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Simplification of European Water Policies

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Authors: Thomas Dworak (Ecologic)
Eleftheria Kampa (Ecologic)
Colette de Roo (Ecologic)
Cristina Alvarez (IPAE)
Saara Bäck (SYKE)
Patricia Benito (BIO Intelligence Service)

Administrator: **Gian Paolo MENEGHINI**
Policy Department Economy and Science
DG Internal Policies
European Parliament
Rue Wiertz 60 - ATR 00K072
B-1047 Brussels
Tel: +32 (0)2 283 22 04
Fax: +32(0)2 284 69 29
E-mail: gianpaolo.meneghini@europarl.europa.eu

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**STUDY FOR THE EUROPEAN PARLIAMENT'S COMMITTEE ON
ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY**

IP/A/ENVI/FWC/2006-172/C1/SC5

SIMPLIFICATION OF EUROPEAN WATER POLICIES

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EXECUTIVE SUMMARY

Over the past few years, extensive work has been done within the scope of the ‘Better Regulation’ Strategy to start and push forward a process of overall simplification of the regulatory environment in the EU.

The water sector was one of the first environmental sectors that was reshaped in the context of the EU better governance activities. In the 1970s and 1980s, European water policy was characterised by a primarily regulatory approach. In the 1990s, with the increasing eutrophication of sea and fresh waters, viewed as the major problem of water pollution within the EU, two new legal instruments were adopted setting strict rules on the treatment of waste water and the use of nitrates in agriculture. In 2000, a Water Framework Directive (WFD) was adopted in order to concentrate, rationalise and standardise, as well as improve the efficiency of European water protection legislation.

The area covered by the WFD extends to all aquatic systems, surface waters (rivers and lakes), groundwater and coastal waters (A Daughter's Directive of WFD is the Groundwater Directive adopted in December 2006). Land ecosystems depending on groundwater are also included in the protection of the quantity of groundwater. Furthermore, water resources are to be managed across national boundaries, following a co-ordinated approach within river catchment areas. The WFD further abolishes and replaces some of the earlier water directives. Besides replacing existing directives, the WFD promotes also other principles to support simplification, by allowing more flexible implementation approaches to achieve a set target and by involving the public. Similar simplification principles were also a central part of the revision of the Bathing Water Directive, which eases the monitoring burden for Member States.

The ideas of better regulation and therewith of simplification also form the basis for implementation processes at EU level. The Common Implementation Strategy (CIS) of the WFD provides such an example. The “Water Information System for Europe” (WISE) also presents opportunities for rationalising the information collected and thus reducing the reporting burden on Member States. As it appears, the simplification process in EU water legislation is well in progress.

Nonetheless, this briefing could identify some further simplification options in this field of European policy. These options refer to the potential of further simplifying and reducing monitoring and reporting requirements, to the elimination of overlaps between certain water policies, to overlaps between water policies and other policies, to the organisational framework of expert networks and finally to options for dealing with water issues not explicitly covered by EU water policy yet (such as intensified scarcity and droughts).

INTRODUCTION AND BACKGROUND

Background

The initiative on "better regulation" or "better lawmaking" has its origins in the Edinburgh European summit of December 1992. EU Heads of State or Government pledged to make the improvement of the EU regulatory environment one of the Community's main priorities. In the ten years that followed, the results were limited due to the complexity of the task and the lack of real political support.

Successive summits from Lisbon (March 2000) onwards gave the European Commission a renewed mandate to develop "a strategy for further coordinated action to simplify the regulatory environment". In its White Paper on European Governance (July 2001)¹, the Commission committed itself to action on improving the quality of EU legislation. As a first follow-up to the Governance White Paper, the Prodi Commission adopted in June 2002 an Action Plan for Better Regulation². The plan identified 16 measures for improvements at various stages of the legislative cycle, from early policy conception to implementation.

Since then, in the past few years, extensive work has been done within the scope of the "Better Regulation Strategy", meant to start and push forward a process of overall simplification of the regulatory environment in the EU³. According to the Communication from the Commission of March 2005⁴ and the Commission Working Document of November 2006 on the strategy for the simplification of the regulatory environment⁵, "A strategic review of Better Regulation in the European Union"⁶, the process of implementation of the simplification Strategy is in progress and taking shape in various parts of the EU regulatory environment, including environmental policies and therewith water policies and directives.

Simplification - What is behind it?

Simplification does not necessarily mean to deregulate or to merely minimise the number of directives and policies. Simplification in the context of the "Better Regulation Strategy" means seeking, with the benefit of hindsight, to make the substance of a piece of regulation simpler and more appropriate to the users' requirements⁷.

¹ Commission of the European Communities (2001): European Governance. A White Paper. COM(2001) 428 final, Brussels, 25.7.2001.

² Commission of the European Communities (2002): Communication from the Commission. Action Plan "Simplifying and improving the regulatory environment". COM(2002) 278 final, Brussels, 5.6.2002.

³ Commission of the European Communities (2006): Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. "A Strategic Review of Better Regulation in the European Union." COM(2006) 689 final, Brussels, 14.11.2006.

⁴ Commission of the European Communities (2005): Communication from the Commission to the Council and the European Parliament, "Better Regulation for Growth and Jobs in the European Union", COM(2005) 97 final.

⁵ Commission of the European Communities (2006): Commission Working Document, "First progress report on the strategy for the simplification of the regulatory environment", COM(2006) 690 final.

⁶ Commission of the European Communities (2006): Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, "A strategic review of Better Regulation in the European Union", COM(2006) 689 final.

⁷ Commission of the European Communities (2001): Communication from the Commission. Simplifying and improving the regulatory environment. COM (2001) 726 final, Brussels, 5.12.2001.

The key elements of the simplification work are:⁸

1. Repealing irrelevant or obsolete legal acts;
2. Codifying to reduce the volume of EU legislation;
3. Recasting with a view to clarifying and improving consistency;
4. Modifying the regulatory approach.

