March 2019

BUSINESSEUROPE RESPONSE TO THE PUBLIC CONSULTATION OF THE WATER FRAMEWORK DIRECTIVE

1. INTRODUCTION

The Water Framework Directive (WFD), and daughter directives, have been instrumental in the protection and recovery of water bodies across Europe. In addition, the WFD has proven beneficial in taking on a systemic view of the surface waters with a strong methodological approach. All together the WFD has had a positive impact in water management since its introduction, and has considerably proven its contribution towards the protection of water bodies across Europe.

The aquatic ecosystems face constant change both from anthropogenic pressures and natural variations. It is therefore important to consider the natural occurring changes and the overall situation of the water body ecosystems in order to respond to future challenges. Measures which are developed to support the implementation of the directive, should look at solutions that are river-basin oriented, taking into account the large variety of natural and societal conditions. The WFD, which is already in place for twenty years, needs to strike the balance between environmental protection and socio-economic development. For this to happen, the EU's ambition for a strong and modern EU industry policy must go hand-in-hand with the objective of sustainable water bodies in the EU.

This paper is a first contribution of BusinessEurope on the on-going review of the Water Framework Directive. We very much look forward to engaging in a constructive dialogue with EU policy-makers with the objective to make this important policy fit-for-purpose.

2. STRENGTHS AND WEAKNESSES

What has been achieved so far

During the last twenty years, European water management has been designed and carried out at river basin scale and in six years cycles.

It enabled a more ecological approach to manage European surface waters, and resulted in gradual improvements of surface waters. The ecological status for several individual quality elements improved, even though this didn't reflect on the overall ecological status classification from the first River Basin Management Plan (RBMP) to the second.

EU WATERS - KEY FIGURES:

40 % of the surface water bodies are in "good" or "high" ecological status or potential.

Surface water bodies of unknown ecological / chemical status, fell from 16% to 4%, and from 39% to 16% between 2009-2019.

