Application of Directive 2000/60/EC, including the compliance with Art. 4.7

JASPERS Networking Platform
Training on environmental requirements for cohesion policy projects in the 2014-2020 programming period

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European Commission, DG Environment
Section F.5
Major Project Application


- **F.5.1** Ex-ante conditionality

- **F.5.2** Project causes deterioration or failure to achieve good status/potential?
  - **F.5.2.1** If ‘Yes’, provide assessment of impacts and explanation of how Article 4.7 conditions are fulfilled
  - **F.5.2.2** If ‘No’, attach Appendix 2 declaration

- **F.5.3** How does the project fit with the River Basin Management Plan's objectives established for the relevant water bodies?
EU Water Framework Directive (WFD)

Scope, objectives and tools

• **Scope**
  - Protection and management of all waters, including rivers, lakes, transitional-, coastal- and groundwater
  - Covering all impacts on waters

• **Objectives**
  - Protect and enhance water bodies
  - **Achievement of good status / potential**
  - No deterioration
  - Exemptions under certain conditions

• **Tools**
  - River Basin Management Plans and Programmes of Measures
  - Existing legislation: urban waste water treatment, nitrates from agriculture, habitats, etc.
  - Public participation
### What is WFD "Good Status"?

**Good surface water status**

<table>
<thead>
<tr>
<th>Good ecological status</th>
<th>Is an expression of the quality of the structure and functioning of aquatic ecosystems including: <strong>biological, hydromorphological and physico-chemical elements</strong></th>
<th>High</th>
<th>Good</th>
<th>Moderate</th>
<th>Poor</th>
<th>Bad</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good chemical status</td>
<td>Means meeting all <strong>environmental quality standards</strong> for chemicals set at EU level in Directive 2008/105/EC (priority substances) as amended by Directive 2013/39/EU</td>
<td>Good</td>
<td>Failing to achieve good</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Good groundwater status**

<table>
<thead>
<tr>
<th>Good quantitative status</th>
<th>Means ensuring a <strong>long-term balance</strong> between abstraction and recharge, protecting as well associated surface waters and ecosystems.</th>
<th>Good</th>
<th>Poor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good chemical status</td>
<td>Means meeting all standards for chemicals, either set at EU level (pesticides and nitrates) or at national level (threshold values)</td>
<td>Good</td>
<td>Poor</td>
</tr>
</tbody>
</table>
Classes

- HIGH
- GOOD
- MODERATE
- POOR
- BAD

Avoiding deterioration

Improving to "good status"

Courtesy Peter Pollard, Scottish Environment Protection Agency
Examples for modifications which may impact water body status

- Embankments (e.g. for floods protection)
- Impoundments (e.g. hydropower)
- Interruption of sediment transport
- Abstractions (surface- and groundwater)
New projects may impact WFD water body status

New hydromorphological modification
or
Alteration to the level of groundwater
or
New sustainable human development activity

May cause

Deterioration of water body status/potential
or
Non-achievement of WFD objectives

Project needs to meet conditions of WFD Article 4.7 for authorisation
CIS Guidance No. 36 (2017)
Exemptions to the Environmental Objectives according to Article 4.7

Available at https://circabc.europa.eu/sd/a/e0352ec3-9f3b-4d91-bdbb-939185be3e89/CIS_Guidance_Article_4_7_FINAL.PDF
F.5.2
Deterioration
Yes/No?

F.5.2.1
Provide assessment of impacts and explanation how Article 4(7) conditions are fulfilled

F.5.2.2
No deterioration
App. 2 declaration

No Article 4(7) Test required. Authorisation may be granted according to the WFD.

Project cannot be authorised according to WFD Article 4(7)

Project can be authorised according to WFD Article 4(7)
### Example 1 – Deterioration of overall status

**Starting point:** Overall ecological status determined by quality element in worst condition (in this case moderate).

**Effect due to modification:** Overall status may deteriorate due to deterioration of individual quality elements (in this example benthic invertebrate and fish fauna as an effect of deterioration of morphology), therefore triggering an Article 4(7) Test. The example includes in this case a change in overall status of the water body from moderate to poor.

