'TIPS AND TRICKS' FOR WATER FRAMEWORK DIRECTIVE IMPLEMENTATION

A resource document for environmental NGOs on the EU guidance for the implementation of the Water Framework Directive

March 2004

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The mission of the **World Wide Fund for Nature** is to stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature, by conserving the world's biological diversity, ensuring that the use of renewable natural resources is sustainable and promoting the reduction of pollution and wasteful consumption.

The **European Environmental Bureau (EEB)** is a federation of 147 environmental citizens' organisations based in all EU Member States and most Accession Countries, as well as in a few neighbouring countries. These organisations range from local and national, to European and international. The aim of the EEB is to protect and improve the environment of Europe and to enable the citizens of Europe to play their part in achieving that goal. The EEB office in Brussels was established in 1974 to provide a focal point for its Members to monitor and respond to the emerging EU environmental policy.

The research necessary for producing this document and much of the drafting was carried out by Gillian Marmelstein (Trainee at the European Environmental Bureau 2002/2003). The text has been completed by Stefan Scheuer (European Environmental Bureau), Eva Royo Gelabert and Francisco Tavares (WWF Living Waters Programme – Europe) and Ruth Davis (Royal Society for the Protection of Birds-RSPB).

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Foreword

People care about water. A recent poll[1] on European attitudes on the environment showed that citizens are increasingly concerned about the pollution of rivers, lakes, groundwater and coastal waters. In 2002, more than 40% of European citizens were 'very worried' about the state of freshwater ecosystems. This marked a sharp increase of 10% from 1999.

Water protection is one of the European Union (EU)'s oldest environmental policies. There are over twenty pieces of legislation to protect surface water and groundwater from human activities, setting water quality standards, and requiring pollution abatement techniques and emission controls for a variety of water uses and activities[2]. Despite this impressive legislative body, the integrity of your water is far from acceptable and smaller rivers and lakes, as well as groundwater, are still deteriorating, in particular those affected by diffuse pollution. The reason? Many of the relevant EU laws have not been properly implemented or enforced, and the objectives of other EU policies, including on industry, agriculture and transport, are in open contradiction with 'water protection' objectives[3].

The December 2000 Water Framework Directive (WFD) provides a new chapter for EU water policy – it consolidates existing laws, adds new environmental instruments and management tools and, most importantly, gives a general ecological objective. For decades, interest groups and academia have demanded that environmental policies and objectives are oriented towards the environment's 'carrying capacity', the proper and long-term functioning of ecosystems and maintenance of biodiversity. Decision-makers finally recognised this demand and have enshrined it in EU law via the WFD. The WFD is a great improvement in EU water policy as it focuses on meaningful outcomes, and thus encourages us to work hard to turn the words of the legal text into day-to-day water management decisions. However, because the WFD is a general 'framework', which has to be made into concrete objectives and measures at the river basin level, it leaves Member States with plenty of room for manoeuvre[4]. As we know that many EU laws have never been properly implemented and enforced, we remain sceptical as to whether governments will actually change from 'business as usual' to *integrated and ecologically-driven river basin management* as the WFD requires. So we will judge the success of this new law on its 'real' outcomes and whether it achieves 'good ecological status' and 'good chemical status' in all waters by 2015 as required by the legal text.

We are pleased that the European Commission and EU Member States have recognised the possible gap between the actual text of the WFD and how it is applied. We have worked together since 2001 to provide a common understanding of, and guidance for, implementing the WFD. This process is known as the *Common Implementation Strategy for the WFD*. The results so far – 13 guidance documents with more than 1,500 pages in total – are a good starting point and should be used widely. However, not all the recommendations from these guidance documents are easily understandable nor are they very ambitious. Some recommendations are insufficient to achieve the WFD objectives and so to respect the law. Critical use of the guidance documents is essential – they are not blueprints.

Our involvement in the WFD Common Implementation Strategy process has been well worth the effort, as it has provided us with a wealth of information and an in-depth understanding of the WFD. It has also showed us some of the problems Member States will face. We believe that this information is relevant for all those who want to participate in implementing, enforcing and applying the WFD, Europe's new water law, at the national level. It should assist environmental NGOs to use the European guidance documents critically to benchmark national, regional or local water management decisions. We have produced this guide to explain the official European guidance and we hope it will encourage environmental NGOs and other interest groups to be active in making Europe's most ambitious and challenging water law work.

We would like to thank Gillian Marmelstein for her extensive research work for this guide as well as our colleagues at the EEB and WWF Living Waters Programme - Europe, who participated in the EU guidance development work and who also provided information for this guide.

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[1] Eurobarometer 58.0, 'The attitudes of Europeans towards the environment', The European Opinion Research Group (EORG 'Public Opinion Analysis' December 2002. http://europa.eu.int/comm/environment/barometer/

[2] For further information see Chapter 3 of 'EEB Handbook on EU Water Policy under the Water Framework Directive, January 2001'. http://www.eeb.org/publication/EEB%20Water%20Handbook%20Absolut%20Final%202001.pdf

[3] For further information see 'WWF's Water and Wetland Index: Critical issues in water policy across Europe, November 2003', http://www.panda.org/about_wwf/where_we_work/europe/what_we_do/freshwater/initiatives/wwi/phase2.cfm

[4] Directive 2000/60/EC establishing a framework for Community action in the field of water policy, O J No. L 327, 21.12.2000, p 1. You can find the legal text at http://forum.europa.eu.int/irc/DownLoad/kietAgJDmfGUXjGZHpGuTRfUzMyugJqK/yxRqRfEtKHf9z04g6BtIYVNtD4GRcD2r/6RjYM_V/WFD-EN.pdf

1 Introduction

1.1 A note on the Water Framework Directive

The Water Framework Directive[5] (WFD) has been in force since 22 December 2000. Its purpose is to establish a framework to protect all waters (inland surface waters, transitional waters, coastal waters and groundwater). Under the Directive, Member States are obliged to prevent further deterioration and to enhance and restore the status of aquatic ecosystems as well as terrestrial ecosystems and wetlands that directly depend on aquatic ecosystems. Its aim is to achieve 'good ecological and chemical status' by 2015. Under almost undisturbed natural conditions the aquatic ecology – flora and fauna – provide the benchmark (reference) for this objective.

This is the first time an EU Directive has addressed not only the chemical aspects of water protection but also its ecological aspects, such as flow regime, composition and abundance of aquatic organisms, etc. This means, for example, that the WFD will help rivers to be, and function, like rivers, instead of being mere transport canals, as they have become in many parts of Europe. To do so, the WFD uses the river basin, i.e. the geographic area that drains all surface water to a single point, as its functional unit. From an ecological viewpoint this is the correct approach to water management. The Directive thus promotes integrated river basin management as the most efficient way to achieve sustainable water use. This, in turn, requires coordinated planning for using land and water resources within the entire basin covering all surface, coastal and ground waters as well as land-use activities.

The 'precautionary principle' and the 'polluter pays principle' from the European Treaty are enshrined in the WFD, which promotes the sustainable use of water resources based on long-term protection, including the use of tools such as water pricing policies. The Directive requires that Member States progressively reduce discharges, emissions and losses of priority substances and stop or phase-out priority hazardous substances. The WFD asks to reduce groundwater pollution and to prevent further pollution. Its implementation should help to mitigate the effects of floods and droughts.

The Water Framework Directive deals with three central elements of the aquatic ecosystem.

- *The **quality of water**, which can be threatened by anthropogenic pollution, including from industrial chemicals (fertilisers, pesticides), urban or industrial wastewater (detergents, surfactants, pharmaceuticals, PAHs), or cooling water from power generation, etc.*
- *The **quantity of water** (the volume and flow – hydrological regime), which can be threatened by abstractions, drainage, dredging, canalisation, damming, and polders for all kinds of human activities, such as for power generation, transport, industry and agriculture.*
- *The **aquatic habitat** (morphology of rivers, lakes and coasts – including sedimentary structure and composition – meandering of rivers, etc.), which can be threatened by intensive land use, soil erosion, and infrastructures for the activities listed above.*

***Quality, quantity** and **habitat** are equally important and interdependent factors in achieving 'good ecological status', i.e. that which is necessary to support an aquatic biodiversity close to undisturbed conditions, all water-dependent ecosystems and all legitimate human water uses.*

[5] Directive 2000/60/EC establishing a framework for Community action in the field of water policy, O J No. L 327, 21.12.2000, p 1. You can find the legal text at http://forum.europa.eu.int/irc/DownLoad/kietAgJDmfGUXjGZHpGuTRfUzMyugJqK/yxRqRfEtKHf9z04g6BtIYVNtD4GRcD2r/6RjYM_V/WFD-EN.pdf

Member States must identify each river basin lying within their national territory and assign them to individual River Basin Districts (RBD), which are the units for all planning and management actions. River basins covering more than one country have to be assigned to an international RBD. Their management will require close co-operation between the authorities of the countries concerned, regardless of whether all of these belong to the EU.

A River Basin Management Plan (RBMP) must be produced for each District. This is the key planning document for each individual RBD and sets out the specific objectives and the measures to achieve them. The RBMPs must be in place by 2009 and must be reviewed in 2015, and updated every six years after that. The RBMP links the WFD and the water-related requirements of other Community legislation, including the Birds Directive (79/409/EEC), the Habitats Directive (92/43/EEC), the Nitrates Directive (91/676/EEC), the Urban Wastewater Treatment Directive (97/271/EEC), the Environmental Impact Assessment Directive (85/337/EEC) and the Drinking Water Directive (98/83/EC). The WFD also aims to streamline Community water policy and, as a result, some of the previous Directives (including those on groundwater protection and discharges of dangerous substances) will be repealed in 2013.

As its function is to set out a framework, the WFD's obligations tend to be quite general and Member States have to make them specific when they transpose the Directive into national law by 22 December 2003 at the latest and then in the RBMPs. The Directive sets out a series of obligatory tasks, each with a strict final deadline, which will help to achieve the overall objective of 'good status'. In many cases these tasks alone will not be sufficient to achieve 'good status' and must be complemented with others at the national, regional and local level.

1.1.1. WHAT ARE THE KEY ACTIONS THAT MEMBER STATES NEED TO TAKE?

- To identify the individual river basins lying within their national territory, assign them to individual river basin districts (RBDs) and identify competent authorities by 2003 (*Article 3, Article 24*).
- To characterise River Basin Districts in terms of status quo, pressures, impacts and economics of water uses and produce a register of protected areas within the River Basin District, by 2004 (*Article 5, Article 6, Annex II, Annex III*).
- To carry out, jointly and together with the European Commission, the intercalibration of the ecological status classification systems by 2006 (Article 2 (22), *Annex V*).
- To start operating the monitoring networks by 2006 (*Article 8*).
- To monitor and analyse the river basin's characteristics in order to identify a programme of cost-effective measures to achieve the WFD's environmental objectives by 2009 (*Article 11, Annex III*).
- To produce and publish River Basin Management Plans (RBMPs) for each RBD including designating heavily modified water bodies, by 2009 (*Article 13, Article 4.3*).
- To implement water pricing policies that enhance the sustainability of water resources by 2010 (*Article 9*).
- To put the programme of measures into operation by 2012 (*Article 11*).
- To implement these measures and achieve the environmental objectives by 2015 (*Article 4*)

Even if the deadlines set out in the WFD seem to be arranged in a sequence of consecutive steps, where each task must be completed before the next can begin, really effective implementation will require a timetable based on 'good practice' (driven by specific river basin dynamics) rather than 'administrative compliance' (driven by the production of reports for the European Commission). This means working on each WFD task at the earliest practicable time, taking into account the different circumstances of each river basin, which may imply working on several tasks simultaneously.

1.2 Background to the Water Framework Directive Common Implementation Strategy

The WFD is the most significant EU water law issued so far. It sets an 'integrative' and ambitious ecological target within a challenging timetable and strict deadlines. However, it leaves quite a lot of margin for interpretation. Implementing the WFD is a complex and long-term process, which requires Member States to co-operate with their neighbours (especially in the area of transboundary RBDs that extend beyond the Community's territory) and between different administrative units and policy sectors. The EU Member States, Norway and the European Commission have indeed recognised that the Directive was very complex and posed many challenges, and in May 2001 they jointly decided to develop a Water Framework Directive Common Implementation Strategy (WFD CIS). Its purpose is:

- To ensure that Member States gain a common understanding of the Directive and its requirements
- To share experience and expertise between Member States on how to develop some of the Directive's tasks
- To develop non-legally binding, practical guidance documents on various technical issues of the Directive, putting forward the 'best practices' to resolve them. These guidance documents are targeted at all those who are directly or indirectly charged with implementing the WFD at the River Basin District level.

These three elements should enable the Directive to be implemented in a coherent, harmonious and ambitious way in all EU Member States and Candidate Countries despite the differences across RBDs.

Shortly after May 2001, EU Candidate Countries and stakeholders with an interest in Community water policy that were active at the pan-European level were invited to join the WFD CIS process. This is organised on three levels:

- ***The Water Directors.*** This is the top level, where all final decisions on both the development of the Strategy itself and the final shape and content of the guidance documents are taken.
- ***The Strategic Coordination Group.*** This is the WFD CIS' 'managerial body' where the European Commission, Member States, Candidate Countries and stakeholders meet regularly to evaluate progress and discuss problematic questions.
- ***The Technical Working/Drafting Groups.*** These are made of experts who are in charge of developing the guidance documents putting forward 'best practice' tools, approaches and solutions to solve existing technical problems/issues relating to or arising from WFD implementation.

The WFD CIS process has so far developed 13 guidance documents and it is scheduled to last up to 2006. During 2003 and 2004 (extending up to 2006) its main activity will be to facilitate the harmonisation of ecological standards, to test the different guidance documents (mainly developed over 2002-2003) in pilot river basins (PRBs) across Europe and report on how to make them more useful for WFD implementation on the ground (see section 4 of this guide). The revised documents will be pulled together over 2005-2006 in a Manual for Integrated River Basin Management (IRBM), which should assist timely and effective WFD implementation. There will be further technical guidance development over 2003-2004 (see subsection 1.4 below) by a 'streamlined' WFD CIS structure.

All the documentation relating to the WFD CIS process, including the guidance documents, can be found at a special European Commission intranet site called CIRCA[6]. CIRCA has a public section (http://forum.europa.eu.int/Public/irc/env/Home/main) and a main section with restricted access (it needs a username) to WFD CIS 'participants' only. To gain access to the restricted section please contact: **env-wfd-circa@cec.eu.int**

[6] Communication & Information Resource Centre Administrator

1.3 Issues covered by the Water Framework Directive Common Implementation Strategy

By November 2003, the WFD CIS process of Working/Drafting Groups had developed 13 guidance documents[7] and three technical information[8] documents on issues covered by the Directive that needed further development or clarification.

Some of the guidance documents deal with issues that are 'horizontal' to WFD implementation, i.e. they are not really linked to a time-line and/or relate to different implementation tasks. Others are 'vertical', as they are linked to a clear deadline and/or only refer to one specific task. The table below explains this.

HORIZONTAL

1 ***Identification of water bodies:*** Provides a common understanding of the definition of water bodies and gives specific practical suggestions for identifying water bodies under the WFD. Water bodies are the key operational units to which a number of the Directive's requirements are related and to which the environmental objectives apply. The way they are defined is fundamental to the entire WFD implementation process and to assessing its compliance - making this a crucial guidance document.

2 ***Public participation in relation to the WFD:*** Explains how to implement public participation in the broader context of the development of IRBM planning as required by the WFD.

3 ***Wetlands:*** Wetlands are not fully covered or dealt with under the definition of water bodies nor are they specifically defined elsewhere in the WFD. However, wetland functions will play a key role in achieving the WFD's 'good status' goal. This guidance explains what wetlands are and lays out a common understanding on how to integrate wetland functions into WFD implementation.

[7] Analysis of pressures and impacts, Identification of water bodies, Public participation in relation to the WFD, Typology, reference conditions and classification systems for transitional and coastal waters, Identification and designation of heavily modified and artificial water bodies, Economics and the environment, Monitoring, Reference conditions and ecological status class boundaries for inland surface waters, Intercalibration, the Planning process, GIS, Wetlands and Ecological classification .

[8] Identification of river basin districts, Pilot river basin network, and Statistical tool for groundwater assessment.

VERTICAL

4 ***Analysis of pressures and impacts (IMPRESS):*** Develops a common understanding of the information needed to identify significant human pressures on surface and ground waters, within the designation of water bodies, in order to assess their likely impact on water status.

5 ***Identification and designation of Heavily Modified (HMWB) and Artificial Water Bodies (AWB):*** The WFD allows a specific derogation from its 'good ecological status' objective for certain water bodies where there have been substantial physical alterations to provide for some specific water uses. These bodies only need to reach 'good ecological potential', but they still need to achieve 'good chemical status'. This guidance document explains how to identify and designate HMWB and AWB and establishes the basis for classifying their ecological potential.

6 ***Reference conditions and ecological status class boundaries for inland surface waters (REFCOND):*** Identifies reference conditions and the boundaries between 'high', 'good', 'moderate' status etc, in lakes and watercourses. The reference conditions of a 'high status' water body are the baseline for classifying all water bodies.

7 ***Typology, reference conditions and classification systems for transitional and coastal waters (COAST):*** Explains how to differentiate transitional and coastal waters into types, produce descriptions of reference conditions and develop frameworks for classifying the ecological status of coastal and transitional waters.

8 ***Ecological classification:*** Summarises the overall ecological classification rules provided by the REFCOND, COAST, HMWB/AWB monitoring and guidance documents and tries to solve issues, such as how to use physico-chemical parameters for ecological classification, and how to combine / aggregate quality parameters and elements. Further, it sets out an approach on how to deal with uncertainty in the ecological classification.

9 ***Intercalibration:*** Gives guidance on the intercalibration exercise that Member States and the European Commission will need to carry out to ensure that ecological status classifications are in line with the WFD, comparable and consistent across the EU Member States.

10 ***Economics and the environment (WATECO):*** Gives detailed guidance on how to carry out an economic analysis of water uses in river basins by 2004, an economic assessment of potential measures for reaching 'good water status' and an assessment of 'water services' recovery costs.

11 ***Planning process:*** Informs practitioners about the issues and activities to be organised and coordinated during the planning process and provides guidance on how to produce and develop River Basin Management Plans.

12 ***Monitoring:*** Develops a common understanding of what is required when monitoring WFD implementation and how to go about it.

13 ***Geographical Information Systems (GIS):*** The WFD's reporting obligations require that a substantial part of the information is sent to the European Commission in Geographical Information System (GIS) format. This guidance document explains how to do this and the system's technical requirements.

1.4 Water Framework Directive Common Implementation Strategy workplan 2003-2004[9]

In addition to the PRB integrated testing exercise, further technical guidance documents will be produced between 2003-2004. This is because when the existing 13 WFD CIS guidance documents were being finalised, most of the Working Groups felt that further work was needed because certain aspects could not be developed in great detail within the given timeframe. Other issues needed to be tested or extensive data collected on national level first (e.g. European typology system for transitional and coastal waters). Moreover, new issues emerged that required technical guidance, for example, eutrophication.

As a result, it was agreed to dissolve the existing Working Groups and to set up four new ones 'recycling' many of the relevant experts to develop new guidance documents on priority issues that were pending, as follows:

- ***Ecological Status***: Facilitates the intercalibration exercise as required by the WFD; develops guidance on ecological status classification including the use of physico-chemical and hydromorphological parameters; harmonises the typology, in particular for transitional and coastal waters; and assesses eutrophication in the context of different European Directives.

- ***Integrated River Basin Management:*** Deals with the PRB integrated testing exercise, and the integration of economic issues in new guidance documents (baseline scenario, scale) addressing economical methodological aspects (such as the assessment of environmental costs or the incentive dimension of pricing) and, possibly, preparing the programme of measures.

- ***Groundwater:*** Takes over from the existing Expert Advisory Forum[10] and prepares guidance for analysing and monitoring groundwater.

- ***Reporting:*** Takes over from the existing Expert Advisory Forum to develop guidelines for reporting under the WFD and other EU water legislation.

As a result, several new guidance documents are being produced. The number of Working Groups has been reduced in comparison with the previous guidance development phase of the WFD CIS. This is because Member States and Candidate Countries are now busy with preparing the 'real' WFD implementation on the ground and they do not have sufficient resources for this stage of the process.

The EEB and WWF's participation in the WFD CIS (see below) will continue over 2003-2004. However, this will be restricted to the Strategic Coordination Group and the Working Groups dealing with 'Ecological status' and 'Integrated River Basin Management'. This does not mean that we will participate in all the Drafting Groups included in these groups.

[9] Much of the text in this subsection has been taken from 'Carrying forward the Common Implementation Strategy for the Water Framework Directive - Progress and work programme for 2003 and 2004' [Final draft version 5.0] available at http://forum.europa.eu.int/irc/DownLoad/mwZcH8GFkfIIfcYfh3suALmhR9pI10fD/c9dc4Go2XjTdS4kfQ4mGr0gb9D_0cwPq/RjNh7c0H8WVHgZtIYyhgDgojLHf-YFfb/5C_CbxhtGhDWPN/3%20-%20%20final%20draft%20strategy%202003_2004%20%28version%205.0%29.doc This should be consulted for further information. To gain access to this web page please contact: env-wfd-circa@cec.eu.int

[10] A sort of Working Group, but with a specific mandate to advise the Commission in preparing proposals for 'daughter' legislation under the WFD, e.g. following from Article 16 and 17. There have been three dealing with 'Priority substances', 'Groundwater' and 'Reporting' during 2001-2003.

1.5 Why have we prepared this guide and how can you use it?

Only two environmental NGOs, the European Environmental Bureau (EEB) and the World Wide Fund for Nature (WWF)[11], participated in the WFD CIS process. The two organisations are closely involved both at the political level, by participating in the Strategic Coordination Group, and at the technical level. EEB members and experts and WWF national or programme offices are part of some of the technical Working/Drafting Groups, and follow the relevant drafting of the guidance documents and try to influence their development. Environmental NGOs have not been allowed to participate in or to have access to the upper decision-making level – the Water Directors.

The main aim of the EEB and WWF's intensive participation in the WFD CIS process is to ensure that its outcomes reflect the WFD's legal obligations and focus on achieving the ambitious WFD objectives. It is also important for us to learn more about the WFD, the thinking of the different players and to involve national environmental NGOs in the process. Our greatest concern has been, and still is, that Member States will try to limit the content of the guidance documents to minimum reporting requirements to the European Commission. Instead they should be developing 'best practice' approaches to help achieve the WFD objectives, which was the WFD CIS' original aim.

The final guidance documents produced are non-legally binding and their main objective is to present a set of 'best practice' recommendations to guide and assist Member States to implement the Directive. The EEB and WWF consider that the WFD CIS process itself and the documents produced are useful as they provide a common understanding about the Directive. However, the quality of the guidance is quite mixed because some include narrow and not very useful interpretations of what the Directive requires. Some WFD CIS guidance documents are difficult to read because of their length and their lack of clarity. They also have the potential to weaken WFD requirements because the consensus-based compromises, that ruled the decision-making at the Strategic Coordination Group and Water Directors' levels, which at times meant that the guidance documents reflected the lowest common denominator.

As a result, it is crucial that environmental NGOs and other stakeholders at the river basin level make critical use of, and seek to improve, the WFD CIS guidance documents. The EEB and WWF are now providing critical comments for each WFD CIS guidance document (with this 'Tips & Tricks' document), which highlight where Member States had problems and which Member States require close observation. Our knowledge of Member States' problems during the WFD CIS guidance development should be very useful in helping environmental NGOs and stakeholders to make the most of the guidance documents and to use them to assess their governments'/authorities' performance in implementing the WFD.

The drafting of the WFD CIS guidance documents has highlighted some very controversial issues for WFD implementation, such as the definition of HMWBs (see section 3.6). These show where current and future Member States will have problems or may try to evade WFD obligations. Environmental NGOs will have to watch and challenge current and future Member States' WFD implementation, in particular with regard to such problems. In some cases, we also might have to remind the European Commission that the WFD CIS guidance documents are not legally binding and that the WFD is the only legal basis for checking compliance.

