

# DWA-Position

## Review of the Water Framework Directive 2019





## Commitment to the Water Framework Directive – further development of the WFD while maintaining its objectives

Directive 2000/60/EG of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (in short: Water Framework Directive, WFD), prescribes the central framework conditions in Europe for a sustainable water policy and significantly influences European and national water law with its subsidiary directives. At the latest by the year 2019, the Commission is to review the WFD and propose any necessary changes. This process requires a thorough evaluation of the directive.

In the course of the implementation of the WFD, the state of the waters in Germany and Europe has improved significantly. The WFD contains key elements for water management which have proven their effectiveness. The DWA is therefore fundamentally committed to maintaining and developing the WFD with its essential instruments:

- Cross-boundary river basin districts as the basis for management decisions.
- Regular monitoring of water bodies according to EU-wide methods and evaluation procedures.
- Pursuit of a scientifically derived target horizon for good status of waters.
- Prevention of deterioration and the requirement to improve as a driver for target achievement.
- Regularly reviewed and updated management plans and programmes of measures as water management instruments for the achievement of the targets.

## 1. Ensuring continuation of the WFD, also after 2027

The path taken with the entry into force of the WFD needs to be consistently pursued. Achieving a good status of all water bodies is, however, a very challenging target, and a task that exceeds the time horizon of one generation. Even where the implementation of the WFD is ambitiously pursued – such as in Germany – there is a high probability that the good water status will not be achieved nationwide until 2027.

The previous implementation process shows – at least under the current time constraints – insurmountable discrepancies between the targets set and the chances of realisation. This is in need of correction and by no means an increase of requirements.

Nevertheless, a continuation of the WFD as a basis for water management beyond 2027 is required. The WFD has to be adapted to practical experience while maintaining its level of requirement. In order to provide planning security for the water sector – also with a view to the next management cycle – the European Commission should accelerate the review process and implement its results in the near-term.

## 2. Creating reliable foundations for water management

The ultimate objective of the WFD must remain to achieve the good status of all waters. However, this can only be accomplished gradually. For this purpose, realistically achievable interim targets have to be determined for the respective management cycles, in order to achieve overall progress and make the success of considerable efforts in water protection visible. This requires further development of the previous approach of implementation goals involving the stakeholders in the water sector and taking into account the actual possibilities for reaching the objectives in the respective management period. The benchmark for implementation goals in a management period has to be the implementation targets set for this. However, one of the reliable foundations of water management is also planning security for water management stakeholders.

### 3. Strengthening the quality and reliability of the management planning

The management plan and programme of measures need to be strengthened as instruments for the conceptual development of waters. This requires a more improved data and knowledge basis in the planning process as it exists today, to avoid mismanagement through measures whose effects on the water status have not been sufficiently clarified.

In addition, the obliging effect of the management planning for the implementing authorities – as already established by the WFD – has to be strengthened. Within the context of the review process, it should be examined whether this effect requires clarification. If clarification is not achievable at the European level, this is to be carried out at the national level. This would considerably relieve the enforcement authorities and facilitate approval procedures.

### 4. Modifying the “one out – all out” principle

With its uncompromising nature, the “one out – all out” principle obscures the view of the success of water management activities and thus proves to be an obstacle when it comes to presenting effective measures for water protection. The review process therefore needs to include considerations on how improvements in individual evaluation components can be made more visible in future. The WFD needs to be applied in a more flexible way, if not revised, provided it is still ensured that the objective of achieving a good status for all waters is not relativized.

### 5. Making the non-deterioration principle more practicable

The review process should be used to make the important instrument of deterioration prevention more practicable with regard to the uses of waters. The ruling passed by the European Court of Justice and the Federal Administrative Court leaves a number of open questions regarding the non-deterioration principle. Under the non-deterioration principle it also has to be possible to grant authorisations to discharge without increasing the requirements and/or having to resort to derogations. For surface waters additional efforts should be made to extend the spatial frame of reference of the deterioration prevention from the individual water body to larger areas of consideration. In this way, for example, by concentrating several discharges from sewage plants at one site with improved purification performance, the benefit of the measure for the respective catchment area of a watercourse as a whole could be regarded as an improvement on the basis of balancing considerations, which override those of the individual water bodies, even if this entails the possible higher loading of one individual water body.

