

CONCEPT 14/2/2024

Non-paper 'Deterioration' WFD

Supported by: [Denmark], [Finland], [Germany], [Luxembourg and] the Netherlands

The Commission launched a proposal for a Directive amending the Water Framework Directive (WFD), the Groundwater Directive and the Environmental Quality Standards Directive (October 2022). At the end of 2023, under the Spanish Presidency, the members of the WPE held informal VTCs to discuss the Presidency's suggestions to modify the Commission proposal.

The Commission's proposal deals with several items that relate to the main goals of the WFD, in particular the obligation to prevent 'deterioration of the status of a body of water'. The Commission's proposal to add new or stricter EQS, impacts the application of the deterioration ban. 'Deterioration of the status' is not defined in the WFD. Instead, it is outlined in Court rulings.

As a general principle, we emphasize that we support the overall ambition of the WFD and the related directives. We do not aim to lower that ambition, nor an overall revision of the Directives. We merely aim to address two specific issues with the concept of 'deterioration of the status', that are both impacted by the current Commission proposal:

- 1) The ruling of the EU Court of Justice (C-525/20, 'France Nature', 2022) established that also temporary short-term impacts without lasting consequences should be taken into account when assessing programmes and projects, unless such impacts do not comprise a deterioration of the status of a body of water. Hence, every deterioration of status, no matter the duration, can only be authorized by applying Article 4(7) WFD. This is, however, not necessary to achieve the overall goals of the WFD. At the same time, this ruling hampers projects in water bodies to a significant extent. Moreover, this ruling may even affect projects, like renaturation of water courses, aimed at improving water quality and thus has an adverse consequence on the aim to reach good status. This problem is further aggravated by the proposal to add new or stricter EQS.
- 2) Further clarity of the concept of 'deterioration' is needed for projects that only relocate already existing pollution. The proposed new or stricter EQS should be achieved within clear deadlines. To this end, these EQS should be used when authorizing activities that cause an addition of these substances to water bodies. It is, however, undesirable that these EQS also apply to the authorization of specific activities that only relocate already existing pollution and do not cause an addition of these substances. Examples of such activities are discharging previously abstracted groundwater at building construction site onto surface water and discharges of previously abstracted cooling water. Another example is the redeposition of previously dredged sediments e.g. for flood protection. These activities should not be hampered by the EQS to the same extent as activities that do bring chemicals into the environment, as long as they do not cause a net negative effect (meaning there is no additional load, net increase in concentration, or extra exposure of previously isolated substances to surface water). This is specifically an unwilling outcome with regard to Persistent, Bioaccumulating and Toxic (PBT) substances which are already widespread in the environment (ubiquitous) and which already exceed the EQS. Moreover, there often is no (cost-efficient) way to remove these pollutants before relocation. This problem further aggravated by the proposal to add new or stricter EQS.

We are of the opinion that there is the need to clarify the concept of 'deterioration' in the WFD regarding the Commission's proposal. This is also mentioned in the Presidency Steering Note (6th December 2023). This concept should be clear in order to discuss the scope and consequences of the proposals of the Commission to its full meaning. To this end we propose to introduce a definition of 'deterioration of status'. This definition should be constrained in such a way that the overall goals of the WFD are not jeopardized.

As a starter for discussion we suggest the following definition (the first paragraph builds upon the Weser Court ruling (C-461/13), the second paragraph mitigates the recent ruling on temporary short-term impacts (C-525/20)):

Article 2 (43) 'Deterioration of the status of a body of water' means that the status of at least one of the quality elements within the meaning of Annex V to this Directive or of at least one of the pollutants within the meaning of Article 2 (24) of this Directive, falls by one class, even if that fall does not result in a fall in classification of the body of water as a whole. If the quality element or pollutant concerned is already in the lowest class, any deterioration of that element constitutes a 'deterioration of the status' of a body of water, unless caused by a relocation of ubiquitous pollutants without a net negative effect regarding those pollutants.

If the status of a quality element or substance deteriorates only for a short period of time, and the quality element or substance is expected to recover within a short period of time, and it is established that no long-term negative consequences are expected on the status of the concerned body of water, such fluctuation does not constitute deterioration of the status of a body of water.

Further clarification of 'net negative effect' and 'short period of time' is needed. Therefore, we propose to specify this in the relevant Guidance Documents.

We call for a discussion in the WPE on the proposal to include a definition of this concept of 'deterioration of the status' in the WFD.