be as much as possible transparency in overriding public interest procedure to enable developer to assess likelihood to pass that test from the as early stages of the project development as possible. Also more uniform procedure/guidance or some kind of generic approach for smaller project would help Competent Authorities to be more objective in taking such decision. It is clear that practice in different member states is quite different but some guiding principles would help.	HR	Addressed in draft chapter.

ANNEX

Comparative overview table WFD, HD, EIA and SEA Directive

Line Nr.	Comment/Change request	Justification of the comment/change request	MS	Comment by drafters
1835	Insert at column “EIA” the factors of EIA Article 3.	The focus of EIA (“water”) is much broader than WFD (“water bodies”). The assessments for WFD are a subset of the assessments for EIA regarding water, biodiversity...	DE	Now addressed in the chapter on the EIA.
1842	All in WFD column Types of development – text should read ‘... any project or activity that can		JB, CHAIR	Considered in the revised

lead to deterioration or otherwise affect the status of a water body ...' Screening – text should read ‘... sustainable human development activity may affect water body status/potential...’ (derives from comment on lines 1246 and 1362 regarding appropriate language for screening/scoping vs. assessment outcomes) Scope and level of detail, top box/row – text should read ‘... on water body status/potential at element level.’ Scope and level of detail, second box/row – please delete ‘(similar concept as used in the Habitats Directive)’ (derives from comment on lines 1616-1626 above), also please change text immediately following to say ‘... of not achieving the WFD objectives in relation to the element(s) in question.’ (derives from comments on line 1672 -1685 above)		NAVI TG	version.
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Flow chart of the Article 6(3) and 6(4) procedure of the Habitats Directive

No comments

Potential further Annexes (t.b.d.)

No comments

Bund/Länder-Arbeitskreis TA Abstand

Eckpunkte

Die nachfolgenden Ausführungen bilden den Diskussionsstand im Bund/-Länderarbeitskreis ab und sollen die Basis für die weiteren Arbeiten zur Entwicklung einer Verwaltungsvorschrift zur Festlegung des angemessenen Sicherheitsabstandes im Sinne des § 3 (5c) BImSchG darstellen.

Einordnung:

Die Pflichten des Betreibers einer Anlage, die in den Anwendungsbereich der 12. BImSchV fällt, zur Vermeidung von Störfällen und Auswirkungen von Störfällen so gering wie möglich zu halten sind durch die Einhaltung der Anforderungen der §§ 3 bis 6 der Störfall-Verordnung sicherzustellen. Unabhängig davon stellt der angemessene Sicherheitsabstand einen räumlichen Bereich um Anlagen von Betriebsbereichen dar, innerhalb dessen im Rahmen des Bauplanungsrechts Maßnahmen als Beitrag zur gebotenen Begrenzung der Auswirkungen schwerer Unfälle auf Schutzobjekte grundsätzlich erforderlich sind. Der Ermittlung des angemessenen Sicherheitsabstands werden Szenarien zugrunde gelegt, deren Eintreten im Sinne des § 3 Abs. 2 der 12. BImSchV vernünftigerweise ausgeschlossen werden können, die sich aber nicht jenseits der Erfahrung und Berechenbarkeit bewegen.

Regelungsinhalte:

1. Abstandsermittlung (Zuordnung zu Abstandsklassen)

Auf der Basis vereinfachter Betrachtungen (Berechnungen für einen Standardfall und/oder Auswertung bisher ermittelter Abstände) werden Klassen für den angemessenen Sicherheitsabstand gebildet. Es werden Kriterien festgelegt, nach denen jede Anlage in einem Betriebsbereich möglichst einfach einer Abstandsklasse zugeordnet werden kann. Kriterien für diese Zuordnung sollen mindestens die Art der vorhandenen Stoffe (z.B. physikalisch-chemische Eigenschaften, Toxizität) und für einige typische Fälle die Anlagenart (z.B. Biogasanlage) sein. Mögliche weitere Kriterien könnten passive Sicherheitsmaßnahmen (z.B. Containment) und die Art der Handhabung (Herstellung/Lagerung) sein. Zudem wird definiert, unter welchen Randbedingungen die Abstandsklassenzuordnung anwendbar ist (z.B. Druckbereich, Temperaturbereich, Ausbreitungsbedingungen).