<table>
<thead>
<tr>
<th>Quality elements</th>
<th>Biological quality elements</th>
<th>Hydromorphological quality elements supporting the biological elements</th>
<th>Chem. and phys. chem. quality elements supporting the biological elements</th>
<th>Overall ecological status</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Aquatic flora</td>
<td>Hydrology, Morphology, Continuity</td>
<td>General conditions, River basin specific pollutants</td>
<td></td>
</tr>
<tr>
<td>Starting point</td>
<td>2</td>
<td>worse than 2**</td>
<td>2**</td>
<td>3</td>
</tr>
<tr>
<td>Effect due to modification</td>
<td>2</td>
<td>worse than 2**</td>
<td>worse than 2**</td>
<td>2**</td>
</tr>
</tbody>
</table>

**F.5.2**
Deterioration  
Yes/No?

**F.5.2.1**
Deterioration - provide assessment of impacts
F.5.2 Deterioration Yes/No?

**Surface water body: Example for deterioration**

### Example 2 – Overall status remains but deterioration of a biological quality element

**Starting point:** Overall ecological status determined by quality element in worst condition (in this case good).

**Effect due to modification:** Overall ecological status maintained as good but one biological quality element may deteriorate, in this example fish fauna due to deterioration of the quality elements hydrology and continuity, therefore triggering an Article 4(7) Test.

<table>
<thead>
<tr>
<th>Quality elements</th>
<th>Biological quality elements</th>
<th>Hydromorphological quality elements supporting the biological elements</th>
<th>Chem. and phys. chem. quality elements supporting the biological elements</th>
<th>Overall ecological status</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Aquatic flora</td>
<td>Benthic invertebrate fauna</td>
<td>Fish fauna</td>
<td>Hydrology</td>
</tr>
<tr>
<td>Starting point</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Effect due to modification</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>2*</td>
</tr>
</tbody>
</table>

**F.5.2.1**

Deterioration – provide assessment of impacts

**Relevant at quality element level!**
F.5.2
Deterioration
Yes/No?

Example 5

**Starting point:** Overall groundwater quantitative status is classified as "good" since each criterion meets the conditions for "good".

**Effect due to modification:** Due to the modification one criterion is expected to deteriorate from "good" to "poor" (in this example due to the damage of a groundwater dependent terrestrial ecosystem), as well as the overall quantitative status, therefore triggering an Article 4(7) test.

<table>
<thead>
<tr>
<th>Criteria</th>
<th>1) Available groundwater resource is not exceeded by the long term annual average rate of abstraction</th>
<th>2) No significant diminution of surface water chemistry and/or ecology resulting from anthropogenic water level alteration or change in flow conditions that would lead to failure of relevant Article 4 objectives for any associated surface water bodies</th>
<th>3) No significant damage to groundwater dependent terrestrial ecosystems resulting from an anthropogenic water level alteration;</th>
<th>4) No saline or other intrusions resulting from anthropogenically induced sustained changes in flow direction;</th>
<th>Overall quantitative groundwater status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Starting point</td>
<td>G</td>
<td>G</td>
<td>G</td>
<td>G</td>
<td>G</td>
</tr>
<tr>
<td>Effect due to modification</td>
<td>G</td>
<td>G</td>
<td>P</td>
<td>G</td>
<td>P</td>
</tr>
</tbody>
</table>

G: Good; P: Poor;
F.5.2.1 Deterioration - Explain how conditions of WFD Article 4.7(a)-(d) are fulfilled

**Conditions to be fulfilled for project authorisation in case project may deteriorate water body status**

*WFD Article 4.7(a)-(d)*
F.5.2.1 Deterioration - Explain how conditions of WFD Article 4.7(a)-(d) are fulfilled

**OBJECTIVE**

→ Despite deterioration achieve best possible ecological condition by applying mitigation measures

**Examples:**

- Sufficient remaining flow in case of water abstractions
- Fish migration aids at dams
- Natural instead of armoured river banks
F.5.2.1 Deterioration - Explain how conditions of WFD Article 4.7(a)-(d) are fulfilled

*Article 4.7(d)*

the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option

**OBJECTIVE**

→ ensure that the best environmental option is chosen to achieve the benefits of the intended project

Relevant at **strategic level**, e.g.

