

Securing clean and healthy rivers

Second Cycle River Basin Management Plans – an opportunity for improved water management in Europe





WWF

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Most recently the European Environment Agency (EEA) concluded that Europe is far from meeting water policy objectives and healthy aquatic ecosystems.¹ The adoption of the Water Framework Directive (WFD) in 2000 has led to improvement in management and protection of European water ecosystems, with positive results especially in relation to some pollutants, raising awareness among decision makers and ensuring public participation. Nevertheless, the WFD objective of achieving Good Status (both good ecological and chemical status) of waters by 2015 will be missed. The preparation of the second cycle River Basin Management Plans (RBMPs) covering the 2016-2021 period represents a great opportunity to increase the ambition of the EU in water management through the adoption of stringent and concrete measures to deal with pressures, effective policy integration and public participation, preventing further deterioration within European waters and achieving the aim of Good Status by 2021.

The **first assessments of the draft plans**, which are currently undergoing public consultation, have been reviewed by **WWF offices across selected Member States**. This has strongly indicated that the first round of water management implementation as defined by the 1st cycle RBMPs of 2009-2015, risks being repeated, and that no further improvements can be anticipated. On average little or no progress could be found in terms of addressing the main gaps identified during the 1st cycle RBMPs, particularly in relation to the main recognised gaps addressing diffuse pollution, over-abstraction, changes to flow and the physical shape of water bodies caused by either hydropower, flood control or navigation, as well as too wide of an application of exemptions, without proper justification. Precise information on how identified pressures will be addressed and how these measures will safeguard the achievement of WFD objectives by 2021 is often still missing². **WWF nevertheless believes that correct implementation of the WFD is still possible across Europe**, if Member States assume their obligation and responsibility to bring EU waters to good health by improving the plans before their final adoption; this will secure continued provision of ecosystem services and healthy future for our society and economy to thrive.

WWF Recommendations for 2nd cycle River Basin Management Plans:

- Improve implementation and enforcement of the WFD, including through a better use of WFD economic instruments, ensuring full recovery of costs, and through promotion of nature based solutions.
- Increase the ambition of 2nd cycle River Basin Management Plans (2015-2021) and associated Programmes of Measures, which will ensure European waters are brought to Good Status by 2021.
- Ensure that all derogations and exemptions from WFD objectives are applied restrictively and in exceptional cases only in order to uphold the purpose and effect of the WFD.
- Prevent ‘affordability’ being used as justification for exemptions and thus ensure that it does not undermine the fundamental objectives of the WFD. Affordability, which is a concept absent from the WFD and is a separate concern from disproportionate expense, cannot in the context of WFD be understood as an assessment of whether measures required to reach the set WFD objectives are too expensive for a sector or a business to implement. Moreover, assessing total expenditure across a MS (costs for public budgets), cannot be used to justify any type of derogation. Disproportionate cost analysis must therefore be carried out independently of any issue of ‘affordability’.
- Better coordinate between water and nature legislation, including by integration of Birds and Habitats Directives’ Protected Areas into the RBMP.
- Ensure that the remaining free-flowing and unaltered stretches of rivers are protected for their biodiversity and ecological values and not left open to further hydropower development and accommodations to fit inland navigation.
- Systematically integrate quantitative elements in water use management, including through defining and implementing ecological flows, and promote ecosystem based measures to tackling impacts of floods and droughts events, which significantly increased over the past 10 years.
- Ensure that any existing and future EU climate and energy policies are compatible with the WFD by considering ecological impacts on the affected water bodies and yielding synergies and co-benefits for both policy areas.
- Ensure there are in place sufficient Basic Measures and any additional Measures needed to address agricultural diffuse pollution, and that there are mechanisms adopted to secure compliance with these measures.
- Include basic WFD measures in the cross-compliance system of the Common Agricultural Policy.
- Ensure that Member States continue to report success towards Good Status as required by the WFD ‘One Out All Out’ Principle. This principle is one of the underlying and most indispensable principles of water management ensuring in a comprehensive manner the Good Status of European Waters. Use of ‘alternate success factors’ does not represent achievement of Good Status.
- Where time exemptions have been used, Member States must set out a timetable and plan by which the exemptions will be overcome within the 2nd cycle RBMP. Where ‘natural conditions’ has been used as a reason for employing exemptions delaying achievement of Good Status, there should be clear justification to show that the correct measures have been taken to overcome the identified pressures in the RBMP.

INTRODUCTION

Constituting only about 2% of the water on the planet, freshwater proves essential for human existence, and provides a resource base for nature and our economy. It nevertheless remains under increasing pressures from various human activities, such as water abstraction, pollution and dams, and increasingly also climate change, leading to freshwater biodiversity disappearing at a rapid pace.

The WWF Living Planet Report (2014)³ found that freshwater species are declining at a faster rate (76%) than species in any other ecosystems.

The EU Water Framework Directive (WFD) is a globally significant piece of legislation which provides Europe with a framework for integrated management of our water environment. Its ambition is visionary: **it provides a framework for true integrated water management – ensuring all the issues affecting water bodies are addressed in one plan**; it puts ecological health as its indicator of success; it sets targets for the achievement of good health (all water bodies to reach good status by 2015 or 2021); it requires for stakeholder engagement (providing ownership and sustainability opportunities).