2. Abstandsermittlung (Berechnung)

Im Einzelfall kann für eine Anlage abweichend vom vereinfachten Verfahren (siehe 1.) auf der Basis von Detailkenntnissen der angemessene Sicherheitsabstand rechnerisch bestimmt werden. Dies muss unter Anwendung einer qualifizierten Berechnungsmethode erfolgen. Es werden Randbedingungen und Kriterien festgelegt, die bei dieser Berechnung anzuwenden sind. Diskutiert wurden bereits die Festlegung von anlagenspezifischen Faktoren (wie Leckgröße, Leckgeometrie, Lachenhöhe, Definition der Betriebsparameter), von Ausbreitungsparametern (wie Windgeschwindigkeit, keine Inversion, Geländerauhigkeit) und eines Referenzrechenmodells bzw. –programms.

3. Bewertungskriterien

Zur Bewertung der ermittelten Auswirkungen wird die PAC-Liste verwendet. D. h. es werden vorzugsweise, sofern vorhanden, die AEGL-2-Werte für 60 Minuten herangezogen, ersatzweise die ERPG-2-Werte oder die TEEL-2-Werte.

4. Mindestabstände

Es wird keine generelle untere Grenze für die Festsetzung von angemessenen Sicherheitsabständen festgelegt.

5. Naturschutz

Der in BImSchG § 3 Abs. 5d eingeführte Begriff „der unter dem Gesichtspunkt des Naturschutzes besonders wertvollen oder besonders empfindlichen Gebiete“ wird konkretisiert. Für diese Gebiete werden angemessene Sicherheitsabstände nach einer vereinfachten Methode festgelegt.

6. Begriffe

Die im BImSchG eingeführten Begriffe wie „störfallrelevante Änderung“ (§ 3 Abs. 5d) und „erheblichen Gefahrenerhöhung“ (u.a. § 16 a) werden konkretisiert.

7. Existierende Gutachten

Die TA Abstand legt fest, unter welchen Bedingungen Gutachten zur Ermittlung des angemessenen Sicherheitsabstandes herangezogen werden können, die vor ihrem Inkrafttreten erstellt wurden.

Hinweise/Erläuterungen

zu 1./2.:

Es wird nur ein Abstand festgelegt. Dieser soll sowohl für die Entscheidung über das durchzuführende Verfahren (mit oder ohne Öffentlichkeitsbeteiligung) als auch für die Abwägung im Rahmen des Rücksichtnahmegebots nach Baurecht herangezogen werden. Ziel ist es, für möglichst viele Anwendungsbereiche die Notwendigkeit von Einzelgutachten zu vermeiden. Das Detailverfahren nach 2 sollte möglichst nur für eine Minderzahl von Fällen, wenn erhebliche Abweichungen von den im vereinfachten Verfahren unterstellten Randbedingungen vorliegen, angewendet werden. Der in einer Einzelfallbetrachtung nach 2. ermittelte Abstand hat Vorrang vor dem Abstand nach 1.

Die Notwendigkeit, Detailgutachten zu erstellen, könnte unter anderem dadurch minimiert werden, dass für bestimmte Anlagenarten möglichst zutreffende Abstandsklassen definiert werden. Denkbar ist dies nach derzeitigem Kenntnisstand insbesondere für Flüssiggas- und Treibstofflager, Galvaniken und Biogasanlagen.

zu 1.:

Das vereinfachte Verfahren soll die Abstandsklassen so zuordnen, dass die Reichweiten von schädlichen Auswirkungen mit hinreichender Wahrscheinlichkeit überschätzt werden und Detailberechnungen in der Regel zu kleineren Abständen führen würden. Hierfür ist es erforderlich, Randbedingungen für den Anwendungsbereich des vereinfachten Verfahrens zu definieren, bei deren Verletzung (z.B. toxische Gase unter Druck) höhere Abstandswerte zu erwarten sind.

Zur Ermittlung der Klassen werden zunächst die mit der Anwendung des Leitfadens KAS-18 gesammelten Erfahrungen zugrunde gelegt. Am Ende der unter 2. angestellten Überlegungen soll durch stichprobenhafte Evaluation überprüft werden, wie valide die auf Basis der Erfahrungen abgeleiteten Abstandsklassen unter Berücksichtigung der neuen Vorgaben sind.

zu 2:

