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Directorate C - Quality of Life, Water & Air  
ENV.C.1 - Water

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**MEETING OF THE STRATEGIC CO-ORDINATION GROUP**

**4 NOVEMBER 2013**

**Agenda point 4.a. Clarification on WFD programmes of measures (Article 11)**

**The SCG is invited to:**

- note the central premise of the paper – that WFD requires MS to put in place new basic measures that address the pressures in the member state; that there were many gaps in the basic measures established in the first cycle POMs; and that these gaps should be filled as a priority in the second cycle POMs.
- Note the planned workshop on linking article 5 analysis with the second cycle programmes of measures to be held 21<sup>ST</sup> January in Brussels.
- put forward any comments on the paper and proposals for issues to be addressed at the workshop in light of this.

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## Background and consultation:

This note is presented to ensure there is a common understanding of the requirements of WFD Article 11 in advance of the preparation of the second cycle River Basin Management Plans (RBMPs).

A request for clarification on basic and supplementary measures was raised in the WFD CIS WG Agriculture, but it is an issue that is applicable to the wider programme of measures and so this note is addressed to the SCG.

The purpose of the WFD is to reach at least “good status” in all waters by 2015 and to prevent any deterioration in the status of all waters, which includes maintaining the “high and good status” of waters where it already exists. The mechanism by which this is to be achieved is through the adoption and implementation of RBMPs and a Programme of Measures (POMs) for each of the identified RBDs.

## Article 11 – programme of measure

Article 11.1 of the Directive stipulates that MS shall establish in each river basin district a programme of measures, that takes account of the results of the analyses required under Article 5 (characterisation, economic analysis, pressures and impacts) **in order to achieve** the objectives established under Article 4 (good status/potential or more stringent in certain protected areas).

Article 11.2. states that each programme of measures **shall** include the basic measures specified in paragraph 3 (a-l) and, where necessary (i.e. in order to allow the Article 4 objectives to be met) supplementary measures.

Article 11.3 States that basic measures **are the minimum requirements** to be complied with and **shall** consist of:

- (a) those **measures required to implement Community legislation** for the protection of water, including measures required under the legislation specified in Article 10 and in part A of Annex VI;  
*(e.g. measures to achieve compliance with the Nitrates Directive and Urban waste water treatment directive)*
  
- (b) measures deemed appropriate for the purposes of **Article 9**;  
*(e.g. water pricing policies)*
  
- (c) measures to promote an **efficient and sustainable water use** in order to avoid compromising the achievement of the objectives specified in Article 4;  
*(e.g. water metering and allocations)*

(d) measures to **meet the requirements of Article 7**, including measures to safeguard water quality in order to reduce the level of purification treatment required for the production of drinking water;

*(e.g. control measures on land to prevent nitrates entering drinking water protected areas (e.g. extending NVZs to cover such areas))*

(e) **controls over the abstraction** of fresh surface water and groundwater, and impoundment of fresh surface water, including a register or registers of water abstractions and a requirement of prior authorisation for abstraction and impoundment. These controls shall be periodically reviewed and, where necessary, updated. Member States can exempt from these controls, abstractions or impoundments which have no significant impact on water status;

*(e.g. requires abstraction permits to be revised in line with WFD requirements)*

(f) **controls**, including a requirement for prior authorisation of **artificial recharge** or augmentation of groundwater bodies. The water used may be derived from any surface water or groundwater, provided that the use of the source does not compromise the achievement of the environmental objectives established for the source or the recharged or augmented body of groundwater. These controls shall be periodically reviewed and, where necessary, updated;

(g) for **point source discharges** liable to cause pollution, a requirement for **prior regulation**, such as a prohibition on the entry of pollutants into water, or for prior authorisation, or registration based on general binding rules, laying down emission controls for the pollutants concerned, including controls in accordance with Articles 10 and 16. These controls shall be periodically reviewed and, where necessary, updated;

(h) for **diffuse sources** liable to cause pollution, **measures to prevent or control the input of pollutants**. Controls may take the form of a requirement for prior regulation, such as a prohibition on the entry of pollutants into water, prior authorisation or registration based on general binding rules where such a requirement is not otherwise provided for under Community legislation. These controls shall be periodically reviewed and, where necessary, updated;

*(e.g. where phosphate, pesticides, sediment, organic pollution and ammonia from agriculture are identified as a pressure affecting the achievement of overall good status, controls must be established)*