WWF believes that proper implementation of the WFD ensuring the achievement of environment objectives is still possible across Europe, and furthermore, that it is essential if we are to secure a healthy future for our society and economy to thrive.

However, today in 2015, despite a 15 year implementation phase, **only 53% of European water bodies are expected to meet Good Ecological Status**; a meagre 10% improvement on the 2009 baseline figures of 43% Member States (MS) are falling significantly short of reaching the WFD target of all water bodies at Good Ecological Status by 2015⁴.

A number of barriers to achieving good status were identified in 2012 European Commission's assessment of 1st River Basin Management Plans (RBMPs)⁵ and more recently in Commission's assessment of MS' Programmes of Measures⁶. In addition to pollution, also by new, largely unknown, groups of substances (e.g. pharmaceuticals, endocrine disruptors), hydromorphological and

water quantity related pressures, mostly driven by unsustainable practices of agriculture, energy production, transport and industry, the implementation of WFD was significantly challenged by the low level of ambition qualified by extensive use of exemptions, by which EU MS were postponing much needed management measures and setting less stringent objectives; coordination and governance mechanisms were not clear and RBMPs lacked concrete measures and economic evaluation of such measures; there was a lack of transparency about decision making, particularly around stakeholder participation; as well as poor integration with other policies.

Why we must act now:

- If all European water bodies would reach good ecological status by 2015, the expected total yearly benefits might range between €2.82 billion and €37.3 billion per year, with an average value of €20 billion per year.⁷
- Agriculture and food production account for 24% of abstracted water supplies, but in some southern European regions, this can rise to more than 80%⁸.
- Diffuse pollution from agriculture significantly affects more than 40% of Europe's rivers and coastal waters and one third of lakes and transitional waters⁹.
- Pressures from hydropower, navigation, agriculture, flood protection and urban development leading to physical alterations of water bodies and habitats, are the most commonly occurring pressures in water bodies. They affect around 40% of rivers and transitional waters and 30% of lakes¹⁰.
- 37% of European freshwater fish species are threatened and over two-thirds of freshwater habitats are in unfavourable conservation status¹¹.

Based on assessments and bilateral meetings with MS the European Commission proposed detailed recommendations¹² for actions to be carried out by MS in view of the second cycle RBMPs scheduled to be adopted at the end of 2015 and currently subject to public consultations. **WWF EPO worked with WWF National Offices, Danube Carpathian Programme Office and WWF European Alpine Programme in Austria, England, Poland, Slovenia¹³, Slovakia, Spain and Sweden**, where the draft second cycle RBMPs were assessed to understand the progress that MS have made following on from the recommendations of the Commission as well as the barriers and opportunities at a country scale. Case studies from evaluated MS, which are presented in this briefing, will show **how little or no progress has been**

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made at addressing the main barriers to WFD implementation and achieving Good Status and how more effort is needed to reverse this

OVER-ABSTRACTION FOR IRRIGATION

The issue

The Mediterranean climate of Spain together with a great pressure from water uses has brought the country in situations of water scarcity many times. In this scenario, which will worsen with the impact of climate change, agriculture takes up 63% of water used – in the Guadalquivir basin reaching up to 90%, – and 83% of the demand. 15% of farming land is irrigated and is responsible for up to 60% of the production, but in many basins it is also responsible for over-abstraction. Around half of Spanish water bodies have not yet reached the Good Status and for most of them exemptions have been applied postponing the objective until either 2021 or 2027.

Despite this situation, even in heavily over-abstracted basins like the Guadalquivir, where the gap between the demand and available resources goes beyond 800 mm³/year, new irrigated fields are being proposed. According to the Ministry of Agriculture, Food and the Environment, the existing RBMPs foresee that 730.000 hectares of new irrigated fields will be put in place by 2027. This area comes on top of an existing area of 3.700.000 hectares. More than half of the new area proposed for irrigation is in the Ebro basin, and it would require the building of around 40 new dams or an increase in capacity of existing dams.

How is the problem being tackled?

Despite the fact that Spanish Water Law includes the mandate to use flow meters for all water abstractions and uses for the Spanish River Basin Authorities (RBAs), there is no specific budget in the Programme of Measures of the 2nd cycle draft RBMPs foreseen for the improvement of control of abstractions through the use of flow meters. The number of RBA that request information on water abstraction volumes is very small. Currently, there is also no updating mechanism for the water permits addressing real/actual demand and available resources. Few Irrigators' Communities have their permits reviewed, and only for groundwater bodies declared "in risk of not achieving Good Status" permits are adapted to resources actually available.

Moreover, in all Spanish River Basin Districts (RBDs), there is still a high amount of non-regulated (no official permit) water use for

trend and allow European waters to be brought to Good Status by 2021.

irrigation (especially for the case of Irrigated Areas developed by the Spanish Government, previously to the 1985 Water Law) and illegal abstraction of groundwater. There is serious inaction and lack of control of the groundwater abstractions in all Spanish RBDs, despite this being mandatory for the RBAs. Although existing regulations are clear about the need to register all water rights, authorities don't ensure its enforcement, and no specific measures are adopted to face the problem of water



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abstraction control. This is especially relevant for Spain because in the majority of RBDs, illegal water use leads to over-abstraction.