Grundsätzlich soll, wie im KAS 18 Leitfaden, eine szenarienbasierte Berechnung bei Festlegung stringenter Konventionen erfolgen. Ziel ist es, konsistente und transparente Gutachten zu erhalten. Für die zur Berechnung erforderlichen Eingangsgrößen sollen Konventionen getroffen werden, die sicherstellen, dass zum einen die Ergebnisse möglichst eindeutig und vom konkreten Anwender

unabhängig sind und zum anderen die konkreten Anlagenspezifika ausreichend in die Betrachtung einfließen können. Maßnahmen außerhalb des Betriebsbereichs sollen nicht in die Berechnungen zum angemessenen Sicherheitsabstand einfließen. Diese müssen im Abwägungsprozess zur Zulässigkeit des berechneten angemessenen Sicherheitsabstandes herangezogen werden. Es ist festzulegen, ob und nach welchen Regeln der ermittelte Abstandswert gerundet werden soll oder ob nur eine Zuordnung zu einer der unter 1. festgelegten Abstandsklasse erfolgen soll.

zu 4:

Der angemessene Sicherheitsabstand kann grundsätzlich null Meter betragen, wenn entsprechende Auswirkungen jenseits der Anlagengrenzen ausgeschlossen werden können. Durch die Vorgabe einer Mindestleckgröße (siehe 2.), wird de facto für viele Anlagen der angemessene Sicherheitsabstand eine Mindestgröße nicht unterschreiten können.

zu 5:

Die Einhaltung eines angemessenen Sicherheitsabstandes zum Schutz besonders empfindlicher Gebiete ist nur erforderlich, sofern der Schutz mittels angemessener Maßnahmen gemäß den Anforderungen des Artikels 13 der Seveso-III-Richtlinie nicht möglich ist. Mögliche Maßnahmen können in der TA Abstand beispielhaft beschrieben werden.

Es ist zu diskutieren, ob eine stoffspezifische Festlegung möglich ist. Andernfalls könnten Abstände „pauschal“, z.B. in Abhängigkeit von der Klasse des Betriebsbereichs und der zu betrachtenden Ereignisse (Brand, Explosion, Gasfreisetzung), festgelegt werden. Bei der Konkretisierung der Gebietsdefinition sollen die Ergebnisse des AK Natur der KAS einbezogen werden.

Die Ergebnisse des AK Natur zeigen, dass eine stoffspezifische Festlegung von angemessenen Sicherheitsabständen beim derzeitigen Kenntnisstand über die Wirkung von chemischen Stoffen auf Ökosysteme unmöglich erscheint. Anhaltspunkte für die Wirkung von chemischen Stoffen auf die Flora liegen vereinzelt vor. Demnach reagiert die Flora zum Teil wesentlich empfindlicher auf chemische Stoffe als der Mensch. Ob dies zu einer dauerhaften Schädigung führt, ist allerdings nicht belastbar feststellbar.

BDI-Position zu einer TA Abstand

Bundesverband der Deutschen Industrie e.V.

Einleitung

Der Arbeitskreis TA Abstand des Bundes und der Länder hat den Entwurf eines Eckpunktepapiers für eine neue Verwaltungsvorschrift, die TA Abstand, vorgelegt (Stand: 11.09.2017). In der Verwaltungsvorschrift soll der „angemessene Sicherheitsabstand im Sinne des § 3 Absatz 5c BImSchG“ festgelegt werden.

Das vorliegende Papier enthält Ausführungen zur Bedeutung des angemessenen Sicherheitsabstandes im Störfallrecht sowie erste Anmerkungen der Industrie in Hinblick auf die geplante TA Abstand.

I. Bedeutung des angemessenen Sicherheitsabstandes im Störfallrecht

Mit Umsetzung der EU-Richtlinie zur Beherrschung der Gefahren schwerer Unfälle mit gefährlichen Stoffen (Seveso-III-Richtlinie) wird eine Begriffsbestimmung für den Begriff „angemessener Sicherheitsabstand“ in das Bundes-Immissionsschutzgesetz eingeführt (§ 3 Absatz 5c BImSchG).

Der angemessene Sicherheitsabstand ist danach der Abstand zwischen einem Betriebsbereich oder einer Anlage, die Betriebsbereich oder Bestandteil eines Betriebsbereichs ist, und einem benachbarten Schutzobjekt, der zur Begrenzung der Auswirkungen von schweren Unfällen beiträgt.

Die Einhaltung des angemessenen Sicherheitsabstandes stellt dabei keine Betreiberpflicht dar, wie in § 3 Absatz 5 der Störfall-Verordnung ausdrücklich geregelt wird.