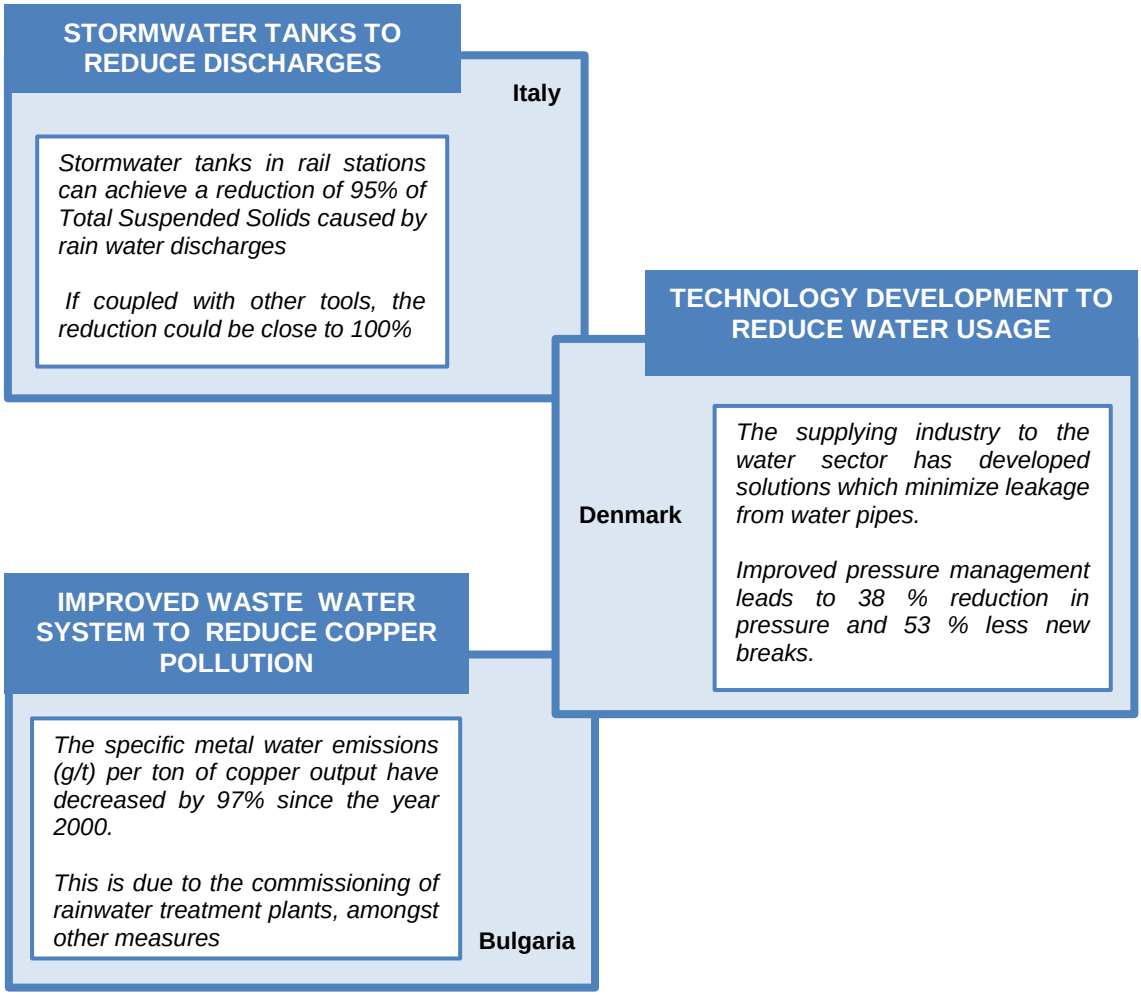
Source: EEA report

The water governance was set up to include all relevant stakeholders, which affect a water body, resulting in a comprehensive network of engaged stakeholders, which is a good basis for further improvement. The work carried out so far by this network has led to provide a more complete picture of the status of water bodies across Europe.

The transboundary process led to an exchange of best practices between competent authorities, and has considerably improved their knowledge through the drafting of River Basin Management Plans. Furthermore, due to a constant improvement process of the monitoring systems (CIS structure) the amount of data related to the state of European waters has increased significantly, as shown in the last European Environmental Agency (EEA) report[1].

A snapshot of industry examples

For many years, industry has taken actions to minimise its footprint on the quality of European water bodies. This section provides an initial list of concrete examples implemented across different sectors. You can find the complete examples in Annex I.



[1] https://www.eea.europa.eu/publications/state-of-water

Industry is facing several challenges

From the experience gained so far, the following challenges with the implementation of the WFD have been identified:

- The relationship **between the objectives of the Water Framework Directive and other European strategies** such as the energy policy. For instance, the water protection requirements such as minimum river-flow requirements or waste water treatment techniques do have an impact on the power generation capacity or its capacity to provide ancillary services that are important for the safety and stability of the power grid.

  The WFD is 20 years old and has never been evaluated since its approval. During that time European environmental norms have been updated numerous times, and new legislation has been introduced. Therefore, a strong understanding of all possible interactions between the provisions of the WFD and other EU policies is therefore important to have a well-informed debate.

- The Water Framework Directive introduced the so-called "**one-out-all-out" principle**, to assess the quality of EU water bodies. As a consequence, the worst status of the elements used in the assessment determines the overall status of the water body. Consequently, progress achieved in some areas may be hidden by a lack of progress in others, resulting in an overly "pessimistic" assessment of water quality status. Industry, amongst other actors, have managed to reduce its impact on water bodies, but the principle prevents improvements to be adequately reflected.

- The sustainable management of waters is anchored in numerous recitals of the directive. Furthermore, art. 4 requires that the measures to reach the environmental goals (of "good ecological status" or "good ecological potential") should be technically possible, cost-proportionate and lead to a significant improvement.