As regards irrigation in particular, most Spanish Programmes of Measures (PoMs) include construction of new dams and modernisation of irrigation systems as complementary measures. Dams are included to ensure supply of water to the agricultural sector; the Spanish law namely foresees that the RBMPs must achieve the double objective of satisfying all the demands defined by the planning process and achieving Good Status of water bodies. Modernisation of irrigation is included as a way to save water. However, there is no proof that water has been saved with modernisation, on the contrary it has served to further intensify the use of water in agriculture, as WWF-Spain shows in its recently launched report "Modernization of Irrigation: a Bad Business for

Nature and Society”¹⁴, there are no data on its role to reduce diffuse pollution. Both measures however take up most of the budget of the current RBMPs and in most cases also of European funds (European Agricultural Fund for Rural Development (EAFRD)). They are not sufficiently justified and are clearly against WFD objectives.

WWF Recommendations:

- Change Spanish water law to ensure environmental objectives are placed above demand satisfaction and sector objectives, and ensure law enforcement and compliance;
- Apply cost recovery to avoid mega-projects being built such as dams and transfers, or useless modernisations;
- Improve characterisation of water bodies and e-flows definition;
- Improve modernisation of irrigation: better projects, better before and after evaluation, increase in knowledge of water use, and ensuring law compliance;
- Ensure all measures in the PoMs contribute to Good Status.

DIFFUSE POLLUTION FROM AGRICULTURE

The issue

Diffuse pollution from agriculture remains a major cause of the poor water quality currently observed in parts of Europe, significantly, it affects 90% of river basin districts, 50% of surface water bodies and 33% of groundwater bodies across the EU¹⁵.

Population and production place a significant pressure on the aquatic environment in **England**. Consequently only 17% of rivers in England are considered healthy¹⁶. The two biggest pressures on England’s freshwater environment come from the water industry and the agricultural and land management industry, who are each responsible for a failure of one third of rivers to be in good health¹⁷.

In March 2014, the England’s Environment Agency set out evidence which showed the impact of agricultural production on the aquatic environment¹⁸. It showed that the biggest impact from agriculture was on water quality, due to soils carrying nutrients (particularly phosphates, and also nitrates) and pesticides running off agricultural land and into water courses. The Environment

Agency report showed that the following Protected Areas are at risk in England due to agriculture:

- 33-44 Bathing Waters due to faecal bacteria from grazing animals (the 2nd biggest pressure affecting Bathing Waters);
- 41 (50%) Natura 2000 sites (UK and European protected conservation sites) due to nutrients and sediment;
- 195 (32%) of Drinking Water Protected Areas due to pesticides, nitrogen compounds and algae/eutrophication;
- 130 (72%) of Groundwater Safeguard Zones due to nitrates and pesticides;
- 23 (22%) of Shellfish Waters are at risk due to bacteria from grazing animals.

How is the problem being tackled?

In 2009, first cycle RBMPs set out how Good Status could be met using existing measures based on voluntary and incentivised approaches to overcome pressures. During the first cycle, these approaches have demonstrated an observed improvement in sediment loads in catchments where voluntary measures have been put in place, compared to where they have not been implemented¹⁹. However, the approach has not reaped any movement towards Good Status in WFD elements. The 2009 Plans stated that where voluntary measures were not sufficient to meet Good Status, regulatory measures would be put in place in the form of Water Protection Zones. This has not yet occurred.

Furthermore, there is mounting evidence that application of such voluntary approaches must be underpinned by compliance with current baseline regulation²⁰. For example: Research by the National Farmers Union in 2011 indicated that non-compliance with Nitrates Directive requirements may be as high as 45%²¹; analysis of Environment Agency catchment survey data indicated that 90% of observed diffuse pollution incidents did not trigger regulatory action²²; and a 2010 National Audit Office review recommended that the Environment Agency take urgent action to raise awareness, target incentives and enforce the legal responsibilities of farmers²³.

In 2011, WWF-UK partnered with Defra and the Rivers Trusts on a Strategic Evidence Project²⁴ that explored through collaborative research with farmers, the effectiveness of current measures to tackle diffuse pollution from farms and fields. A clear conclusion of that work was that voluntary, sector-led initiatives can only be effective if built on a fair and level playing field of compliance with the statutory legislation.

In 2014, WWF-UK has commissioned an independent assessment of farm compliance with water protection legislation including the Nitrates

Directive, Silage, Slurry and Agricultural Fuel Oil Regulations and Good Agricultural and Environmental Conditions (GAEC) under Cross Compliance. In the absence of robust quantitative data, the author used expert opinion to estimate the proportion of farmers complying with key GAEC rules and other regulations. The report also investigated mechanisms to secure compliance, and how far compliance may take us towards achieving GES in the aquatic environment. In line with earlier evidence, the report concluded:

- It was estimated that farmer compliance with England's water protection legislation may be between 70 and 80% on average, although in some cases may be as low as 57% (incorporation of organic manure, slurries and sewage sludge when spread to bare soil or stubble)²⁵.
- It found that the Scottish targeted enforcement model of General Binding Rules was successful in bringing 85% of farmers inspected into compliance and that farmers and representative bodies viewed the Scottish approach favourably, regarding the process as balanced and fair;
- It suggested that, while legal compliance with the current baseline legislation will go some way towards improving the health of our waters, this alone will not be sufficient to address the scale of the problem.

After reviewing England's 2009 RBMP and holding a bilateral with the UK, the European Commission recommended that the UK develops a clear strategy that defines the basic/mandatory measures for farmers as well as additional supplementary measures that can be financed^{26,27}.