Der angemessene Sicherheitsabstand hat zwei Funktionen im Rahmen des Zulassungsrechts für Störfallanlagen:

**Bundesverband der
Deutschen Industrie e.V.**
Mitgliedsverband
BUSINESSEUROPE

Hausanschrift
Breite Straße 29
10178 Berlin

Postanschrift
11053 Berlin

Ansprechpartner
Annette Giersch

T: +49302028 1608
F: +49302028 2608

Internet
www.bdi.eu

E-Mail
a.giersch@bdi.eu

1. Unterschreitung des angemessenen Sicherheitsabstandes ggf. Auslöser für Verfahren

Zum einen wird bei Unterschreitung des angemessenen Sicherheitsabstandes zu benachbarten Schutzobjekten unter bestimmten Voraussetzungen die Durchführung eines Genehmigungsverfahrens erforderlich.

Wenn durch die störfallrelevante Errichtung und den Betrieb oder die störfallrelevante Änderung der Anlage der angemessene Sicherheitsabstand zu benachbarten Schutzobjekten erstmalig unterschritten wird, räumlich noch weiter unterschritten wird oder eine erhebliche Gefahrenerhöhung ausgelöst wird, muss bei störfallrelevanter Errichtung und Betrieb oder störfallrelevanter Änderung ein Genehmigungsverfahren durchgeführt werden (vgl. §§ 16a, 19 IV, 23b BImSchG).

- Die Unterschreitung des angemessenen Sicherheitsabstandes löst also verfahrensrechtliche Folgen aus. Es kann bei Unterschreitung des angemessenen Sicherheitsabstandes ein Genehmigungsverfahren erforderlich werden.
- Die Unterschreitung des angemessenen Sicherheitsabstandes sagt aber nichts darüber aus, ob die Errichtung oder Änderung der Anlage genehmigungsfähig ist. Auch bei Unterschreitung des angemessenen Sicherheitsabstandes kann die Errichtung oder Änderung der Anlage genehmigt werden, wenn die entsprechenden öffentlich-rechtlichen Vorschriften nicht entgegenstehen.
- Wichtig ist auch, dass zur Ermittlung des angemessenen Sicherheitsabstandes die Erstellung eines Gutachtens nicht in jedem Fall erforderlich ist.

Im Bundes-Immissionsschutzgesetz (§ 15 Abs. 2) ist bestimmt, dass die zuständige Behörde ein Gutachten zu den Auswirkungen verlangen kann, die bei schweren Unfällen durch die Anlage hervorgerufen werden können, soweit es zur Ermittlung des angemessenen Sicherheitsabstandes erforderlich ist.

2. Angemessener Sicherheitsabstand als eine der möglichen Maßnahmen zur Auswirkungsbegrenzung eines „Dennoch-Störfall“

Zum anderen kann der angemessene Sicherheitsabstand eine der möglichen Maßnahmen zur Auswirkungsbegrenzung eines „Dennoch-Störfalls“ darstellen.

Der Betreiber einer genehmigungsbedürftigen Anlage muss die Pflichten des § 5 Bundes-Immissionsschutzgesetzes erfüllen. Wenn im Betriebsbereich gefährliche Stoffe in Mengen vorhanden sind, die die Mengenschwellen des Anhangs I der Störfall-Verordnung (12. BImSchV) überschreiten,

müssen zudem die konkretisierenden Vorschriften der Störfall-Verordnung beachtet werden.

Der Betreiber muss insbesondere Vorkehrungen treffen, um Störfälle zu verhindern (§ 3 Abs. 1 der 12. BImSchV). Dabei wird die Eintrittswahrscheinlichkeit eines Störfalls auf ein tolerierbares und sozialadäquates Maß reduziert, ein Restrisiko verbleibt.

Zusätzlich muss der Betreiber vorbeugend Maßnahmen treffen, um die Auswirkungen von Störfällen so gering wie möglich zu halten (§ 3 Abs. 3 der 12. BImSchV). Es geht also darum, dass für den Fall eines Dennoch-Störfalls, der aus welchen Gründen auch immer dennoch eintritt, weitere vorbeugende Maßnahmen (über die Verpflichtungen des Absatzes 1 hinaus) getroffen werden, um die Auswirkung dieses Dennoch-Störfalls so gering wie möglich zu halten (minimieren, nicht verhindern). Der Sicherheitsabstand zu Schutzgütern ist eine der möglichen Maßnahmen zur Auswirkungsbegrenzung des Dennoch-Störfalls. Es kommen auch andere Maßnahmen (z. B. Schutzmauern, Werksfeuerwehr) in Betracht.