The WFD CIS guidance documents are supposed to be 'living documents' rather than implementation blueprints. So they have to be adapted to national/regional/river basin/local use and may be of limited use in certain circumstances. So it is important for environmental NGOs to participate in the Pilot River Basin (PRB) testing exercise scheduled for 2003-2004, as this is supposed to help overcome some of the weaknesses of the current guidance documents by including information from the implementation of certain WFD components on the ground.

This document summarises the information contained in the guidance documents produced under the WFD CIS process. It highlights the controversial issues and the different political agendas linked to them; it also explains how each of these 'controversies' has been addressed. Environmental NGOs and others should use this information to decide how they will participate in the WFD implementation process 'on the ground'.

After this introductory section on the WFD, our resource document gives answers to some Frequently Asked Questions, and provides the actual 'Tips & Tricks' for using the WFD CIS guidance documents. It then explains the Pilot River Basin Testing Exercise and its challenges for environmental NGOs, and gives some conclusions.

[11] An Annex to each guidance document shows who from each organisation was involved in each Working Group.

HOW SHOULD ENVIRONMENTAL NGOS USE THE WFD CIS GUIDANCE DOCUMENTS?

In order to benchmark Member States' achievements against the targets of the WFD and the 'best practices' provided by the WFD CIS guidance documents, environmental NGOs must challenge well-trodden paths and suggest alternatives. To this aim they should:

- *Request the River Basin Authorities to provide translations of the WFD CIS guidance documents*
- *Familiarise themselves with the guidance documents and read them together with the relevant sections of this resource document*
- *Use key information from the guidance documents and this resource document to monitor, challenge and improve the WFD's transposition into national law and its implementation*
- *Improve the guidance documents by critically participating in the Pilot River Basin testing exercise. Highlight issues that have been overlooked and focus on intercalibration, ecological status classification and reporting requirements*
- *Request that there is public participation as early as possible in the WFD implementation process.*

This resource document includes 'Be aware boxes' marked with an exclamation mark (such as the one below). These are designed to warn you about important issues or alternative ways of using/understanding the information provided.

While the WFD CIS guidance documents and this resource document aim to help implement the WFD at the river basin level, the information provided can also help at the time of WFD transposition. This is particularly true of this resource document because it highlights which WFD aspects need close follow-up throughout the process so that they are not lost in the national transposition laws.

2 Frequently Asked Questions (FAQs)

This section is subdivided into two types of Frequently Asked Questions: Those relating to the WFD itself and those relating to the WFD CIS guidance documents.

2.1 The Water Framework Directive

2.1.1. WHAT CAN THE WFD DO FOR YOU?[12]

The Directive's implementation and the achievement of 'good status' (see below) will not only bring about environmental benefits as a direct consequence of the protection and improvement of quantity and quality of all waters, but will also lead to several clearly identifiable socio-economic gains, such as:

- ***Increasing water security.*** The extreme hydrological conditions of 2002 and 2003 showed us how dependent our social and economical life is on having too much or too little water. Infrastructure, houses and agricultural land were destroyed by the 2002 floods, while energy supplies and harvests were reduced and huge areas suffered from the forest fires of the 2003 summer drought. Long-term integrated river basin management and protecting/ restoring the environment's natural capacity to balance extreme weather conditions should soften the local impacts of drought and flood periods.

- ***Only paying once and only for the right measures to tackle water problems.*** The Directive requires thorough studies of the condition of water bodies and their catchment areas in order to design appropriate measures to tackle existing or predictable problems. It is foreseen that any necessary investments made will be more accurate, last longer and be more effective than the existing piece-meal approaches in water policies. Up until now, different pieces of EU environmental legislation dealing with water, developed over the past 25 years, have been fairly unrelated and are often inconsistent. Further, they were designed to control pollution in certain waters and by certain pollutants, rather than to achieve sustainability.

- ***Paying less in the future for water treatment.*** Today, domestic consumers often have to pay for the treatment of water polluted by industry and agriculture. The WFD promotes the 'polluter pays' principle – thus making the ones who pollute pay. If the WFD achieves its goals of 'no deterioration' and 'good water status', the results will be better water quality and improved ecological 'carrying capacities' in the future. One direct result of this is that there will be less need for water treatment, which will then reduce costs.

- ***Having high quality water available for all as needed.*** Water shortages caused by poor water management are expensive for farmers and industry as well as causing a major inconvenience and potential health hazard to domestic users. Implementing WFD and its pricing mechanism, should help improve water management and lead to a sustainable and more reliable high quality water supply at local level.

- ***River, lake, wetland, estuarine and coastal habitats, and species available for all to enjoy.*** Besides the direct economic activities that freshwater ecosystems can generate, they bring biodiversity, recreation and leisure. These are important values, but are currently very underestimated. Freshwater ecosystems are a source of life for fauna and flora and support abundant species of birds, plants and fish. This makes them extremely pleasurable areas for recreation and leisure (eg, nature trails, boating) for many people, which is a source of richness *per se* for the local population and can also give raise to small-scale economic activities.

- ***Fishing and tourism.*** These are two important economic activities directly related to the 'health' of freshwater ecosystems that are open to the public. If rivers or lakes achieve 'good status' this will probably mean that fishing can be resumed and that the local authorities can use them to attract visitors, promote tourism and other related economic activities. This can be a vital source of money and development for the community.

- ***Job creation.*** WFD implementation *per se* should generate jobs at administrative and other local levels via, for example, the development of monitoring networks or the creation of specific projects in rivers, lakes, etc, which will help achieve the 'good status' objective. If this objective is reached, then jobs will also be created in the tourism sector and other related economic activities, such as services.

[12] Parts of this text have been taken from the 'Explanatory memorandum' of the European Commission's original proposal for the WFD, COM (97) 49 final of 26.02.1997

2.1.2 WHAT EXACTLY IS 'GOOD STATUS'?

'Good status' is defined differently for surface and groundwater. In the case of surface waters[13], it comprises 'good *ecological* status' and 'good *chemical* status' of a surface water body.

'Ecological status' measures the quality of the structure and functioning of aquatic ecosystems associated with surface waters, which result from a combination of biological elements (e.g. organisms, diversity), hydro-morphological elements (e.g. flow) and physico-chemical elements (e.g. temperature, oxygen).

'Good ecological status' means a slight biological deviation from what would be expected under natural/undisturbed (reference) conditions (no chemical contamination, water abstractions or physical changes, like dams or embankments). 'Good chemical status' is achieved when all EU environmental quality standards are met (e.g. from the Directive on discharges of dangerous substance to surface waters, the list of priority substances under Article 16 of the WFD etc).

'Good groundwater status' comprises 'good *chemical* status' and 'good *quantitative* status'. 'Good chemical status' is achieved if:

- No salt or other intrusions occur
- Relevant EU standards are met (although there are currently no global EU standards, as the so-called standards under the Nitrates and Pesticides Directives are action thresholds or market authorisation tests rather than groundwater quality standards).
- Surface waters and terrestrial ecosystems, like wetlands, are not negatively impacted.

'Good quantitative status' means that less water is abstracted than is recharged in the long term, and that there is enough flow to maintain all the ecological functions of associated surface waters or terrestrial ecosystems.

Annex V of the WFD establishes the normative definition of 'good status' and lists the quality elements and criteria to achieve it. However, it does not provide any thresholds or values that could be used to establish the 'range' of conditions in which good status applies.

> ! *At national level reference conditions, thresholds for quality elements and the boundaries between 'high', 'good' and 'moderate' status still need to be developed.*
> *An EU 'Intercalibration' exercise will shortly be carried out to ensure a common and harmonised approach to achieve this.*

2.1.3 WHAT IS 'NO DETERIORATION'?

'No deterioration' is a key requirement of EU environmental policy. It means: 'Do not make things worse' and 'avoid repeating past mistakes'.

The WFD (Articles 1, 4.1 [a] and [b]) obliges Member States to refrain from any activity that would lower the ecological, chemical or quantitative status of any water body. This not only includes the new WFD standards but also all existing water standards set by other EU legislation. This is normally known as the WFD's 'no-deterioration' duties.

In order to avoid a conflict between carrying out this policy and meeting important societal demands, the WFD (Article 4.7) allows some exceptions to the 'no-deterioration' objective, provided that the following conditions are met:

- If there is no better environmental alternative.
- If the activity is a new physical modification or groundwater abstraction or presents new sustainable human development.
- If the activity is of overriding public interest or delivers human health or safety benefits, which outweigh the environmental benefits.
- If all practicable measures are taken to mitigate its effects.

As well as these conditions, the WFD (Article 4.8 and 4.9) requires that if meeting these demands causes the situation to deteriorate, it must not make it impossible to achieve the WFD objectives in other water bodies, or contradict EU environmental policies, or lower the environmental protection set out in other EU legislation, such as the Habitats Directive.

[13] Rivers, lakes, transitional waters (e.g. estuaries) and coastal waters

EXAMPLE

In order to guarantee an adequate supply of urban drinking water in the dry season, the responsible authority plans to construct a dam in an upstream river to create a reservoir. This dam would destroy the river's physical characteristics and breach the WFD's 'no deterioration' clause. Therefore, in order to meet the WFD requirements, the authority would need to prove inter alia *that:*

- *Water conservation measures, like reducing leakage rates in the distribution network or reusing waste water for irrigating the city parks, and water demand-management measures, like increasing water prices for excessive water consumption, are insufficient to overcome the shortage.*
- *Available local groundwater resources are insufficient or of too low quality to cover the shortage, and it is unfeasible to recover them in the near future.*
- *The environmental costs of constructing the dam, such as a reduced fish population, the loss of protected areas, reduced recreational activities etc., are outweighed by human health and safety benefits.*
- *Measures to alleviate the negative environmental effects, like fish ladders, maintaining minimum water flows, or reforestation, are included in the construction plan.*

Nevertheless, environmental NGOs' attempts to raise awareness about new industrial or agricultural land-use plans, water infrastructure or groundwater abstraction projects, which could lead to 'deterioration', may be rebuffed by the relevant authorities. Their attempts to ensure that the authorities are aware of the conditions under which 'deterioration' is allowed before taking a decision on such projects could also meet the same fate. This is because there are conflicting opinions about the date on which the WFD 'no-deterioration' duties become, or became, legally binding on Member States. Negotiations on the WFD text have already shown the political sensitiveness about this potentially very strong duty[14].

Some suggest that 'no-deterioration' has been binding from the date on which the Directive entered into force – 22 December 2000. Common sense says that this is the only acceptable date, as preventing deterioration is a logical step to achieving 'good ecological status' for all waters, and so should be mandatory as early as possible. Others, however, contend that it is not possible to comply with the obligation until the programme of measures set out under Article 11 of the WFD is established (22 December 2009), or when it comes into operation (22 December 2012).

In any case, Member States *will not be able to* achieve the objective set out in Article 1 of the WFD (preventing further water status deterioration) in the next eight years if the measures mentioned in Article 4.1 only come into effect when the programme of measures required under Article 11 (to be established in 2009) come into operation in 2012[15]. In addition, because Member States are under an obligation to maintain standards of water quality under existing EU Directives, it would be incompatible for the 'prevention of water deterioration' duties to only begin in 2009 or 2012.

Despite many politically motivated claims, the EEB and WWF[16] believe that Member States have had a legal obligation to prevent deterioration since 22 December 2000, within the scope of existing EU and national legislation or policy programmes. This obligation needs to be implemented into national law from 22 December 2003.

Unfortunately, so far the Commission has not upheld its own opinion given in March 2001, when Commissioner Liikanen stated in a European Parliament debate that 'since the Directive entered into force on 22 December 2000 a strict no-deterioration clause has applied, which should prevent a repetition of past errors'. Thus, the European Commission's DG Environment is currently working on a legal opinion on the meaning and entry into force of the WFD 'no-deterioration' duty, which should be available in 2004.

[14] For a short history of the negotiations on the adoption of the WFD legal text see Annex II of 'EEB Handbook on EU Water Policy under the Water Framework Directive', January 2001 available at: http://www.eeb.org/publication/EEB%20Water%20Handbook%20Absolut%20Final%202001.pdf

[15] In addition, jurisprudence from the European Court of Justice (ECJ) confirms that this inconsistency is unlawful. Cf. Decision of 10th January 1985, Leclerc / Au blé vert (To the Green Meadow), 229/83, Rec. 1985, p.1, para 14; Decision of 18th December 1997, *Inter-Environnement Wallonie ASBL v Region Wallone*, C-129/96, Rec. p. I-7411, para 41

[16] cf. for example 'Water Framework Directive (2000/60/EC), Legal interpretation, of the 'No deterioration in status' duty of Member States', The Royal Society for the Protection of Birds, 20 October 2001 and 'WWF Position paper on the Article 4(1) - 'No-deterioration duty' of the European Community Water Framework Directive (2000/60/EC)', June 2003, available at http://www.panda.org/about_wwf/where_we_work/ europe/what_we_do/ policy_and_events/ epo/initiatives/freshwater.cfm

How do the Commission and Member States determine whether there has been deterioration or not?

Data and information, in particular on ecological status and to some extent on water quantity, are missing, and will not be available until the end of 2004. This is the date when an analysis of the characteristics and of the pressures and impacts within River Basin Districts has to be ready. In order to prevent deterioration, Member States will, therefore, have to start monitoring much earlier than the actual deadlines given in the Directive.

Nevertheless, there are cases, in particular in relation to infrastructure developments on surface waters, where expert judgement can determine whether there will be a long-term effect on the ecology of a given freshwater ecosystem or not.

Where planned activities lead to changes in groundwater quantity, such as water abstractions, the situation is much clearer and it will be much easier to evaluate the potential deterioration of the quantitative groundwater status[17].

The 'necessary measures' in Articles 4.1.a (i) and 4.1.b(i), which Member States are obliged to take to prevent deterioration may, to some extent, be identical to the measures following from Article 11 ('Programmes of measures'). This means that in the period 2000-2012 'no-deterioration' requires Member States to implement some of these measures before the deadline specified for establishing the programmes. As mentioned above, this already applies to existing Community legislation.

It follows that, in order for 'no-deterioration' to be met between 2000 and 2012, Member States need to have made adequate provisions when transposing the WFD into their national laws, for example, by allowing the implementation of some 'basic' or 'supplementary' measures earlier than the deadline laid down (as explained above). Alternatively, they could establish 'interim' measures to prevent deterioration as indicated in the WFD CIS guidance document on the (first cycle) of the 'Planning process' (see section 3.8 of this document).

Environmental NGOs need to check and ensure that this happens. Otherwise, they will not have the tools to prevent damage from, for example, major infrastructure developments on freshwater ecosystems in the period between 2000-2012.

2.1.4. DOES THE WFD ONLY RELATE TO 'WATER'?

The quick answer to this question is 'no'. The WFD provides an ecological objective, which cannot be strictly divided into terrestrial and aquatic ecology, as there are many ecosystems that depend on each other. Article 1, on the purpose of the WFD, states that it covers aquatic ecosystems and terrestrial ecosystems (when relating to their water needs) and wetlands (directly depending on aquatic ecosystems) (see section 3.3 on 'Wetlands'). In addition, the WFD requires that all standards and objectives for protected areas (Article 4.1 [c]), are met by 2015, except when the specific EU legislation for such protected areas provides other deadlines. The Directive covers protected areas including bathing waters, areas where drinking water is abstracted and areas where habitats and species should be protected. The WFD lists these areas under Annex IV[18] and environmental NGOs must ensure that none of them are overlooked in the WFD's River Basin Management Plans. However, it is still not clear whether national areas designated for conserving habitats and species that are not a direct result of implementing the EU Habitats and Birds Directives are included or not.

Additionally, measures taken to comply with the WFD should not compromise the environmental objectives of other Community laws (Article 4.8). Under the WFD, authorities have to achieve the objectives of at least 11 pieces of existing Community environmental legislation (Article 11.3) in order to achieve 'good status'. These are listed in Annex VI part A and include not only 'water' laws (e.g. Bathing Waters Directive), but also other laws such as the Control of Major Accidents Directive (96/82/EC), Environmental Impact Assessment Directive (85/337/EEC), Pesticides Directive (91/414/EEC) and the Integrated Pollution Prevention and Control Directive (96/61/EC). Measures to implement these must be included in the WFD's River Basin Management Plans.

[17] See chapter 4.5.2.4 'EEB Handbook on EU Water Policy under the Water Framework Directive', January 2001

[18] The following legislative instruments designate protected areas in EU Member States and Candidate countries; Drinking water for human consumption (98/83/EC), the protection of economically significant aquatic species (79/923/EEC), recreational waters (76/160/EEC), nutrient sensitive areas (86/278/EEC, 91/676/EEC and 91/271/EEC), the protection of birds, habitats or species (92/43/EEC and 79/409/EEC)

2.1.5 WHAT ROLE DOES EU REGIONAL AND AGRICULTURE POLICY AND FUNDING PLAY IN IMPLEMENTING THE WFD?

Under the WFD, river basin management planning will affect land-use and other planning cycles (and vice versa), such as the Rural Development Regulation (second pillar of the Common Agricultural Policy - CAP) or the use of Community Regional Funds. Because different planning cycles under different Community policies/instruments should be coherent, they will have to be integrated into the WFD implementation process, as measures to implement the Directive could be financed by these other policies. This would be even more apparent if the objectives of these policies had been 'integrated', as required by Article 6 of the Treaty, early on in their development.

The WFD's River Basin Management Plans can and should provide the basis for increased policy coherence and integration. It is crucial that they are used to promote opportunities for sustainable water management in sectoral (e.g. cross-compliance in agriculture) and structural policies (e.g. allocation of funds to regional development initiatives that contribute to meeting WFD objectives). However, while River Basin Management Plans might demonstrate that change is needed in sectoral policies, it is important to recognise that these might have to be undertaken at national or EU levels, which is beyond the direct control or influence of the River Basin Authority.

For the CAP, the Commission has produced a working document: 'The Water Framework Directive (WFD) and tools within the Common Agricultural Policy (CAP) to support its implementation'. This is available in the Commission intranet CIRCA[19] and should be very helpful for Member State governments and River Basin Authorities, which are worried about how to finance WFD implementation and how to actively promote it via the CAP.

What role can the EU Common Agricultural Policy (CAP) play in achieving WFD objectives? *Here are some ideas from the DG Environment and DG Agriculture working document 'The Water Framework Directive (WFD) and tools within the Common Agricultural Policy (CAP) to support its implementation'.*

- *Use the CAP to implement the WFD, especially through existing CAP measures under the Rural Development Regulation, such as agri-environment, Article 16 - Less favoured areas, codes of 'Good Agricultural Practice' etc.*
- *Use new CAP measures (depending on the final shape of the CAP mid-term review) such as 'new standards', which use subsidies to achieve EU legal environmental objectives, and obligatory cross-compliance to meet WFD standards as a condition for receiving funds (currently this is only voluntary).*
- *The River Basin Authorities and Rural Development planners need to co-operate to align River Basin Management Plans with Rural Development Plans. The deadline for this is 2006, when the Rural Development Plans for 2007 - 2013 will be discussed/approved and draft River Basin Management Plans have to be published.*

Unfortunately, the working document has some shortcomings and at times is not consistent with the WFD[20].

- The expectations of how the revised CAP can support WFD implementation are too low.
- Not enough emphasis is placed on the opportunities available within the CAP's 'First pillar' (Common Market organisations).
- Paying farmers compensation for any loss they might have incurred in order to achieve WFD standards when there are competing needs for land between water and agriculture – as the paper seems to suggest - is not in line with the 'polluter pays principle'.

[19] http://forum.europa.eu.int/irc/DownLoad/m6ZvH5G1kfI2fqYmhIspAam3RppMkOfS/zMqw8BcGer6YRxosB1ZGeDfsLJ_2bjhp/eSGGkeZSp14g6BR0dmAdEdPvKUqTc9Yd/1GjtI/3.2%20-%20FWD%20and%20Agriculture.doc .To gain access to this web page please contact: env-wfd-circa@cec.eu.int

[20] For more information please see 'WWF response to the European Commission's Working Document: The Water Framework Directive (WFD) and tools within the Common Agricultural Policy (CAP) to support its implementation', April 2003, at http://www.panda.org/about_wwf/where_we_work/europe/what_we_do/policy_and_events/epo/initiatives/freshwater.cfm

- Member States should not be able to use the farming sector's poor track record in achieving existing EU environmental standards, like those from the Nitrates Directive, to justify derogations from reaching the WFD objectives. All WFD derogation tests have to be strictly applied for each single case. General derogations for farming activities are unlawful[21].

- It fails to recognise that a strong vision on overall CAP reform can support WFD implementation at both EU and national levels.

> ! *Environmental NGOs should promote the DG Environment and DG Agriculture working document to Member State governments and River Basin Authorities. This should help in implementing the WFD by showing how certain measures required to achieve its objectives can be financed via the CAP. However, they should be aware of its shortcomings (see above) and provide alternative solutions.*

In terms of the Structural Funds, DG Environment and DG Regional Development are now drafting a paper with similar aims to those of the 'WFD and CAP paper'. DG Regional Development is very interested in promoting the use of Structural Funds for 'ecological flood management', which will help to achieve 'good ecological status'.

The interaction between DG Environment and DG Regional Policy is already apparent in the additional guidelines produced by the European Commission in August 2003[22] on the use of the Structural Funds, which seem to be a good first step in the right direction. These guidelines aim to facilitate the identification of coherent and balanced priorities for the development of projects to be submitted by Member States to DG Regional Policy for co-financing. The guidelines are applicable for the period 2004-06 and have been sent to the relevant authorities so they know what can and should be promoted.

Page 10 of these guidelines under 'Environment' reads: 'Beyond this, the Water Framework Directive (WFD) introduces a new model for water protection based on integrated management at the level of river basins. Therefore, while specific measures targeted at waste-water treatment and drinking water provision will continue to be a priority, such actions must be seen as part of an overall strategy for ensuring the ecological status and chemical quality of the entire river basin. Integrated programmes for river basin management, including the development of the management plans foreseen under the WFD will also be eligible for support'.

This is a positive development because it will allow, for example, nutrient reduction via wetland/floodplain restoration, where appropriate, to be eligible instead of (or together with) waste water treatment plants. Heavy infrastructure investment for treating and piping drinking water will have to be considered in the context of achieving the objectives of the WFD. Therefore, damaging infrastructure projects should have less chance of being funded with EU (EIB, EFTA) money. It also means that River Basin Management Plans (RBMP) under the WFD and all the prior analyses and studies (e.g. IMPRESS, etc) required in order to develop the measures to be part of the RBMP or its characterization, can be co-financed by the EU. Overall, these new guidelines for the Structural Funds open endless possibilities for the use of EU money in 2004-06 for any water management aspect related to WFD implementation.

[21] It has been argued that derogation is necessary because of the cost of changing the activity that prevents the achievement of 'good status'. However, decisions about what proportion of that expense should take into account the financial support given to farming both now and in the past. It is unacceptable to support farming that prevents the WFD achieving its objectives and then to argue that we cannot burden farmers with the cost of changing their practices. Since the measures to maintain and/or improve water body status under the WFD have to be assessed for their cost-effectiveness, 'disproportionate' costs should be easily prevented.

[22] 22 COM(2003) 499 final

Environmental NGOs should promote the use of Structural Funds in a way that does not damage (deteriorate) freshwater ecosystems and that helps to achieve WFD objectives[23]*. For example in the case of flood management, they should promote measures to ensure that existing wetlands and floodplains can function naturally and fully as part of an integrated system, so they can play as full a role as possible in mitigating future floods. These could include:*

- *Restoring degraded wetlands and floodplains, including river meanders, especially those that reconnect rivers with their floodplains.*
- *Removing obsolete man-made constraints on rivers as well as flood defences, and preventing further construction on floodplains.*
- *Setting up public awareness campaigns to inform the public about the risks of living in flood-prone areas and combat the false sense of security provided by current dykes etc, which do not always work.*

These measures should be part of a long-term strategy to alleviate the effects of floods at the river basin level and must be implemented via the relevant River Basin Management Plan under the WFD.