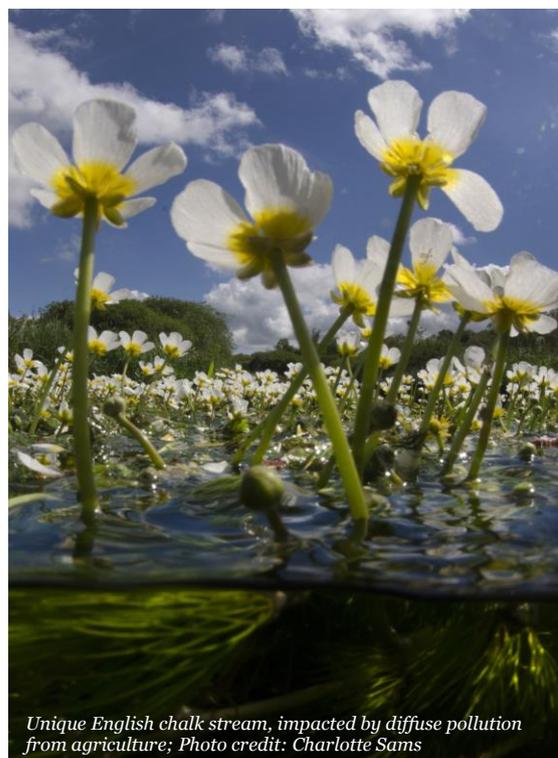
Following on from the Commission's recommendations, Defra set up a 'Water and Agriculture' group of stakeholders to consider options including new measures to address diffuse agricultural pollution. In a Ministerial meeting in July 2014, Defra promised a consultation, to be published alongside the draft RBMPs, to set out the actions including those to smarten the regulatory framework to improve adoption of basic farm practices. This has been delayed and will not be published during the RBMP consultation process. Consequently there are no new measures offered within the draft RBMPs.

The 2015 draft RBMPs therefore still lack effective PoMs and recharging mechanisms under the Polluter Pays Principle to deal with diffuse pollution from agriculture. They include no further measures or mechanisms since the first cycle RBMPs. Therefore, they fail to set out how any improvement towards Good Ecological Status (GES) will occur over the 2nd cycle to 2021. Furthermore, the tools that are currently used are not risk or impact based – but reactionary (i.e. reacting to pollution events

that cause significant damage, such as fish kills), which is contrary to the Scottish model of General Binding Rules.

WWF Recommendations:

- Target efforts to bring the 20-30% of non-compliant farmers in England into compliance, drawing on the successful Scottish model of General Binding Rules;
- Ensure that water and agriculture policies reflect the 'Polluter Pays Principle' and that basic legislation is sufficient to support further achievement of good health in our waters, as defined by the WFD;
- Provide targeted agri-environment incentives to deliver improvements in the water environment, including through the new Common Agricultural Policy (CAP) Pillar 2 Countryside Stewardship scheme;
- Continue support and resourcing for farm advice, such as Catchment Sensitive Farming, including enabling knowledge exchange with private and third sector schemes;
- Develop the means to enable and promote matched-funding from the farming and food & drink sectors for water stewardship voluntary initiatives in order to maximise impact and promote corporate leadership.



Unique English chalk stream, impacted by diffuse pollution from agriculture; Photo credit: Charlotte Sams

HYDROPOWER

The issue

The European Environment Agency (EEA) reports have identified more than 25,000 hydropower plants in Europe as one of the main drivers affecting the status of rivers²⁸.

In the 1st implementation report of the WFD,²⁹ hydropower had already been identified as one of the main drivers of hydro-morphological alterations, loss of connectivity and to significant adverse effects on the ability of survival of fish populations. The water ecosystem degradation and loss of biodiversity due to hydromorphological pressures from hydropower will continue in the future if infrastructure developments are implemented without taking full account of the requirements of the WFD and Birds and Habitats Directives³⁰. Drivers of hydropower development are among others also climate policies, which promote a switch to renewable energy sources, e.g. through feed-in tariffs. Assessments of the measures in the next planning cycle in several MS indicate that the problem is not being tackled, and hydropower risk remain one of the main causes of failing to reach Good Status.

How is the problem being tackled?

In 2011, the **Slovakian** government gave the green light to 368 small hydropower stations, out of which 77 plants were earmarked as “strategically important”, which means the construction can be realised regardless of nature conservation objectives. Additionally, Article 4.7 of the WFD is not yet correctly implemented in national legislation and many plants were constructed without an Environmental Impact Assessment. Several complaints were submitted to the European Commission as projects ignored legislation and used European funds incorrectly.

The government perceives hydropower as of overriding public interest, having priority over the WFD objectives and nature protection. The arguments and reasons for building new hydropower projects have not been explained in the first cycle RBMPs and also they are not included in the second cycle draft RBMPs. There is no information about the number of already constructed new hydropower plants and their impact on environment. The impact of hydropower plants on water status is not monitored and not included in pressure risk analysis in the updated RBMPs. Currently, an update of the governmental hydropower plan has been developed as an additional plan annexed to the RBMPs. The strategic document is now in the process of assessment according to Strategic Environment

Assessment (SEA) Directive (2001/42/EC). The preliminary proposals indicate no changes in application of the WFD requirements.