Dass der angemessene Sicherheitsabstand eine der möglichen Maßnahmen zur Auswirkungsbegrenzung eines „Dennoch-Störfalls“ ist (und keine Maßnahme zur Verhinderung von Störfällen nach § 3 Abs. 1 der 12. BImSchV), ergibt sich u. a. aus der Begriffsdefinition im Bundes-Immissionsschutzgesetz. In § 3 Absatz 5c BImSchG wird klargestellt, dass der angemessene Sicherheitsabstand der Abstand zwischen einem Betriebsbereich und einem benachbarten Schutzobjekt ist, der zur Begrenzung der Auswirkungen von schweren Unfällen beiträgt. Würde die Einhaltung des angemessenen Sicherheitsabstandes als Maßnahme zur Verhinderung von Störfällen (§ 3 Abs. 1 der 12. BImSchV) angesehen, würde das nach § 3 Abs. 1 der 12. BImSchV tolerierte Restrisiko nicht mehr zugelassen.

II. Anmerkungen zum Entwurf des Eckpunktepapiers für eine TA Abstand

Der BDI unterstützt den Erlass einer TA Abstand, wenn hierdurch die industrielle Tätigkeit und der Ausbau der Industriestandorte weiterhin ermöglicht werden und der Vollzug der Vorschriften für die Vorhabenträger erleichtert wird.

Mit den neuen Regelungen im Störfallrecht wurden zusätzliche Verpflichtungen für die Genehmigungsverfahren eingeführt. Bei der Konkretisierung der neuen rechtlichen Vorgaben in der TA Abstand sollte darauf geachtet werden, dass es nicht zu Verzögerungen und Kostensteigerungen für die Vorhabenträger kommt. Es muss Rechtssicherheit für Betreiber und Behörden geschaffen werden, um Investitionen an deutschen Standorten zu erleichtern.

Folgende Punkte sind nach Auffassung des BDI in einer neuen TA Abstand zu berücksichtigen:

- Es sollte eine Lösung gefunden werden, dass bestehende Abstands-gutachten weiterverwendet werden können.

Existierende Anlagen müssen einen klar definierten Bestandsschutz erhalten, der auch unter Berücksichtigung geänderter Rahmenbedingungen, Änderungen der Anlagen ermöglicht und damit den Standort festigt.

- Wenn ein neues Rechenmodell zur Ermittlung des angemessenen Sicherheitsabstandes durch eine TA Abstand eingeführt werden sollte, ist eine ausreichend lang bemessene Übergangsfrist erforderlich. Bestehende Abstandsgutachten müssen in laufenden Verfahren weiter verwendet werden können.
- Im Entwurf des Eckpunktepapiers für eine TA Abstand wird offen gelassen, ob die Abstandsermittlung zukünftig auf der Grundlage eines neuen Ansatzes (Abstandsklassen) erfolgen soll oder der KAS-Leitfaden entsprechend überarbeitet wird. Es wird derzeit noch geprüft, ob typisierende Abstände für einzelne Anlagen und Stoffe ermittelt werden können.

Die Industrie steht dem Ansatz der Abstandsklassen kritisch gegenüber. Abstandsklassen, die nur einen Stoff oder nur ein Anlagentyp betrachten, sind nicht sinnvoll. Im Zweifel würde ein entsprechender festgelegter Sicherheitsabstand möglicherweise unverhältnismäßig groß bestimmt und würde im Einzelfall nicht passen. In der Folge wären dann ohnehin Detailbetrachtungen erforderlich.

- Es ist unerlässlich, dass weiterhin Einzelfallbetrachtungen in Gutachten möglich sind (Berücksichtigung vorhandener Schutzmaßnahmen, konkrete Parameter der betroffenen Anlage, örtliche Lage etc.).

Die Option zur Erstellung von Einzelgutachten sollte dabei für jedes Verfahren erhalten bleiben und nicht nur für bestimmte Fallkonstellationen. Individuallösungen und spezifische Wechselwirkungen, die in einer standardisierten Abstandsbetrachtung nur schwer berücksichtigt werden können, dürfen nicht vereinfacht und kumuliert betrachtet werden.