Scope of the briefing

The scope of this briefing is to discuss the need for simplification in EU water policies. Needs for improving and simplifying regulations regarding water should be identified. In order to do so, this briefing first gives an overview of the current EU policy framework for water. In this context, common difficulties faced during the transposition and implementation of EU water policy on the national level are briefly discussed, based on interviews with representatives of selected Member States across Europe.

In the following, the briefing describes recent and ongoing simplification actions in EU water policy. It then identifies main options for (further) simplification, which were drawn from interviews with different stakeholders throughout Europe (selected Member State representatives, the European Commission and NGOs)⁹. It was deemed of utmost importance to know where the stakeholders themselves identify needs for simplification. Finally, in order to avoid any potential loss in environmental quality through simplification of water protection policy, the briefing highlights some key relevant issues to be considered in possible future simplification exercises.

⁸ for further details see: http://ec.europa.eu/enterprise/regulation/better_regulation/simplification.htm

⁹ For the purpose of this briefing, 29 interviews and personal communications were carried out using the questionnaire attached in the Annex. The individuals contacted included representatives of selected Member States (France, Spain, Germany, Austria, Finland, Denmark and Sweden), of the European Commission and of the WWF European Policy Office.

Overview of current and upcoming EU water policies

The first and second wave of EU water policy

The evolution of European water policy is marked by three distinct waves¹⁰. The first wave started with the initiation of the first of a series of five-year **Environmental Action Programmes (EAP)** in 1973, laying down the objectives and principles of the environmental policies of the European Commission (EC)¹¹. Since the end of the 1970s, several measures for the reduction and prevention of water pollution have been introduced in a number of Directives based primarily on a regulatory approach¹². The basis for these first legal acts with the intention of protecting water was the original EC Treaty¹³, which at the time needed a specific paragraph for the environment.

The Directives subdivided the aquatic ecosystems into individual protected commodities and defined quality targets, each of which had to be followed or achieved through certain measures¹⁴.

In 1990 the major problems of water pollution within the EU were seen in the increasing eutrophication of sea and fish waters and in the general state of water resources. Consequently, two new legal instruments were adopted setting strict rules on the treatment of waste water and the use of nitrates in agriculture; this was the second wave in the evolution of European water policy. **Waste water treatment** (Directives 91/271/EEC and 98/15/EEC) became obligatory even in the smallest settlement and legally binding measures came into force which limited the amount of animal fertiliser used on fields (**Nitrate Directive** 91/676/EEC). With the implementation of the **Directive concerning integrated pollution prevention and control** (96/61/EC), a new rule for emissions control was formulated. Also, the guideline to control the dangers in the event of major accidents (96/82/EEC, the so-called **Seveso II Directive**) contains important aspects of water protection. However, in spite of the numerous regulatory interventions on the Community level, criticism about the lack of consistency in water protection policy continued.

¹⁰ Austrian Federal Ministry for Agriculture and Forestry, Environment and Water Management (2000): EU launches new water policy. Aqua press international, 5/2000.

¹¹ In the following EAP, the EC stressed the growing importance of environmental policies. The fourth programme emphasised that environmental concerns need to be taken into account in the entire corpus of EC policies; the fifth programme "Towards sustainability" makes environmental protection alongside social and economic concerns an integral and equally important element in making decisions.

¹² Directives of the first wave are: Surface water directive (75/440/EEC), Bathing water directive (76/160/EEC), Fish water directive (78/659/EEC), Shellfish water directive (79/923/EEC) and Drinking water directive (80/778/EEC).

¹³ At this time, a unanimous decision was still a prerequisite for the enactment of secondary Community law in the Council of Ministers.

¹⁴ Holtmeier, E-L. (1997): Development of European Water Legislation, in: Ministry for Environment, Spatial Planning and Agriculture of North Rhine-Westphalia (ed.): Environmental Protection in Europe as well as on the Federal and State Level - Conference Proceedings.

The third wave of EU water policy

A communication of the European Commission on the water policy of the Community in February 1996¹⁵ marked the start of the third wave in European water policy¹⁶. In this document the European Commission concluded that a **Water Framework Directive** should be drawn up in order to concentrate, rationalise and standardise, as well as improve the efficiency of European water protection legislation¹⁷. The new Water Framework Directive, adopted in October 2000 and entered into force in December 2000, is designed in the view of integrated water management¹⁸. As opposed to the water protection of the 1990s, the area covered by this Directive extends to all aquatic systems, surface waters (rivers and lakes), groundwater and coastal waters. Land ecosystems depending on groundwater are also included in the protection of the quantity of groundwater. Therefore water resources should be managed across national boundaries, choosing a co-ordinated approach within the river catchments' areas. It further bundles the approaches from the first and second wave to form a coherent overall concept and abolishes some of the individual directives.

The main target of this Directive is to achieve the “good status” of all surface, ground and coastal waters¹⁹ in the Community by 2015 whereby there is a differentiation between the ecological and chemical status of water. The basic thinking behind the term “good ecological status” is that water can be used by humans as long as the ecological function of the water body is not significantly impaired. The ecological function is defined by requirements for the different types of water by the EU. It still has not been specified how to define good ecological quality and how to carry out the assessment of water. The “chemical water status” is to be determined by environmental quality standards for hazardous substances.

Article 16 of the WFD forces the Commission to set out detailed provisions for groundwater protection to be tackled separately in a Daughter Directive. On 12 December 2006, after six years of discussion, the European Parliament finally agreed the **Groundwater Directive**²⁰ which entered into force on 16 January 2007. The Directive aims to prevent the pollution of groundwater, Europe’s main drinking resource, from agricultural residues such as pesticides and other harmful chemicals. The proposed Directive will ensure that groundwater quality is monitored and evaluated across Europe in a harmonised way.

¹⁵ Commission of the European Communities (1996): European Community Water Policy. Communication from the Commission to the Council and the European Parliament. COM (96) 59 final, 21.02.1996.

