



Joint Statement

Raw Materials Europe's Input on the Announced Guidance Document and Revision of the Water Framework Directive

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The undersigned associations of Raw Materials Europe (RME), representing the European non-energy extractive industry panel, believe that the recently announced initiatives under RESourceEU and the Environmental Omnibus package (VIII) are important steps in the right direction to unblock permitting in the European non-energy extractive industry.

Pending the resolution of what may constitute the most significant challenge to establishing an integrated and resilient raw materials value chain, the announced revision of the Water Framework Directive (WFD), Raw Materials Europe would like to take this opportunity to provide input to the guidance document that was announced, in order to address the interim needs until the revision is completed.

Raw Materials Europe is urging:

- **Targeted amendments to the WFD to address the permitting issues.** This concerns the following points:
 - Improvement of exceptions to the management objectives (Article 4(7) WFD).
 - Extension of deadlines (Article 4(4)(c) WFD)
 - Improvement of less stringent management objectives (Article 4(5) WFD)
 - Pragmatic definition of ‘deterioration’
- **Be involved in the upcoming EU Commission work on the Guidance and the WFD review,** to ensure that the solutions proposed are workable, the expertise of the raw materials sector that encounters these bottlenecks daily must be integrated into the drafting process for both the guidance and the amendments to the WFD.
- **The ongoing EU legislative process on Integrated Water Management (“EU Water Package”) should be suspended** in the EP and Council. This is because the subject matter of this EU Water Package process includes fundamental issues of water law mentioned above; it further tightens the WFD in particular by codifying the far too strict ECJ-Definition of “deterioration” in the WFD. Adopting the outcome of the EU water Package trilogue – agreed before the ReSourceEU and Environmental Omnibus – would create a fait accompli and undermine the measures announced by the Commission in the Environmental Omnibus and ReSourceEU (Guidance and Revision of the WFD), effectively rendering them absurd.

1) **Guidance cannot replace modifications of the Water Framework Directive**

Firstly, we would like to emphasize that the guidance document cannot replace the necessary modifications and adaptations to the environmental legislative framework. The legislative framework, in its current iteration, has increasingly become a barrier to industrial investment, which consequently prevents us from meeting important societal needs. The proposed guidance document on the Water Framework Directive can only serve as an additional interpretation document. It cannot replace the substantive legislative changes necessary in the Water Framework Directive itself.

As addressed in our previous Joint Position Paper “The impact of the Water Framework Directive revision on the competitiveness of the European non-energy extractive sector”, the Water Framework Directive and its far-reaching goals create legal and practical challenges. An important consideration is the question of whether the objectives of the WFD can be practically reached by 2027 across all Member States; moreover, there are significant uncertainties connected to the derogations and exemptions of the WFD. These uncertainties need to be addressed urgently at the level of the Water Framework Directive itself. Raw Materials Europe welcomes the EU Commission’s announcement of a review and subsequent revision of the WFD.

From RME’s perspective, particular attention must be paid to the important derogation set out in Article 4(7) of the WFD and must be addressed in such a revision. In its current wording, Article 4(7) does not provide for any derogation in the case of failure to achieve good chemical status of surface waters, and it does not allow derogations for impacts stemming from emissions.

Therefore, **we suggest that Article 4(7) should be amended** so that no constellation of circumstances is excluded from the scope of this exemption from the outset.

The Article 4(7) amendment text proposal of our previous Joint position paper is also provided below:

4.7. ‘Member States will not be in breach of this Directive when (our proposed amendments shown crossed out in red):

- failure to achieve good groundwater status, good ~~ecological surface water~~ status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the ~~physical~~ characteristics of a ~~surface~~ water body or alterations to the level of bodies of groundwater, or
- failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities and all the following conditions are met:

- (a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;
- (b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;
- (c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and
- (d) the 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, which are a significantly better environmental option.’

