

# Response to the Public Consultation on the Water Framework Directive Fitness Check.

12 March 2019

## About Energy UK

Energy UK is the trade association for the GB energy industry with a membership of over 100 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership covers over 90% of both UK power generation and the energy supply market for UK homes. We represent the diverse nature of the UK's energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 27 million homes and every business in Britain. Over 680,000 people in every corner of the country rely on the sector for their jobs, with many of our members providing long-term employment as well as quality apprenticeships and training for those starting their careers. The energy industry invests over £12.5bn annually, delivers around £84bn in economic activity through its supply chain and interaction with other sectors, and pays £6bn in tax to HM Treasury.

## General comments

The River Basin Management Planning (RBMP) process, as well as the structure of environmental objectives resulting from the proper application of the range of mechanisms within WFD has to date provided an overall effective, efficient and flexible framework enabling Member States to strike an appropriate balance between water use, and protection/improvement of the aquatic environment.

Below, we provide our view of some features of WFD with regard to the evaluation criteria set by European Commission (EC) namely "effectiveness", "efficiency", "coherence" and "EU added value".

Although so far, the progress on water status shows mixed results and is partially masked by the "one out all out" principle we think the directive provides an effective and efficient framework towards achieving its objectives.

- With regard to effectiveness, it is important to keep in mind that aiming for good ecological potential of designated Heavily Modified Water Body (HMWB) as well as the defined exemptions (Art. 4.4-4.7) are integral elements of the WFD's objective structure. Justified designations of HMWB as well as justified use of exemptions do not indicate lack of effectiveness but rather reflect the correct application of the WFD's mechanisms in achieving appropriate balance. The energy sector has many long-life water-dependent assets including both hydro and thermal power plant playing a vital role in delivering energy policy for decades to come some of whose continuing operation relies on the application of such mechanisms.
- With regard to both effectiveness and efficiency, we strongly support the classification of status and the definition of environmental objectives based on biological quality elements. A clear focus on biological quality elements is necessary for both securing ecological improvement and the application of well-targeted and cost-effective measures. Consequently, hydro-morphological quality criteria (such as river flow and continuity) should remain supporting criteria with regard to GES and GEP and not be promoted to quality elements in their own right.
- The designation of HMWB is a cornerstone of the WFD allowing sustainable management of water uses which are deemed beneficial in their national or regional context and also to take into account requirements and ambitions from other EU legislation (e. g. renewable energy targets). This is essential to achieve overall efficiency across societal objectives. As a consequence, we strongly

support that HMWB is a water-body-category in its own right with Member States being free to designate on a case-by-case basis without regard to arbitrary constraints (such as limits on numbers or percentage areas so designated). In line with the designation test the resulting objective of “good ecological potential” must in turn avoid significant adverse effects on relevant beneficial activities. Adverse effects should include adverse effects resulting both from the restrictions of operations for an activity (e.g. for the power sector generation or flexibility losses) as well as the costs of any associated mitigation or restoration measures. The consequences of restrictions and the costs of restoration and mitigation both together will determine whether an activity remains viable.

- It is vital to retain the Directive’s full range of mechanisms such as time derogations, less stringent objectives and means of allowing for new activities in order to achieve overall efficiency taking into account technical feasibility and proportionality of costs (e.g. including consideration of Cost-Benefit-Ratio). Time derogations are important to ensure sufficient knowledge on the site-specific river ecology and likely performance of measures is available for decision making within the Driver-Pressure-State-Impact-Response-Approach. This is necessary to avoid the implementation of unnecessary, ineffective or inefficient measures. Taking into account the future development of society and respective policies and objectives, the less stringent objective mechanism of art 4.5 and the mechanism of Art 4.7 in relation to deterioration will continue to be of paramount importance for overall efficiency in aiming for WFD objectives. For example, continued provision of affordable electricity within a decarbonising and reliable power system will inevitably require the continued and varying operation of existing water-dependent power sector infrastructure (thermal and hydro) and development of new water-dependent infrastructure. These, in combination with other non-power sector activity, may inhibit achieving good status or potential in particular water bodies but nonetheless provide an appropriate means of delivering wider societal policies including those relating to climate change, and energy. The concept of “overriding interest” allowing flexibility for Member States to weigh different public interests in the respective context is sufficient to deliver overall efficiency in respect of article 4.7. However, the efforts necessary to demonstrate that all preconditions have been met can be quite challenging for authorities and resulting legal uncertainties (e. g. Weser case) can undermine investments. We hope that the new CIS Guidance Document No. 37 will reduce uncertainties and assist in streamlining application of Art. 4.7 in the future.
- A pre-condition for efficiency is provided by the requirement of cost-effectiveness for the Programme of Measures. This requires that the costs of necessary measures be considered prior to establishing the target status at an appropriate spatial scale. In cases where broad brush rather than water body level cost benefit assessments have been made by competent authorities in establishing status targets, the potential consequences of more refined assessment should be explored before imposing measures which could have major consequences for costs or operational restrictions to water-dependent power stations with consequent wider societal impacts.
- EU added value occurs through the promotion of a level playing field as part of the internal market. This is particularly valuable in responding to emerging significant issues. We believe that there is the potential to deliver EU added value in dealing with the challenge of adequately adapting the WFD to incorporate the consequences of climate change for the aquatic environment and wider society. We recognise there is EU added value through promoting sharing of best practice between member states. We support retention of a CIS process with this aim recognising retention of Member State flexibility to take account of their specifics in deriving implementation approaches.