¹⁶ Commission of the European Communities (1996): Communication from the Commission. European Community Water Policy, COM(96) 59 final Brussels: European Commission.

¹⁷ Commission of the European Communities (1996): Communication from the Commission. European Community Water Policy, COM(96) 59 final Brussels: European Commission.

¹⁸ The European Parliament and the Council (2000): Directive of the European Parliament and of the Council concerning establishing a framework for community action in the field of water policy (2000/60/EC), 23 October 2000.

¹⁹ “Good surface water status” means the status achieved by a surface water body when both its ecological status (classified in accordance with Annex V of the WFD) and its chemical status are at least “good”. “Good surface water chemical status” means the chemical status required to meet the environmental objectives for surface waters established in Article 4(1)(a), that is the chemical status achieved by a body of surface water in which concentrations of pollutants do not exceed the environmental quality standards established in Annex IX and under Article 16(7) of the WFD, and under other relevant Community legislation setting environmental quality standards at Community level. “Good groundwater status” means the status achieved by a groundwater body when both its quantitative status (defined in table 2.1.2 of Annex V of the WFD) and its chemical status (see table 2.3.2 of Annex V of the WFD) are at least “good”.

²⁰ The European Parliament and the Council (2006): Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration. OJ L 372 (49).

Further, it introduces a mixed regime – on the one hand compliance to quality standards, on the other hand measures to prevent or limit inputs of pollutants into groundwater. The Member States will have to establish some of the standards themselves at the most appropriate level, taking into account local or regional conditions. In addition to the Water Framework Directive, the Groundwater Directive is also related to the Nitrates Directive²¹, the Landfill Directive and the future Soil Framework Directive. The rules will have to be reviewed six years after the Directive enters into force, then again every six years. Member States will have two years to transpose the Directive into national law. It should therefore take effect from early 2009.

In the wake of the 2002 floods, the EU Council of Ministers (Environment), following a French initiative, put the issue of flooding on the political agenda. As a result of a four year ongoing discussion process, a proposal for a **Directive on the assessment and management of floods**²² was finally put forward in January 2006. The objective of the Directive is to reduce and manage the risks which floods pose to human health, the environment, infrastructure and property, as Europe's commitment to sustainable development could be severely compromised if appropriate action is not taken. Therefore the Directive requires Member States to prepare flood risk maps indicating areas which are at risk of flooding and the indicative damage that could occur. The plans should address all phases of the flood risk management cycle, i.e. prevention, protection, preparedness and taking into account the characteristics of a particular basin or sub-basin. Due to the diversity of situations across Europe as regards geography, hydrology and settlement structure, the Member States are given considerable flexibility regarding the level of protection required, measures to be taken and the timetables for implementing the flood risk management plans²³.

The new **Bathing Water Directive**²⁴, which was adopted in February 2006, sets new requirements for monitoring schemes and clearer and stricter classification of bathing water than the old Directive of 1976. In compliance with the Århus Convention, the new directive also provides regulations for public information and participation and defines requirements for comprehensive and modern management measures.

In addition, the new Bathing Water Directive requires Member States to make site specific integrated management plans in order to protect bathers from potential contamination sources, which require particular attention at that site. A clearly defined chain of forecasting, prevention, monitoring, detection and action should be part of the management plan. In accordance with the regulations for public information and participation, the public should be allowed and invited to actively contribute to the management plan. Further, the public should be regularly informed of the current status of a particular bathing site, monitoring results and water quality problems, when they occur, through the media.

²¹ The agreement provides a legally binding obligation for Member States to prevent the input of hazardous chemicals into groundwater and reasserts a limit for nitrate residue levels at 50mg per litre, a standard previously laid down in a 1991 directive on nitrates.

²² Commission of the European Communities (2006): Proposal for a Directive of the European Parliament and of the Council on the assessment and management of floods. COM(2006) 15 final.

²³ See also Interwies, Dworak & Marsden (2006), The adequacy of EU action on flood protection, focusing on the Commission's recent proposal, Policy Brief for the EP Environment Committee IP/A/ENVI/FWC/2005-35.

²⁴ The European Parliament and the Council (2006): Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC. OJ L 64/37.

Upcoming issues

The aim of the proposal for the **Marine Strategy Directive** (MSD)²⁵ is to establish a framework for the protection and preservation of the marine environment, the prevention of its deterioration and where practicable the restoration of that environment in areas where it has been adversely affected. For that purpose Marine Strategies will be developed and implemented by the Member States, with the aim of achieving or maintaining good environmental status in the marine environment by the year 2021 at the latest, taking into account the measures required under the WFD and international agreements. The deadline of 2021 is, according to the last version of the proposal, relatively flexible, since the Member States do not have to take specific steps “where there is no significant risk to the marine environment, or where the costs would be disproportionate taking account of the risks” (Article 4(3)). Good environmental status means that “seas and oceans are ecologically diverse and dynamic, clean, healthy and productive, their use is at a sustainable level, safeguarding the potential for uses and activities by current and future generations”, and must be determined at the scale of the marine regions or sub-regions on the basis of certain generic qualitative descriptors (Article 8(1) and 8(3), and Annex VI). Marine strategies will be regularly up-dated and made available to the public in accordance with Community legislation

The Water Framework Directive required the establishment of environmental quality standards applicable to water. The best way to achieve a good surface water chemical status in the European Union is to harmonize the environmental quality standards that exist at national level for priority substances. On 17 July 2006 the European Commission adopted a proposal for a new **Directive on environmental quality standards in field of water policy**²⁶. The proposed Directive, which is required to support the Water Framework Directive, will set limits on concentrations in surface waters of 41 dangerous chemical substances (including 33 priority substances and 8 other pollutants) that pose a particular risk to animal and plant life in the aquatic environment and to human health. The proposal will contribute to the Commission's Better Regulation initiative by replacing five older directives, allowing their repeal.