2.1.6 WHAT ABOUT THE IMPORTANCE OF SOIL POLICY IN THE CONTEXT OF INTEGRATED RIVER BASIN MANAGEMENT?

European soil protection objectives and measures are urgently needed. In 2004 the Commission will present its 'European Thematic Strategy for Soil Protection'. This must set ambitious targets and provide strategic links to other policies, in particular water policy and the WFD. Targets on reversing soil contamination, erosion, compaction and sealing caused *inter alia* by agricultural activities and by inappropriate land use planning for urban development and transport should be included in this strategy. Soil compaction and sealing lead to increased water runoff and additional flooding so water, land and soil interactions must be considered for the entire river basin. For example, farming methods that increase the soil's capacity to retain water and reduce the burden on flood and drought control should be encouraged as well as drainage systems that can reduce the run-off from land.

Soil stores many chemicals, including pesticides, industrial chemicals as well as their breakdown products, and also heavy metals, nitrates, phosphates and acidifying agents. Some of these pollutants are slowly released into ground and surface water over long periods of time. However, once the soil's storing and buffering capacities are surpassed or the soil erodes the release can be sudden and fast.

Achieving the WFD's 'good water status' objective by 2015 requires rapid action to reverse soil contamination, erosion and sealing trends and end soil accumulation of hazardous substances across Europe. If action comes too late, it will be very difficult or even impossible to achieve the WFD objective by that date.

[23] For more information please see 'Structural Funds in an Enlarged EU. Learning from the Past – Looking to the Future', May 2003, at http://www.panda.org/downloads/europe/mtefinalmay2003.pdf

2.2 The Water Framework Directive Common Implementation Strategy guidance documents

2.2.1 WHAT STATUS DO THE WFD CIS GUIDANCE DOCUMENTS HAVE?

The WFD CIS guidance documents are non-legally binding 'guidelines'. However, Member States may give them some type of official status via their own internal mechanisms for implementing the Directive. The WFD is still the definitive reference tool for each Member State on its legal requirements for implementation.

Nevertheless, WFD CIS guidance documents offer a set of useful and practical 'best practice' recommendations and examples to guide and assist Member States' authorities on the specific tasks needed to achieve the WFD.

2.2.2 WHO SHOULD USE THE WFD CIS GUIDANCE DOCUMENTS?

The WFD CIS guidance documents are aimed at administrative bodies responsible for implementing the WFD and anybody else affected by its implementation. This includes planning engineers and other technical experts, stakeholders (e.g. environmental NGOs, water supply companies, hydropower, shipping, and industry) and the public at large. However, the documents are only in English, which will make it difficult for them to be widely used. While the European Commission has decided not to translate them, Member States may do so, at least the parts that they want to include in their own internal mechanisms for implementing the Directive. For example, German translations of the documents should become available at **www.wasserblick.de**.

> ! *Environmental NGOs should request a full translation of the WFD CIS guidance documents from Member State governments or River Basin Authorities, and should promote them to implement the WFD at the river basin level.*

2.2.3 WHERE CAN YOU GET COPIES OF THE WFD CIS GUIDANCE DOCUMENTS?

All WFD CIS guidance and technical information documents and other relevant information – always in English - can be found in the 'Library' section of the public part of the European Commission CIRCA intranet site. This can be accessed at the following web page address: **http://forum.europa.eu.int/Public/irc/env/wfd/library?l=/framework_directive/guidance_documents&vm=detailed&sb=Title**

A link to these documents can also be found on the EEB website (**www.eeb.org**) (the download will take some time as the documents contain a number of pages with a considerable number of graphics).

The wording and format of the guidance documents still need some final polishing and the correct cross-references, all of which was done in early 2004. The finalised guidance documents produced between 2002-2003 were published by the Commission in a CD-ROM (again, only in English). This includes the WFD text, related leaflets, etc and is available from the Commission Publications Office.

2.2.4 HOW ARE THE WFD CIS GUIDANCE DOCUMENTS STRUCTURED?

The various WFD CIS guidance documents can be very intimidating as most of them are more than 150 pages long. The entire set of documents amounts to over 1,500 pages of technical and legal information. Valuable information is buried in the wealth of the other information. As a general rule, the guidance documents are divided into several distinct parts and it is possible to go directly to the specific section required.

The documents come in three blocks:

- A policy summary with the main political messages/guidance.
- The actual guidance document itself.
- A set of Annexes containing very specific technical guidance with examples and/or information on demonstration projects.

Each document has a 'Foreword', an 'Executive summary' and an 'Introduction' that gives a general explanation. The 'Introduction' tells the reader what can be found in the document, who it is aimed at, provides some general information on the WFD and introduces the Working Group that produced the document. An annex at the end contains the contact details of all of those who helped draft the document, and who to contact for further information.

'Section 1 – Implementing the Directive: Setting the Scene' is common to all guidance documents. It summarises the main WFD obligations and explains the WFD CIS as well as giving the main deadlines for achieving the WFD's 'results' (environmental objectives) and 'processes' (operational tasks). In subse-

quent sections, the document is more specific in providing technical guidance to Member States, River Basin Authorities and others. The final section contains the recommendations and conclusions.

All the guidance documents contain 'Lookout boxes' marked with a traffic light that contain valuable information. They act as a warning of potential problems that may arise in or for particular aspects that need to be carefully considered when implementing the Directive. For example, in all the documents one 'Lookout box' states that the guidance in the document needs to be adapted to local conditions and is not a blueprint for WFD implementation.

2.2.5 HOW DO THE WFD CIS GUIDANCE DOCUMENTS WORK TOGETHER?

No WFD CIS guidance document should be considered in isolation, they all depend on each other. This is even more important for 'vertical' guidance documents, which need information from the 'horizontal' ones to work (see section 1). For example, the IMPRESS document does not make sense without the 'Water bodies' document, as water bodies have to be designated as discrete entities before it is possible to identify the pressures and impacts on them. In turn, water bodies cannot be defined without taking the relevant wetlands into account. The 'Intercalibration', REFCOND, COAST and 'Monitoring' guidance documents are also interdependent. All guidance documents must be properly cross-referenced and cross-checked in order to increase their effectiveness.

During the PRB testing phase the various guidance documents will be tested/validated in fifteen pilot river basins across Europe (see below). This will be followed by an improvement period. A 'Manual on Integrated River Basin Management' will be produced at the end of the pilot testing phase from the end of 2004, which will be broadly disseminated to Member States, river basin managers and others.

2.2.6 HAVE THE WFD GUIDANCE DOCUMENTS BEEN APPLIED OR TESTED IN ANY WAY YET? WHAT DOES THE PILOT RIVER BASIN INTEGRATED TESTING INVOLVE? (see also section 4)

By July 2003, Member States had proposed fifteen[24] Pilot River Basins (PRBs), where the final WFD CIS guidance documents would be tested between 2003-2006.

The PRB integrated testing exercise has two main aims:

- To test the 'usefulness' of certain parts of the guidance documents on the 'ground' at the river basin level and see whether and /or where they need further revision/adjustment to help the 'real' WFD implementation. The testing phase should highlight any weaknesses or areas needing further development in the documents, which will be then revised and modified to sharpen their final content. The final result will be a 'Manual on Integrated River Basin Management'. This manual will be a living document that can be modified to suit the national and regional conditions of each RBD.

- To contribute to implementing the WFD in the Pilot River Basins or nationally via input to the relevant River Basin Management Plans (RBMPS). The documents could be tested *in situ* and the results would then contribute to the development of the relevant RBMP.

Role of environmental NGOs in the WFD CIS PRB testing exercise

- *Ask to be involved in the testing process as early as possible (see also section 4).*
- *Insist that the 'Public participation' and the 'Wetlands' guidance documents are tested in all of them.*
- *Improve the WFD CIS guidance documents via critical participation in the exercise. Highlight issues that have been overlooked. Focus on intercalibration, ecological status classification and the reporting requirements.*
- *According to the Terms of Reference, testing and reporting PRB activities focuses on the 'priority issues'– those linked to implementing Article 5 of the WFD. However, environmental NGOs should also insist that aspects of particular relevance to the individual river basins are also tested during the PRB testing process.*

2.2.7 HOW ARE WETLANDS DEALT WITH BY THE WFD CIS PROCESS? (see also section 3.3)

The WFD clearly identifies part of its purpose in Article 1(a) as to protect, restore and enhance wetlands. However, it does not define what a wetland is, nor does it explain to what extent wetlands should be used to achieve the WFD's environmental objectives. Because of these ambiguities, the EEB and WWF

[24] Odense, Shannon, Ribble, Mosel-Sarre, Scheldt, Cecina, Tevere, Pinios, Jucar, Guadiana, Oulujoki, Neisse, Marne, Somos, and Suldalsvassdraget

have persuaded the European Commission, EU Member States and Candidate Countries and other stakeholders that, in the context of the WFD CIS, the role the wetlands play in implementing the WFD should be explored and clarified.

The Water Directors meeting in November 2002 provided a common 'Wetlands' text[25] to be inserted in all WFD CIS guidance documents. In this text the Directors acknowledged that wetlands are coming under increasing pressure and highlighted their potential important role in river basin management and in helping to achieve WFD environmental objectives. They also recommended that a WFD CIS horizontal guidance document on 'Wetlands' should be prepared to realise these principles.

The horizontal guidance document on 'Wetlands' does not define wetlands, but it provides a description of what wetlands are and explains the relationship between (ground and surface) water bodies ('units' to which the environmental objectives of the WFD are to be applied, and monitored) and wetlands. It also explains how to include wetlands within the river basin planning cycle.

The Ramsar Convention's definition of 'wetlands' is a good reference tool in helping to identify wetland characteristics[26]. Wetland ecosystems, such as mires, reedbeds and floodplain marshes, are often made up of mosaics of open water and land that is permanently and seasonally inundated. This mosaic structure does not fit conveniently within WFD definitions of rivers, lakes, transitional and coastal waters, but many wetland ecosystems include parts of these water body types. River basin planners and other water managers are faced with the challenge of ensuring coherent management of such systems, while complying with WFD's legal and administrative requirements.

The horizontal guidance document on 'Wetlands' is very useful here. As wetlands are a cross-cutting issue in relation to all other WFD CIS guidance documents, it explains the WFD requirements for wetlands and identifies their role in its implementation, particularly in relation to Article 11 ('Programme of measures').

In cases where additional effort could lead to considerably better results, the guidance goes one step further and illustrates 'best practices' that go beyond the WFD's legal requirements. In these cases, a clear distinction is made between legal obligations and 'best practice' recommendations. Note that EU Member States and Candidate Countries always have the flexibility to establish stricter environmental protection according to their particular national concerns.

The central chapters in the horizontal guidance document on 'Wetlands' are:

- **The specific role wetlands play in achieving WFD environmental objectives**. This is illustrated by specifying minimum requirements, the relationship between wetlands and WFD objectives for surface water, and the relationship between wetlands systems and Heavily Modified and Artificial Water bodies. It also explains wetlands' relevance in achieving environmental objectives for groundwater, transitional and coastal waters, and protected areas.
- **The role of wetlands in 'basic' and 'supplementary' measures.** This chapter plays particular attention to wetland restoration and recreation as possible 'measures' to be considered as part of the programme of measures, also taking into account economic tests, as necessary to prevent further deterioration and achieve 'good ecological status'.

2.2.8 IS FLOODING COVERED BY THE WFD CIS GUIDANCE DOCUMENTS?

The short answer to this question is 'yes', even if the European Commission and many Member States believe that flood protection and prevention are legally outside the WFD remit. The EEB and WWF are convinced that the WFD provides the context for identifying ecological solutions for all freshwater ecosystem problems, which should include flood (damage) protection and prevention measures.

Under the WFD, Member States not only have to prevent the deterioration of current ecological and chemical status (important for floods) and to achieve 'good ecological and chemical status' in all waters by 2015 (Article 4), but also to minimise the effects of floods (Article 1). The WFD offers a unique opportunity to manage all land and waters at river basin and sub-basin levels in a way that protects the environ-

[25] 'Wetland ecosystems are ecologically and functionally significant elements of the water environment. They could potentially play an important role in achieving sustainable river basin management. While the Water Framework Directive does not set environmental objectives for wetlands, as they are dependent on groundwater bodies, form part of a surface water body, or are Protected Areas they would benefit from WFD obligations to protect and restore the status of water. CIS horizontal guidance documents develop relevant definitions on water bodies, which are also considered in guidance on wetlands.

Pressures on wetlands (for example physical modification or pollution) can have an impact on the ecological status of water bodies. River basin management plans need to consider measures to manage such pressures, where they have to be met to fulfil the Directive's environmental objectives.

In certain circumstances creating and enhancing wetlands can be part of the sustainable, cost-effective and socially acceptable mechanisms that help to achieve the Directive's environmental objectives.. In particular, wetlands can abate pollution impacts, contribute to alleviating the effects of droughts and floods, help to achieve sustainable coastal management and promote groundwater re-charge. The relevance of wetlands within programmes of measures is examined in the horizontal guidance paper on wetlands.

[26] The Ramsar Convention on Wetlands (1971) defines wetlands as areas of marsh, fen peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish, or salt, including areas of marine water which is less than six metres deep at low tide.

ment and people from the damaging effects of flooding. It should represent a significant change in Europe's traditional water management policies, and make it possible to integrate actions on a geographical scale with those at the policy level.

WFD implementation should consider other policies that have a significant impact on freshwater ecosystems - like land-use planning and agricultural policies – and make them all work towards the same objectives. It also provides for international co-operation and planning and for public involvement. It allows us to work with nature and not against it by, for example, restoring and conserving wetlands and floodplains. These are central to the delivery of 'good water status' and, through their water retention capacities, will help protect us from the impact of catastrophic floods.

The first[27] visible consequence of the floods that took place across Europe in the summer of 2002 - and a reflection of their political importance - was the introduction, by the Water Directors at a meeting in November 2002, of a paragraph in all WFD CIS guidance documents insisting that floods needed to be managed as part of integrated river basin management (IRBM).

At that same meeting, the European Commission proposed that EU Member State and Candidate Country Water Directors should develop an Initiative on 'Flood prediction, prevention and mitigation' in the context of, but not as an integral part of, the WFD CIS. This initiative was designed to share experiences and compile 'best practice' examples as well as other relevant information for sustainable flood management.

In 2003, after the WFD CIS structure and tasks were revised, a Working Group on 'Preventive flood protection under the scope of IRBM' was established. This operated under the joint leadership of The Netherlands and France, with the participation of most of the EU Member States and Candidate Countries and some stakeholders, including WWF. This group drafted a document on 'Best practices on flood prevention, protection and mitigation' based on the conclusions of the Bonn and Budapest Conferences (see footnotes), and other available information and relevant experiences across Europe on reducing flood risks.

The final version of this paper was endorsed at the Water Directors meeting in Athens, in June 2003[28]. Although it is not officially part of WFD CIS, its components will be incorporated into the 'IRBM manual' to be issued in 2006. It will also be part of a European Commission 'Floods (damage) protection and prevention' legislative package to be issued mid-2004.

The 'best practices' document makes an exhaustive analysis of the root causes for the increasing impacts of flooding in Europe. It also identifies the changes that need to be made in existing practices and 'mentalities' to tackle the flooding (damage) problem at all levels, and recommends how to tackle the previously identified root causes of the increasing impacts of flooding. It is also an inventory of 'best practices' on reducing flood risks based on experiences across Europe. Among others, the document suggests the following:

- Promoting a long-term, integrated river basin management approach, in harmony with natural resources and socio-economic developments
- Public awareness and participation
- Retaining water and other non-structural measures (ecological flood management)
- Assessing land-use, zoning and risks
- Structural measures to protect against floods (damage) and their impact
- Early warning and forecast systems
- Flood emergency
- Preventing pollution.

'

The EEB and WWF consider that this is a very good document. Our only criticism is that it does not really put forward clearly enough that the WFD has a key role to play in implementing measures for flood (damage) mitigation, protection and prevention. The River Basin Management Plans (RBMPs) are the only suitable vehicle for defining and implementing all the necessary measures for achieving 'good status' in each River Basin District, under the WFD. Thus, they must include any measures for flood management/control needed at national or international levels even if these are only 'supplementary' measures. In conclusion, there should be just one RBMP per each River Basin District to be used to integrate measures for sustainable water management, including flood (damage) protection, prevention and mitigation.

[27] Others were as follows: a High Level International Conference on 'Prevention of flood hazards by integrating socio-economic and environmental considerations' took place in Budapest in December 2002. It aimed to identify the elements for a European Initiative on floods, e.g. what policies should it address, etc. The final Joint Statement of the Conference announced that a *'new comprehensive approach to flood management at international level, implying better harmonisation of water policies and land-use practices, as well as, environmental protection and nature conservation*' is needed, in a context of enhanced international co-operation. Additionally, the IRBM approach was recognised as the core element for flood prevention and protection, and the River Basins Management Plans (RBMPs) under the WFD as the fundamental tool to achieve these objectives.

Later, in February 2003, a pan-European conference on 'Precautionary Flood Protection in Europe' took place in Bonn (Germany). It was attended by representatives of the European Commission, Member States and Candidate Countries and was a second step in developing the European Initiative. The Conference's conclusions again recognised the role of WFD in flood protection, prevention and mitigation and emphasised the need for integration of the European Initiative on flood protection into other policy areas, such as transport, shipping, urban development, emergency management, and specially nature conservation.

Although these meetings were developed in parallel to the WFD CIS process and were not part of it in *stricto senso*, their main conclusions provided a significant input to the formulation of the 'Best practices on flood prevention, protection and mitigation' document. This was the main contribution from the WFD CIS process to the European Initiative.

[28] Available in the 'public' part of the EC intranet forum (CIRCA) at http://forum.europa.eu.int/Public/irc/env/wfd.library.

3. 'Tips & Tricks' for using the Water Framework Directive Common Implementation Strategy's guidance documents

DISCLAIMER

The EEB and WWF were not allowed into the Water Directors' meetings so our information comes from the written outputs and from conversations with WFD CIS members who participated. As a result, there may be some inaccuracies on the positions of the Member States vis-à-vis the 'open issues' for adopting certain guidance documents, which have been reported below as the text tends to reflect the positions at the Strategic Coordination Group meeting. The aim of this section is not to 'name and shame'/criticise the Member States, but to help implement WFD on the ground by indicating Members States' problems with specific aspects of the process and how environmental NGOs can help.

The EEB and WWF's participation in the WFD Common Implementation Strategy (WFD CIS) has been a fruitful exercise at many levels. Generally, it has enabled us to influence the guidance documents and to make 'best practices' for WFD implementation the overriding principle for their development. We have acquired a thorough knowledge of the documents themselves, and their strengths and weaknesses. Finally, it has given us access to information on possible 'problematic issues' for Member States when they implement the Directive and where they might try to apply lax interpretations of the WFD text. This information is not shown in the guidance documents and was only visible during the negotiations on their final content. This section seeks to inform others about these issues. While we specifically mention the Member States that opposed certain 'best practice' approaches and/or put forward related implementation problems, this does not mean that countries that did not openly oppose them, supported them.

Each one of the sub-points here refers to how the analysis of a given guidance document has been carried out:

- A brief introduction to each guidance document
- An explanation of the areas of conflict that arose during its development and which were put forward as 'open issues' from the Working Group (which could not agree on them) to the Strategic Coordination Group. If no agreement was reached there then they were submitted to the Water Directors
- The final outcome of the discussions on the areas of conflict
- 'NGO action' boxes containing key issues that environmental NGOs should look out for or make specific demands on to the Member State authorities.

The order of the guidance documents follows the order specified in the 'Table of Contents' and the logic of 'Horizontal' and 'Vertical' guidance documents as explained in section 1 of this resource document.

3.1 Identification of water bodies

These are the WFD commodities. Water bodies are the units that implement the WFD at the River Basin District level. In principle, the larger a water body and the more different waters it covers (aggregates), the more inaccurate the WFD measures and objectives will be. Therefore, the smaller the water body the stricter the objectives will be!

3.1.1 INTRODUCTION

Article 2(10) of the WFD states that a body of surface water refers to a discrete and significant element such as '*a lake, a reservoir, a stream, river or canal, part of a stream, river or canal, a transitional water or a stretch of coastal water*'. The guidance document on 'Water bodies' is important in that it explains in detail what constitutes a 'water body', clarifying what needs to be included in the relevant River Basin District (RBD) and the corresponding Management Plan.

The guidance stresses that the WFD covers all surface waters. This means that RBDs cannot have 'white spots' because any given surface water must be attributed to a water body. A series of key criteria for defining water bodies is provided in the guidance document, including water categories (lake, river…); typology; physical characteristics (confluence of two rivers); and severe physical modifications. Additional criteria, such as pressures and impacts on the ecological or chemical status or its designation as a 'protected area', must also be considered so that water bodies are identified in a way that accurately describes their water status. This is important, as it should, for example, prevent two river stretches with different status being covered by a single water body, which would result in environmental problems being 'hidden' by 'averaging' their status across large areas.

3.1.2 AREAS OF CONFLICT

Small surface water bodies (see guidance document chapter 3.5, page 13): The recommendations for minimum thresholds (size) for small water bodies were one of the main problems in drafting this guidance document. Typology system A in Annex II of the WFD includes a minimum threshold for small lakes of 0.5 km^2 and a catchment size of 10 km^2 for rivers[29]. Initially, the guidance document recommended using these minimum size thresholds, but this created problems with many Member States. Finland, The Netherlands and Austria, objected on the basis that their countries have too many water bodies at and above the System A thresholds, and feared the administrative burden of having to formally identify them all. Other Member States objected to these thresholds because they would exclude many of their smaller and ecologically significant waters. The EEB and WWF also argued against minimum thresholds and highlighted the importance of ecological and pressures/impacts criteria for identifying water bodies in a flexible and meaningful way.

This 'open issue' was eventually linked to the Geographic Information System (GIS) guidance document because a lot of the small lakes would not be represented, i.e. would not be visible on the chosen GIS scale unless they were aggregated. Austria and Norway sought clarification on whether aggregation applied only to identifying water bodies or also included monitoring and reporting. The European Commission maintained that the aggregation of water bodies for reporting purposes was considered in the 'Water bodies' guidance document, and that it was up to the Member States to determine how to set up their individual management systems for monitoring.

Justification and transparency. In relation to the 'minimum size' issue, earlier versions of the guidance document had included a reference to Member States' obligations to provide a transparent justification for selecting water bodies within a river basin. This disappeared in later stages, which prompted environmental NGOs to stress that the Directive's environmental objectives were meant to apply to all waters. In this case it was logical and necessary for the competent authorities to describe how they had identified small/smaller water bodies to ensure that the WFD objectives were fulfilled, in particular when aggregating them. However, certain Member States did not believe that the guidance document needed to request any justification for decisions on identifying small/smaller water bodies, particularly their aggregation, since transparency was inherent in the WFD.

Finland disagreed with the environmental NGOs' request and stated that the WFD did not require 'justification or transparency'. Greece and France stated that there were enough transparency provisions in the guidance documents already, specifically in the entire 'Public participation' guidance.

Water bodies and wetlands. During the preparation of the 'Water bodies' paper, some key issues arose in relation to the 'overlap' between wetlands and open surface waters. These included the extent to which wetlands 'associated' with water bodies (e.g. floodplain wetlands) should be considered part of the water body itself. Member States (including the UK) objected to environmental NGOs' suggestions that the delineation of water bodies that

[29] System A for the typology specifies values for size descriptors for rivers and lakes. The smallest size range for a river type is 10 – 100 km^2 catchment area. The smallest size range for a lake type is 0.5 – 1 km^2 surface area (p. 13)

occurred in complex 'mosaic' systems with wetlands should also include the wetlands systems themselves, in order to reflect their ecological inter-dependence and continuity. At the same time, there were discussions on the extent to which the 'riparian, intertidal and lake-shore zones', which constitute one of the hydromorphological elements of a water body, should include relevant wetlands systems, as these have a direct effect on achieving the appropriate standards for biological quality elements.