### 6. Adapting the derogation scheme

According to the ruling of the European Court of Justice on the non-deterioration principle, the derogation provision (article 4 para. 7 WFD) is to be applied so that, in individual cases, intentions can be permitted which collide with the non-deterioration principle but which are in the public interest. Here, in particular, water management tasks should be taken into consideration which are required by other European laws, such as the provision of drinking water and disposal of wastewater, energy supply and infrastructure. In order to avoid de facto prohibitions of any activity with an impact on water bodies, the exceptions to the management objectives for the ecological status according to article 4 para. 7 WFD (§ 31 para. 2 Water Management Act - WHG) also have to be applied accordingly to the chemical water status. However, this is not undisputed. In order to create legal certainty, it is advisable to adapt the WFD at least for the sake of clarification. This would make it also possible to weigh up interests in favour of intentions with material water changes.

### 7. Limiting the relevance of pollutants for the assessment of chemical status

In article 2, the WFD distinguishes between an ecological status that emphasises the quality of the structure and functioning of aquatic ecosystems in connection with surface waters and a chemical status that describes the material properties of surface waters with regard to the priority substances listed in Directive 2013/39/EU. Appendix V of the WFD which, among other things, determines the quality components for the classification of the ecological status, abandons this systematisation. Because this also names specific pollutants as components for this classification which are discharged into water bodies as other substances (river basin-specific pollutants) in significant quantities or as priority substances.

The classification of surface waters by chemical status should therefore be consistent with the definition in article 2 no. 24 WFD. Appendix V of the WFD needs to be amended so that in the future, all environmental quality standards for the assessment of the chemical status of surface waters are applied and not only the requirements for priority substances and priority hazardous substances as was previously the case. In addition, the river basin-specific substances are to be used for the assessment of the chemical status.





On the other hand, it seems to be systematically misguided and technically unfounded that, according to the WFD, the exceedance of even one EQS from the category of river basin-specific pollutants leads to classification of the ecological status of waters as, at best, moderate regardless of the possibly objective-compliant assessment of the biological quality components. The aim should be the strict separation of substances and water ecology in water management laid down in the WFD. This would provide clarity and facilitate enforcement for all stakeholders in the water sector without the need to compromise on the requirements level of the directive.

For ubiquitous substances, e.g. mercury or PAH, more differentiated rules, for example with graded environmental quality standards staggered over time, should also apply so as to be able to solve the problem of the unavoidability of exceeding values in these parameters in a practical way.

## 8. Reviewing the “phasing out” obligation

The regulation in article 16 para. 6 WFD on ending the emission of so-called priority hazardous substances has not gained any practical significance since the WFD entered into force. An agreement at EU level on measures to the phasing out obligation was not possible. Many substances have lost significance for water management over time. Moreover, since 2007 the REACH- evaluation system has existed with various possible actions for the European authorities, whose effect on the achievement of the management objectives of the WFD is, however, open.

It is therefore recommended to review the development of the requirements for the phasing-out process in article 16 para. 6 WFD.

## 9. Harmonising WFD with other European regulations

The DWA calls for a stronger integrative consideration and harmonisation of the existing European regulations with the WFD. This task offers great opportunities for improving water protection and reducing bureaucracy and should already be carried out within the upcoming review process, if possible.

The harmonisation of substance-related regulations is considered to be an important partial aspect here. Specifically, this also means harmonising the regulations for the assessment, approval and use of substances as they result from, for example, the REACH Regulation, CLP Regulation, Biocidal Products Regulation and phytosanitary or pharmaceutical legislation, more closely with water law. It is necessary to bring the differences between the different sets of rules together in a comprehensive, integrative solution.

When harmonising the WFD with other existing European regulations, for example, flood risk management, also EU agricultural policy and its subsidy programmes and energy policy need to be taken into account.

The DWA further suggests that the important findings and results of the German Stakeholder Dialogue on the Federal Government’s trace substance strategy should also be taken into account at the European level in the further development of the WFD.