Furthermore, based on the decision of the Water Directors in June 2006, a group was set up to support the Commission's analysis on **Water Scarcity and Drought**. In October 2006, the Commission carried out an in-depth assessment including information on the scope of issues, a first evaluation of impacts and an overview of how Member States currently use EU instruments to address these demanding challenges. The outcomes were presented to the Water Directors at the end of 2006²⁷ and will be further refined in the first half of 2007. A communication on water scarcity, including an analysis of water saving potential in the EU, is due in July 2007. This set of activities might lead to future policy action on water scarcity and drought.

²⁵ Council of the European Union (2006): Information Note. Proposal for a Directive of the European Parliament and of the Council establishing A Framework for Community Action in the field of Marine Environmental Policy (Marine Strategy Directive) - Political agreement. Document 16976/06, 20.12.2006.

²⁶ Commission of the European Communities (2006) Proposal for a Directive of the European Parliament and of the Council on environmental quality standards in the field of water policy and amending Directive 2000/60/EC. COM(2006)397 final. Brussels, 17.7.2006.

²⁷ See http://forum.europa.eu.int/Public/irc/env/wfd/library?l=/framework_directive/scarcity_droughts/interim_report_06pdf/EN_1.0_&a=d

Organisational framework supporting EU water legislation

In most cases, Committees of experts from Member States were attached to the directives under the first and second wave of EU water policy. The work of these Committees focused mainly on the technical issues aiming to assist the Commission in the implementation of the individual Directives.

With the coming into force of the WFD, a new format of interaction between the EU Member States, stakeholders and the European Commission was set up. The agreement to start an informal **Common Implementation Strategy** (CIS) for the Water Framework Directive in 2001 was seen as a milestone in working together towards successful implementation of the core water law at EU level. The process aims to solve a number of shared technical challenges for the Member States, the Commission, the Candidate Countries and other stakeholders. The key activities of this implementation process are:

- Information sharing: Several ways of information exchange were established (web based exchange platform, conferences, workshops and public information activities)
- Developing guidance on technical issues: Under this task informal, practical Guidance Documents are produced to support the overall implementation process and for testing in the pilot river basins.
- Information and data management: The primary objective of the project is to develop a concept for and a prototype of a European Catchment GIS, compatible with the needs of the WFD and the Eurowaternet²⁸.
- Application, testing and validation: A key element of the implementation strategy is the integrated testing and validation of the Guidance Documents. By 2002, a pilot river basin network was established including 14 national or international (sub-) river basins.

Every two to three years a new work program is developed by the Water Directors in cooperation with the Commission, addressing the most important issues to be solved commonly. Due to the broad range of issues covered by the WFD the CIS process is also covering a wide range of activities. This has turned this process into the informal coordination format for EU water policy.

Article 4 of the proposal for the Marine Strategy Directive (MSD) sets the principle of cooperation between the Member States sharing a Marine Region or Sub-region, in order to prepare the strategies.

The proposal contains several provisions which would delegate implementing powers to the Commission in accordance with a standard regulatory committee procedure (“comitology”). Some of these provisions affect the standards and criteria to determine the “good environmental status” (Article 8), specifications and standardised methods for monitoring and assessment (Article 10), and amendments to the Annexes II, III and IV of the Directive (Article 21). Since the technical issues in the proposal are more generic and undetermined than in the WFD, it would be useful to include the works of the future implementation process of the MSD in the same committee (created by the Article 21) of the WFD (as suggested in the Commission’s proposal)²⁹, and in the same Common Implementation Strategy.

²⁸ Monitoring network designated to collect data on the status and trends of Europe's water resources in terms of quality and quantity and analyse how this reflects pressures on the environment.

²⁹ Farmer, Brown, Miller & Pallemarts (2006), Marine Thematic Strategy, Policy Brief for the EP Environment Committee IP/A/ENVI/FWC/2005-35, IEEP.

Implementation by the Member States

The transposition of EU water directives into national legislation has been carried out, in most cases, without any national simplification exercises. However, for transposing the WFD, some countries have adopted new national water laws aiming at streamlining requirements under previously transposed directives and at achieving more inter-administrative and inter-sectoral water coordination.

All in all, although the transposition and implementation of water directives across Member States progressed in very different ways³⁰, several common difficulties were encountered.

Firstly, transposition and implementation have sometimes been slowed down due to the complexity of the language used in the directives, possibilities for multiple interpretations of terminology and problems of translation of the directives without the early active involvement of Member State experts. For example, some key terms of the WFD (e.g. “surface water body”, “economic analysis of water use” or “cost-recovery of various water services”) have been open to various interpretations. This led to significant time spent on an expert level across Europe to improve the understanding of terms and to agree on the different guidance documents of the WFD CIS. National interpretation problems were also encountered in earlier water Directives, such as the Urban Waste Water Treatment Directive concerning the term “agglomeration” or the Bathing Water Directive concerning the concepts of “bathing” and “bathing seasons” for coastal and inland waters.

For some directives (e.g. on nitrates), lack of cooperation between Member States during transposition was also highlighted as a problem. Indeed, the implementation of the Nitrates Directive has been very heterogeneous due to numerous variations in its national transpositions.

Secondly, the frequent lack of coordination among national authorities (both among different administrative levels and among different sectoral authorities) negatively influenced implementation. An example is the Nitrates Directive, where problems existed due to diverging interests of national ministries for agricultural policy and ministries for environmental and water policy. A further example is provided by the Groundwater Directive which affects several sectors such as agriculture and industry, so that in France, for instance, different laws need to be modified to transpose it. In Spain, lack of coordination between authorities for water, agriculture and fishing is reported, lack of coordination of different planning processes affecting water quality (plans for protected areas, for forestry and for the use of soil) as well as the problematic allocation of competence for waste water treatment to the local administration without allocating the corresponding financial resources.

Thirdly, a rather common problem has been the lack of adequate time for planning processes and for implementation. Especially for the WFD, the following timing issues can be highlighted. The intercalibration³¹ process is still incomplete and there is no clear picture of how to transpose the intercalibration results to classification systems. Secondly, more time is needed for research (e.g. on ecological classification) to support correct implementation than for the formal legislative work.