Groundwater. 'Body of groundwater' means a distinct volume of groundwater within an aquifer or aquifers. The logical first step in identifying bodies of groundwater requires a general interpretation of the term aquifer and what is a *significant flow* of groundwater, and what volume of water abstraction is a *significant quantity.* However, certain Member States believed that the only groundwater bodies of a specific size that should be identified were those intended for abstracting drinking water. This would ignore any other groundwater flow and volume, which are important parameters in determining the status of aquatic and terrestrial ecosystems.

Austria and Spain in particular were concerned about the way the 'significant abstraction' issue was dealt with in the guidance document. Austria suggested removing a reference to a 'significant abstraction' of more than 10 m^3 of drinking water a day as an average (which was a direct quote of Article 7.1 of the WFD). Spain suggested that 'significant abstraction' should only apply to drinking water supply and that the guidance should not mention groundwater bodies that were not used for this purpose. They also felt that 10m^3 per day average abstraction rate was too low, and that this figure should be more flexible.

3.1.3 OUTCOMES

Small water bodies. In relation to the issue of the 'minimum size' of small water bodies, the guidance document now contains the following text: '*It is therefore recommended to use the size of small rivers and lakes according to system A. However, it is recognised that in some regions where there are many small water bodies, this general approach will need to be adapted. Having said that, it may be appropriate to aggregate water bodies into groups for certain purposes (…) in order to avoid unnecessary administrative burden*' *(p.13)*. It also suggests a way of dealing with 'smaller' water bodies, so that they can also achieve WFD objectives[30] (see chapter 3.5). While System A minimum thresholds may be an appropriate guideline in some regions, where there are numerous small water bodies of ecological significance that fall below this threshold, Member States should take them into account in identifying water bodies, and during any aggregation process.

The EEB and WWF are satisfied with this outcome. For some Member States it was necessary to allow aggregation of small water bodies, and to make the application of the minimum size threshold flexible, providing the opportunity to consider water bodies smaller than those automatically identified via System A. The very nature of the WFD requires a certain level of transparency and openness in the planning states. It will now be up to environmental NGOs and stakeholders in the Member States (especially in The Netherlands, Austria and Finland) to ensure that decisions to aggregate water bodies do not contravene the WFD's overall objectives. The guidance document on 'Public participation' should provide environmental NGOs with a very good roadmap to ensure that all decisions are taken openly.

Justification and transparency. The introductory chapter of each guidance document contains a section on 'Public Information and Consultation' (Article 14 of the WFD) that reads: *'Changing the management process – information, consultation and participation. Article 14 of the Directive specifies that Member States shall encourage the active involvement of all interested parties in the implementation of the Directive and development of River Basin Management Plans. Member States will inform and consult the public, including users, in particular for:*

- *The timetable and work programme for the production of the River Basin Management Plans and the role of consultation at the latest by 2006*
- *The overview of the significant water management issues in the river basin at the latest by 2007*
- *The draft River Basin Management Plan, at the latest by 2008.*

This common section then refers to the '*Integration of stakeholders and the civil society in decision making by promoting transparency and information to the public, and by offering a unique opportunity for involving stakeholders in the development of River Basin Management Plans*'.

[29] 'A suggested approach is to: (a) include small elements of surface water as part of a contiguous larger water body of the same surface water category and of the same type, where possible; (b) where this is not possible, screen small elements of surface water for identification as water bodies according to their significance in the context of the Directive's purposes and provisions (e.g. ecological importance; importance to the objectives of a Protected Area, significant adverse impacts on other surface waters in the river basin district). In such a case, small elements; (1) belonging to the same category and type, (2) influenced by the same pressure category and level and (3) having an influence on another well-delimited water body, may be grouped for assessment and reporting purposes; and (c) for those small elements of surface water not identified as surface water bodies, protect, and where necessary improve them to the extent needed to achieve the Directive's objectives for water bodies to which they are directly or indirectly connected (i.e. apply the necessary basic control measures under Article 11)'.

Member States should respect these requirements in all the WFD implementation phases irrespective of the issue. NGOs should use them to ensure this happens and that the processes are transparent and participatory.

In terms of the specific issue of 'transparency and aggregation', the guidance document states that '(...) *it will be necessary to apply this aggregation on the basis of clear criteria agreed on river basin district level and in a transparent way. Further details on whether and how aggregation of water bodies for the purpose of reporting is possible need to be discussed and elaborated in the context of the Expert Advisory Forum on Reporting. In the meantime it is recommended to focus particular attention on this issue when testing this guidance document, e.g. in the pilot river basins*' (pp20).

Nevertheless, the apparent resolution of this issue does not compensate for the fact that the guidance document on 'Water bodies' does not require any justification for deciding how to identify water bodies below the System A minimum thresholds. Nor does it require any justification on decisions taken to protect smaller water bodies, which would have been a 'best practice' approach. As it stands, competent authorities need only apply WFD objectives to water bodies above the minimum thresholds and do not have to pro-actively justify why certain small waters are not designated as a self-standing water bodies. This contradicts the spirit of this guidance document.

Water bodies and wetlands. The following text was inserted into the document:

'Components of a 'surface water body' and wetlands: A 'surface water body' comprises the quality elements described in the Directive for the classification of ecological status[31]**.**

In concrete terms this means that a river water body comprises:

(a) the hydromorphological quality elements, which include the water flow, the bed of the channel, that part of the land adjacent to the channel that has a structure and condition directly relevant to achieving the biological quality values (i.e. the riparian zone), and

(b) the relevant biological elements. In relation to wetlands, this means that the wetlands must be associated with a 'water body', and must directly influence its status. The boundaries of these wetlands must be identified in such a way as meets the requirements of being a 'discrete and significant' element.'

The EEB and WWF are disappointed that the text does not delineate water bodies in a way that is sympathetic to their ecological integrity and to the WFD requirements of being 'discrete and significant'. However, we feel that accepting that wetlands may constitute a part of the hydro-morphological quality elements of a water body is an important step. Its consequences are explored in the 'Wetlands' guidance document (see below).

Groundwater. The Water Directors agreed on the following text, which is now included in the final version of the guidance document on 'Water bodies'.

'Article 7 requires the identification of all groundwater bodies used, or intended to be used, for the abstraction of more than 10 m^3 of drinking water a day as an average. By implication, this volume could be regarded as a significant quantity of groundwater. Geological strata capable of permitting such levels of abstraction (even only locally) would therefore qualify as aquifers.

If either of the criteria described in Paragraphs 4.2.1 [Significant flow] or 4.2.2 [Abstraction of significant quantities of groundwater] are satisfied, the geological strata should be regarded as an aquifer. Most geological strata would be expected to qualify as aquifers as most supply or are intended to supply 10 m^3 a day as an average or could serve 50 or more people.

However, it is clear that the requirements are different as regards those groundwater bodies which are being used or are intended to be used for drinking water abstraction (cf. Article 7) and those bodies where groundwater is abstracted for other uses (cf. Annex II 2.3). For the latter, not all groundwater bodies would be identified. The criteria in Annex II 2.3 specify that only those groundwater bodies must be addressed 'which cross the boundary between two or more Member States or are identified [...] as being at risk of failing to meet the objectives set for each body under Article 4'.

For the EEB and WWF the outcome on 'groundwater' is a bit confusing but conforms to WFD objectives, and ultimately the WFD is the final reference tool for Member States.

[31] Annex V 1.1 & Annex V 1.2

3.1.4 NGO ACTIONS

- *Ensure that aggregating many surface waters into a bigger water body is not misused to hide environmental problems or to reduce monitoring and reporting requirements. All waters must be attributed to a water body!*

- *Ask the competent authority what they are doing to protect/enhance/restore smaller water bodies, particularly if you live in a European country with the 'thousand lakes problem' (eg Sweden, Finland). The WFD applies to them even if they may not all be identified as water bodies and the guidance document on 'Water bodies' explains how to protect them (pp 13-14) (see footnote 30 in this section). There should be no minimum size threshold for small water bodies. Some protected areas, such as bathing waters or those to protect wild birds and endangered species, may be smaller than this size. In this case, the relevant standards and requirements for monitoring these areas should be met by identifying them as water bodies under WFD, regardless of size. In some parts of the EU, water bodies smaller than the System A limits contain significant biological diversity. These should be considered during river basin planning so that the objective of achieving 'good water status' applies to the whole water resource. If NGOs are faced with such uncertainties they should ask the competent authority to justify the threshold or process they used to identify small water bodies.*

- *Wetlands within the riparian, lakeshore or intertidal zones of a water body, the conditions of which might affect their ecological status, are part of the water body's hydro-morphological quality elements. Under WFD rules, they should receive 'high status' protection, and may need to be restored in order to achieve 'good ecological status' or (for HMW and AW) 'good ecological potential'. They must be considered during the impacts and pressures analysis and, according to the requirements of Article 11 3 (i), Member States must take measures to control any pressures on them.*

- *Groundwater bodies should not be aggregated. Groundwater bodies are unlike surface water bodies and have different properties and function differently. Aggregating these water bodies would not necessarily reflect their true status.*

- *Identification of water bodies must be driven firstly by ecological criteria and, secondly, by water quality and quantity pressures.*

3.2 Public participation

Public participation is central to the WFD and its implementation, and is a key element for a new water management era.

3.2.1 INTRODUCTION

Article 14 of the WFD requires that Member States encourage the active involvement[32] of all interested parties in the implementation of the Directive. Further, Member States are required to carry out public information and consultation in the development, review and updating of River Basin Management Plans (RBMPs). This includes access to background documents and information used for the development of the draft plan.

All WFD CIS guidance documents are written with the target users in mind, i.e. those who are developing national WFD implementation strategies and those who are/will be preparing the RBMP. The guidance document on 'Public participation' is no exception. However, it is different in that it explains how and why individuals/authorities responsible for implementing the WFD should involve stakeholders and/or the general public (depending on the issue) in all stages of the implementation. This guidance document is 'horizontal' in nature because it is important for all activities that implement the WFD. It is also a crucial document for environmental NGOs. Although the WFD CIS process did not foresee producing guidance on public participation, it was added to the work programme after environmental NGOs, who knew that this was a new and difficult issue for water management authorities and one for which they were going to need a lot of help, requested it.

> ! *The terminology used in the WFD is not consistent with that used in the horizontal guidance document on 'Public participation'. The Directive does not define terms such as 'interested party', 'users' and 'general public', while the guidance document uses the term 'stakeholder' as synonymous with 'interested party'.*

'Active involvement' is quite new and not many administrations are familiar with the process[33]. The WFD CIS Pilot River Basin (PRB) integrated testing exercise is suffering from a lack of active involvement by environmental NGOs (see section 4 of this document). So far, the results do not reflect favourably on the commitment of Member States and Candidate Countries to encourage all interested parties to be *actively involved* in implementing the Directive from its entry into force, nor to include them in developing the RBMP.

3.2.2 AREAS OF CONFLICT

There were no significant areas of conflict in drafting the horizontal guidance document on 'Public participation'. Both the EEB and WWF were part of the Drafting Group and were allowed to have a very significant input into its final content and shape.

3.2.3 OUTCOMES

The horizontal guidance document on 'Public participation' is of a considerably high standard. The text is clear and unambiguous and easily accessible to stakeholders and members of the public.

[32] A higher level of participation than consultation. Active involvement implies that stakeholders are invited to contribute actively to the planning process by discussing issues and contributing to their solution.

[33] For more information on current European administrations' problems with 'public participation' in implementing the WFD see 'Results of a pan-European survey carried out by the WWF European Living Waters Programme.' This provides a 'snapshot' of Member States and Accession Countries' progress in transposing and implementing the Water Framework Directive (WFD). It can be downloaded at the following web page address:
http://www.panda.org/about_wwf/where_we_work/europe/what_we_do/policy_and_events/epo/initiatives/freshwater.cfm

3.2.4 NGO ACTIONS

- *Member States/Candidate Countries and the River Basin Authorities are legally obliged to provide background information on WFD implementation on request at any time. They also have to start the public participation phase for developing the River Basin Management Plans by 2006. However, according to the 'Planning process' guidance document, 'in order to achieve a 'best practice' in the planning process, high priority must be given to establishing effective mechanisms for public participation and decision-making right from the start. NGOs must ensure that they are involved from the start of the process' ('yesterday' would have been better!)*

- *While public participation is a fundamental part of the WFD, there are additional legal tools environmental NGOs can use to ensure they are involved, including the 'Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters' (Aarhus, 25 June 1998), which has been partially 'transformed' into a set of EU Directives*[34].

- ***BE PRO-ACTIVE!** Active involvement may be quite new and difficult for many administrations. Environmental NGOs should contact the relevant River Basin Authorities and ask to be involved in implementing the WFD in their River Basin District (RBD). If you do not get the desired result, climb the political ladder (Ministry, European Commission, etc), or address the national courts.*

- *Environmental NGOs in Member States and Candidate Countries should decide on a strategy of what they hope to achieve during the public participation process. Those with an interest in a given water body/RBD should make sure they fully understand the WFD objective of 'good status'. For example, some people may think that removing the debris and shopping trolleys from rivers is all they need to do to achieve 'good status'. Environmental NGOs must clearly define and explain their aims so that other stakeholders/members of the WFD implementation process understand them.*

- *First define the part of the process most relevant for you and whether you have the necessary interest and capacity to work on it. Define your 'rules of the game': Under what set of conditions offered by the River Basin Authority would you be willing to participate (e.g. timing, financial support, access to information, etc)? Then explain to the River Basin Authority or relevant water managers that having you there is good for WFD implementation as you can, for example, involve other stakeholders and/or provide specific information/data about the area, etc.*

- *One of the first steps should be to compile information, for example you may be asked 'What is the WFD?' over and over again. You need to make sure that the River Basin Authority makes this information widely available and that it includes something on the socio-economic 'benefits' of WFD implementation (as attempted in section 2 of this document). This information was not available when the Habitats Directive*[35] *was transposed and it is hardly available now during its implementation, which has hampered the achievement of its objectives so far. Thus, the only information that seemed to reach the actual areas to be protected as part of the EU Natura2000 network early in the process was mostly on how the scheme 'threatened' certain economic sectors. This is also probably the case for the WFD, for example on water pricing. It will be necessary to break down barriers such as this one to ensure that the WFD is implemented nationally in a timely and efficient way.*

[34] The 'Aarhus process' and its implementation in the EU follow a three tier system:

1) Access to Information: The earlier 'Freedom of access to environmental information' Directive (90/313 - OJ L 158 23.06.1990) was replaced in February 2003 by the Directive on Public access to environmental information (2003/4 - OJ L 41 14.02.2003), which will repeal the 1990 Directive on 14 February 2005 (date of formal compliance);
2) Public Participation: In June the new Directive providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment (2003/35 OJ L 156, 25.06.2003) was published. It amends - with regard to public participation and access to justice - Council Directives 85/337/EEC and 96/61/EC;
3) Access to Justice: The Commission published a second Working Document on developing a proposal for a Directive on Access to justice in environmental matters on 22 July 2002 - no legislative proposal has been adopted so far.

[35] This type of information is still difficult to get, but the WWF report 'Promoting the socio-economic benefits of Natura 2000' includes several socio-economic case studies on the value of protected areas **that depend on water**. Find it at:
http://www.panda.org/about_wwf/where_we_work/europe/what_we_do/policy_and_events/epo/initiatives/natura_2000.cfm#pubs

3.3 Wetlands

The diagram in Figure 1 below shows how wetlands interact with water bodies, the WFD's 'operational units'. This interaction is at the heart of the 'Wetlands' guidance document, and needs to be understood to maximize delivering the WFD objectives to wetland ecosystems.

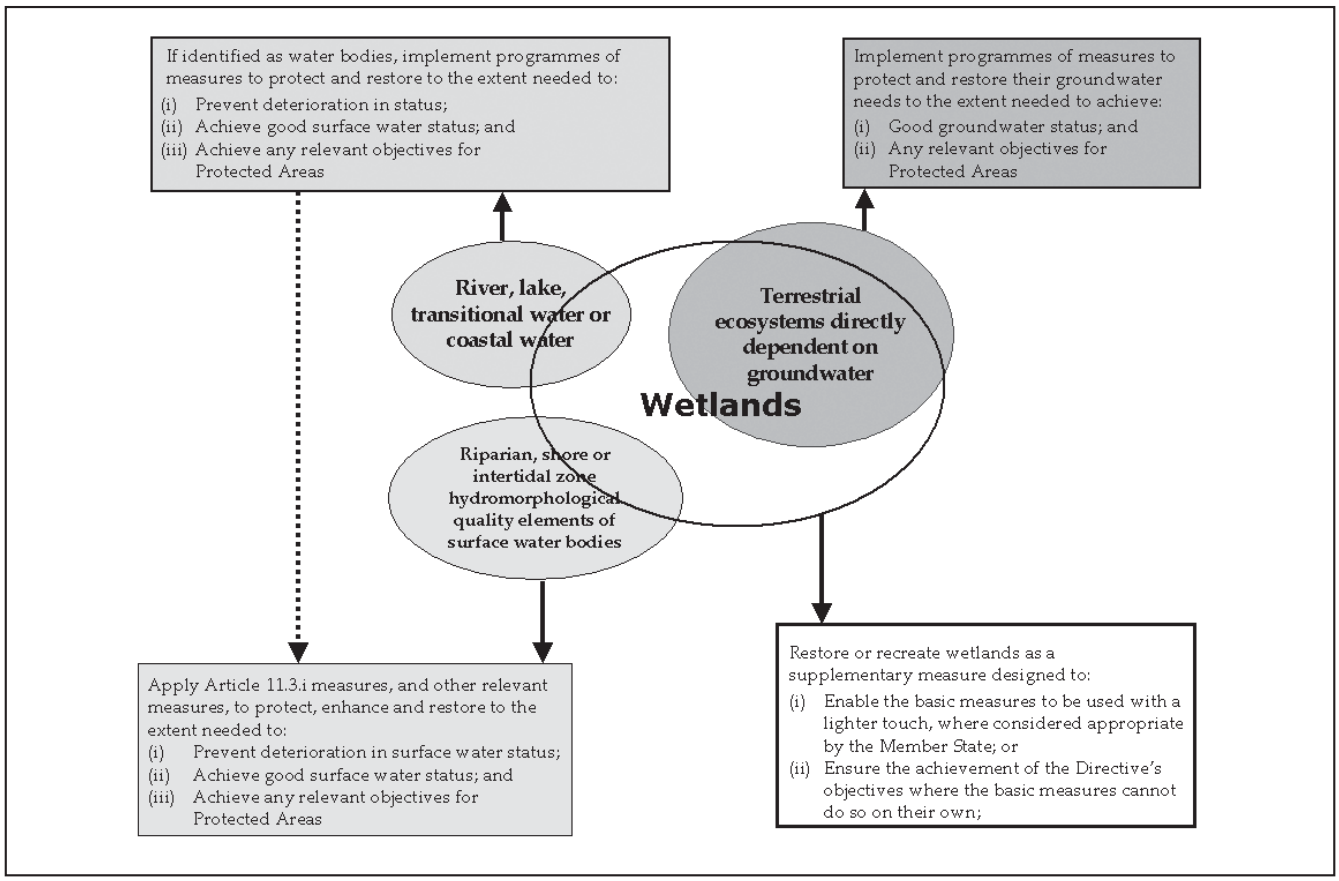


FIGURE 1

3.3.1 INTRODUCTION

Wetlands are a significant interface between ground and surface water bodies and between land and water as well as an integral part of the water environment. They perform a variety of functions in the hydrological cycle and are valuable habitats for a wide range of flora and fauna that are an important part of indigenous ecosystems.

Although the WFD does not define wetlands or set specific objectives for them, it includes important provisions that will help to protect them. For example, 'good status' for groundwater bodies is partly defined in terms of the prevention of significant damage to directly dependent ecosystems (including wetlands), which could result from anthropogenic alterations to either the levels or quality of groundwater reaching those ecosystems. The guidance document is designed to ensure that during WFD implementation Member States fully consider the links between its objectives and wetland values and functions. Initially, the WFD CIS process did not consider wetlands at all. Member States/Candidate Countries and the European Commission were reluctant to have this raised as an issue that needed further technical development, not only because they argued that there were not specific objectives for wetlands within the WFD, but also, and above all, because some Member States/Candidate Countries (where wetlands are still abundant) feared the additional cost implications of including wetlands within River Basin Management Plans (RBMPs).

Nevertheless, following an EEB and WWF initiative, a Drafting Group was established to come up with a horizontal guidance document on wetlands, which would explain their role in achieving WFD objectives. The drafting process was difficult throughout, as some Member States who had opposed producing a guidance document initially, refused to participate constructively. They offered 'blocking' objections to whole sections of text, with a view to either delaying it or preventing it being completed. This was eventually overcome and while the document is still 'minimalist' in some ways, it raises the profile of wetlands in the WFD, and clarifies where action needs to be taken.

3.3.2 AREAS OF CONFLICT

What is a wetland? There was a considerable conflict over defining wetlands in the guidance document in a way that could be useful for implementing the WFD. Some Member States wanted to use the Ramsar Convention definition, while others strongly objected to references or links with Ramsar. In reality, no single hard and fast definition is required to link wetlands with WFD objectives, since these apply to 'water bodies' and not to wetlands *per se*.

Wetlands and water bodies. The discussion around this issue was similar to that taking place during the development of the 'Horizontal Guidance on Water Bodies' (see above). The crucial questions were: Firstly, can some wetlands be defined as rivers, lakes, transitional or coastal water bodies? Secondly, will some wetlands be included within the riparian, lake-shore or intertidal zones of water bodies?

Wetland and Heavily Modified Waters. HMWB designation applies to waters the physical condition of which has been irrevocably modified to meet an important water use (see the relevant section of this document), and where environmentally better alternatives would be too costly. By including wetlands in the definition of water bodies (in the riparian, lake shore or inter-tidal zones), we can ensure that they are considered during river basin planning, and that some measures are implemented to restore them. However, the same approach leads to the risk that damage to wetlands will be used as an excuse for designating their associated water bodies as heavily modified. This problem arose during the Drafting Group discussions, with both NGOs and Member States finding it hard to come up with a balanced solution.

Groundwater and dependent ecosystems. Many of the most heated arguments in the Drafting Group centred around whether the obligations to groundwater-dependent ecosystems meant that: a) all groundwater capable of supporting a dependent ecosystem would need to be defined as an aquifer or groundwater body, and b) whether the obligation to prevent significant damage to dependent ecosystems applied to all ecosystems, regardless of whether they were protected or in some way 'special' (for their ecological, functional, landscape or archaeological interest).

The Netherlands found these issues extremely difficult, arguing that a literal interpretation of the Directive would mean that their whole country was a groundwater-dependent terrestrial ecosystem. Further, that in order to meet the requirements for 'good status' for groundwater, they would be required to monitor it all against an 'un-impacted' baseline. They expressed the fear that this could apply equally to industrial land in Amsterdam or Rotterdam, agricultural pastures or nature protection areas. This fundamental problem almost led to the collapse of the drafting process. In attempting to achieve a compromise, there was a danger that the final text might imply that obligations to groundwater-dependent systems were restricted to sites with existing nature conservation protection, which NGOs argued was below the legal requirements of WFD in this regard.

'Wetlands' and 'Protected Areas'. The original version of the document contained suggestions of including *nationally* protected wetlands sites in the WFD Protected Areas Register. Some Member States insisted that they were removed (in particular, the UK). Instead, the document concentrates on the kinds of criteria that would justify including Natura 2000 sites in the Protected Area Register for WFD purposes (i.e. in what way the species/habitats are water-dependent).

'Basic' and 'Supplementary' measures. A long drawn-out battle was fought over whether or not wetlands play a role in the WFD's programme of measures as 'basic measures'. The UK refused to accept that this was possible, with the exception of measures linked to Article 11 3 (i) and obligations towards Natura 2000 sites. Others, including the Drafting Group, argued that if a Member State wished to use wetlands in creating a 'basic measure', for example wetland protection or restoration as part of a measure for the control of diffuse pollution, this would make the wetlands part of that 'basic measure'.