A similar trend is detected in **Austria**, where new hydropower installations are being planned by various actors. A WWF study³¹ showed that at least 120 large and small projects are planned or in legal approval procedures. According to this study around 50% of the projects are in conflict with the goals of WFD (non-deterioration) and other EU legislations (Birds and Habitats Directives). Notwithstanding, no nation-wide preplanning activities have been undertaken to balance economic and ecological interests.

Nearly half of Austrian rivers will fail to meet, or are in risk of not meeting Good Ecological Status (GES) due to hydromorphological alterations, mainly caused by existing hydropower plants and flood protection measures. The Austrian authorities argue that the construction of hydropower plants does not necessarily lead to a deterioration of GES and that the ‘balance of interests’ (overriding public interest) has to be investigated on the project level. Some federal states have implemented criteria or other commitments to give some guidance for new hydropower plants. The Austrian Federal Ministry of Agriculture, Forestry, Environment and Water Management has also developed a “Criteria Catalogue” for balancing public interests on the local/project level. While the criteria are scientifically sound, they are not legally binding. Furthermore, the criteria catalogue is not used as a comprehensive tool, but only when exceptions are to be applied, and since its adoption three years ago it has been used only rarely.

It should be recognised that alternatives do exist³², however they have not been considered sufficiently. Similarly, recommendations from the Commission ‘to provide a clear commitment in the 2nd RBMPs to properly prioritised hydromorphological measures and to a review of hydropower permits as restoration measures and the establishment of an ecological flow downstream of hydropower plants will be necessary to achieve good surface water status’³³. However, this is disregarded in the 2nd cycle draft RBMPs. A plan to support the development of large hydropower plants within a regional RBMP, the “Wasserwirtschaftlicher Rahmenplan Großkraftwerksvorhaben Tiroler Oberland”, is also not in line with the WFD. Furthermore, Austria is also facing infringement cases on hydropower development (such as “Kraftwerk Ybbs-Ferschnitz” (in connection with Natura 2000) and “Schwarze Sulm” (violation of non-deterioration clause and misuse of interpretation of ecological status identification, as

defined in RBMP). Despite that and the fact that hydropower is identified as the main driver for river deterioration in Austria, a strong push for hydropower development over recent years and the non-existence of legally binding Exclusion Zones, show that the goal to reduce the hydromorphological pressure from hydropower on Austrian rivers has failed.

Elsewhere in Europe, the story is repeated. Preliminary analysis shows that approximately 40% of **Slovenia's** surface water does not reach GES, mostly because of hydromorphological alterations.³⁴ Since 2004 Slovenia granted construction permits for nearly 500 small hydropower plants (sHPP); most of them are not passable for aquatic organisms. In 43% of sHPP ecologically acceptable flows (Qes) are defined, but there is no proper inspection and most of the water abstraction takes place at a time of low water flows. A key weakness in the 1st RBMP is that there was no appropriate assessment of small hydropower pressure as only watercourses with a catchment area greater than 100 km² were monitored. The methodology for designation of water bodies between 10 and 100 km² was developed by the Institute for Water in 2007 but never implemented. Slovenia should take into account cumulative impact of small HPP on water status. There is no draft of 2nd cycle RBMP yet, but from the significant water management issues (SWMI) document it doesn't look like this gap will be adequately considered.

The European Commission recommendations on tackling hydropower pressures seem to have been disregarded also in **Sweden**, where a large number of water bodies are affected by this pressure. The Commission called on Sweden to 'provide clear commitment in the RBMPs to properly prioritised measures and the review of hydropower permits'. Swedish water legislation is outdated, in particular in relation to hydropower and dams; 3800 hydropower facilities are without permit altogether (based on several hundreds of years of 'tradition'/private ownership) and 3654 facilities have permits based on water law from 1918.

Only 73 hydropower facilities have modern permits with some consideration for biodiversity. This situation is aggravated by the fact that hydropower permits never expire. As hydropower is extremely important for the Swedish electricity supply it is politically a hot topic, which splits almost all political parties in the country. Sweden has also reported to the Commission that it has water pricing in place to ensure cost recovery from hydropower pressure, however this is not the case. The only existing water pricing are the tariffs municipal

households pay for provision of water and for wastewater treatment (so called water fees).

WWF Recommendations:

- Ensure that public subsidies and feed-in tariffs for hydropower are only granted after a thorough screening of risk associated with the planned hydropower facilities. This includes screening risk against deterioration of ecological status and assessment of more suitable alternatives (including through energy efficiency measures);
- Develop and implement with support of RBMP a strategic planning approach for hydropower to spare the most ecologically valuable river stretches from hydropower impacts (no go areas and other zones where particular care must be invested when designing hydropower projects should be defined);
- Enshrine no go areas, e-flows and connectivity requirements in national legislation;
- Improve transparency in application of Article 4.7 and ensure public participation in decision-making;
- Facilitate sharing of experiences on Article 4.7 (including: decisions of overriding public interest; calculation of benefits from new installations and benefits for the environment from achievement of environmental objectives);
- Increase compliance-checking and initiate more infringement cases for breaking the requirements of Article 4.7 of the WFD, Article 6.2-4 of the Birds and Habitats Directives and the SEA/EIA (Environmental Impact Assessment) Directives.