³⁰ Specifically for the WFD, an overview of the progress of implementation in Member States is available (with regular updates) at: <http://ec.europa.eu/environment/water/water-framework/scoreboard.html>.

³¹ The intercalibration process aims at setting harmonised ecological quality criteria for the protection and restoration targets for all surface waters (inland and coastal) throughout the European Union. A common interpretation of the “good ecological status” of water is necessary in order to compare the results from the different Member States.

At the moment, the assessment of the ecological status of water bodies is (illogically) carried out in parallel to the preparation of the River Basin Management Plans (RBMPs) and the Programmes of Measures (PoMs). Thirdly, the RBMPs are due in 2009, but good ecological status needs to be achieved by 2015. This is considered too short a time for the management measures to actually have an effect on the ecological status.

Similarly, for other water directives, the time schedules for implementation are judged to be too short (e.g. for the Bathing Directive) or the reporting requirements too frequent (e.g. evaluation reporting every 4 years for the Nitrates Directive, while the WFD requires an implementation report every 6 years).

An additional problem encountered less frequently in the transposition of water directives is the case of Member States (especially Nordic), which had to adapt their more advanced national legislation to less-demanding EU legislation (e.g. regarding urban waste water treatment). However, these challenges are usually related more to the administration, implementation and reporting for the EU directives rather than to the objectives themselves.

On the other hand, in southern Europe (e.g. Spain), it is often argued that EU water policy does not reflect adequately their specific environmental reality. For instance, Directives on surface water quality are more difficult to implement in Spain than in other European countries, because the lack of rain most of the year reduces the seasonal capacity of surface waters to dilute pollutants.

Remaining gaps in legislation to achieve the environmental objectives of EU water policy

Considering the developments under the third wave and the upcoming EU water policy developments, it appears that all important water issues will be covered by EU policy in the near future. The WFD, its daughter directives and the upcoming Marine Directive are addressing all pressures on inland and marine waters, including pollutants, hydro-morphology and quantity issues. Extreme events from flooding will be covered under the new Flooding Directive and the current activities on water scarcity and droughts address low water conditions. Special attention is also paid to health issues through the Drinking Water Directive and the new Bathing Water Directive. The Drinking Water Directive takes account of future developments by stating that “in the light of future review of the parametric values, the establishment of (microbiological) parametric values applicable to water intended for human consumption should be based on public-health considerations and on a method of assessing risk”. The new Bathing Water Directive requires monitoring of microbiological indicators of faecal contamination (*E. Coli* and intestinal *Enterococci*).

Therefore, from an environmental policy perspective, it seems that all important pressures on European waters will be covered if the envisaged policy framework is fully implemented. The achievement of European quality objectives, however, may still be undermined due to national implementation gaps (see previous section for most common implementation difficulties encountered in Member States).

EU WATER POLICY IN THE CONTEXT OF THE SIMPLIFICATION FRAMEWORK

Recent and ongoing simplification activities in EU water policy

The water sector was one of the first environmental sectors that was reshaped in the context of the EU better governance activities. Member States and the Commission realised in the mid-nineties that the existing bundle of legislation would not stop the continuous degradation of the EU's waters and called for the reshaping of the EU water policy. First ideas for such a reshaping were set out in Communication COM(96)59 of the European Commission on the water policy of the Community in February 1996 calling for an integrated river basin approach but also for "drawing together some of the measures required under the various pieces of water quality legislation, particularly in respect of monitoring obligations, and bringing together the various definitions found in the legislation." These aspects and the concepts of modernisation and simplification were firstly demonstrated in the water sector with the coming into force of the Water Framework Directive (WFD) in 2000. The Directive rationalised the Community's water legislation by replacing seven earlier Directives addressing surface water, fish water, shellfish water, and dangerous substances discharges³².

Besides replacing existing Directives, the WFD also follows other issues to be considered under simplification, allowing more flexible implementation approaches to achieve a set target and involving the public. The WFD obliges Member States to work towards achieving "good status" of all European waters by setting up RBMPs to tackle all pressures hampering the achievement of this aim. Due to the six year planning cycle in which RBMPs have to be drafted and reviewed, each river basin can follow its own approach finding the most suitable and most (cost) efficient approach. Including public participation and stakeholder involvement in the WFD (Article 14) allows for the balancing of various groups' interests for taking decisions on the most appropriate measures to achieve the objectives in the River Basin Management Plan.

The same simplification principles were also a central part of the revision of the Bathing Water Directive. While the old **Bathing Water Directive** required regularly monitoring of 19 pollutants or other parameters, the new Directive reduced this list to just two. This **simplification** reflects recognition that faecal material, for instance due to inadequate sewage treatment and pollution from animal waste, is the primary health threat to bathers and that the other water quality issues should be covered by the WFD. It will apply to surface water where a large number of people are expected to bathe, establishing a method for monitoring bathing water quality during the bathing season. In **order to further ease the monitoring burden** for Member States, the Directive proposes reduced monitoring frequencies if the bathing water quality proves to be constantly "good" or "excellent". In addition, the new Bathing Water Directive requires Member States to make site-specific integrated management plans in order to protect bathers from potential contamination sources, which require particular attention at that site. A clearly defined chain of forecasting, prevention, monitoring, detection and action should be part of the management plan.

³² Commission of the European Communities (2005): Commission Working Document "Better regulation and the thematic strategies for the environment", COM(2005) 466 final.

In accordance with the legislation for public information and participation, the public should be allowed and invited to actively contribute to the management plan, as well as be regularly informed of the current status of a particular bathing site, monitoring results and water quality problems, when they occur, through the media. The principles of the EU simplification activity are also considered in the upcoming Directives, such as the **Marine Strategy Directive** and the **Floods Protection Directive**.