3.3.3 OUTCOMES

What is a wetland? This was resolved by describing wetland functions and values, instead of giving an actual 'definition' of wetlands, since the WFD does not require it. However, this has meant that some of the potential links to Ramsar have been lost and Member States may find it hard to apply the guidance without greater clarity. Nonetheless, this was not a crucial argument, and the EEB and WWF are largely happy with the outcome. It respects Member States' different interpretations of the wetland concept, while stressing wetlands' core biological and functional aspects.

Wetlands and water bodies. This was resolved through a simple cross-reference to the guidance document on identifying water bodies. However, problems remain. While it is clear that in some cases wetlands may be defined as water bodies (for example as shallow lakes, or parts of coastal waters), this is largely at the discretion of Member States. Similarly, while wetlands that are functionally linked to rivers, lakes or coasts should be included within the riparian, lakeshore or inter-tidal zones of the relevant water bodies, there is not an explicit requirement to identify these during reporting. It is, therefore, not yet clear how stakeholders could challenge Member States that excluded wetlands from these zones during the river basin planning process.

Groundwater and dependent ecosystems. A 'step-wise' approach to identifying groundwater dependent ecosystems was produced by the UK, in a successful attempt to placate Dutch opposition to the guidance document. The finished version (after considerable NGO pressure) makes it clear that obligations are not restricted to sites protected by EU legislation, but does allow Member States to concentrate efforts on wetlands to which damage, if it were to occur, would be deemed 'significant' (with spectacular WFD circularity!). The criteria for the selection are left to the discretion of Member States (until and unless this is subsequently tested by the courts).

'Wetlands' and 'Protected Areas'. No reference is made to national sites, but the document contains relatively good and comprehensive criteria for identifying Natura 2000 sites.

'Basic' and 'Supplementary' measures. There is now a clear reference to the role which wetlands play in those 'basic measures' relating to existing EU legislation and Article 11 3 (i) of the WFD, which requires controlling the pressures on hydromorphology. The issue about whether or not wetlands can be part of other 'basic measures' has been dodged by removing any text referring directly to it. Nor is the part which wetlands may play in the analysis of cost-effectiveness resolved. The outcome is adequate, though it is unfortunate that this debate prevented the Drafting Group fully exploring the links between particular 'basic measures' (e.g. management of pollution) and wetlands. This would have helped Member States to see how multi-functional wetlands could form components of RBMPs. Instead, there are some general (and useful) sections demonstrating the roles that wetlands can play in pollution management, flood risk control and groundwater recharge. There is also a useful reminder that 'supplementary measures' are not always voluntary.

3.3.4 NGO ACTIONS

- *Make sure that, wherever possible, important wetland systems are defined as water bodies, for example shallow lake and lagoon systems may be defined as lakes or (if saline) transitional waters.*

- *Make sure that either the descriptive or mapping parts of the RBMP and its supporting information explicitly identify wetlands within the riparian, lake-shore or intertidal zones. This will be difficult to achieve – it was resisted in every guidance document linked to the wetlands one, particularly by the UK, but there is a strong argument for saying that many WFD processes, particularly the IMPRESS analysis, HMWB designation, and planning programmes of measures, will rely on this identification.*

- *Make sure that biological reference conditions for water body types take full account of the interactions with associated wetlands. The guidance document clearly illustrates how impacts on wetlands affect the ecological status of different biological quality elements, for example how damage to floodplains would affect the spawning grounds of fish.*

- *Ensure that standards are described and defined for hydromorphological quality elements at 'high status', including any wetlands within the lakeshore, riparian or inter-tidal zones. These must be protected from deterioration, which requires a process for identification and standard-setting.*

- *Make sure that there is a transparent process for defining 'significant' damage to terrestrial ecosystems dependent on groundwater, which goes beyond just obligations to Natura 2000 sites. In theory, where these wetlands depend on groundwater these obligations apply to all wetlands across the EU.*

- *Note that 'wetland status' can influence HMWB designation. Take care that 'damage to wetlands' does not become an immediate (and systematic) excuse for provisionally designating certain water bodies as HMWB. This must be avoided by applying the tests to designate HMWBs in a way that reflects wetland functions and, in particular, by requiring that wetlands are restored as part of achieving 'good ecological potential'.*

- *Apply the broad-reaching criteria to identifying Natura 2000 sites within the Protected Areas Register.*

- *Lobby for controls stipulated under Article 11 3 (i) to include those on activities likely to damage wetlands, including land-drainage, flood embankment, etc.*

- *Promote the use of wetlands wherever possible in other 'basic measures' within the programme of measures, as being at the discretion of Member States.*

- *Make links to the WATECO guidance document to support the case for the wise and sustainable use of wetlands within the RBMP to achieve the WFD objectives in the most cost-effective way.*

3.4 Analysis of pressures and impacts (IMPRESS)

This stocktaking process is one of the most crucial exercises in implementing the WFD. It must identify any factors that affect the quality, quantity or morphology of water bodies across the whole of the RBDs in such detail that any potential failure to achieve 'good status' will be very clear and can be easily addressed

3.4.1 INTRODUCTION

This guidance document helps experts and stakeholders to identify where and to what extent human activities threaten the WFD environmental objectives. The document describes the steps to undertake the pressures and impacts exercise, including analysing and understanding the results. It also shows how to use the results effectively in developing the RBD Management Plan.

The pressures and impact analysis must identify *significant* pressures and those water bodies that are at risk of failing to achieve the Directive's environmental objectives. *Significant* pressures are any pressures that on their own, or in conjunction with other pressures, may lead to failure to achieve one of the WFD objectives (p. 30 of the IMPRESS guidance document). Annex II of the Directive provides examples of these significant pressures including land-use patterns, morphological change to water bodies and diffuse pollution. The guidance document expands on these examples of pressures and adds to the list. However, the list is not exhaustive and Member States should be aware of other pressures and impacts that may affect water bodies in their RBDs and the complex relationships between them, such as between downstream lakes and coastal waters where eutrophication, sedimentation or bio-accumulation occur.

There is a whole body of EU legislation to consider during a 'Pressures and Impacts Analysis' including, among others, the Birds (79/409/EEC), the Habitats (92/43/EEC), the Drinking Water (98/83/EC), the Sewage Sludge (86/278/EEC), the Urban Waste Water Treatment (91/271/EEC), and the Nitrates (91/676/EEC) Directives. However, to assess the risks of failing to achieve the WFD's holistic objectives means considering a much wider range of pressures on the water environment than previous EU water legislation did, especially pressure on hydrology and morphology.

To assess risks, Member States must use information about the type and magnitude of pressures water bodies face and about the characteristics of water bodies, together with any other relevant information, including existing environmental monitoring data. Their efforts should be in proportion to the difficulty of the assessment, and they should recognise and record their uncertainties and apply the 'precautionary principle'.

3.4.2 AREAS OF CONFLICT

Uncertainty in the pressures and impact analysis. One major challenge for the IMPRESS analysis is that the first cycle has to be completed by the end of 2004. However, there is a lack of information and considerable uncertainty because the environmental conditions needed to meet most of the WFD's objectives have yet to be clearly defined. At earlier stages of the development of the guidance document, it was agreed that water bodies with insufficient information and/or uncertainty in the analysis should be initially reported as being 'at risk' (i.e. failing to achieve 'good status'). However, this became an 'open issue' in the Working Group preparing the guidance document as Finland strongly opposed it.

The EEB and WWF felt that it was important to report the uncertainty of the information to decision-makers. We believed that this was 'best practice' in line with the precautionary principle. We felt it would avoid 'paralysis by analysis' and promote 'anticipating' measures to safeguard the strict WFD objectives of no-deterioration and of restoring to 'good status'.

REFCOND/IMPRESS 'pressure criteria'. At earlier stages of the guidance discussions, a tool was included to assist the IMPRESS analysis. This was a table with proposed pressure screening criteria[36] for selecting potential 'good status' sites or values, which originated in the REFCOND guidance document. The criteria in the table described the degree of acceptable change in anthropogenic pressure that would provide the limits of 'good status' sites or values, and could be used as a screening tool. The pressure criteria table became an 'open issue' because governments felt that there was not enough information on pressure thresholds for WFD biological class boundaries. They lacked sufficient understanding of the normative definitions of ecological status (i.e. what does 'very minor' or 'slight' mean?) to extrapolate from these in a useful way. The UK and Germany as well as the EEB and WWF opposed including the table in the guidance document. We felt that it was not possible to develop sufficient pressure criteria with associated threshold values in time for inclusion in the IMPRESS guidance document. We welcome suggestions for developing this work during the WFD CIS 2003-2004 work programme.

[36] When 'state' data are not sufficient enough to assess actual impact, techniques using only 'pressure' data must be used

3.4.3 OUTCOMES

Uncertainty in the pressures and impact analysis: Chapter 2.3.5 of the final version of the guidance document states that: *'It will be important for Member States to be aware of the uncertainties so that their monitoring programmes can be designed and targeted to provide the information needed to improve the confidence in the assessments. Where the assessment contains significant uncertainty, those water bodies should be categorised as at risk of failing to meet their objectives'*. This strong text applies the precautionary principle in case of lacking data and scientific uncertainties.

REFCOND/IMPRESS 'pressure criteria': The final version of the guidance document does not include the problematic 'pressure criteria' table. This should be developed in 2003-2004 under the new WFD CIS Working Group on 'Ecological Status'.

However, the document includes a 'screening tool', i.e. a table labelled 'Example criteria for significant pressures' taken from the German LAWA 'pressure screening tool'[37]. The EEB and WWF stress that this is a limited list of pressure types, and the relevant 'criteria' (thresholds) to determine whether or not they are 'significant' cannot be applied in all situations, as the diversity and complexity of ecosystems requires a case-by-case approach.

3.4.4 NGO ACTIONS

There should be no minimum thresholds for pressures and impacts. The Directive requires governments to identify 'significant' pressures, which could potentially overlook the synergistic effects of several non-significant impacts. To combat this the guidance document offers two approaches:

- *To carry out numerical modelling that simulates the impact of numerous pressures. However, modelling is not very reliable as it is based on hypotheses about how ecosystems function.*
- *To compare the magnitude of the pressure with a threshold that is relevant to the water body type. However, there are no valid thresholds that can be applied to all countries. Different water bodies have particular characteristics, which affect how vulnerable they are to pressure.*

Environmental NGOs should ensure that existing legislation and pressures/impacts on hydrology and/or morphology are taken into account but are not used as a 'get out' clause when implementing the WFD.

The 'precautionary principle' must be applied when identifying pressures and impacts in line with chapter 2.3.5 page 19 of the IMPRESS guidance document; 'Where the assessment contains significant uncertainty, those water bodies should be categorised as at risk of failing to meet their objectives'.

[37] Developed for compiling the significant pressures, indicating which water bodies might be at risk and which elements of status (biological, substances) should be considered in the monitoring programme.

3.5 Ecological classification (three guidance documents)

This section covers the classifications described in three different documents: Overall approach to ecological classification, Reference conditions and ecological status class boundaries for inland surface waters (REFCOND) and Typology, reference conditions and classification systems for transitional and coastal waters (COAST).

Establishing robust reference conditions and developing ambitious and ecologically meaningful standards for ecological status classification is central to giving the WFD an environmental meaning[38]. Unfortunately the content of the two guidance documents REFCOND and COAST does not live up to this challenge. Time was too short and the political pressures too low to provide real guidance on classifying ecological status. The original aim had been to determine what sort of standards and thresholds should apply in the water environment, not simply to describe the methods and processes that Member States should use in setting these standards. So this central area of WFD work was postponed until the second phase of the WFD CIS process in 2003 and 2004.

In 2003, the guidance document on the overall approach to ecological classification followed, where Water Directors recognised that *'The development of ecological assessment and classification systems is one of the most important and technically challenging parts of the implementation of the Water Framework Directive. It is the first time such systems have been required under Community legislation and all Member States are in a position of needing to significantly expand their technical knowledge and experience'.* The 'Ecological classification' guidance document summarises the overall classification rules provided by REFCOND, ECOSTAT, HMWB and 'Monitoring' guidance documents. It elaborates some of the outstanding and unsolved issues, like the role of physico-chemical parameters or the 'one out – all out' principle and touches upon new issues, like the confidence and errors of classification. But, again, the key issue of developing an interpretation of what 'very minor' or 'slight' deviations from natural conditions mean and, therefore, what kind of standards and thresholds to apply, has not been touched. This will be left to the 'Intercalibration' process in 2006.

The REFCOND guidance document concentrates on developing methods for defining reference conditions, and for establishing Environmental Quality Ratios. In doing so it also provides some extremely useful and important guidance on the role physico-chemical and hydro-morphological quality elements should play in determining ecological status. The COAST guidance works in a similar way, but also develops a common typology for coastal waters across the EU – an approach that was considered impossible for inland surface waters.

3.5.1 INTRODUCTION

The REFCOND and COAST describe methods, principles and criteria for establishing reference conditions (i.e. benchmarks) and quality class boundaries between the 'high', 'good', and 'moderate' ecological status of inland surface waters and coastal waters. An initial or preliminary understanding of reference conditions - of what constitutes 'high ecological status' - and of acceptable deviation from reference conditions within 'good ecological status', is pivotal for many WFD tasks.

> ! *Reference conditions do not necessarily mean totally undisturbed pristine conditions but can include very minor disturbance, even human pressure, so long as these have very minor ecological effects. In particular, the REFCOND guidance document states that: 'High status or reference conditions are a state in the present or in the past that corresponds to very low pressure, without the effects of major industrialisation, urbanisation and intensification of agriculture, and with only very minor physico-chemistry, hydromorphology and biology modifications'.*

Such initial understanding is necessary:

- To allow Member States to select sites at the 'high'/'good' and 'good'/'moderate' boundaries, to be submitted for the intercalibration network - the register of sites that will be used to establish harmonised standards for ecological status across the EU (see subsection 3.10 of this document).
- To make sure that when those standards emerge, they are consistent with the spirit of the WFD, and with the technical definitions laid out in its Annexes describing ecological classification (Annexes II and V).
- To underpin the pressure threshold criteria required for the initial RBD characterisation report (including the pressures and impacts analysis), to be completed by the end of 2004.
- To assist in the establishment of monitoring programmes, which will, in turn, allow the actual classification of water bodies from 2006 onwards to take place, based on the 'harmonised' standards emerging from the inter-calibration exercise.

[38] See 'EEB Handbook on EU Water Policy under the Water Framework Directive', January 2001 available at: http://www.eeb.org/publication/EEB%20Water%20Handbook%20Absolut%20Final%202001.pdf

While the REFCOND and COAST guidance documents do define the reference conditions, they are still open to some interpretation. The 'Ecological classification' guidance document provides a summary of the classification procedure set out by the WFD and elaborated by previous guidance documents. It establishes procedures to set physico-chemical standards, which are to be checked against the measured biological impacts. In case a significant number of water bodies do not met the physico-chemical standards, but do meet the biological standards, or vice versa, a 'checking' procedure should be used either to improve the sensitivity of the biological assessment method or to adjust the physico-chemical standards. The status classification is undertaken on the basis of 'one out – all out', which means that the worst quality element determines the status class. In order to avoid misclassification and to provide adequate confidence general rules are provided.

Overall, this latter guidance clarifies the important definitions for the ecological status classification, outlines a procedure, which recognises the importance of each group of water quality elements and their interrelation, and defines the level of aggregation of monitoring results for a robust status assessment.

Useful definitions for the ecological classification process are given below:

- ***Reference conditions*** are equivalent to the biological quality elements at 'high status' that are found on existing sites in a suitably undisturbed state. However, if there are no undisturbed sites of a particular water body type, reference conditions can be derived from analysing historical information, from modelling, or by using expert judgement. Whatever method is adopted, reference conditions should have concentrations of specific synthetic pollutants that are close to zero and of non-synthetic pollutants within the range associated with normal background conditions. These sites should only have minor physical impacts. Rivers with modified channels, flow impoundments, or where their connection with the floodplain is significantly disrupted, cannot, by definition, be at reference condition.

> ! *The REFCOND guidance document recognises that some Member States may have few or no waters at 'high status' and will need to use reference conditions established in another Member State for the same water body type. Alternatively, they can base them on historical data, modelling or expert judgement.*

- ***Types*** within the WFD are rivers, lakes, transitional or coastal waters with similar physical, chemical and climatic conditions, that result in comparable biological communities. The COAST guidance document proposes that Member States develop a common European typology of coastal and transitional waters, which will make it easier to compare data on sites and achieve common standards. Because national traditions covering the typology of inland waters are more entrenched, REFCOND does not propose a common typology. However, in order to undertake the inter-calibration exercise (which depends on comparing water bodies of similar types) it has been necessary to develop a 'crude' typology for inland waters. This typology is only likely to be used for comparative purposes, rather than adopted consistently by Member States during the implementation of the WFD within their own boundaries.

> ! *Because biological systems vary naturally even within types, reference conditions must take this variability into account. However, this should not be an excuse to expand the 'high status class' (and hence reference conditions) to include serious impacts attributable to human activities. The more refined the typology adopted by a Member State, the more possible it will be to establish stringent and accurate reference conditions. In certain contexts there may be good reasons for establishing reference conditions that are specific to an individual site (for example where unique ecosystems have developed in response to very specific climatic and physical conditions). The REFCOND guidance document appears to allow for this, though it is unclear how this relates to the need for a typology to achieve harmonisation through intercalibration.*

- ***The use of different kinds of 'quality elements' to define ecological status.*** The most useful work the REFCOND and COAST guidance documents have undertaken is to determine the roles of biological, physico-chemical and hydromorphological quality elements. This demonstrates that, at 'high status', all three parts of the WFD classification scheme must be used and must be protected from deterioration because they are all independently significant in determining 'high ecological status'.

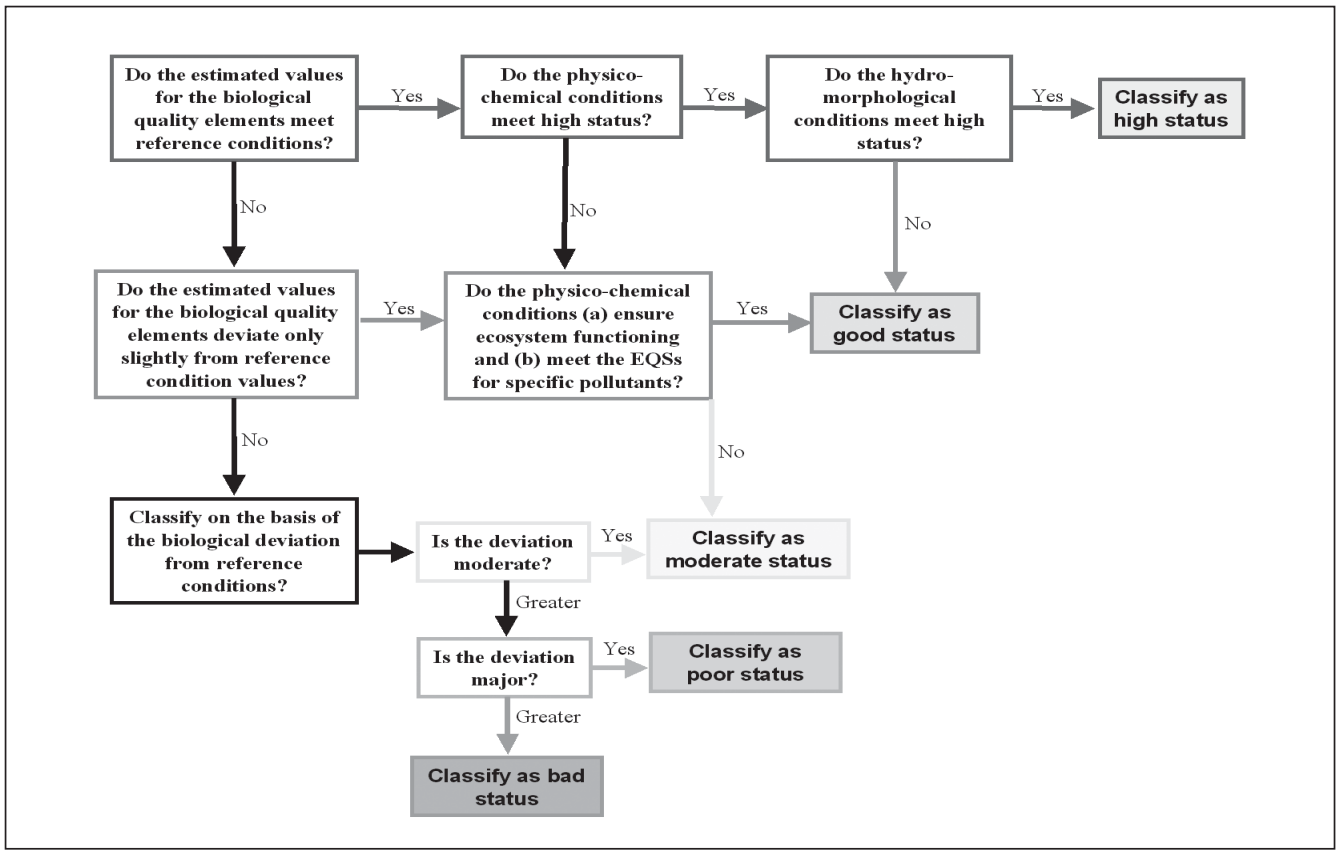


FIGURE 2 Indication of the relative roles of biological, hydromorphological and physico-chemical quality elements in ecological status classification according the normative definitions in Annex V:1.2 as shown in the REFCOND and COAST guidance documents.

At 'good status', the REFCOND and COAST guidance documents shows that the physico-chemical quality elements must not only be in a condition to support the biological quality elements, but must independently: (a) ensure ecosystem functions and (b) meet the Environmental Quality Standards (EQS) for specific pollutants. While the full implications of this are still being determined during phase 2 of the WFD CIS process, the principle established here is that Member States will be required to set legal thresholds for key physico-checmical conditions, such as nutrients, pH and temperature within the water environment. They will have to define and meet these as well as the biological standards. The table below illustrates the relationships between different quality elements within the WFD.

- ***Normative definitions and good ecological status.*** While the documents confirm that the 'normative definitions' in Annex V are the basic points for understanding and defining ecological status, they do not describe what these might mean in terms of actual hydro-morphology, chemistry or biology. This would have required an interpretation of the words 'very minor' and 'slight' deviation from natural conditions. Efforts to do so were hampered by the extreme political sensitivity of the task (it will essentially determine the Member States' implementing costs for the WFD), and it is still unclear how much of this role will be fulfilled by the new Working Group on 'Ecological Status' (ECOSTAT) operating during 2003-2004 and the intercalibration exercise until 2006.

The 'Ecological classification' guidance document clarifies that Member States have to use biological and physico-chemical standards to determine whether the ecological status is 'good' or'moderate'. Additionally, hydro-morphological standards have to be used to decide whether a water body is in 'good' or 'high' ecological status. This is crucial to avoid erroneous quality assessments as our current understanding of the aquatic biology and its sensitivity to human pressures is too limited. Therefore, it would be useful to use hydro-morphological standards additionally for the 'good'/'moderate' status assessment.

- ***The 'one out – all out' principle and the combination of parameters.*** 'One out – all out' means that the worst quality element decides the status class. Table 1a of the 'Ecological classification' guidance document (page 8, as shown below), defines quality elements in comparison to groups of elements and parameters.

Groups of quality elements	Examples of quality elements	Examples of parameters
General physico-chemical elements	Oxygenation conditions	COD, BOD, dissolved oxygen (see point 12 of Annex VIII)
Non-priority, specific pollutants	Copper discharged in significant quantities	Concentrations of copper in water, sediment **or** biota
Hydromorphological elements	Hydrological regime	Quantity of flow, dynamics of flow
Biological elements	Composition and abundance of benthic invertebrate fauna	Composition, abundance

In order to assess the condition of biological quality elements sensitive parameters need to be combined. Figure 3 of the 'Ecological classification' guidance document (page 10) provides an illustration (see Figure 3 below).