WATER PRICING AND COST RECOVERY

The issue

One of the mechanisms of WFD for ensuring the long term sustainable management of water resources is ensuring that different water users contribute to the recovery of the costs of water services (including households, industry and agriculture) in accordance with Polluter Pays Principle and that water pricing is put in place reflecting the true value of water (Article 9 of the WFD). The first cycle of RBMP implementation showed that incentives for more efficient water use and transparent water pricing are not applied across all Member States and water-using sectors, also because of a narrow interpretation of the concept of

‘water services’ by some MS.³⁵ In a recent ruling the EU Court of Justice (Case C-525/13), however, confirmed a broad interpretation of water services which renders cost recovery principle applicable to a wide range of service (not only drinking water and waste water treatment, but e.g. also abstraction, impoundment, storage, etc.) that may have an impact on water and could undermine the objectives of the WFD. If a MS does not apply cost recovery to a given service it needs to justify this exemption in the RBMP and set out clear measures for achieving the WFD objectives, which should not be compromised by excluding a certain activity from cost recovery³⁶.

How is the problem being tackled?

In **Slovakia** economic analysis of water use has not been developed in compliance with Article 5 and Annex III of the WFD. It does not contain appropriate and sufficient information (or the latter is missing) needed for the cost recovery assessment of all relevant water services having impact on water status. Cost recovery was calculated only for drinking water services including waste water treatment and surface water maintenance, but without calculating environmental and resource costs. Economic analysis has been developed separately from the technical pressures and impacts analysis. The costs were estimated only for implementation of the Directive 91/271/EEC, programme of hydromorphological measures and for programme of waste water treatment plants designed for the Protected Area Žitný ostrov. A cost-effectiveness analysis of the potential measures for achieving the environmental objectives has not been carried out at all due to inappropriate/ineffective PoMs and lack of estimation of the costs of measures. Therefore, Article 9 of the WFD is implemented insufficiently and PoMs do not contain appropriate measures for the implementation of the water pricing policy.

Spain has also failed to apply cost-recovery instruments to the WFD, as was recommended by the Commission³⁷ and maintains cost-recovery exemptions for “projects of general interest” based on a pre-constitutional law. No volumetric abstraction water fee is foreseen to be broadly implemented across the country; only in modernised Irrigators’ Communities a combination of surface and volume fees is being implemented. Groundwater continues to be abstracted, the cost of pumping being the only cost for abstraction, and many RBMPs consider this to constitute cost recovery.

Furthermore, water pricing does not stimulate water saving in the farming sector. Water saving is somewhat incentivised by the price of electricity for modernised Irrigators’ Communities or for

groundwater pumping. However, recent changes introduced by the new tax reform allow farmers to deduct 85% of the electricity tax, lowering their energy costs. WWF also considers the current water pricing as a hidden subsidy that is not openly and transparently justified.

A new tax has been introduced for hydropower production, but it taxes energy production and not the volume of water used, thus going against renewable energy production and is also not stimulating efficient water use.

In the consulted dRBMPs (for the Guadiana and Guadalquivir RBDs) there is no full cost recovery of environmental and resource costs. Environmental costs related to energy have not been clearly included. The cost of diffuse pollution is considered to be recovered in the cost of the modernisation works, with all the limitations it implies. However, no evaluation of the cost of diffuse pollution of non-modernised areas has been carried out. Much progress is thus needed in the 2nd cycle RBMP for the cost recovery and pricing to be put in line with the WFD.

WWF Recommendations:

- Introduce adequate water pricing in line with WFD, reflecting the true value of water and ensuring cost recovery in accordance with the Polluter Pays Principle;
- Ensure the contribution of different water users, including agriculture, to the cost recovery for the water service, as interpreted by the EU CJ in its recent ruling on water services (Case C-525/13);
- Demonstrate good practice examples of WFD-compliant implementation of economic instruments;
- Commission should increase the pressure on Member States with regards to the implementation of Article 9 on cost recovery and water pricing.

DEROGATIONS

The issue

The implementation of the WFD is significantly hampered by a wide spread use of exemptions, by which the MS are postponing implementation of much needed measures (Article 4.4 WFD) or setting less stringent objectives (Article 4.5 WFD), including through the designation of water bodies as Heavily Modified (Article 4.3). Strict conditions defined by WFD for exemption for new

modifications (Article 4.7 WFD) are also disregarded or misused. In its recent Communication on the Water Framework Directive and the Floods Directive, **the Commission assessed that exemptions are applied too widely and without appropriate justification, and also without establishing concrete measures necessary to progress towards Good Status³⁸. The draft 2nd cycle RBMPs evaluated do not show significant improvement in this respect.** There is also a tendency among MS to apply the exemptions, in particular the time bound exemptions, on the basis of measures or a PoM not being affordable, instead of assessing the disproportionality of measures as stipulated in the WFD, which requires MS to perform a general balancing exercise between the costs of the measure and its benefits.

How is the problem being tackled?

In the draft of the 2nd RBMPs in **Slovakia**, a high number of Article 4.4 exemptions are applied. The time bound exemption is suggested for 640 water bodies (36% of all surface water bodies) not achieving good ecological status by 2015 and 16 surface water bodies not achieving good chemical status. An Article 4.5 exemption is applied for one surface water body to not achieve Good Chemical Status. A groundwater exemption according to Article 4.4 is applied for 11 water bodies in bad Chemical Status and three water bodies in bad quantitative status. It seems that exemptions are applied for all water bodies identified at status assessment as bodies not achieving Good Status. The deadlines are extended to 2021 – 2027.