(i) for **any other significant adverse impacts** on the status of water identified under Article 5 and Annex II, in particular measures to ensure that the **hydromorphological conditions** of the bodies of water are consistent with the achievement of the required ecological status or good ecological potential for bodies of water designated as artificial or heavily modified. Controls for this purpose may take the form of a requirement for prior authorisation or registration based on general

binding rules where such a requirement is not otherwise provided for under Community legislation. Such controls shall be periodically reviewed and, where necessary, updated;

*(e.g. controls should be defined to ensure that actions in or near rivers do not negatively impact on morphological condition)*

(j) a **prohibition of direct discharges of pollutants into groundwater** subject to a number of provisions

(k) in accordance with action taken pursuant to Article 16, **measures to eliminate** pollution of surface waters by those substances specified in the list of **priority substances** agreed pursuant to Article 16(2) and to progressively reduce pollution by other substances which would otherwise prevent Member States from achieving the objectives for the bodies of surface waters as set out in Article 4;

(l) any measures required to prevent significant losses of pollutants from technical installations, and to **prevent and/or to reduce the impact of accidental pollution incidents** for example as a result of floods, including through systems to detect or give warning of such events including, in the case of accidents which could not reasonably have been foreseen, all appropriate measures to reduce the risk to aquatic ecosystems

### **Progress in first cycle RBMPs**

The lack of basic measures, beyond Article 11.3.a in the first cycle plans for a number of Member States points to a common misconception that the only basic measures that need to be in place in a POM are those that derive from pre-existing requirements (those referred to in article 11.3.a). **This is incorrect** and MS should act now to identify and redress any gaps in their basic measures (11.3 b-l) for inclusion in the second cycle. The WFD requires MS to put basic measures in place to address pressures at source, which will contribute to the achievement of the Directive's objectives (good status by 2015). While article 11.3 (a-l) is prescriptive, the precise type of measure is down to the MS depending on the pressures in a river basin district.

It is the view of the Commission that this gap in basic measures is part of the reason for the relatively low level of water bodies projected to be at good status by 2015 and for the extensive use of exemptions. This needs to be addressed to allow the achievement of the WFD within the required time limits and to also contribute to other policies e.g. Marine Strategy Framework Directive. To achieve the objectives of the MSFD, it is essential to limit pollution from land entering freshwaters and eventually being discharged into the marine environment.

## **Supplementary measures**

While Article 11.3. of the Directive defines the legal baseline that must be established in the POM of a MS, it is acknowledged in article 11.2 that in certain situations basic measures alone will not be sufficient to achieve good status and so supplementary measures may be needed.

In any case, MS must first have basic measures that are compliant with article 11.3 and second define supplementary measures and have a credible plan for securing and tracking progress on the established supplementary measures. E.g. if rural development programmes are indicated as a mean to reduce agricultural pressure to allow the achievement of good status, there must be 1) a solid and compliant action programme established under the Nitrates Directive and 2) a budget secured for the implementation of the RDP and a delivery mechanism to ensure it happens on the ground. If no budget for this is agreed or uptake of RDP measures is lower than foreseen then the basic measures will have to be strengthened to address the gap.

In short, the basic and supplementary measures must add up to what is needed to address the pressures to allow the achievement of the WFD objectives.

## **Linking measures with pressures**

Due to the time lag in the first cycle for establishing reference conditions and defining good status and the need to simultaneously develop programmes of measures - the logical link between pressures and measures was not evident in many RBMP. This situation needs to be rectified in the second cycle. In many cases it offers an opportunity to rationalise and simplify national legislation and to ensure that effort is focussed on the most pressing water management issues.

## **Next steps**

MS should ensure their POM for the second cycle is compliant with the requirements of the WFD. All basic measures listed in art. 11.3 (points a to l) shall be included in the POM.

In determining what basic measures should be put in place to address the requirements of article 11.3, points a to l, it is necessary to determine:

- what is the existing status of waters (using information from WFD and other programmes – see CIS guidance 3)

- what is the gap to be closed to reach the WFD objectives of "good status" (using information from the article 5 analysis, in particular identified existing and potential pressures and how these have an impact on good status)

- how far will the implementation of measures pursuant to article 11.3.a close the gap, (taking into account in many member states the need to adopt reinforced measures under art. 5.5 of the Nitrates Directive and improve compliance with UWWTD)

- what measures can deliver for WFD but also for other environmental objectives (e.g. MSFD, BWD, air quality, biodiversity)

In deciding on what basic measures are needed MS should be guided by the polluter pays principle, as well as by the principle of prevention of pollution at source.