

Use of exemptions in the development of River Basin Management Plan and their impact on environmental objectives

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WFD Environmental Objectives

- **No deterioration** of status for surface and groundwaters and the protection, enhancement and restoration of all water bodies;
- Achievement of good status by 2015, i.e. good ecological status (or Potential) and good chemical status for surface waters and good chemical and good quantitative status for groundwaters;
- **Progressive reduction of pollution** of priority substances and **phase-out of** priority hazardous substances in surface waters⁵ and prevention and limitation of input of pollutants in groundwaters;
- **Reversal** of any significant, upward **trend** of pollutants in groundwaters;
- Achievement of Standards and objectives set for **protected areas** in Community legislation.

Type of exemptions

- Extending the deadline
- Less stringent environmental objectives
- Temporary deterioration
- New modification of the water status

Exemptions under Art. 4.4

Art 4.4 allows for extension of deadlines «for the purpose of phased achievement of the objectives» of the WFD

Conditions:

- No further deterioration in the status of affected water body
- It is not possible to achieve improvements in status of water body “within the timescales” because:
 - technical feasibility and/or
 - disproportionately expensive and/or
 - natural conditions don't allow improvement in time
- Extension of the deadline, and the reasons must be explained in the river basin management plan (RBMP)
- Extensions limited to a maximum of two further updates of the RBMP except in cases when is due to the natural conditions

Exemptions under Art. 4.5

Art 4.5 allows for less stringent environmental objectives when water body is so affected by human activity or its natural condition that objectives achievement is infeasible or costs disproportionate

Conditions:

- No “significantly better environmental option not entailing disproportionate costs” available to achieve environmental & socioeconomic needs
- For surface water, the highest ecological and chemical status possible is achieved, given non avoidable impacts
- For groundwater, the least possible changes to good groundwater status, given not avoidable impacts
- No further deterioration in status of the affected water body - less stringent environmental objectives, and the reasons for it, are mentioned in river basin management plan and reviewed every 6 years.

Exemptions under Art. 4.6

Art 4.6 allows for exemptions with reg. to “temporary deterioration” in case of circumstances of natural cause or “force majeure” exceptional and unforeseeable – severe floods, prolonged droughts, accidents

Conditions:

- All practicable steps are taken to prevent further deterioration in status and in order not to compromise the achievement of the objectives of this Directive in other bodies of water
- Exceptional unforeseeable conditions are declared, including adoption of appropriate indicators, and are stated in the RBMP;
- Measures on exceptional circumstances included in the programme of measures and don't compromise recovery of the quality of water body once the circumstances are over;
- Effects of circumstances reviewed annually and all practicable measures taken to restore water body to its prior status as soon as reasonably practicable, and
- A summary of effects of circumstances and such measures taken or to be taken included in the next update of the RBMP.

Exemptions under Art. 4.7

- Allows for **new modifications** affecting water bodies status

Conditions:

- Steps are taken to mitigate the adverse impact on the status of the body of water
- Reasons for those modifications or alterations are specifically set out and explained in the river basin management plan
- Reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the WFD objectives are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development
- 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

General conditions for derogation

- Obligation to ensure that the application of derogation does not permanently exclude or compromise the achievement of the objectives of this Directive in other bodies of water within the same river basin district
- Steps must be taken to ensure that the application of the new provisions,, guarantees at least the same level of protection as the existing Community legislation

Horizontal issues for derogation

- Scale
- Protected areas
- Technical infeasibility
- Management of uncertainties
- Disproportionate costs
- Alternative means
- Transboundary context
- Public participation
- Link with SEA and EIA

Scale

- Different scales (national, basin, sub-basin, water body) may be appropriate for different assessments or different aspects of the same assessment
- Aggregated information is relevant for the concerned water body or group of water bodies
- No automatic mechanism for justifying exemptions in an adjacent water body on the basis of an assessment carried out for another water body

Protected areas

- Exemptions from the WFD environmental objectives cannot be used to deviate from objectives and obligations set by other pieces of EU legislation.
- The relevant conditions set out in Article 4.7 of the WFD for allowing deterioration of status would have to be met to the extent that it is a water body; and
- The conditions set out in Article 6 of the Habitats Directive (92/43/EEC) for allowing a failure to achieve a Natura 2000 site's objective would have to be met.

Technical infeasibility

- No technical solution is available;
- It takes longer to fix the problem than there is time available;
- There is no information on the cause of the problem; hence a solution cannot be identified
- Solutions beyond best available technique

Management of uncertainties

- Whether, and to what extent, a water body is adversely impacted and what and/or who causes the impact;
- The impact of policies already in place or planned and various trends and developments, including innovation and technical change;
- The effectiveness of measures in addressing an adverse impact on a water body (this will have an effect on the certainty of the benefits)
- The assessment of the achievement of good status⁹;
- The costs associated with measures;
- The benefits resulting from improvements to the status of water bodies, particularly the calculation of the non-marketable benefits

Disproportionate costs

- Disproportionality should not begin at the point where measured costs simply exceed quantifiable benefits;
- The assessment of costs and benefits will have to include qualitative costs and benefits as well as quantitative;
- The margin by which costs exceed benefits should be appreciable and have a high level of confidence;
- In the context of disproportionality the decision-maker may also want to take into consideration the ability to pay of those affected by the measures and some information on this may be required.
- Affordability
- Prioritization of measures implementation

Alternative means

- Alternative locations
- Different scales or designs of development
- Alternative processes.
- Alternatives should be assessed in the early stages of development and at the appropriate geographical level

Transboundary context

- In international river basin districts within the EU, exemptions need to be coordinated
- Country causing the problem should be obliged to provide enough information for justification of the application of exemptions for the affected Member State.
- Frequent information exchange is crucial when applying exemptions in a transboundary context

Public participation and transparency

Provide to the public:

- the reasons for an extension of the deadline should be specifically set out
- the reasons for the establishment of less stringent environmental objectives should be specifically mentioned;
- a summary of the measures to bring the bodies of water progressively to the required status;
- the reasons for any significant delay in making the measures operational;
- the expected timetable for the implementation of the measures (that are delayed);
- the appropriate, evident and transparent criteria used for applying exemptions

Justification of time extensions and less stringent objectives

- Disproportionately expensive – unfavourable balance of costs and benefits
- Further investigations are needed. In these cases the justification used was – ‘technically infeasible - cause of adverse impact unknown
- Technically infeasible - no known technical solution is available (mining)
- Natural conditions - groundwater status recovery time (e.g widespread impact of pesticides that are now banned)
- Disproportionately expensive – disproportionate burdens