Moreover, the process of the application of exemptions is not transparent, not connected with setting of environmental objectives at water body level and the criteria are not clearly defined. The consequences of non-action before 2021 were not explained. The exemptions are also not adequately justified. The justification for exemption was described only in three cases in the RBMPs. Two reasons are alleged for all exemptions – technical feasibility and economic consideration. No further details are provided in the draft RBMPs.

Exemptions under Article 4.7 are not being applied in 2nd cycle dRBMPs despite plans for vast infrastructure projects (e.g. flood protection, energy). Instead of assessing the ecological impact of such projects before implementation, the Ministry for the Environment plans to determine impact only after deterioration has occurred. They justify this by stating they are not sure that these infrastructure projects will cause deterioration. Article 4.7 exemptions are also not applied in the permission process for construction of small hydropower schemes.

Assessment of 2nd cycle RBMPs in **Poland** similarly shows that Article 4.4 exemptions have been applied widely. Rationale has been provided, however in some parts non-comprehensive and rather cursory and unconvincing (e.g. sometimes there is nothing more than stating that measures are ‘technically unfeasible,’ especially in relation to lakes). Lack of knowledge on causes of bad status and pressures to be tackled is often used as a reason for derogation. Another rationale for exemptions often indicated is the necessary sequence of actions (e.g. the necessity of improving the condition of tributaries before improving the condition of the lake itself). Moreover, there is no analysis of whether the measures planned at the time of applying the Article 4.4 exemptions have actually been implemented or defined objective achieved. For many water bodies the exemption is repeated from the previous planning cycle, with no new rationale.

Exemptions according to Article 4.5 seem more convincing; they have been applied for approximately 10 lakes, and the justification has been provided. They include specific coastal lakes and several lakes surrounded by forests.

There is on the other hand a very wide application of exemptions for new modifications (Article 4.7). The same rationale is repeatedly used in the draft plans: overriding public interest (with indication of the area concerned, e.g. flood prevention) and the lack of alternative solutions. These rationales are in line with WFD’s requirements, but their quality and validity are in most cases very doubtful (e.g. priority of the indicated public interest is sometimes assumed without analysing the individual situation (e.g. the tendency to assume *a priori* that flood prevention always has priority over the protection of water bodies); use of incorrect data in justifications; lack of more substantial analysis of alternatives; strikingly scarce indication of actions limiting negative influence; justifying investments only with the rationale of them being part of Flood Risk Management Plan (FRMP), without assessing if there is an overriding public interest, or alternatives exist).

Designation of Heavily Modified Water Bodies are also not in line with Article 4.3, although it has improved from the previous cycle. The analysis of fulfilment of Article 4.3 criteria, performed by individual Regional Water Management Authorities, is faulty, in some cases more than the others: from totally neglecting some of the obligatory elements of Article 4.3, through general and completely unconvincing rationales, to setting the multi-criteria analytical method in a manner that from the outset the arguments for maintaining the modifications are preferred over the arguments

for re-naturalisation of hydromorphology. Moreover, reasons for final designation of HMWB have still not been provided in the 2nd cycle dRBMP; this information is only available as the source material provided on the request of the interested parties.

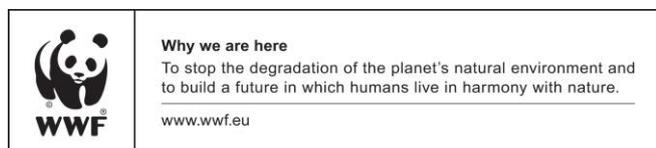
The above mentioned problems are additionally amplified by the strong pressure from large-scale hydromorphological changes to rivers (caused by regulations and so called river maintenance) being completely ignored in the 2nd draft RBMPs in Poland. As a result, cumulative environmental impact assessment of planned new modification is underestimated.

WWF Recommendations:

- Improve the process of setting environmental objectives on water body level based on identification of significant pressures, the determination of gaps in achievement of Good Status and implementation of necessary measures;
- Improve transparency of the planning process, availability of background information and public participation in the development of RBMPs;
- Ensure that all derogations and exemptions from WFD objectives are applied restrictively and in exceptional cases only, as repeatedly confirmed by EU Courts in relation to EU legislation, in order to uphold the purpose and effect of the WFD;
- Intensified action is needed by the European Commission to prevent the misuse and overuse of exemptions, also through improved inspection, surveillance and legal action against MS.