  However, measures often lack a good consideration of **cost-benefit analyses**. The focus tends to be directed towards the costs of implementation for Member States, often omitting measures that could bring improvement while being more proportionate. The directive was introduced without a prior Impact Assessment, which could have enlightened the proportionality of certain implementing measures. Many of the reports which assess the cost-benefit process, tend to be outdated and rather incomplete. The engagement of industry is key in this matter.

- Application of the **phasing-out or reduction of pollution by priority substances** mentioned in articles 4.1, 16.6 and 16.8 must take due account of the ubiquitous presence of some substances that occur naturally in the environment. Currently, these provisions are too often interpreted as requiring a complete removal of natural background concentrations, which is beyond the target of "undisturbed conditions", and often beyond technical and economic possibilities. Therefore, hampering continuation of sustainable economic activities.

3. THE NON-DETERIORATION PRINCIPLE

BusinessEurope fully acknowledges the importance of the principle, and its relevance for the protection of the aquatic environment. Whereas its importance is not contested, its interpretation and application alongside other elements of the directive have resulted in a particularly complicated situation for industry.

On one hand, the directive laid out an objective to reach "good status" in all European waters by 2015, later extended until 2027, which has resulted in an unattainable goal for many Member States. On the other hand, in order to find a balance between the protection of the environment and economic activities, the directive introduces an option for less stringent objectives in art 4.5. Nonetheless, several countries refrained from using it, because of its high requirements and in fear of the consequences it will have on their ability to reach the 2027 objective.

In 2015, the European Court of Justice concluded the Weser case judgement, which introduced a very strict interpretation of the "non-deterioration principle". The ruling:

- Concluded that there is a deterioration of the overall status (or ecologic potential), if (at least) one quality component deteriorates by one class. Even if this does not represent a change in the status of the water surface body. Moreover, if the quality component is already in the lowest class, any deterioration of that element constitutes a deterioration of the overall status.
- Had a heterogenic response across Member States depending on how strict their initial interpretation of "deterioration" was.
- Implied that this "non-deterioration principle" is implemented at the level of individual projects.
- Had direct consequences over the permitting situation in numerous industrial sites across Europe.

This Weser case strongly accentuates the pressure on some Member States to use of the exemption's clause under art. 4.7 in order to grant permits for industrial activities. The need for exemptions has increased drastically. However, exemptions which do not represent hydro morphological changes, only apply to surface water bodies with "high status" [2]. Nonetheless if there are physical alterations, status only needs to be "good". Therefore, it leaves industries at constant risk of not having their permits being granted or renewed.

[2] Only about 10% of the European water bodies reach "high status" according to the European Environment Agency.

THE WESER CASE IN PRACTICE:

- An installation applies for a water management permit to discharge treated wastewater
- The surface water is already below "good status" because one of the priority substances (e.g. Hg, Cd) exceeds the environmental quality standard
- If the discharge of treated waste water increases the concentration of one priority substances only by a small amount…
- …the permit should be refused according to Weser case ruling, even if the treated wastewater improves other priority substances and has a positive influence on the overall water quality.

What are the options according to the WFD?

- Postpone the date of achievement of the "good status"? → *No, because 2027 is the final date. It's not a long-term solution.*
- Less stringent objective according to art. 4.5? → *No, because some deterioration occurs*
- Use the exemption clause according to art. 4.7? → *No, because chemical alterations are an option only when the water body is in "high status".*

Consequences?

- **High uncertainty on how permits will be granted or renewed.**

4. THE WAY FORWARD

In light of the challenges outlined in this paper, the following initial reflections should be conducted during the review process:

- **Coordination with other EU policies**: A thorough mapping of interactions between the provisions of the WFD and other EU policies should be performed, and thoroughly discussed with impacted stakeholders.