- Relevance of overall policy context (transport, renewable energy, ...)
- Alternative project locations
- Link to SEA

Relevant at **project level**, e.g.

- Alternatives in the project design with less environmental impacts
- Link to EIA
F.5.2.1 Deterioration - Explain how conditions of WFD Article 4.7(a)-(d) are fulfilled

Article 4.7(c)
the reasons for those modifications or alterations are of **overriding public interest and/or**
the **benefits** to the environment and to society of **achieving the objectives** set out in
paragraph 1 are **outweighed by the benefits of the new modifications** or alterations to
human health, to the maintenance of human safety or to sustainable development

**OBJECTIVE**

→ ensure that deterioration of the public good is only allowed for a good reason

- **Range of "public interests"** exists (e.g. health, energy, security, environment)
- **Overriding public interest** – can be reasonably considered that simple
declaration without well-grounded justification is not sufficient
- **Weighing of interests** - project benefits against project impacts
  - "Water costs" (i.e. negative effects of the project) to be weighed against project benefits
  - Appropriate mix of qualitative, quantitative and monetised information
- **Public consultation** helps
F.5.2.1 Deterioration - Explain how conditions of WFD Article 4.7(a)-(d) are fulfilled

*Article 4.7(b)*

“the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years”

**OBJECTIVE**

→ allow public scrutiny in the context of river basin management planning

- Ensuring that use of Article 4.7 exemptions is transparent and traceable
- MS not required to wait for next RBMP to authorise project, however,
- **Benefits** of including planned/envisaged projects in draft RBMPs
  - Allows for assessment of interaction with other projects and developments
  - Making best use of public participation process during RBMP elaboration
  - Reduce likelihood that interested parties will challenge subsequent decision on project
  - Also beneficial to include projects which may not cause deterioration
F.5.3

How does the project fit with the River Basin Management Plan's objectives established for the relevant water bodies?

**Relevant issues** to be addressed can inter alia include

- What's the **current water body status/potential** according to the RBMP?

- What's the **environmental objective** for that water body according to the RBMP? Is an exemption applied (e.g. time-extension according to Article 4.4)?

- Is the project **expected to cause deterioration** of status?

- **Can** water body **status be maintained** / good status be achieved despite the project?

- May the project have impacts also on **other water bodies**?

- **Cumulative impacts** with existing pressures or other projects?

- etc.
Potential for streamlining of assessments WFD, HD and EIA
Important issues related to WFD Art. 4.7

- **Assessment required in advance** whether planned project may cause deterioration / non-achievement of WFD objectives
- In case of expected deterioration/non-achievement: Project needs to meet Art. 4.7 conditions for authorisation
- Completing an EIA does not guarantee the fulfilment of the WFD obligations since specific assessments are needed, however
- **Potential synergies** with EIA/SEA and Habitats Directive are significant - MS are encouraged to exploit them at national level (e.g. data collection, consultation processes)
- National legal frameworks should allow for **effective application**
- **Technical and environmental expertise** needed – exchange and expertise of / with River Basin Management / water authority
- **Transparency** is important and the assessment and conclusions need to be documented in the River Basin Management Plan
Thank you for your attention!

http://water.europa.eu/policy

More Information

For info or further questions on this seminar and the activities of the JASPERS Networking Platform, please contact the JASPERS Networking and Competence Centre at the following email:

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JASPERS Networking Platform:    www.jaspersnetwork.org