- ¹ EEA (2015) The European environment — state and outlook 2015: synthesis report, European Environment Agency, Copenhagen.
- ² See findings from the EC (2012) Report from the Commission to the European Parliament and the Council on the Implementation of the Water Framework Directive (2000/60/EC) River Basin Management Plans (COM(2012)670 final) and EC (2015) Communication from the Commission to the European Parliament and the Council on the Water Framework Directive and the Floods Directive: Actions towards the 'good status' of EU water and to reduce flood risks (COM(2015) 120 final).
- ³ See: http://wwf.panda.org/about_our_earth/all_publications/living_planet_report/
- ⁴ EC (2012) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Blueprint to Safeguard Europe's Water Resources (COM/2012/673 final); EEA (2012) European waters — assessment of status and pressures (EEA Report No 8/2012), Luxembourg: Publications Office of the European Union.
- ⁵ *Op. cit.* COM(2012)670 final.
- ⁶ *Op. cit.* COM(2015) 120 final.
- ⁷ Mattheiß V., De Paoli G. and Strosser P. (ACTeon) (2012) *Comparative study of pressures and measures in the major river basin management plans in the EU, Task 4 b: Costs & Benefits of WFD implementation* (EU project), p. 35, 46.
- ⁸ EEA (2009) Water resources across Europe — confronting water scarcity and drought (EEA Report No 2/2009), European Environment Agency, Copenhagen.
- ⁹ EEA (2012) European waters — assessment of status and pressures (EEA Report No 8/2012), European Environment Agency, Copenhagen, p. 9.
- ¹⁰ *Ibid.*, p. 9, 43.
- ¹¹ EEA (2012) *Protected areas in Europe — an overview (EEA Report No 5/2012)*, European Environment Agency, Copenhagen.
- ¹² EC (2015) Commission Staff Working Document Report on the progress in implementation of the Water Framework Directive Programmes of Measures, Accompanying the document Communication from the Commission to the European Parliament and the Council The Water Framework Directive and the Floods Directive: Actions towards the 'good status' of EU water and to reduce flood risks (SWD(2015) 50 final).
- ¹³ For Slovenia assessment was conducted on the basis of the SWMI document and other available documents forming the basis for preparation of the RBMPs.
- ¹⁴ WWF/Adena (2015) *Modernización de Regadíos Un mal negocio para la naturaleza y la sociedad*; accessible at: http://awsassets.wwf.es/downloads/modernizacion_regadios.pdf (abstract is in English).
- ¹⁵ *Op. cit.* COM(2015) 120 final.
- ¹⁶ UK Environment Agency presentation to the Blueprint for Water coalition (6th March 2015) (personal communications).
- ¹⁷ UK Environment Agency (2013) *Reasons for Failure data, Challenges and Choices*.
- ¹⁸ UK Environment Agency (March 2014) *Progressing towards WFD objectives — the role of agriculture*.
- ¹⁹ UK Environment Agency (August 2014) *Catchment Sensitive Farming Evaluation Report (2006-2014)*.
- ²⁰ WWF (Dec 2014) *Investigating Agricultural Compliance Rates in England*.
- ²¹ National Farmers Union (February 2011) *Dairy Nitrate Vulnerable Zone Survey*.
- ²² RSPB (July 2014) *Catchment Walkovers; Observations of Pressures on the Water Environment*.
- ²³ UK National Audit Office (July 2010) *Environment Agency: Tackling diffuse water pollution in England*.
- ²⁴ Defra Strategic Evidence and Partnership Project, Component B Report (October 2011).
- ²⁵ Evidence was gathered using a survey of 45 hand-picked expert multi-sector farm advisory personnel.
- ²⁶ EC (2012) Commission Staff Working Document, Member State: United Kingdom, accompanying the document Report from the Commission to the European Parliament and the Council on the implementation of the Water Framework Directive (SWD(2012)379 Volume 29), p. 60-61.
- ²⁷ *Op. cit.* SWD(2015) 50 final.
- ²⁸ EEA (2015) *SOER 2015, European briefings, Hydrological systems and sustainable water management*, available at: <http://www.eea.europa.eu/soer-2015/europe/hydrological-systems>.
- ²⁹ EC (2007) Commission Staff Working Document, Accompanying document to the Communication from the Commission to the European Parliament and the Council 'Towards Sustainable Water Management in the European Union', First stage in the implementation of the Water Framework Directive 2000/60/EC (SEC(2007)362).
- ³⁰ Water management, Water Framework Directive & Hydropower, Common Implementation Strategy Workshop, Brussels, 13-14 September 2011, Issue Paper (final version).
- ³¹ WWF Austria (2010) *Ökomasterplan Stufe III – Schutz für Österreichs Flussjuwele*, available at: http://www.oekomasterplan.at/fileadmin/user_upload/pdf/Oekomasterplan_III.pdf.
- ³² *Op. cit.* WWF Austria (2010); WWF European Alpine Program (2014) *Save The Alpine Rivers!*, available at: http://assets.panda.org/downloads/wwf_study_save_the_alpine_rivers_c_wwf_2014.pdf.
- ³³ *Op. cit.* SWD(2015) 50 final.
- ³⁴ Stanič Račan D., Mohorko T., Urbanič G., Petelin Š., Đurovič B., Dobnikar Tehovnik M., Uhan J., Cvitanič I., Rotar B. (2014) *Priprava načrta upravljanja voda za vodni območji donave in jadranskega morja 2015 – 2021*.
- ³⁵ *Op. cit.* COM/2012/673 final, p 10; *op. cit.* COM(2015) 120 final, p 10; on practical knowledge on the state of water pricing in Europe, with a focus on the concept of cost recovery of water services, including environmental and resource costs see also EEA (2013) *Assessment of cost recovery through water pricing* (EEA Technical report No 16/2013), European Environment Agency, Copenhagen.
- ³⁶ See 'Analysis of Case C-525/13 – German water services Commission preliminary reaction' (Commission document for Strategic Coordination Group meeting, November 2014).
- ³⁷ *Op. cit.* SWD(2015) 50 final.
- ³⁸ *Op. cit.* COM(2015) 120 final, p.5.

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