- Bei der Ermittlung der angemessenen Sicherheitsabstände sollte keine uneingeschränkte Verweisung auf die AEGL-Werte erfolgen. Die Werte können sich ändern, ohne dass die Bundesregierung hierauf einen Einfluss hätte. Es können auch neue Stoffe dazukommen, die erhebliche Änderungen für die Sicherheitsabstände zur Folge hätten. Sollte zukünftig auf die AEGL-Werte abgestellt werden, so muss zumindest eine statische Verweisung erfolgen und keine dynamische Verweisung, die unter Rechtsstaatlichkeitsgesichtspunkten ohnehin problematisch ist.

- Sollte ein neues Referenzmodell durch Überarbeitung des KAS-Leitfadens entwickelt werden, sollte das Modell möglichst einfach gestaltet und Eingangsgrößen bestimmt werden, die ausreichend eindeutig definiert und festgelegt werden. Die Eingangsgrößen sollten bekannt oder mit vertretbarem Aufwand bestimmbar sein.
- Es sollten Bagatellgrenzen eingeführt werden. Hierdurch kann eine aufwändige Betrachtung von unerheblichen Gefahrenpotenzialen entfallen.
- Der im Bundes-Immissionsschutzgesetz enthaltene Begriff „störfall-relevante Änderung“ (§ 3 Abs. 5d) sollte definiert werden.
- Der im Bundes-Immissionsschutzgesetz neu eingeführte Begriff „erhebliche Gefahrenerhöhung“ (vgl. §§ 16 a, 19, 23a, 23b) sollte in der TA Abstand definiert werden.

In Anlehnung an § 3 Abs. 5b BImSchG sollte bestimmt werden, dass eine erhebliche Gefahrenerhöhung vorliegt, wenn der angemessene Abstand erstmals unterschritten wird, räumlich noch weiter unterschritten wird oder ein Betriebsbereich der unteren Klasse zu einem Betriebsbereich der oberen Klasse wird.

Bei der Definition ist zu unterscheiden, ob eine Erhöhung der Gefahr erfolgt oder sich lediglich das Risiko erhöht.

- Bei der Definition der Schutzobjekte in der TA Abstand sollte folgendes berücksichtigt werden:
 - Es sollte keine über das Europarecht hinausgehende Ausweitung bei der Definition der Schutzobjekte geben.
 - Die Definition der Schutzobjekte sollte mit Augenmaß erfolgen. Zudem bedarf es einer Harmonisierung mit dem Baurecht der Länder, das heute schon verfahrensrechtliche Regelungen mit Definitionen von Schutzobjekten enthält.
 - Der Begriff „unter dem Gesichtspunkt des Naturschutzes besonders wertvolle oder besonders empfindliche Gebiete“ ist aus der EU-Seveso-III-Richtlinie in das deutsche Recht übernommen worden. Entsprechend sollten auch nur aufgrund europäischen Rechts geschützte Gebiete in die Begriffsdefinition aufgenommen werden (Natura 2000-Gebiete). Eine Ausweitung auf sonstige, aufgrund nationalen Rechts geschützte Gebiete sollte nicht erfolgen (Naturschutzgebiet, Nationalpark, Biosphärenreservat und Landschaftsschutzgebiet).
 - Für die Abstandsbestimmung von Betriebsbereichen zu „unter dem Gesichtspunkt des Naturschutzes besonders wertvollen oder besonders empfindlichen Gebieten“ müssen erst

einmal die wissenschaftlichen und fachlichen Grundlagen geschaffen werden.

ENTWURF

Über den BDI

Der BDI transportiert die Interessen der deutschen Industrie an die politisch Verantwortlichen. Damit unterstützt er die Unternehmen im globalen Wettbewerb. Er verfügt über ein weit verzweigtes Netzwerk in Deutschland und Europa, auf allen wichtigen Märkten und in internationalen Organisationen. Der BDI sorgt für die politische Flankierung internationaler Markterschließung. Und er bietet Informationen und wirtschaftspolitische Beratung für alle industrierelevanten Themen. Der BDI ist die Spitzenorganisation der deutschen Industrie und der industrienahen Dienstleister. Er spricht für 36 Branchenverbände und mehr als 100.000 Unternehmen mit rund 8 Mio. Beschäftigten. Die Mitgliedschaft ist freiwillig. 15 Landesvertretungen vertreten die Interessen der Wirtschaft auf regionaler Ebene.

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Bundesverband der Deutschen Industrie e.V. (BDI)
Breite Straße 29, 10178 Berlin
www.bdi.eu
T: +49 30 2028-0

Ansprechpartner

Annette Giersch, LL.M.
Rechtsanwältin
Telefon: +49 30 2028 1608
a.giersch@bdi.eu

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