The ideas of better regulation and therewith of simplification cannot only be recognised in the design of new legal requirements. They also form the basis for the implementation process at EU level. The previously mentioned Common Implementation Strategy (CIS) process was also designed in this manner.

When the CIS process was set up, Member States, the European Commission, the European Environment Agency (EEA) and other bodies with a stake in reporting procedures recognised that the new water policy also provides an opportunity for “streamlining” the reporting process established under the first and second wave of EU water policies.

In order to streamline the reporting process of the various Directives and make the exchange process as efficient as possible using modern technology (i.e. Web based reporting), it was agreed in 2003 to set up a “**Water Information System for Europe**” (WISE). The idea of WISE also presents opportunities for rationalising the information collected and thus reducing the reporting burden on Member States.

Under this joint initiative of DG Environment, the EEA, Eurostat (ESTAT) and the Joint Research Centre (JRC), WISE aims to set up a GIS based information system for all water-related information stemming from EU water policy (not only the Water Framework, but also the Urban Waste water Treatment, Nitrates, Bathing Water and Drinking Water Directives as well as the upcoming Marine and Flood Directives). It should be extended to cover other European water-related datasets (such as EIONET Water and water research information). By geo-referencing most of these data, WISE will become an important building block for INSPIRE³³, another European Community initiative that aims to establish an infrastructure for spatial information in the EU. WISE is currently being developed and should be fully operational by 2010.

Analysis of the simplification potential in EU water policy

As shown above, the simplification process in EU water legislation is well in progress. However, the interviews conducted for this briefing highlighted further issues for simplification. These issues are discussed in the sections below.

1. Administrative burdens

Monitoring and the related reporting of water quality information have been mentioned as one of the biggest administrative burdens in most of the interviews. Reporting requirements are often seen as too detailed and the reporting frequencies of the different Directives are not harmonised, leading to double reporting of the same data at different times (e.g. reporting for the Nitrates Directive and reporting for Art. 5 of the WFD).

³³ Infrastructure for spatial information in Europe, see <http://inspire.jrc.it/>

However these issues have already been identified and WISE, as mentioned above, should be seen as a first step towards simplification. In addition, and in accordance with the Commission work program for 2007³⁴, the issue of reporting will be addressed in a Communication outlining the vision, objectives, actions and timetable for the development of a Shared Environmental Information System. It will announce simplification measures for environmental reporting to be presented in 2007. The Communication will be accompanied with appropriate legislative proposals to streamline the environmental reporting. More specifically, further room for simplification is seen in terms of streamlining the reporting cycles of different directives. However, simplified reporting needs also to take into account the reporting requirements of the European Commission to the European Parliament and not only the reporting requirements of the Member States to the European Commission.

2. *Overlaps in water policies*

Considering the existing and upcoming policy framework for EU waters and taking into account the current simplification activities, it becomes clear that only minor overlaps remain. There is a need to discuss these overlaps from a technical, administrative and policy point of view:

- **WFD and Nitrates Directives:** The WFD and its daughter Directive on Groundwater require the establishment of programmes of measures to achieve the “good ecological status” in waters (Article 11). This also includes setting up measures in case of pollution from nitrate. Under the Nitrates Directive, Member States must establish codes of good agricultural practice to be implemented by farmers on a voluntary basis (Article 4) and action programmes in respect of vulnerable zones to address nitrate pollution (Article 5). These must include the measures prescribed in the codes of good agricultural practice and measures to limit the spreading on land of any fertiliser containing nitrogen and of livestock effluent. In addition, the Directive authorises Member States to take additional measures or to reinforce the action programmes in order to attain the objectives of the Directive. With this in mind, there is clearly an overlap of the WFD and the Nitrates Directive from a technical point of view.

However, there is an important difference with respect to the enforcing authorities in the several Member States. While the WFD is mostly under clear responsibility of the water authorities, the Nitrates Directive is often under the authorities responsible for agriculture since the national implementation of codes of good practice is clearly linked to agricultural issues. Due to the different policy interests between agriculture and water management³⁵, a repealing of the Nitrates Directive before the first programmes of measures of the WFD are set up could result in a reduction of environmental quality as the influence of water authorities on non-environmentally friendly agricultural practices cannot be ensured. Depending on the design of the first programmes of measures and the results achieved after the first management cycle of the WFD in 2015, a discussion on the potential repealing of the Nitrates Directive could be started.

³⁴ See http://ec.europa.eu/atwork/programmes/docs/clwp2007_en.pdf

³⁵ See e.g. Dworak, T., Herbke, N.; Müssner, R. and Görlach, B. (2006): WFD and Agriculture Linkages at the EU Level, Synthesis Report of the 2005-06 Activity of the SSG on "WFD and Agriculture". Ecologic: Berlin.

- WFD and Urban Waste Water Directive (UWWTD): There is an overlap between the UWWTD and the WFD as both directives require measures to reduce pollution from point sources. In other words, from a technical point of view, the programmes of measures under the WFD could substitute the requirements established under the UWWTD. However, when entering a discussion on whether to repeal the UWWTD, the further implementation of the WFD should be considered. For instance, the WFD allows exemptions in the programmes of measures in case of disproportionate costs (Art 4.4). Considering that one important reason for the still incomplete implementation of the UWWTD are the high implementation costs, the WFD options for exemptions open the possibility for the application for “cost” exemptions in several cases. This would not only lower the environmental water quality that should be achieved by 2015, but would also bring a “cost benefit” to those Member States which have not complied with the UWWTD so far.

In short, both the Nitrates Directive and the UWWTD overlap with the WFD from a technical point of view. Depending on the future implementation of the WFD, in particular of the programmes of measures, these Directives could be repealed in the long run (beyond 2015). Repeal at an earlier stage might result in a reduction of environmental water quality. In the case of the Nitrates Directive, this might result from lowering environmental standards in agriculture and in the case of the UWWTD from using “cost” exemptions.