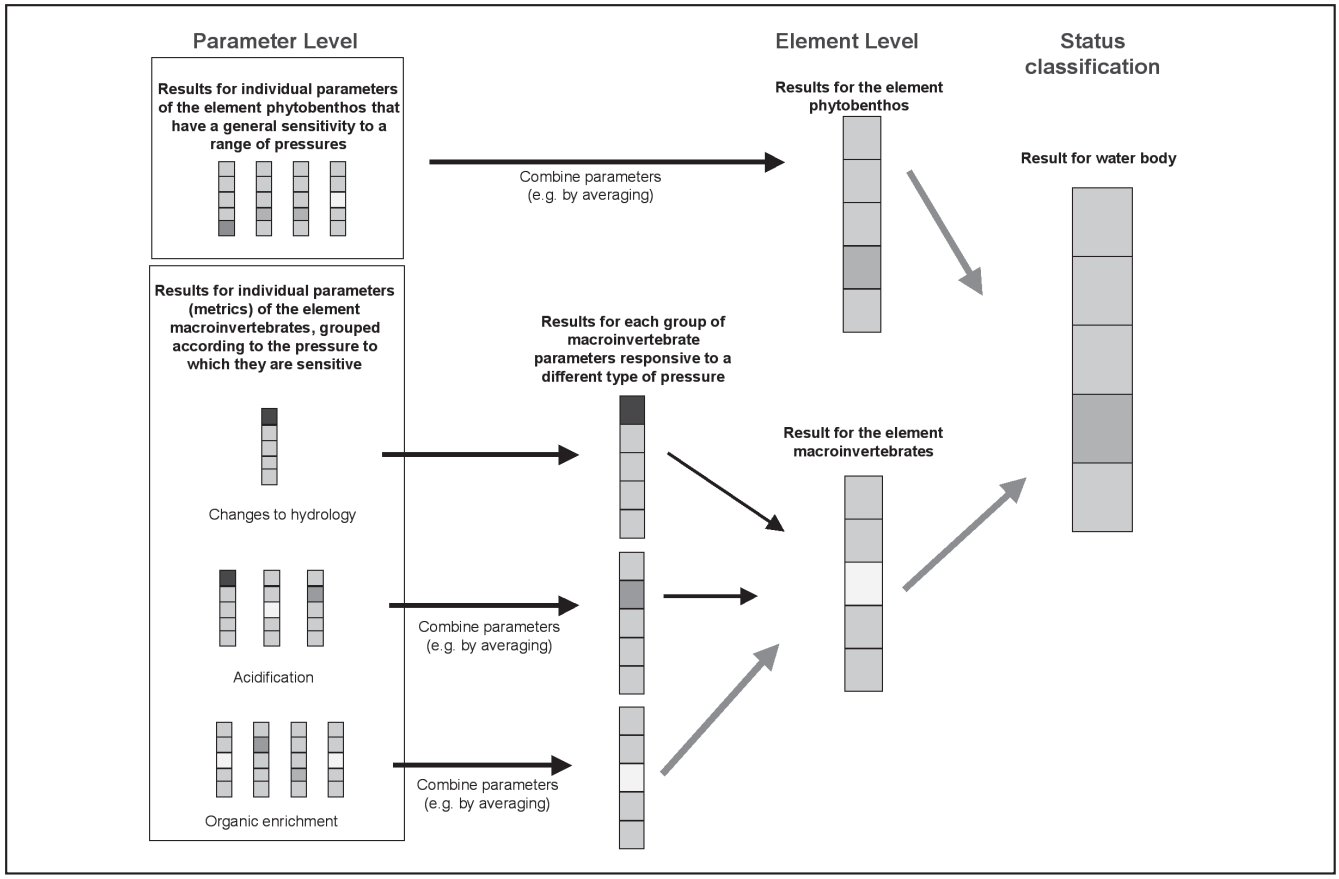


FIGURE 3

- ***Preventing misclassification and providing an adequate confidence level*** are the crucial elements for a sound scientifically based ecological status classification, and are required by the WFD. Therefore the 'Ecological classification' guidance suggests applying a set of principles, such as using only monitoring and analysis procedures that quantify their errors, as well as those quality elements sensitive to the specific pressure on the water body and using better monitoring to reduce errors.

3.5.2 AREAS OF CONFLICT

The use of physico-chemical elements in determining ecological status (see also sub-sections 3.9 and 3.10 of this document) **and the definition of the 'one out – all out' principle** were controversial 'open issues' in developing these guidance documents. According to the Directive, physico-chemical elements are needed to determine the ecological status of the water body, and the lowest quality element determines the status classification. However, certain Member States believed that *biological* elements were the only determinants of ecological status, and that the physico-chemical elements should only be used to aid monitoring and classification. The Netherlands, Germany and Finland specifically requested that the use of physico-chemical elements should be clarified as they saw them merely as 'supporting' elements.

During the drafting of the REFCOND guidance document other issues arose that were resolved before they became major 'open issues', but which left further work for the Working Group 2A during the 2003-2004 WFD CIS work period. The most important of these was what the 'normative definitions' of ecological status in Annex V actually meant. How great is the 'minor anthropogenic' impact that can be encompassed by reference condition? What is meant by the 'functioning of the type-specific ecosystem'? etc. The task facing the new WFD CIS process is to achieve a common and more detailed definition of these terms, which can then be used to guide intercalibration and to assist all other aspects of the WFD implementation.

3.5.3 OUTCOMES

Use of physico-chemical and hydro-morphological elements in the classification of ecological status. (see sections 2.6 REFCOND and 5.1 COAST). The EEB and WWF are pleased that Figure 2 above is used by both guidance documents and cross-referenced in the 'Monitoring' guidance document. It is crucial to include this figure as it makes the point that hydro-morphological quality elements must be assessed and protected at 'high status' (which should proctect 'pristine sites' against physical modification), and stresses that physico-chemical elements are essential to the WFD's classification framework.

The guidance documents also support the WFD's requirement that ecological status classifications should be based on relevant biological and physico-chemical elements applying the 'one out - all out' principle. This means that ecological status is based on whichever of the values for the biological and physico-chemical monitoring results for the relevant quality elements is lower.

Nevertheless, the definition of the parameters that can be combined (averaged) to determine a quality element as seen in Figure 3 above, provides flexibility and could lead to potential misuse.

The use of physico-chemical elements for determining status and for monitoring water bodies cannot be overstated. By their nature, biological elements are slow to react to changes, so there might be a significant time lag between the cause (pressure) and its effects (impact). Moreover, we cannot be so confident about our understanding of the interactions of pressures and impacts, that we can afford to remove the precautionary element in setting physical as well as biological standards for our waters. By using physico-chemical elements in conjunction with biological elements, we gain a more comprehensive understanding of a water body's status in real time.

3.5.4 NGO ACTIONS

- *The WFD's strength and scope depends on setting reference values for all the biological elements correctly. If the biological reference is set low, because it uses disturbed ecosystems as a reference, then the 2015 ecological status will be low*[39].
- *Be aware that crude typologies with a limited number of types of water bodies will include a large amount of natural variation, making it more difficult to identify the impact of human activity. This will result in very broad, and rather undemanding definitions of ecological status. Try to ensure that your typology, while still practical, is sufficiently precise to deliver the WFD's demanding ecological standards.*
- *There are no standard methods for establishing reference conditions. There are a number of different methods, each with its own inherent strengths and weaknesses. Establishing reference conditions for many quality elements may involve using a single method, or several methods in conjunction. Each method of group or methods will need to be validated.*
- *Whatever method your Member State adopts for determining reference conditions, these and the sites they propose for intercalibration must conform to the normative definitions in the WFD's Annex V. If Member States want to apply economic considerations these will have to be rejected. More detailed explanations of these definitions should emerge during the WFD CIS' second phase in 2004, but until then you should check all your national descriptions and data against the WFD's core text.*
- *Environmental NGOs must ask their Member States to include hydro-morphological elements in their systems for identifying and protecting 'high status' sites, and to include physico-chemical elements in the monitoring and classification of all status classes. The importance of using physico-chemical elements in determining status and for monitoring water bodies can not be overstated. Because biological elements are slow to react to changes there might be a significant time lag between the cause (pressure) and its effects (impact). Using physico-chemical elements in conjunction with biological elements gives a better understanding of a water body's status in real time.*
- *Environmental NGOs must also ensure that the River Basin Authority observes the 'one out - all out' principle. This principle is taken directly from the WFD, where a water body's ecological status is determined by whichever of the biological or physico-chemical elements is lower. The Water Directors have endorsed this principle and included it in the final guidance documents.*

3.6 Identifying and designating Heavily Modified and Artificial Water Bodies (HMWB)

Identifying and designating Heavily Modified (HMWB) and Artificial Water Bodies (AWB) could be a large derogation from the WFD's 'good ecological status' objective. It could be used extensively as a 'get out' clause for not restoring a water body's hydro-morphology (e.g. flow regime, habitat functioning etc.) after it has deteriorated as a result of physical works, including general infrastructure, navigation, dredging, flood defence and hydropower.

3.6.1 INTRODUCTION

Article 4(3) of the WFD states that '*Member States may designate a body of surface water as artificial or heavily modified, when:*

(a) the changes to the hydromorphological characteristics of that body which would be necessary for achieving good ecological status would have significant adverse effects on:
  i) the wider environment
  ii) navigation, including port facilities, or recreation
  iii) activities for the purposes of which water is stored, such as drinking water supply, power generation or irrigation
  iv) water regulation, flood protection, land drainage, or
  v) other equally important sustainable human development activities.

(b) the beneficial objectives served by the artificial or modified characteristics of the water body cannot, for reasons of technical feasibility or disproportionate costs, reasonably be achieved by other means, which are a significantly better environmental option.'

For example, if a Member State considers it disproportionately expensive to remove dykes and re-introduce floodplains for flood control and this is the only environmental option to achieve 'good ecological status', then it can justifiably designate that water body 'heavily modified'.

This example shows Member States' scope for designating waters as HMWB or AWB. This could be problematic because these waters do not have to reach 'good ecological *status*'. They only have to reach 'good ecological *potential*', which would imply lower biological standards as a result of the hydro-morphological changes that have given rise to

[39] See explanation on page 9-11 of 'An Assessment of actions taken by the EU to Implement the Water Framework Directive (WFD) *Do they make the WFD work?*' May 2003, European Environmental Bureau.

HMWB or AWB designation[40]. However, HMWBs or AWBs still have to achieve 'good chemical status'. Annex X of the WFD gives a list of the existing chemical standards and the standards to be developed for the 33 pollutants that AWB and/or HMWB still need to comply with.

Chapters 4 and 5 of the HMWB guidance document offer practical and useful advice on designating HMWB and AWB. They give a series of easily followed and comprehensive designation tests, which stakeholders and environmental NGOs can use to monitor Member States' designation processes.

3.6.2 AREAS OF CONFLICT

A 'narrow' or 'broad' definition of HMWB and AWB. The most problematic issue in drafting this guidance document was the scope of the provisional designation of HMWB and AWB. The EEB and WWF argued that it should be a 'narrow' definition, specifying that HMWB could only be those water bodies that had experienced substantial changes to *both* their hydrology and morphology.

Nevertheless, some Member States wanted a 'broad' definition of HMWB, so that water bodies that had *either* a changed hydrology *or* morphology could be considered as HMWB and would not need to achieve 'good ecological status' by 2015.

Austria, Finland, Greece, Italy, Spain and Eurelectric (Union of the Electricity Industry) supported the 'broad' definition of HMWB. This would allow water abstractions and discharges (e.g. for hydro-power or irrigation) to lead to a provisional HMWB designation. It would also mean that river stretches downstream of a dam (e.g. for hydro-power) could be provisionally designated as HMWB. Indeed many of the Member States cited river stretches, particularly downstream of dams, as areas which should be designated as HMWB.

The European Commission services' opinion was that, according to the WFD, the 'narrow' definition of HMWB was the only legal one, so it should be used in the guidance document. However, they proposed that Member States should draft a text illustrating the technical problems that they would experience in applying the 'narrow' definition, to be discussed at the Water Directors' meeting to endorse the final text of the guidance document. Spain agreed to lead a Drafting Group to provide examples.

3.6.3 OUTCOMES

The Water Directors confirmed that the 'narrow' definition of HMWB should apply. However, they did concede to possible large exceptions on the basis of hydrological changes only. For example, a stretch of river downstream of a dam could be designated as a HMWB, without specifying for which length. So the final text in the HMWB guidance document reads as follows:

'Notwithstanding the agreed general approach described in the paragraph above (in reference to the 'narrow' definition), it was agreed that a slightly different approach could be taken for limited stretches of rivers, e.g. downstream of dams. Under these circumstances, substantial hydrological changes that are accompanied by subsequent non-substantial morphological changes would be sufficient to consider the water body for a provisional identification as HMWB'

This text is not strictly in keeping with the WFD's 'narrow' definition. Member States could interpret it to provisionally designate certain 'limited' lengths of river stretches used for abstracting water *or* for discharging it only as HMWB, which would imply that the provisional designation had only been done on the basis of hydrological changes. In addition, the 'limit' of such stretches has not been defined. This is not in line with WFD requirements. While this could happen, the justification and transparency in the WFD and in the guidance documents should ensure that stakeholders or other interested parties can raise the issue.

What sort of developments could be used to to designate HMWBs?

According to Article 4(3) of the Directive, those having significant adverse effects on:

- *The wider environment*
- *Navigation – port facilities and recreation*
- *Stored water – drinking water supply, power generation or irrigation*
- *Water regulation – food protection and land drainage*
- *Other equally important sustainable human development activities*
- *Potentially – dams for power generation, irrigation schemes, dykes, polders, canalised rivers, water transfers and reservoirs can be designated as HMWB.*

The Directive also requires that 'Such designations and the reasons for them shall be specifically mentioned in the river basin management plans and reviewed every six years'.

[40] Having many more HMWBs and/or AWBs than is genuine and legitimate would mean less water bodies would have to reach 'good ecological status' - so there would be less improvement in the condition of freshwater ecosystems .

Again, note that the HMWB guidance document is not legally binding and is open to interpretation within the confines of achieving the WFD objectives. However, the WFD does not define what the guidance document describes as a 'substantial change in character'. Therefore, unless Member States adopt the guidance document as a legal instrument and accept its definition of 'substantial change' as an extensive, profound long term, irreversible change in the hydrology *and* morphology of a surface water body, we may see Member States designating vast numbers of surface water bodies as HMWB.

HMWB and AWB designation – The risks

Article 2(9) of the Directive states that 'Heavily modified water body means a body of surface water which as a result of physical alterations by human activity is substantially changed in character as designated by the Member State in accordance with the provisions of article 4(3)'.

Three criteria must be met before a body of water is designated as HMWB or AWB. Two of them are objective: 'physical alteration' and the list of activities under Article 4(3). However, a water body's changes in character are not so easily defined and the WFD does not define them. The HMWB guidance document says that a water body's character has changed if there have been modifications that alter the hydro-morphology, meaning its hydrology and *morphology. Further, it stresses that modifications and resultant changes in hydro-morphology should not be temporary, reversible or intermittent.*

The use of the term 'substantial' is also subject to interpretation. The HMWB guidance document defines 'substantial' to mean extensive/widespread or profound. The document states 'It is clear that a water body could be described as substantially changed in character if both its morphology and hydrology were subject to substantial changes. It is less clear that a water body should be considered as substantially changed in character if only its morphology or hydrology is substantially changed' (p. 24).

3.6.4 NGO ACTIONS

- *Always question what the River Basin Authority (RBA) designates as a Heavily Modified and/or Artificial Water Body. The RBA could use this designation to apply the minimal amount of effort rather than achieve 'best practice'.*
- *A simple water abstraction/discharge (hydrology) is not enough to designate a water body as heavily modified. The river morphology must also be substantially altered.*
- *HWMB/AWB does not mean that no action is required. Designating a water body as 'heavily modified or artificial' still means that WFD environmental objectives have to be met. HMWB and AWB must attain 'good ecological potential' (GEP) and 'good chemical status'. Achieving this can be quite a challenge for Member States.*
- *Be aware of, and demand, measures to mitigate the work that led to the severe changes in hydro-morphology, which resulted in the water body being designated as a HMWB.*
- *If faced with a case where a river stretch downstream of a dam is up for provisional designation as HMWB, be vigilant that this does not necessarily mean that the rest of the river up to a delta/estuary should also be designated as HMWB. You can ask for an assessment to determine how much of that river should be a HMWB.*

3.7 Planning process

This guidance document indicates the best way to develop the River Basin Management Plans that the WFD requires: what steps to take, in what order and how they relate to each other.

> *There has been confusion in the Working Group in charge of drafting this guidance document and in the discussions around it in the WFD CIS process, between (a) integrated river basin management planning, and (b) the critical path/logical steps needed to comply with the building blocks and deadlines specified in the WFD.*
> *Some elements are common to both, but the logical order, some of the building blocks, and key constraints and requirements can differ between them. Today, this confusion is visible in many countries that favour WFD implementation that is 'compliance driven' (i.e. driven by the deadlines set for reporting progress to the European Commission) rather than a WFD implementation that is (as it should be) 'river basin dynamics'-driven.*

3.7.1 INTRODUCTION

It is as important to plan how to develop and implement all the different steps/requirements set out in the WFD to achieve 'good ecological status' as it is to actually carry them out. This guidance document could be a 'road map' for water managers and other stakeholders in charge of implementing the Directive.

Its objectives are:

- To create a common understanding with regard to the planning process in the Directive
- To provide guidance by explaining the requirements of the Directive with regard to the implementation steps and stages of river basin management planning, and by analysing the possibilities the Directive offers
- To provide recommendations and examples of how to make the planning process operational
- To explain how to organise the planning process, providing information on 'what', 'who' and 'when'.

The guidance document establishes indicative sequences of the procedural tasks needed to achieve the WFD's environmental goals (flow charts), which makes it even more relevant. This is because whether something is defined as 'obligatory' or not carries a certain psychological weight for Member States. Therefore, it was very difficult for environmental NGOs to introduce certain issues into these flow charts despite it being a non-legally binding document.

3.7.2 AREAS OF CONFLICT

Preventing deterioration of current status: The most controversial issue in the text/flow charts was a set of references to the WFD's 'no-deterioration duty' requested by environmental NGOs .

As explained in section 2 of this resource document, the EEB and WWF believe that the WFD's no-deterioration duty became law when the Directive entered into force on 22 December 2000. This is not only because of the general obligation contained in Article 1 of the WFD to prevent current status deteriorating but also because, according to several European Court of Justice rulings (based on Article 10 of the Treaty), Member States cannot take any measures that go against a Directive's objectives during the transitional period[41]. In addition, logic indicates that all types of further or future deterioration should be prevented immediately in order to achieve 'good ecological status' by 2015. Water planners should bear this pre-condition in mind before developing any planning measures.

Environmental NGOs tried to introduce the obligation into the guidance document not to allow any further deterioration of current status, so that it would be clear that the measures to achieve this objective should not wait until a River Basin Management Plan (RMBP) is set up in 2009 and put into practice in 2012 (see Article 11.7 of the WFD).

We believe that Member States must develop interim measures to prevent current water status deteriorating between now and 2012, when the 'programme of measures' (which needs to contain measures to prevent deterioration) will apply.

Accordingly, the controversial environmental NGO suggestions were:

- To insert a 'Look out box' at the beginning of the guidance document stating that the WFD contains 'no-deterioration' provisions, which should be taken in consideration from the absolute beginning of the planning process.

[41] This could be interpreted to run from 22 December 2000 to December 2012.

- To introduce the 'no-deterioration' objective at the beginning of the section on 'Legally binding deadlines for Member States' of the flowchart (pp 66-67). However, contrary to all other steps in this flowchart, it would not have a deadline for its starting point (as Member States might not agree on one for reasons explained in section 2 of this resource document). Instead, it would be perceived as an overall objective to be taken in consideration while implementing the entire Directive.

- To include the necessity of developing 'interim' measures to prevent deterioration prior to 22 December 2012 in the flowchart on the 'First cycle of the planning process' (pp 72-74).

3.7.3 OUTCOMES

'No deterioration duty'. Member States resisted accepting any reference to the WFD's 'no-deterioration' duty in this guidance document. They argued that, because the Directive did not give a date for this obligation to begin, nothing about it could be specified in the flowcharts. Germany and the UK, along with Spain (one of the Working Group leaders) opposed our suggestions most strongly.

When the European Commission services realised how serious the problem was, they agreed to produce a legal opinion by 2004 on the date when the WFD's 'no-deterioration' obligation should become law. They also agreed with the NGOs' other suggestions.

The final outcome of the discussions was mixed, but fairly positive.

- Member States agreed to have a 'Look out box' in the guidance document stating that '*The Directive includes specific requirements for no deterioration and the implementation of extra measures to comply with previously existing water related community legislation.*' (p. 29)

- Member States did not agree to have 'no-deterioration' as an objective in the 'Legally binding deadlines for Member States' flowchart.

- Member States agreed to add a line to the 'Flowchart for the first cycle of the planning process'[42] (p. 74) showing that *'interim measures to prevent further deterioration of the status of aquatic ecosystems*' should be put in place from the end of 2001 until the end of 2009, the date when the RBMP will actually define the long-term measures to achieve 'good ecological status'. Although this is a positive result, it is not as strong as we wished, as this flowchart is more informative in nature (e.g. it includes many entries as 'best practices'), while the previous one was on legally binding provisions and showed the obligatory steps for implementing the WFD.

3.7.4 NGO ACTIONS

- *Environmental NGOs should be aware that the 'no-deterioration' duty has applied in EU law since 22 December 2000. We hope that the European Commission's legal opinion in 2004 will confirm this date and will define the 'no-deterioration' duty's practical application/implications. Otherwise, it can and should be challenged in the European Court of Justice.*

- *During the transposition of the WFD into national law, environmental NGOs should ask Member States to introduce 'interim' measures to prevent further deterioration of the status of aquatic ecosystems for the period from the end of 2000 to the end of 2012 in the relevant national laws.*

- *During the WFD transposition period, from the river basin analysis until the programme of measures comes into operation, environmental NGOs should be aware that Member States have to ensure that existing water management and other development plans (e.g. for land use) do not lead to water status deteriorating, and/or that there are no new development plans that could lead to this. Deterioration can only be justified after relevant conditions in Articles 4.7, 4.8 and 4.9 are met (see section 2 of this document).*

[42] For some strange reason, the time scale in this flow-chart does not start at the end of 2000, when the WFD entered into force, but at the end of 2001.This is mostly relevant for dates relating to WFD elements that have to be applied/considered since it entered into force. Therefore this affects the deadline for: (a) developing 'interim measures to prevent further deterioration of the status of aquatic ecosystems' (entry 158). This should have started at the end of 2000, but as 2000 is not included .It should have started at the beginning of 2001, the first year in the flowchart; and (b) The 'information and consultation of the public, active involvement of interested parties in accordance with the public participation guidance document' (entry 159). As in the above case, this should have started at the end of 2000, but as 2000 is not included in the scale, it should then have started at the beginning of 2001, the first year in this flowchart. At the same time, the end of the period during which 'interim measures to prevent further deterioration of the status of aquatic ecosystems' apply is also wrong. It finishes at the end of 2009, when the RBMPs are to be prepared, but it should finish at the end of 2012 when the RBMPs come into operation.

3.8 Economic analysis (WATECO)

3.8.1 INTRODUCTION

The WFD integrates economics into water management and policy making and calls for three economic approaches:

- Polluter pays principle
- Cost-effectiveness
- Water pricing.

The WATECO guidance document is designed to assist decision-making in developing water management measures to achieve 'good status', and to ensure that the polluter/user contributes to WFD objectives. Environmental concerns and limited financial resources meant that many Member States pushed for this guidance document, which should be used to support sustainable water management policies.