We note some shortcomings with regard to efficiency and coherence at the implementation level. In the UK we have welcomed appropriate dialogue at site-specific and national levels including consideration of emissions of chemicals and some aspects of water resource planning. However, we do not feel we have been adequately consulted on the potential consequences for power plant of certain measures relating to water resources that could lead to operational restrictions and this may not have been factored into the RBMP target setting.

Furthermore, coherence between different EU policies and legislation and their respective objectives and obligations could be improved on EU level. This applies especially to the balancing of trade-offs between different policies and legal requirements (e. g. energy and climate policy)

In the 1990s when the principles of WFD were being developed, the science of climate change was not as advanced as it is today and the signals for climate change and its consequences were not readily identified. However, today, as we approach RBMP3, it must be recognised that regulatory and investment decisions on water-dependent infrastructure to be made imminently will influence the aquatic environment and wider society for decades to come. It is therefore necessary to ensure continued effectiveness, efficiency and coherence that some clarity must be provided on the way in which changes in the aquatic environment resulting from climate change should be accommodated in the WFD mechanisms whilst retaining an appropriate balance between environmental protection and societal use of the water environment.

The use of indicators based exclusively on 'one-out all out' along with the presumption that 'universal achievement of 'good' as the sole objective of WFD is inconsistent with the overall operation of the WFD mechanisms. This serves to obscure the effectiveness and efficiency of the correct application of WFD including properly justified use of its flexibility mechanisms. For example, the robust establishment of realistic target status for water bodies or individual elements including the use of less stringent objectives (even including setting targets at individual quality elements level) and the achievement of that appropriate target is not easily discerned from the indicators commonly in use. Robust establishment of the appropriate objective and its achievement should be promoted as an indicator that 'the appropriate balance of spend and benefit in been achieved.

There is a clear problem area with respect to legacy uPBT substances if the sole indicator is just a 'one out all out' chemical status. This needs to be addressed in order to avoid pressure for very expensive or technically infeasible measures which would compromise efficiency and effectiveness. It may be possible or preferable to use the absence of significant biological effect as a softening filter on chemical status of 'fail'.

ECJ-jurisdiction has shown a restrictive interpretation regarding the principle of no deterioration leading to potential difficulties for the continued operation and development of future economic activities for all stakeholders involved. We would encourage a future implementation of the "non-deterioration" principle in a more pragmatic, practicable and integrated way; in particular when applying the WFD exemption mechanisms in project-related determinations, systematically to consider the power sector's role in fulfilling EU's policies and priorities in terms of energy and climate objectives. Such consideration should also extend to consideration of new, modified and time-varying discharges associated with power plant projects as well as hydro morphological issues associated with hydropower.

We are looking forward to engaging in the further discussions on future EU water policy. We would therefore welcome the opportunity of a limited revision of the WFD and the suite of existing CIS guidance documents in order to address in an effective way the limited number of necessary/recommended improvements as stated above.

For further information contact:

**Andy Limbrick**  
Environment Consultant  
Energy UK  
26 Finsbury Square  
London EC2A 1DS

Tel: +44 20 7747 2924  
[andy.limbrick@energy-uk.org.uk](mailto:andy.limbrick@energy-uk.org.uk)

**India Redrup**  
Policy Manager  
Energy UK  
26 Finsbury Square  
London EC2A 1DS

Tel: +44 20 7024 7635  
[india.redrup@energy-uk.org.uk](mailto:india.redrup@energy-uk.org.uk)