3. Overlaps between water policies and other policies

The current Community legal framework on the regulation of industrial emissions is complex and comprises the following main pieces of legislation: the Integrated Pollution Prevention and Control (IPPC) Directive (96/61/EC) and several sectoral Directives, namely the Large Combustion Plants (LCP) Directive (2001/80/EC), the Waste Incineration (WI) Directive (2000/76/EC) and the Solvents Emissions (SE) Directive (1999/13/EC). Some of these directives overlap with requirements set out under existing water legislation. In order to identify these overlaps the Commission has set out a strategic initiative in its 2007 work programme. Its general objective is to evaluate the scope available for improving the functioning of the current legal framework related to industrial emissions and the interaction between the various legislation, without altering the underlying principles and the level of ambition of the present legal framework.

Furthermore, there could be some potential overlap between the Strategic Environmental Assessment (SEA) Directive and the WFD, considering the relevance of the SEA Directive on the environmental effects of plans and programmes and the WFD requirements for RBMPs and Programmes of Measures (PoMs). Interpretations and explanations of this potential overlap are provided in a guidance document of the Commission’s DG Environment on the implementation of the SEA³⁶. This document states, in short, that an assessment of whether RBMPs and PoMs are in the scope of the SEA should be done on a case-by-case basis. The main question is whether the RBMPs and PoMs set the framework for future development consents of projects. The answer will depend on the contents of RBMPs and PoMs in each case. However, there can be also synergies between the SEA and the WFD. For instance, when measures and projects have been dealt with in a RBMP for their water-related impacts, the RBMP information will be used in any subsequent SEA, which will deal with other environmental effects (e.g. air quality) and will not repeat an assessment of impacts on water. An additional synergy between the SEA and the WFD could be achieved by combining their public consultation processes.

³⁶ Available at: http://ec.europa.eu/environment/eia/pdf/030923_sea_guidance.pdf.

4. Organisational framework

The expert network established through the CIS of the WFD has turned out to be very beneficial, both on a strategic and a technical level. More than 1,000 experts and stakeholders have been connected through this process and the important positive feedback seems to suggest that the benefits from the establishment of this network already make the CIS a success. The experience of implementing the work programme of the CIS has always been reviewed on a two year basis before setting up new work programmes, allowing a flexible approach adapted to new needs. Further, the CIS process has also become a platform for new water related initiatives, such as on flooding or droughts.

However, despite these and other positive developments, there are also some critical signs. Several findings suggest that there was only limited or no use made of the CIS Guidance Documents which, of course, would question the added value of all the past efforts on the CIS. Further, several administrations in Member States, especially smaller countries, stress the large amount of work related to the development and review of such CIS documents. These criticisms have been reflected in the new work programme for 2007-2009 which agrees that the main driver for this period should be "less documents and more exchange of practical experiences"³⁷.

Additional administrative resources are taken up by the specific committees for non WFD water legislation set out in older regulations which are often running in parallel to the CIS process. It should be checked, to which extent these specific committees are still needed or could be included in the future development of the CIS process.

5. Future developments in EU water policy in the light of the simplification process

As mentioned above, the Commission has started to work on the issue of water scarcity and droughts. The activities on scarcity and droughts might result in new legislative action in the future. However, for the sake of simplification, the extent to which policy goals on scarcity and droughts can be achieved through existing water legislation and funding instruments should be verified first. For instance, although the WFD largely focuses on water quality, also issues of water scarcity and droughts could be covered under the RBMPs and the PoMs of this Directive.

Additional issues to be considered in future simplification exercises

Although a simplification process of EU water policy is already in progress, the previous section of this briefing showed that some further elements of EU water legislation could be simplified in the future. In this context some additional important issues should be considered in order to ensure that any future simplification does not result in environmental quality which is lower than that required by current legislation. These issues are:

- A stakeholder involvement process should give non-governmental organisations enough room to present their opinions and should allow all stakeholders to contribute their views to the shaping of new rules. Such a process further allows making stakeholders aware of the new policy framework.

³⁷ Common Implementation Strategy for the Water Framework Directive (2000/60/EC). "Improving the comparability and quality of the Water Framework Directive implementation Progress and work programme for 2007-2009" as agreed by the Water Directors on 30 November/1 December 2006.

- Costs and benefits of simplification options should be considered. Especially, in some cases, a reduction of administrative costs could result in higher costs for other stakeholders outside the administration.
- The effects of simplification should not only be reviewed in the context of potentially significant negative impacts on competitiveness. Such impact assessments should go hand in hand with an environmental impact assessment looking at potential negative side effects on the environment.
- In order to achieve a full simplification across Europe, it is not enough to deal with Community rules alone, as they represent only part of the regulatory environment. National rules must be addressed too, but the simplification of national legislation is the responsibility of Member States.

CONCLUSIONS

Since the start of European water policy in the 1970s, a complex set of directives and regulations has been established over the years. These sets of legislation addressed many of the emerging environmental quality issues related to water. In 1996, a Communication of the European Commission on the water policy of the Community was issued, reflecting the initiative on "better regulation" of 1992. This Communication called for a **Water Framework Directive** (WFD) in order to concentrate, rationalise and standardise, as well as improve the efficiency of European water protection legislation. The WFD came into force in 2000 and represents a milestone in EU water policy. As a Framework Directive it covers all inland and coastal waters and represents a powerful tool to address the various pressures on water (quality, quantity and hydro-morphology). The Directive replaces several earlier regulations and gives Member States a flexible and more target-related approach for implementation. In order to support Member States in the implementation process and to involve a broad range of stakeholders, a Common Implementation Process was set up. Under this process the production of several guidance documents has been organised, a platform for sharing information and experiences has been established and the streamlining of reporting has been started.

On the ground, the transposition and implementation of water Directives (including the WFD) has progressed with a different pace in different Member States. However, several common difficulties have been encountered (e.g. language and interpretation problems of terms used, lack of coordination among national authorities, too tight time-schedules for implementation).