The main 'economics' references in the WFD are Article 1, Article 2 (paragraphs 38 & 39), Article 5 and Article 9. The Directive distinguishes human activities into 'water services' and 'water uses'. These terms are defined in Article 2 of the Directive, where 'water services' are specifically referred to in the context of Article 9 and cost-recovery. Accordingly:

- ***Water services*** *(Art 2.38) means all services, which provide, for households, public institutions or any economic activity:*

(a) Abstraction, impoundment, storage, treatment and distribution of surface water or groundwater,
(b) Wastewater collection and treatment facilities, which subsequently discharge into surface water.

- ***Water use*** *(Art 2.39) means water services together with any other activity identified under Article 5 and Annex II having a significant impact on the status of water. This concept applies for the purposes of Article 1 and of the economic analysis carried out according to Article 5 and Annex III, point (b).'*

The first sentence of Article 9 (on the 'Recovery of cost for water services') introduces the principle of cost recovery, including environmental and resource costs, for 'water services'. Later, it specifies that Member States shall ensure that different 'water uses' make an adequate contribution to recovering the costs of 'water services'[43]. Article 9 combines both 'water services' and 'water uses'.

For example, diffuse pollution to surface water or groundwater is not a 'water service' as defined in Article 2. However, if it has a significant impact on the status of water, it is a 'water use'. This 'use' will then be asked to make an adequate contribution to the cost of the 'water service' needed to address its impacts on water status (e.g. costs of water treatment), and to the measures needed to achieve 'good status'. This will be based on the economic analysis undertaken as specified in Annex III and according to the 'polluter pays principle'.

Member States need to assess their recovery levels for 'water service' costs and the contribution of different 'water uses' to recover such costs[44]. Clear definitions of 'water services' and 'water uses' are needed to enable Member States to do this. The WATECO Working Group proposed several combinations of how to integrate 'water uses' and 'water services' within the requirements of Article 9.1 of the Directive. Figure 4 below (taken from the WATECO guidance document) illustrates the relationship between 'water services', 'water uses' and other activities.

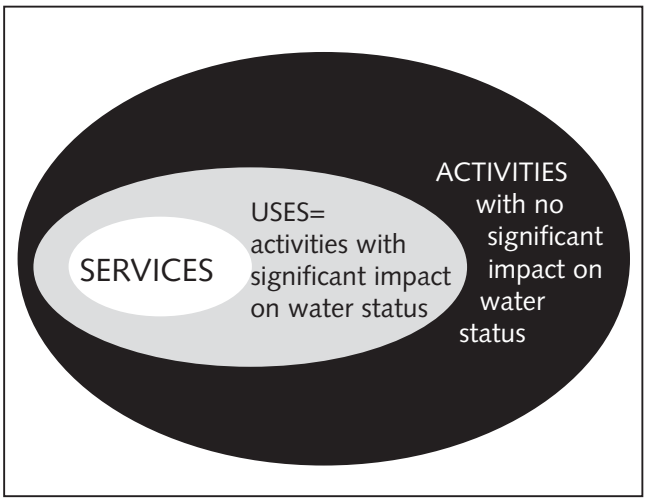


FIGURE 4
WATECO Guidance, ANNEX II.III.2

[43] '*Member States must ensure that by 2010: Water pricing polices incentive users to use water resources efficiently and adequate contribution of the different water uses to the recovery of the costs of water services is put in place*'

[44] To be disaggregated into at least three elements: industry, households and agriculture.

3.8.2 AREAS OF CONFLICT

The definition of 'water services'. Initially there was no agreement on whether to include infrastructure developments, such as for hydropower and navigation (because of their impoundment/ storage aspect), or 'self-services', such as water abstractions for own water use, in the list of 'water services' in the WATECO guidance document.

Austria, Sweden, Finland and Eurelectric (Union of the Electricity Industry) disagreed with including infrastructure for hydropower and navigation in the list of 'water services' relevant for cost recovery under Article 9 of the WFD. Austria and Finland opposed integrating 'self-services' in the definition of 'water services'. This would mean that these activities would not be subject to cost recovery assessment (as 'water services' would be), but would just have to provide an adequate contribution to recovering 'water services' costs. This is a much weaker requirement.

The EEB and WWF argued that the WFD (article 2.38) clearly indicates that infrastructures such as for hydropower, navigation and 'self-services' should be included in the definition of 'water services'. These are in most cases the biggest pressure on ecological status, for which cost recovery and the 'polluter pays' principle need to be urgently implemented.

3.8.3 OUTCOMES

The definition of 'water services'. In the Annex of the guidance document, the Water Directors agreed a final text that reads: '*Overall, a water service per se does not consume water nor produce pollution, although it can directly lead to morphological changes to the water ecosystem. Characteristics of waters that are modified through a water service include:*

- *Its spatial distribution, e.g. a water supply network for ensuring that water is reallocated spatially to every individual user*
- *Its temporal distribution/flows, e.g. dams*
- *Its height, e.g. weirs and dams*
- *Its chemical composition, e.g. treatment of water and wastewater*
- *Its temperature, e.g. temperature impact on water.*

This would imply that infrastructure developed for hydropower and navigation is considered as 'water services' in general.

The Water Directors also agreed that **'***Water Services include all services (public or private) of abstraction, impoundment, storage, treatment and distribution of surface water or groundwater, along with wastewater collection and treatment facilities'*. This definition specifically includes 'self-services', which should then be taken into account for cost recovery according to Article 9 of the WFD.

Finally, they recognised that more work is needed to define water uses: '*Basically, only the activities that cause significant impacts on water bodies and therefore pose a risk to achieving good status are covered by the definition of water uses. General experience shows that navigation, hydropower generation, domestic, agriculture and industrial activities are important water uses which may cause significant impacts and therefore have to be taken in consideration'*. This suggests, for example, that hydropower and navigation should be considered as 'water uses'.

As a result, the outcome is not very clear. The main achievement is that 'self-services', which include farmers' abstractions, are 'water services'. While the criteria for 'water services' in the guidance document would put hydropower and navigation under the 'service' definition, the document does not specifically state this. However it does specify that these activities are a 'water use' that has significant impacts.

Nevertheless, note that discussions at the WFD CIS Strategic Coordination Group and Water Directors' meetings only focused on the guidance document Annex that defined 'water services' and 'water uses'. Other Annexes dealing with cost-recovery, for example, were not discussed, although they provide a much clearer and wider view on which 'water services' should be included in the cost-recovery assessment.

3.8.4 NGO ACTIONS

The economic analysis will probably be one of the most significant areas for stakeholder and public input into the WFD process, as it will potentially affect the most people. Environmental NGOs must use the WFD public participation process to push for the following aspects:

- *Publication of an extended list of 'water services', including 'self-services'. This would comply with the WFD's transparency requirements and allow specific criteria and rules to be adopted for 'water services' reporting and cost recovery accounting, including environmental and resource costs.*

- *Determination of a list of main 'water uses' based on an assessment of their significant human impacts on water bodies (Article 5 and Annex II) before 2004. Although the WFD does not specify which water uses should be considered - (only those that have a significant impact on water bodies and pose a risk to achieving good status) - publishing a list would be useful for the overall characterisation of river basins.*

- *Consider navigation, hydropower generation, domestic, agriculture and industrial activities as important 'water uses' as they cause significant impacts. At the same time, the infrastructure developed for navigation and hydropower generation should be listed as a 'water service'. If navigation and hydropower infrastructure is classified as a 'service', its costs may or may not be recovered by navigation and hydropower activities, but at least the costs will have to be reported and cost-recovery assessed.*

- *Ensure that River Basin Authorities (RBA) consider the environmental costs of 'water services' and 'uses' and their effects on cost recovery fully. In general, cost assessments are biased towards economic assessments. As a result, environment assessment tools (for example, for an economic valuation of ecosystems services) tend to be limited and more experimental. However RBA should not overlook qualitative estimations and statements about environmental costs, such as loss of biodiversity, even if their economic valuation in monetary terms has not been fully developed.*

- *While there have been discussions on how to define 'water services' and the difference between 'water services' and 'water uses', the key political challenge for an economic analysis lies elsewhere. The important elements are the different analytical steps used to identify the programme of measures, in particular how to develop the baseline scenario, the cost-effectiveness analysis, and the economic (cost/benefit) analyses used to justify derogations.*

3.9 Monitoring

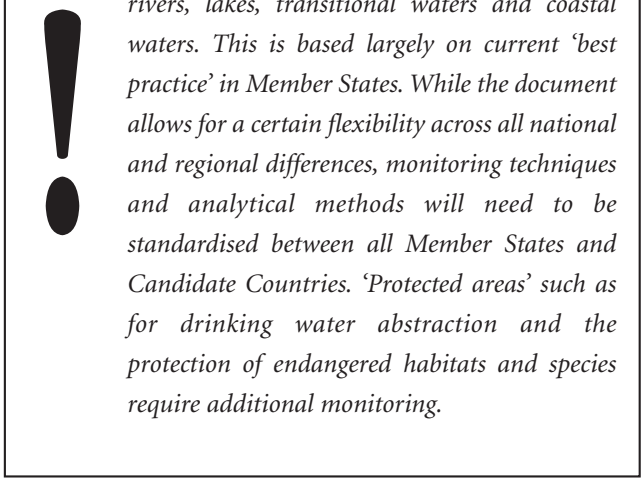
Monitoring is the key for understanding and managing a complex ecosystem, and for reporting back on both current status and any improvements to the rest of Europe. Without reporting there can be no appropriate control over implementing the WFD.

3.9.1 INTRODUCTION

Article 8 of the WFD stresses the need to monitor surface water status, groundwater status and protected areas. The 'Monitoring' guidance document aims to help experts and stakeholders to design and implement the necessary monitoring networks and programmes to meet the WFD objectives in all types of water. As with all the guidance documents, this one must be developed and adapted to meet national and regional circumstances.

Annex V of the WFD explains why it is required to monitor surface water and groundwater, and lists what information a monitoring programme must produce. Surface waters require 'surveillance', 'operational' and 'investigative' monitoring, while groundwater requires 'chemical status surveillance', as well as 'operational' and 'quantitative' monitoring. The monitoring of protected areas must take place in conjunction with other monitoring. The objective of a monitoring programme is to establish a coherent and comprehensive overview of water status within each River Basin District. It must allow all surface water bodies to be classified into five classes '(high', 'good', 'moderate', 'poor' and 'bad') and groundwater into two classes ('poor' and 'good').

The WFD specifies the biological, hydro-morphological, chemical and physico-chemical elements supporting biological elements to be included in the classification of ecological status. The ecological status of a body of water is represented by the lower of the values ('one out – all out' principle, see sub-section 3.5 above) for the biological and physico-chemical monitoring results in the relevant quality elements.



The 'Monitoring' guidance document provides a common understanding of the WFD's monitoring requirements. It provides guidance and principles generic to all water categories as well as more specific advice on groundwater, rivers, lakes, transitional waters and coastal waters. This is based largely on current 'best practice' in Member States. While the document allows for a certain flexibility across all national and regional differences, monitoring techniques and analytical methods will need to be standardised between all Member States and Candidate Countries. 'Protected areas' such as for drinking water abstraction and the protection of endangered habitats and species require additional monitoring.

3.9.2 AREAS OF CONFLICT

Physico-chemical elements. As in the case of the REFCOND and COAST guidance documents, the main 'open issue' for Member States was the suggestion of using physico-chemical elements in establishing the status of water bodies (rather than just supporting the biological elements) and the 'one out – all out' principle.

Annex V of the Directive divides physico-chemical parameters into two groups: General parameters that include thermal and oxygenation conditions, salinity, etc, on the one hand, and specific pollutants, the priority substances and the pollutants listed in Annex VIII on the other. Austria suggested that nutrients were more important than some of the general physico-chemical parameters such as temperature, and Austria and Portugal questioned the relevance and relative importance of some of these physico-chemical parameters.

The use of the word 'supporting' confused certain Member States. Monitoring and assessing physical and physico-chemical quality elements will support the interpretation, assessment and

classification of the results that arise from the biological quality monitoring. Annex V provides tabulated guidelines on minimum monitoring requirements for all the quality elements. Spain and The Netherlands wanted to resolve the issue of the 'supporting role' of physico-chemical parameters. The Netherlands suggested that there was a hierarchical system to determine status, with biological elements being the most important. Finland requested that the figure detailing physico-chemical elements in the REFCOND and COAST documents should be removed. Finland also suggested deleting the equivalent figure requiring physico-chemical elements in determining status from the 'Monitoring' guidance document. Belgium and France wanted more definitions and to prioritise the 'good ecological status' definition. Ireland stressed that it was very important to use physico-chemical elements in the intercalibration process.

Nutrients are treated differently as they may take the form of pollutants. While the WFD says that Environmental Quality Standards are required for general parameters and pollutants, none are needed for nutrients.

3.9.3 OUTCOMES

Physico-chemical elements. The 'Monitoring' guidance document states that physico-chemical elements should be used to determine the status of a water body and also includes a reference to both the REFCOND and COAST documents. The EEB and WWF consider this is a positive outcome as it reflects the importance of physico-chemical parameters, which are intrinsic to determining 'good ecological status'. The 'one out – all out' principle also remains intact in this guidance document.

3.9.4 NGO ACTIONS

Ensure that physico-chemical quality elements are used when reporting. These are important elements in their own right and should not just be seen as 'supporting elements'. Physico-chemical elements can give a better indication of the quality status of a water body over time than biological elements, which might react more slowly to changes.

3.10 Intercalibration

Intercalibration is an important obligatory activity under the WFD as it harmonises ecological status classifications and status boundaries. This ensures that 'good status' in Sweden is comparable to 'good status' in Italy[45].

According to Article 21 of the WFD, the European Commission, under the control of a Member States Committee, takes decisions on the WFD's intercalibration exercise for ecological assessments and reference sites. So while the guidance document on 'Intercalibration' is non-binding, it will lead to an EU legal procedure in 2003-2006. In the future, the intercalibration process will be the most crucial aspect for determining the WFD's success. Despite its rather technical character, public involvement is very important for the WFD intercalibration. Member States' intercalibration activities that cannot be explained and justified must be seen as flawed.

3.10.1 INTRODUCTION

The WFD requires that the ecological references chosen by Member States and the boundaries between the ecological quality classes, 'high'–'good' and 'good'–'moderate', are harmonised through an intercalibration exercise. By the end of 2003, each Member State must have suggested sites that they think are of 'high', 'good' and 'moderate' ecological status in their territory in order to establish an EU draft register of intercalibration sites. Member States needed to select their sites using expert judgement based on joint inspections and all available information in conformity with WFD Annex V normative definitions. Artificial and Heavily Modified Water Bodies should also have been considered in the intercalibration exercise. The Commission has to publish a final register of these sites by the end of 2004. This will then form the basis of an 18-month intercalibration exercise to establish a common understanding on status quality assessment and harmonised class boundaries that is consistent with the WFD normative definitions. The results and the values for the class boundaries have to be formally published at the end of 2006.

[45] See page 20 of 'EEB Handbook on EU water policy under the Water Framework Directive', January 2001, http://www.eeb.org/publication/EEB%20Water%20Handbook%20Absolut%20Final%202001.pdf

Current problems for the intercalibration exercise

Member States are currently citing the short time left for undertaking the intercalibration exercise as a reason for only undertaking a limited exercise, which would compare a restricted number of pressure/impact relationships in a tightly defined number of water body types. As yet, Member States are under little or no pressure to collect new data where gaps exist. This could lead to a total failure to intercalibrate little understood or sampled biota, or to attempt to understand and take account of the effects of poorly studied pressures, such as physical modification of the water environment. The result may be that only 'traditional' indicators are compared, giving a classification system that confirms, rather than challenges, traditional standards for water management[46]*. A WFD CIS expert group on lakes acknowledged that even existing data has been collected in such differing ways that it cannot be meaningfully compared, and that a new data collection and analysis exercise is required for intercalibration.*

Unfortunately the existing 'Intercalibration' guidance document is not a great help in dealing with these problems. Working group 2A of the WFD CIS on 'Ecological status' (ECOSTAT) will have to offer solutions in 2003-2004.

3.10.2 AREAS OF CONFLICT

The use of physico-chemical elements. As with the REFCOND, COAST and 'Monitoring' guidance documents, certain Member States believed that biological elements should be the only ones to determine ecological status, and that physico-chemical elements should just support the biological elements in establishing status for intercalibration purposes.

The timetable to complete the intercalibration exercise. Member States believed that the intercalibration process would take longer than the Commission anticipated. Austria, France and Germany believed that the 2006 deadline was too tight to complete the intercalibration exercise, and suggested using the Article 21 Committee to extend it.

'One out – all out' principle. Finland did not agree with this principle (see also sub-sections 3.5 - which includes a definition - and 3.9 of this resource document). It also suggested that either of the two typology systems (A or B) should be used throughout the intercalibration process, which would provide a more meaningful intercalibration assessment.

3.10.3 OUTCOMES

The current version of the 'Intercalibration' guidance document was endorsed as an interim measure, but requires further development if it is to provide meaningful guidance on how to co-ordinate and achieve intercalibration. The logistical aspect of the intercalibration exercise will be one of the most difficult to harmonise between Member States and so requires a practical and useful guidance document. There is agreement that the draft ' Intercalibration' guidance document is a valuable starting point for further work on this issue, which has been planned for the 2003-2004 period of the WFD CIS process via the new Working Group 2A (see section 1 of this resource document).

The use of physico-chemical elements in establishing status for intercalibration purposes and the 'one out – all out' principle**:** The disputes about using general physico-chemical elements for classifying ecological status have already been solved in the REFCOND, COAST and 'Monitoring' guidance documents (see sub-sections 3.5 – which includes a definition - and 3.9 of this resource document). The same applies to the 'one out – all out' principle.

[46] See 'An Assessment of actions taken by the EU to Implement the Water Framework Directive (WFD) *Do they make the WFD work?*', European Environmental Bureau, May 2003.

The timetable to complete the intercalibration exercise. The request to shift a WFD obligatory deadline cannot be resolved in a non-binding guidance document. This will have to be a regulatory (legislative) decision, potentially involving the European Parliament and the Council.

3.10.4 NGO ACTIONS

- *Environmental NGOs should ask their authorities to explain the criteria and data for the decision to select sites for the intercalibration register and assess their status:*
  - *What were the sites submitted to the Commission for the draft intercalibration register by the end of 2003?*
  - *What pressure and impact information and monitoring data were used for the selection?*
  - *What interpretation of 'no or very minor' alterations for the hydromorphological and physico-chemical quality elements has been applied to assign sites to the 'high'/'good' boundary? What quality elements were used in the specific cases and why was this selection made?*
  - *What interpretation of 'slight' deviation for biological quality elements has been applied to assign sites to the 'good'/'moderate' boundary, and what biological quality elements were used in the specific case and why?*

- *NGOs should scrutinise the proposed sites and data to check that all available and relevant data has been submitted, and whether the judgement of their ecological status as 'high', 'good' or 'moderate' is in line with the normative definitions of the WFD Annex V. This could also be carried out through site inspections organised by NGOs.*

- *NGOs should ensure that the reference conditions (from the sites proposed for 'high' ecological status) reflect a situation close to natural/undisturbed conditions, in particular with regard to biological parameters. As yet, the potential gap in standards between the reference sites proposed by countries with relatively undisturbed freshwater ecosystems (for example some Scandinavian or Eastern European systems) and those from countries with ecosystems that are heavily impacted by industrial pollution and intensive agriculture, has not been exposed.*

3.11 Geographical Information Systems (GIS)

3.11.1 INTRODUCTION

The WFD requires Member States to regularly report their findings to the European Commission. The Directive requires that the vast majority of the data is in a GIS-compatible format, but does not give guidance on the technical specifications of these GIS maps. WFD reporting requirements include:

- Maps of the monitoring networks
- Maps of the water status
- Maps of bodies of groundwater where there will be a significant upward trend in concentrations of pollutants, with an indication of groundwater bodies where these trends have been reversed.

The usefulness of GIS information cannot be overestimated. It will provide a very important visual indication of how the WFD is being implemented and could, where underlying data are provided, allow everybody equipped with the right software to undertake their own analysis. The EEB and WWF supported this type of GIS model, which enables access and analysis of data. Unfortunately, Member States and the Commission agreed to develop a GIS system mainly for presenting data and basic information to be reported under the WFD, but this does not exclude later developments that enable access to the underlying data and for it to be analysed.

The GIS guidance document gives detailed technical specifications on the content of the maps and GIS layers. However, it is quite a technical document and will not be accessible to many people without a basic understanding of the subject. In order to help explain how the GIS works, here is an explanation of the following terms and their relationships.

- ***Map:*** The WFD refers to a number of maps, each one with a specific thematic content (e.g. a map of the River Basin Districts). A map can be made up of one or many datasets with a geographic datatype. Using GIS software, maps can be presented in digital form from which an analogue map can be plotted.

- ***Dataset with a geographic datatype:*** A collection of data describing similar phenomena that can be represented with reference to the earth's surface (e.g. the groundwater monitoring stations in a given River Basin District). A dataset with geographic datatype is assumed to be a digital dataset in a GIS. The terms dataset, GIS layer or layer are synonyms for a digital dataset with a geographic datatype.

- ***Table:*** Most software systems require datasets to be organised in one or more tables. In order to make information comparable between organisations the tables must have a similar structure.

- ***Data:*** Tables are made up of digital data. The data will be stored using common typologies like geometry (e.g., points, lines, polygons, networks), strings (e.g., name, codes), numbers (e.g. amount of monitoring stations in a region), or dates (e.g., reporting date).

3.11.2 AREAS OF CONFLICT

Map scale. Member States and the Commission could not agree on the scale to be used for the GIS maps. Most experts and the Commission proposed a scale of 1:250,000 and an spatial accuracy of 125 metres, while some Member States felt that this did not take their current technical capabilities into consideration and asked for a bigger scale of 1:1 million with a spatial accuracy of 1,000-2,000 metres.

Germany requested that the EuroGlobal Map, with a scale of 1:1 million, be used as it would allow for boundaries to be harmonised with other information layers. The Commission and other Member States believed that 1:1million was too large for many small water bodies to be easily identified, so using the EuroGlobal Map would not fulfil all the WFD requirements.

The Commission, the EEB and WWF strongly opposed using the 1:1 million scale as this would mean that only areas greater than 50 km² would be seen as anything other than a dot on the GIS map, so that valuable information would be lost. Thus, at a scale of 1:1million, an area the size of Luxembourg would fit onto an mobile phone screen, and hence the merits of using a scale of this size are limited.

The problem is not as trivial as it would seem. Member States may have been concerned about the scale of the GIS maps because, as expressed by The Netherlands, the greater the resolution the more data they would have to collect and the higher the costs and the administrative burden. However, one thing is information that Member States need to report to the European Commission using GIS maps, and the other is background information that they should collect and have available in GIS as part of their timely and efficient WFD implementation. It is here that the real detail is needed and we are concerned that some Member States may not have realized or may not want to realise this yet.

3.11.3 OUTCOMES

Map Scale: Annex VII of the WFD sets out what must be reported. It was agreed that in the short term a scale of 1:1 million should be used with the longer-term aim of using a 1:250,000 scale. The Water Directors' final decision was as follows: *'For the short-term reporting, this EU-wide base (1:1million could be an option. In the long term, the scale of reporting may be 1:250.000, as far as an identical and harmonised data base (e.g. EuroRegionalMap) is available*'. The EEB and WWF are concerned about this decision because such a large reporting scale would imply that important information on WFD implementation across Europe is neither readily accessible nor visible to a wider public.

The EEB and WWF are also concerned at Member States' unwillingness to commit themselves productively to the WFD CIS process. Both Finland and Germany have the capabilities to report at the 1:250,000 scale (and Germany has the technology to report to 1:50,000 scale), yet both these governments wanted to use the larger scale. Their attitude is puzzling.

As with some of the other guidance documents, the GIS document needs to be standardised across the Member States. While the 'scale issue' has been temporarily resolved, the issue of what specific metadata profile for the GIS layers is to be used remains. This, coupled with the fact that information technology develops very quickly, should mean that any decisions on this metadata profile must be considered with an eye to the future. In addition, it should be adaptable to change as technical capabilities and standards evolve.