The objective of adjusting the design of Article 4 (7) of the WFD is to make the provision in the first amendment applicable to good chemical status, not just ecological status of surface water. This is even more important now that the Commission has proposed that river basin-specific pollutants should become part of chemical status. The second amendment– ‘modifications to the physical characteristics’ – means that a derogation may be granted for all types of modifications to a water body, not just for modifications to hydro-morphological characteristics. Lately, the third amendment – ‘characteristics of a surface water body’ – allows the inclusion of modifications to a groundwater body as well as to a surface water body.

Additionally, the Water Framework Directive should include a **practical and proportionate definition of the term "deterioration"**; this definition must allow for flexibility and introduce a distinction that not every impact on the water quality should be considered a prohibited deterioration.

An additional consideration is that the option to extend the deadline for achieving good status under **Article 4(4)(c)** of the WFD only exists until 2027 in cases of anthropogenic impacts, and thereafter only on the basis of ‘natural conditions’, which is unlikely to apply in many cases if a long-term industrial facility with water utilisation is to be continued beyond 2027. **After 2027, it must be possible to continue industrial activities.** A realistic extension of the deadline option is required here, coupled with an evaluation of whether the ‘no further deterioration’ requirement in **Article 4(5)**, as applied to the less stringent objectives, could be removed. Alternatively, the consideration of the implementation of a stepwise approach, accompanied by a flexible definition of deterioration.

Unfortunately, **the recently negotiated agreement on the revised Water Framework Directive doesn’t take into consideration the concerns of industry.** Rather, it increases the existing difficulties associated with new projects trying to obtain the needed permits, by introducing new and stricter environmental quality standards without appropriate provisions for derogations under the current Directive.

2) Scope and applicability - Announced Guidance on Water Framework Directive

The guidance should provide clarification on the practical challenges and uncertainties that are created by the Water Framework Directive and its far-reaching goals and obligations as they are applied.

However, regarding the most important issue of exemptions, guidance is not an adequate means to deliver the necessary adjustments. Such amendments must be incorporated directly into the legal text of the WFD itself.

A guidance document, however, can provide interpretative guidance on the following points:

- **Derivation of Environmental Quality Standards (EQS) and bioavailability**

Administrative estimates of **EQSs have the power to stop industrial projects**, even where project-specific, evidence-based assessments indicate no actual negative impact of conditions for aquatic life. This is because of the narrow application of the term “deterioration”. The guidance should **address the methodology** of how these estimates are conducted and give precedence to real deterioration evidence. It must be possible to **make site-specific, or at least river basin specific, adaptations in the application of general EQSs**.

The guidance should stress that all EQSs are to be **based on scientific evidence** and address real risks. Any lack of comprehensive scientific knowledge shall not be compensated with the application of multiple layers of precautionary assessments when establishing EQSs, as this may result in unreasonably or artificially low limit values that do not correspond to the actual water quality situation, particularly concerning naturally occurring elements, substances, and compounds.

It would also be appropriate to reiterate and strengthen the current recommendation (in CIS Guidance No 27) on the consideration of **bioavailability**. All EQSs for metals should refer to bioavailable concentrations to avoid unreasonably and unnecessarily low EQSs that do not correspond to actual impact levels of toxicity. Where bioavailability models are not available, they must be developed in parallel with the derivation of an EQS.

- **Compliance with EQS**

The guidance ought also to address compliance with Environmental Quality Standards. Specifically, it could be clarified that the **EQS compliance should be assessed at the level of the water body as a whole**, rather than at individual or isolated measuring points, taking into account other factors that provide for representativity. A water body should be classified as deteriorated only when the impact has an effect on its ecological and/or societal functions.

- **Natural Background concentrations**

The Guidance should clarify how to take into account ‘natural’ background concentrations when assessing the chemical status and EQSs of surface water and groundwater. Natural background should be interpreted as ‘ambient’ background, rather than pre-industrial background, in order to account for Europe’s long history of human activity which has affected background concentrations. It would also seem appropriate to stress that increased concentrations of naturally occurring substances, which are negligible in relation to natural (or ambient) background, should not result in a water body being classified as deteriorated. The guidance must also address the fact that natural background concentrations can vary greatly in concentration also within a small geographic range.