Recently and in parallel to the implementation of the WFD, new EU water policy actions have also been taken. The Floods Directive, a new Directive on environmental quality standards in the field of water policy, and the Marine Strategy Directive have been proposed, the Bathing Water Directive was revised, and a new Groundwater Directive was set up. All this has been carried out as part of the better regulation approach and in complement to the WFD.

As one can see from the above, EU water policy is undergoing a complete reshaping process, which will continue for some more years. Nonetheless, this briefing could identify some further simplification options in this field of European policy. For instance, monitoring and reporting requirements under different water directives could be further simplified. In fact, work in this direction is already under way. WISE, a common reporting platform, aims to harmonise and simplify required reporting in order to reduce administrative burdens. In addition to this, the work programme of the European Commission for 2007 foresees a Communication on the development of a "Shared Environmental Information System" which aims to further reduce the reporting burden. Secondly, the repealing of the Nitrate and Urban Waste Water Directive could be possible in the long run (beyond 2015), if it can be ensured that their objectives and technical aspects can be addressed in the future by the WFD. Thirdly, some overlaps between water and other policies (e.g. on industrial emissions regulations and on strategic environmental assessment) are in the process of being addressed by the Commission. The interpretation of such cross-field simplifications on the national level remains to be seen. Finally, the issue of water scarcity and droughts seems so far not explicitly addressed in European water policy. Work of the Commission with relevant stakeholders is underway to consider this issue more explicitly. Before proceeding to new legislative action, it should be checked to what extent policy goals on scarcity can be achieved through existing EU water legislation (especially the WFD) and EU funding instruments.

All in all, it should be emphasised that even if simplification in EU water policy progresses well, it can only be a success on the ground if Member States also set up simplification programmes adapted to national circumstances, as well as better coordinating structures within their national administrations.

ANNEX 1 – QUESTIONNAIRE FOR INTERVIEWS

Simplifying European Water Policy – needless or a need ?

Note to the Interviewer

Please note that this interview guide represents a general framework. The questions should be adapted to the background of the interviewed person.

Name of the interviewed person: _____

Institution: _____

Position: _____

Date of the interview: _____

INTRODUCTION

The following interview guide is part of a survey on behalf of the European Parliament, to explore the need of simplification in European water policy. Your experiences as a water expert are very valuable to us, in order to get a better view of whether simplification in European water policy is needed, where and how this could be achieved. First we ask some questions regarding your familiarity with different key water directives. Then we ask some questions on the need to simplify any of these key water directives in separate. Finally we ask for your opinion on any cross-directive simplification needed and on any water issues not covered in current EU legislation.

PERSONAL CONTEXT

1. Which European water policy/-ies or water legislation are you familiar with (please tick) and in which position / responsibility are you dealing with each of the following ?

Directives	X	Position / responsibility
<i>Existing Directives</i>		
Water Framework Directive (2000/60/EC)		
Directive on pollution caused by discharges of certain dangerous substances (76/464/EEC)		
Urban Waste Water Treatment Directive (91/271/EEC and 98/15/EEC)		
Drinking Water Directive (98/83/EC)		

Groundwater Directive (Directive adopted, 12/12/2006)		
<i>Recently adopted and proposed Directives</i>		
Surface water protection from pollution (Directive proposal agreed, 17/07/2006)		
Flood Risk Management (Communication on the common position adopted, 06/12/2006)		
Marine Strategy Directive (Directive proposal agreed, 12/01/2007)		
<i>Other directives related to water</i>		

NEED FOR SIMPLIFICATION WITHIN INDIVIDUAL WATER DIRECTIVES?

2. Is any of the above Directives or part of a Directive redundant in your opinion? If yes, please specify which Directive and for what reason.

3. Were the existing Directives listed above difficult to transpose or implement in your country ? Why ?

4. Was there any simplification carried out during transposition of the European Directives into national legislation (in the procedures or reporting requirements) in your Member State?

5. Can you choose from the following list, problems related to incorrect implementation and transposition for each existing Directive ? Please give examples.

0 Language problems (multiple interpretations of texts possible or too complex language use), namely...

0 Contradictions (between requirements described within one EU Directive), namely...

0 Discrepancies (for instance gaps between EU and national legislation, which make transposition difficult to carry out or omissions of important aspects), namely...

0 Other issue, namely...

NEED FOR CROSS-WATER DIRECTIVES SIMPLIFICATION ?

6. Do you see any overlap in the content of different EU water directives ? (Besides water directives, also other related policies may be considered, e.g. IPPC Dir, Birds Dir, Habitats Dir, others ?)

7. Do you think that parts of new proposed Directives are producing overlaps with old Directives ? If yes, please specify ?

8. Do you see a need for simplification in the procedures and reporting requirements between different EU water directives ?

9. Are there any other suggestions for simplification beside reporting ?

FUTURE DEVELOPMENTS

10. Are there water management issues which are not dealt with in EU water directives so far (existing or proposed) ? Should these issues be covered by EU water policy ? If yes, how ?

11. Does the national legislation in you country introduce stricter provisions than those in the European water related legislation ?

12. Do you have any suggestions on how to streamline any further simplification of EU water policy ?

Any other comments regarding Simplification ?

Thank you for your kind co-operation !

ABBREVIATIONS

CIS	Common Implementation Strategy
EAP	Environmental Action Programmes
EC	European Commission
EEA	European Environment Agency
EIONET	European Environment Information and Observation Network
ESTAT	EuroStat
EU	European Union
GIS	Geographic Information System
INSPIRE	INfrastructure for SPatial InfoRmation in Europe
IPPC	Integrated Pollution Prevention and Control
JRC	Joint Research Centre
MSD	Proposal for a Marine Strategy Directive (COM(2005)505 final)
PoM	Programme of Measures
RBMP	River Basin Management Plan
SEA	Strategic Environmental Assessment
UWWTD	Urban Waste Water Directive 91/271/EEC
WFD	Water Framework Directive 2000/60/EC
WISE	Water Information System for Europe