3.11.4 NGO ACTION

- *NGOs should request their River Basin Authorities to supply them with GIS-based information with sufficient detail and background information so they can undertake their own analysis on the progress of WFD implementation.*

4. Pilot river basin testing of the Water Framework Directive Common Implementation Strategy's guidance documents

4.1 Introduction

Sections 1 (Introduction) and 2 (FAQs) of this resource document have introduced and described the WFD CIS integrated Pilot River Basin testing exercise in some detail. This is a voluntary process taking place mainly over 2003 and 2004. It will be completed in 2006 after fifteen Pilot River Basins (PRBs) across seventeen European countries have tested the WFD CIS guidance documents and reported on how to improve their usefulness for implementing the WFD on the ground. The PRBs[47] are as follows:

1. Cecina (Italy)
2. Guadiana (Portuguese side)
3. Jucar (Spain)
4. Marne (France)
5. Mosel-Sarre (France, Germany, Luxembourg)
6. Odense (Denmark)
7. Oulujoki (Finland)
8. Neisse (Czech Republic, Germany, Poland)
9. Pinios (Greece)
10. Ribble (UK)
11. Shannon (Ireland)
12. Scheldt (Belgium, France, The Netherlands)
13. Somos (Hungary)
14. Suldalsvassdraget (Norway)
15. Tevere (Italy)

FIGURE 5
Map showing the 15 PRBs (in the form of big dots) taken from the European Commission's 'WFD newsletter', 1st edition, September 2003, European Commission DG Environment

[47] A summary of the fifteen PRB projects is available at http://forum.europa.eu.int/Members/irc/env/wfd/library?l=/pilot_river_basin/originalsprbsproposals&vm=detailed&sb=Title. To gain access to this web page please contact: env-wfd-circa@cec.eu.int

According to the Terms of Reference[48] (ToRs) for the integrated PRB testing exercise, the timing for this process is divided in two different phases as follows:

Phase 1a: Testing '*Key Issues*' (*as listed in Annex 1 to the ToRs*) related to the reporting commitments under Article 5 (*of the WFD: Characteristics of the river basin district, review of the environmental impact of human activity, and economic analysis of water uses*) and associated Annexes. It will also involve setting up an on-line dynamic feedback and information exchange, and identifying new issues as the testing process evolves and additional cross-cutting problems appear.

Phase 1a lasted in theory from 2002 until the third quarter of 2003, and concentrated primarily on issues in the guidance documents related to the reporting commitments in Article 5 and associated Annexes due for reporting to the Commission by March 2005 at the latest. A list of general and specific key issues reported in Annex 1 of the ToRs has been developed in collaboration with the WFD CIS Working Group leaders. The different PRBs will exchange information acquired during this phase on their experience on how 'Key Issues' should be addressed. PRB and Working Group leaders will also exchange information on specific technical issues in the guidance documents relating to interpretation, implementation, checking for coherence, etc. This information will be made available to the river basins involved in 'regular' WFD implementation, so that they can benefit from the pilot testing experience. The end product will be a document based on an analysis of the reports dealing with the 'Key Issues' covered during the testing phase, and any observations/suggestions regarding 'best practices' for implementing WFD on the ground.

Phase 1b: Testing sections of the guidance documents and/or the guidance documents not tested in Phase 1a (to be run in parallel with Phase 1a). Continuation of information exchange.

This work should run in parallel with Phase 1a. However, in theory, it extends from 2002 until mid-2004. The simultaneous testing to be done in Phases 1a and b should enable all guidance documents to be tested. The reporting will be based on the list of general and specific *Key Issues* reported in Annex 1 of the ToRs, which was developed in collaboration with the different Working Group leaders. A similar approach using a Platform of Information Exchange will ensure an information flow between the PRBs and the Working Group leaders (PIE at http://viso.ei.jrc.it/wfd_prb/index.html).

Despite the timetable outlined above, the PRB testing process has been delayed and none of the fifteen PRB projects started working in 2002 as scheduled. This means that it will be difficult to finish on time. PRB leaders were under a great deal of pressure to comply even with the new timetable, where deadlines for Phase 1a were extended up to the end of 2003, while the completion of Phase 1b was provisionally scheduled for the end of May 2004. In any event, this only refers to the technical work, but the actual reports presenting the results will be delayed even further.

Phase 2: Further develop integrated testing to contribute to the Programme of Measures and possibly to the Manual for Integrated River Basin Management. The work envisaged during this Phase would begin in the second half of 2004 and could last up until the end of 2006.

In summary, the above means that Phase 1a should mainly test parts of the 'Water bodies', IMPRESS, REFCOND, HMWBs, COAST and WATECO guidance documents. Phase 1b will test the others, depending on PRB leaders' commitments. In addition, the European Commission has insisted that all horizontal guidance documents must be tested.

[48] You can find the ToRs document at http://forum.europa.eu.int/irc/DownLoad/mqZfHgGOkrIFfFYkh2sWAGmwRGpZTFf-/YTYc1LR4ZmScFm-z6CnEV9gcO2f-YjPF/FmIf80tDc9dc1LZ-xjKgGm3xkHf-o0xZ/6SfIvx_d7xHa64kE6tVUo-TtGV6/Terms%20of%20Ref%20%287th%20April%20%2003%29.doc. The PRB testing process is not only still ongoing but also evolving all the time. To gain access to this web page please contact: env-wfd-circa@cec.eu.int

There is no guarantee that all WFD CIS guidance documents will be tested during Phase 1a and 1b of the PRB exercise.

It is up to the Member States and Candidate Countries to choose which guidance documents to test. In addition, according to the tables in Annex 1 of the ToRs of the integrated PRB testing exercise, only 'Key Issues' from the relevant documents can be tested. In November 2003, it appeared[49] that the overall exercise may test 'Key Issues' from all guidance documents, including the horizontal guidance document on 'Wetlands'. A few PRB leaders have committed themselves to test all documents in their PRB (e.g. Scheldt).

At the Water Directors' meeting in Athens (June 2003), the EU's Greek Presidency presented a report entitled 'State of the WFD implementation process' to all the Water Directors from EU Member States, the new Candidate Countries, Norway and Switzerland. The Presidency produced this on the basis of responses to a questionnaire from 23 countries. In terms of the PRB integrated testing process, it is important to note that this report, which was endorsed by all the Water Directors, states that:

- '*It is envisaged that the general public's ability and willingness to participate in the WFD implementation process will be enhanced in the future, considering that public participation is still in a testing stage and it is an important element in many pilot projects concerning the implementation of the Water Framework Directive. These pilot projects will provide an opportunity for the interested parties to be involved in the early application and refinement of the Guidance Documents before they are applied more widely across Europe.*

- *The pilot projects across Europe are seen, from most of the involved countries, as very essential in order that the guidance documents are transformed into documents that should be taken into account by regional/local authorities/water managers by giving concrete examples of application in selected river basins in Europe. For many countries, the pilot river basin exercise goes beyond the testing of the guidance documents and it is really a way to learn about the implementation of the Water Framework Directive*'

Note that some countries, for example, Spain and the UK, have already stated that they will use the PRB as the model for national WFD implementation.

[49] You can find an overview on the guidance documents tested by the PRBs at http://forum.europa.eu.int/irc/DownLoad/mqZfHgGOkrIFfFYkh2sWAGmwRGpZTFf-/YTYc1LR4ZmScFm-z6CnEV9gcO2f-YjPF/FmIf80tDc9dc1LZ-xjKgGm3xkHf-o0xZ/6Sflvx_d7xHa64kE6tVUo-TtGV6/Terms%20of%20Ref%20%287th%20April%20%2003%29.doc. The PRB project summaries list the documents to be tested. To gain access to this web page please contact: env-wfd-circa@cec.eu.int

4.2 Current[50] problems with the PRB integrated testing exercise

Nevertheless, despite the Water Directors' opinions on the PRB integrated testing exercise, the actual situation is, at times, quite different. According to the EEB and WWF, the main problems with the process are:

4.2.1 INSUFFICIENT INVOLVEMENT OF ENVIRONMENTAL NGOS

The EEB and WWF do not consider that the PRB integrated testing exercise as a whole fulfils either the Water Directors' statement, as quoted above, or the 'good'/'best practice' in the WFD CIS 'Public Participation' guidance document. We believe that this will be one of the main obstacles for its success. We have raised this issue at several levels of the WFD CIS hierarchy including at the PRB Steering Group, which has some steering and decision-making powers over the general process.

Apart from in a few PRBs, PRB leaders have not made a significant effort to involve environmental NGOs in the testing exercise, despite attempts by environmental NGOs to contact the leaders, show interest and ask to be involved.

It may be that stakeholder involvement in this exercise requires logistical support from the PRBs, which they have not given yet. Thus, until now, very few of the PRB resources have gone towards public participation and to support environmental NGOs' and other stakeholders' active involvement. Environmental NGOs have, therefore, not participated in the first steps of the PRB exercise, which are concerned with design and set up.

Another possible reason is that the required stakeholder identification step (see the WFD CIS 'Public participation' and the 'Planning process' guidance documents) has not been carried out, so PRB leaders do not know whom to involve. There is currently no (adequate) general list of environmental NGO contact persons for the PRB exercise. For those leading the PRB process, this is an additional obstacle to providing and gathering information. This is also an obstacle for an effective exchange of NGO experience. Thus, it is important that there is a two-way information flow between environmental NGOs on the ground (for some of whom this is their first experience of participating in the WFD CIS process), and those that have been active at European level, which can advise on whether the PRB testing exercise is coherent with the WFD CIS guidance documents.

Many PRBs are not clear whether environmental NGOs are likely to be involved in the final steps of Phase 1a and/or Phase 1b of the exercise. In addition, environmental NGOs that become involved late could find that there are incoherencies or differences in interpreting PRB testing results because they have not participated at an earlier stage.

The EEB and WWF believe that this situation must be urgently reversed, so that environmental NGOs are actively involved in the PRBs, otherwise:

- It will not be possible to use the results of the exercise from a large number of PRBs for validating (revising/updating) the WFD CIS guidance documents. So while the guidance documents have been developed with strong input from environmental NGOs, if these NGOs are then not involved in the PRB testing exercise the results will not be fully legitimate.

- Member States that indicated that they would use the current PRB testing approach as a model for their national implementation of the WFD, but where the 'national' PRB does not involve environmental NGOs yet will have to improve on this approach. If they fail, they will be in danger of breaching Article 14 (Public information and consultation) of the WFD because there will have been a lack of effective active involvement of all interested parties in the model they aim to replicate.

The European Commission services have tried to resolve the situation, without success so far. The Commission promoted public participation training at a PRB workshop in Belgirate (Italy) early in 2003, to improve stakeholder involvement because it believed that PRB leaders were unaware of how to carry it out. Unfortunately, this did not significantly improve environmental NGOs' involvement. More recently, the European Commission requested all PRB leaders to provide a

[50] Note that the PRB testing process is not only still ongoing but also constantly evolving.

list of names and contacts for stakeholder/NGO involvement in their PRB. They were also asked to ensure that their next progress reports should explicitly mention steps taken towards involving stakeholders (including environmental NGOs). The PRB Steering Group has agreed.

4.2.2 INSUFFICIENT VALUE FOR WFD IMPLEMENTATION AT NATIONAL LEVEL

The EEB and WWF do not consider that the PRB integrated testing exercise fulfils the Water Directors' statements (quoted above) because most of the exercises are 'virtual', i.e. carried out as desk studies, at times, by hired consultants working independently of the administration(s). So far, most have only dealt with reporting obligations on *Key Issues*. We consider that they should be used as real and much-needed opportunities to assist real WFD implementation, as the steps leading to, and the actual development of, River Basin Management Plans (RBMPs). At a minimum, they should be used to inform relevant stakeholders and authorities about the WFD, rather than being carried out behind closed doors.

The above problem is even more serious in several countries where the PRB exercise is supposed to go beyond testing the guidance documents and will be used as a model for national WFD implementation. In these countries, it is intended as a means of learning how to approach WFD implementation on the ground, exposing the problems, demonstrating capacity and financial needs, and giving possible solutions. Where the PRB testing exercise takes place without input from those on the ground, from relevant administrations, or from stakeholders, little will have been learned that can be used in the regular WFD implementation. This is a paradoxical situation, as the WFD CIS process was established to aid WFD implementation at national level, given the complexity of the WFD. However, it may be a mere desk study in its final stages.

We know of some notable exceptions: The Odense, Oulujoki and Ribble PRBs. In the case of the latter, the invited stakeholders, were not interested in being involved in a 'virtual' exercise. As a result, the Ribble PRB will provide a real test of the guidance by using the results to help prepare a prototype river basin management plan for the Ribble. This will feed into the River Basin District Management Plan to be developed under Article 13 of the WFD[51].

The main drawback of 'real' versus 'virtual' PRB testing is that real testing requires more time. However, if one compares the added value gained for actual WFD implementation, which was the reason that WFD guidance documents were drafted in the first place and are now being tested, this should not be a problem if enough time is granted.

Clearly stakeholders' active involvement is precious and needs to be proper managed (see the WFD CIS 'Public participation' guidance document). Stakeholders, who may have not been previously involved in the PRB testing, may be less keen if they realise that their efforts will not translate into something durable, unlike those in the Ribble. When trying to involve stakeholders, the PRB leaders need to be able to link the testing exercise to real WFD implementation to catch people's interest and avoid 'participation fatigue'.

4.2.3 INSUFFICIENT INTEGRATION

The EEB and WWF do not consider the PRB integrated testing exercise to be sufficiently integrated. In the past we raised our concern that the phased approach presented in the ToRs would not deliver integrated testing with the WFD CIS Strategic Coordination Group. We could not accept that main parts of guidance documents or even whole guidance documents would not be part of the Phase 1a testing exercise. We have always considered that it should be a 'real life test' with regard to Article 5 obligations, while for others it should be a 'pilot testing' to improve the guidance documents. The redeeming aspect of the ToRs was that parts of Phase 1a and 1b were designed to take place simultaneously, but this is no longer the case.

Given current delays in the start of Phase 1a and the subsequent delay of Phase 1b (see the 'Be aware' box in the 'Introduction' to this section), there will be no simultaneous testing during these Phases, which will prevent any integrated testing of the guidance documents. Added to this is the difficulty that both Phases only test 'Key Issues', not the entire guidance documents.

It is paradoxical that the PRB integrated testing exercise, which should assist WFD implementation, is not integrated. This goes against the integrative spirit of the WFD, which is clearly emphasised in the 'Integration' box in 'Section 1 – Implementing the Directive: Setting the Scene', the common section to all WFD CIS guidance documents.

[51] As stated in the Ribble PRB project Progress Report, July 2003

One problem is that some of the issues/guidance documents to be tested in Phase 1b were needed for Phase 1a. For example, the horizontal guidance document on 'Wetlands', which should be only tested as part of Phase 1b, was needed in Phase 1a for the testing of the horizontal guidance on 'Water bodies' and many others. This is a concrete example of the need to integrate the testing as it was originally envisaged, involving real integration from simultaneous testing of guidance documents, and not just ensuring coherence by testing one guidance document and keeping in mind relevant parts of others.

The European Commission services are trying to resolve the situation in the following ways:

- They have requested that all PRBs test all the horizontal guidance documents (see section 1 of this document) as they are the 'building blocks' for the rest of the exercise. This should happen, for example, in the Scheldt.

- In the case of the 'Wetlands' horizontal guidance document, with the support of the Strategic Coordination Group, it has encouraged PRB leaders to test the document in full. It will most probably be the case in the Shannon and Odense PRBs. The Commission also encouraged PRB leaders to use relevant parts of the 'Wetlands' guidance, during Phase 1a, in relation to guidance documents that are linked to it, such as the one on 'Water bodies'.

- They will revise the ToRs for the PRB integrated testing exercise, including the 'Key issues' in Annex 1 in order to increase integration and refine some of the questions and issues contained in the Annex that are poorly targeted. The EEB and WWF are concerned that the section on public participation is still quite poor and needs to be aligned with the horizontal guidance document on 'Public participation'. This is particularly the case with the need to include provisions for building the capacity of stakeholders and the general public in the part dealing with the 'organisational aspects for testing'. The Annex also needs some wetlands-related 'Key issues'.

4.2.4 NGO ACTIONS

- *Environmental NGOs involved in the WFD CIS integrated PRB testing exercise should insist that the 'REFCOND', 'Ecological classification', 'IMPRESS', 'Water bodies', 'Public participation' and 'Wetlands' guidance documents are tested in their PRB.*

- ***BE PRO-ACTIVE**: Active involvement is quite new and unfamiliar to many administrations[52]. Environmental NGOs operating in the PRBs listed above should contact the PRB project leaders and ask to be involved in the WFD CIS integrated PRB testing. If you do not get the desired result, climb up the political ladder (Ministry, European Commission etc).*

- *First, define which part of the PRB testing exercise is the most relevant for you and whether you have the necessary interest and capacity to work on it. Define your 'rules of the game', that is, the set of conditions to be provided by the PRB under which you would be willing to participate (e.g. timing, financial support, access to information, etc.). Then explain to the PRB or relevant water managers that having you there is good for the process and for general WFD implementation as you can, for example, help to get other stakeholders involved, and/or provide specific information/data about the area, and/or increase your value as a stakeholder for the real WFD implementation that began at the end of 2003.*

- ***IT WORKS**: Increased pressure on the Júcar PRB at both the national and European levels showed results as all relevant environmental NGOs were invited to a first meeting in September 2003.*

- *If you belong to a national environmental NGO, help select someone from your own or another organisation to be a relevant stakeholder in the PRB(s) in your own country and help them to get involved.*

- *It may be too late to persuade all PRBs to be models for national WFD implementation and PRB leaders are under pressure to catch up because of the delays (see the 'Be aware box' in the 'Introduction' to this section). However, once you are involved in the PRB testing, try to steer it in a way that provides added value for real WFD implementation in that basin and/or nationally. In case you are not, try at least to be informed on what is going on. It could well be that later on, when your county is in a panic to comply with the WFD due to time pressure, the PRB approaches will be used in other RBDs across the country. You will then need to know if they were 'good' or 'bad'.*

- *For example, the first step for the PRB leadership should be to compile information on the process, its aims and its links to WFD implementation. The question 'What is the WFD?' may be asked over and over again within the PRB process. This information needs to be widely available. The Scheldt PRB has produced an interesting but simple information brochure and has set up a web page (http://www.scaldit.org).*

- *Try to ensure that this information includes something on the WFD implementation's socio-economic benefits as we attempted in section 2 of this resource document. This information was not available when the Habitats Directive was transposed and first implemented[53], which has hampered its implementation. As a result, in the early stages the only information that reached the actual areas to be protected as part of the EU Natura 2000 network focused on the threats the scheme posed to certain economic sectors. This is probably also true for the WFD, for example with water pricing, so there will be barriers to break down to ensure that the WFD is implemented nationally in a timely and efficient manner. The PRB testing exercise should help to smooth out these problems and you can contribute to that.*

[52] For more information on current European administrations' problems with public participation in the context of WFD implementation see 'Results of a pan-European survey carried out by the WWF European Living Waters Programme'. This provides a 'snapshot' of EU Member States and Accession Countries' progress in transposing and implementing the WFD. It can be downloaded at the following web page address: http://www.panda.org/about_wwf/where_we_work/europe/what_we_do/policy_and_events/epo/initiatives/freshwater.cfm

[53] This type of information is difficult to get hold of, but see the WWF report 'Promoting the socio-economic benefits of Natura 2000', which includes several case studies on the socio-economic value of protected areas that depend on water. It is available at: http://www.panda.org/about_wwf/where_we_work/europe/what_we_do/policy_and_events/epo/initiatives/natura_2000.cfm#pubs

- *Insist that:*
  - *You are fully involved in selecting what authorities might consider to be the 'high', 'good' or 'moderate' status water bodies available in the PRB*
  - *Your knowledge is included in the analysis of pressures and impacts*
  - *All the horizontal guidance documents are tested in your PRB, in particular the ones on 'Public participation' and 'Wetlands'*
  - *The PRB invests enough human capacity and financial resources to facilitate your involvement*
  - *You are given enough notice of any meeting and enough documentation and time to prepare*
  - *Real integrated/simultaneous testing is promoted, so some parts of the exercise are 'real' life testing of Article 5 obligations, and others are 'pilot' testing of other aspects of the guidance documents to further improve them.*

5. Conclusions

The EEB and WWF welcome the commitment of the European Commission, the Member States and Norway to transparency and public participation shown by the introduction of the Common Implementation Strategy for the Water Framework Directive (WFD CIS). Our participation in the WFD CIS process has been positive and very informative, and we consider that the WFD CIS guidance documents can be effective in helping to achieve the WFD objectives. They provide a common understanding about the Directive as well as describing some 'best practices' and giving practical examples of how it could be implemented.

Nevertheless, in a few cases the guidance documents deviate from 'best practices' and potentially undermine WFD requirements because of compromises made in the consensus-based decision-making process of the WFD CIS. At times, these led to a lowest common denominator approach with regard to what should or not be included in the final text of a given guidance document - as has been illustrated in section 3 of this resource document. The EEB and WWF have tried to ensure that the guidance documents are in keeping with the WFD's legal objectives and requirements. However, as we have shown in this resource document, this has not always been possible principally because we do not have the same political influence as the Member States. As a result, some of the 13 guidance documents produced so far are sometimes biased towards the interests of a particular Member State or States. This has been the case, for example, with the WFD's quantitative water management requirements, relevant to irrigation, hydropower and 'self-services'. Additionally, we are concerned that these compromises could politically restrict the European Commission in pursuing Member States that breach the WFD.

Consequently, it is crucial that environmental NGOs and other stakeholders make critical use of, and try to improve, the WFD CIS guidance documents at national, regional and local levels. For this reason the EEB and WWF have provided critical comments on each guidance document in this resource document. We have highlighted *where* Member States had problems, *which* Member States require close observation and on *what* issues. Our knowledge of Member States' attitudes during the WFD CIS guidance development should support other environmental NGOs' and stakeholders' work. It should help them to use the guidance documents effectively, to prioritise their strategies, and to assess how their governments/authorities are performing in implementing the WFD and contribute to the process.

This resource document has already stressed that environmental NGOs must watch and challenge Member States when they implement 'controversial' issues[54] in the guidance documents. This is the case, for example, with the criteria for preliminary designation of HMWB, which is now open to interpretation by Member States and may potentially undermine legal obligations of the WFD by widening the application of what is already quite a major exemption from achieving 'good ecological status'. These 'controversies' show where Member States may have problems or may try to evade WFD obligations. We will have to challenge Member States in these cases and might have to remind them and the European Commission that the WFD is the only legal and ultimate basis for checking compliance.

Member States will ultimately have to choose between 'minimum reporting requirements' and 'best practices' when implementing the WFD. The wisdom of such a choice will be benchmarked via success or failure in achieving the WFD objectives. Ultimately the final goal of the WFD implementation is to prevent the current status from deteriorating from 22 December 2000 onwards and to achieve 'good status' for all our waters by 2015. We must not forget or let others forget this!

In summary, the EEB and WWF found the WFD CIS to be a rewarding and informative process. For the first time stakeholders' and environmental NGOs' opinions and positions were sought to gather a broad range of views and ideas on implementing EU water laws. We stress that the guidance documents produced so far provide significant help for implementing the WFD 'on the ground'. Despite our concerns and some negative results, the EEB and WWF believe that environmental NGOs should support and use the guidance documents, and we hope that NGOs will be able to make the most out of them by using this resource document.

[54] These were called 'Areas of conflict' in section 3 of this resource document

The EEB and WWF also support the continuation of the WFD CIS process. In particular this should provide transparency and ambition in the European harmonisation of the quantitative boundaries between 'high', 'good' and 'moderate status' and guidance for the classification of ecological status. There is a danger that Member States will use economic criteria for setting these boundaries instead of sound ecological understanding of the WFD normative definitions. Additionally, Member States are keen to continue using existing national water quality assessment systems, none of which are sufficient to satisfy the WFD's holistic ecological status assessment. New methodologies, which are already available or under development, must be used to extend the scope of current systems – otherwise the Directive is doomed to fail.

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