- **"One-out-all-out" principle**: As it stands now, water body status is determined by its lowest quality factor. Nonetheless, it has prevented to show meaningful progress in water quality. Improvements could be made through concrete evolution assessments in the implementation reports carried by Member States.

- **Cost-benefit analyses**: First, the deficit in socio-economic and cost-benefit analyses for the implementation of the WFD needs to be addressed. Second, when cost-benefit analyses are performed, the costs for industry should be evaluated including the direct cost of the measures, but also indirect and maintenance costs on the involved activity. The affordability of the measures should also be considered. In order to perform these assessments, further

guidance should be developed in close coordination with the impacted stakeholders.

- **Phase-out or reduction of pollution by priority substances**: authorities must continue to take due account of the naturally occurrent presence of some substances in the environment, while considering the availability of technical and economic possibilities.

- **"Non-deterioration principle"**: The principle has introduced a high degree of legal and investment uncertainty, even more so after the 2015 Weser case ruling. The strict interpretation of the principle coming from this ruling is taking a step back from the original objective of the directive i.e. a River Basin approach that looks at water bodies as a whole entity.

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ANNEX I: Initial list of industry examples contributing to the WFD, March 2019 (To be updated)

STORMWATER TANKS TO REDUCE DISCHARGES

Country: Italy

In many RFI rail terminals, washing platforms and parking areas close to railway stations, stormwater tanks have been added to reduce the rate of pollution in rain water discharges. It is scientifically demonstrated that runoff during the first minutes of rain has a high concentration of pollution (Total Suspended Solids, heavy metals, etc).

Stormwater capture tanks are used to improve the quality and/or reducing the quantity of discharges in receivers during heavy rains. Stormwater tanks can store these polluted flows before sending to the final receiver, improving the quality through sedimentation or other pre-treatment as filtration, oil & grease separation, etc.

Stored water may be used for watering gardens, irrigation, house appliances, fire-systems and even for drinking water (under special conditions).

Stormwater tanks can achieve a reduction of 95% of TSS (Total Suspended Solids), which are the main pollution bearers.

If coupled with other tools, the reduction could be close to 100%.

TECHNOLOGY DEVELOPMENT TO REDUCE WATER USAGE

Country: Denmark

Danfoss has developed solutions which minimize leakage from water pipes, based on pressure sensors and variable speed drives. These tools are key for reducing water usage and energy loss throughout the whole water cycle. Water and energy loss in the water sector are unnecessarily high: many places in Europe loose more than 25 % of the water, wasted due to errors, leakages, and water pressure.

Among the benefits from new and efficient waste water treatment techniques we can count energy efficiency, with an accompanying climate effect, and recovery of resources from the waste water streams to lock into the circular economy.

Today a waste water treatment plan can become energy producing.

In average, improved pressure management leads to 38 % reduction in pressure and 53 % less new breaks.

Moreover, the energy consumption is reduced by 20-40 %.

IMPROVED WASTE WATER SYSTEM TO REDUCE COPPER POLLUTION

Country: Bulgaria

Throughout the last few years the efficiency of the existing wastewater cleaning systems at the Aurubis plant has been considerably improved. The sewage networks for industrial and household wastewater have been completely renovated and the rain and drainage sewage has been partially reconstructed.

The local cleaning equipment has been renovated (oil and water separators, sedimentation tanks) and new ones have been constructed, which has prevented petroleum products from entering the wastewater that is discharged.

In order to achieve additional improvements as regards the water quality, in 2014 a new water treatment plant was opened for waste water from rain-drainage sewers.

Design and capacity are 250 m3 / hour, and the investment exceeds 10 million BGN. With new sewer branches, the rain and drainage water from the entire industrial site of the company is conveyed to the treatment plant for purification to achieve the parameters required for discharge.

The specific metal water emissions (g/t) per ton of copper output have decreased by 97% since the year 2000.

This reduction is due to several measures, including the commissioning of the rainwater treatment plants, amongst others.