PAN Europe and PAN Germany position

concerning the current review of the Water Framework Directive (WFD) and its Daughter Directives

Brussels / Hamburg, March 2019

Summary

Against the backdrop of several shortcomings in the implementation and application of the WFD, PAN Europe and PAN Germany urge Member States as well as the European Commission to put in place a more consistent approach to fulfil the legal requirements for the protection of our aquatic ecosystems. At this stage, there is no need to revise the WFD, but there is an urgent need to better implement its provisions. The collapse of biodiversity is taking place at a worrying pace and strong measures need to be taken to protect European waters. A quick and full implementation of the European water protection targets would contribute to protect, conserve and enhance the Union's natural capital while safeguarding citizens from environment-related pressures and risks to health and wellbeing as set in the 7th Environment Action Programme. It would also contribute to the achievement of the relevant Agenda 2030 sustainable development goals, agreed by the United Nations.

Background

Water is not a commercial product as some may consider but rather a heritage, which must be protected, defended and treated as such. Water is a natural resource, a medium and a habitat. In order to realize their shared objective - that rivers, lakes, groundwater, transitional and coastal waters shall achieve a good status - both Member States of the European Union and the European Parliament have adopted a common framework for the water policy in 2000, called the Water Framework Directive (WFD)[1]. From a global perspective, the WFD can be regarded as a modern, integrated and holistic environmental policy, having as a main objective to protect our valuable European freshwater resources and achieve good ecological status of EU waters. It enhances an ecologically-oriented as well as participatory river basin management.

According to article 19 of this Directive, the EU Commission (Directorate General for the Environment) is currently reviewing the WFD and its Daughter Directives for environmental quality standards in the field of water policy[2] and for the protection of groundwater[3]. This review goes along with the so-called „fitness-check", a process taking place at European Commission level, which aims at clarifying whether the existing legislation is effective, efficient and relevant, whether it offers an added value for the EU and whether it is coherent with other EU policies.[4] The EU Commission started a public consultation to inform the "Fitness Check of the Water Framework Directive and the Floods Directive" in September 2018, which invites citizens and experts to express their opinion until the

1 Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (WFD)

2 Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy

3 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

4 European Commission, DG ENV (2017): Roadmap on the fitness check of the Water Framework Directive and the Floods Directive. Ref. Ares (2017)5128184 - 20/10/2017

11th March 2019, using the provided questionnaire.[5] Pesticide Action Network (PAN) Europe and PAN Germany welcome that the civil society is invited to participate in this process. As environmental NGOs, PAN Europe and PAN Germany and their member organisations deal with the development and implementation of chemicals' legislations since the 1980s, particularly with the pesticide-relevant regulations and policies, but also with legislation on biocides and veterinary medicines and related policies. The commitment of PAN covers also the interface between those chemicals and water legislation.

Poor WFD-implementation

The original target of the WFD to get all European waters into a good status by 2015 was not achieved. Despite the fact that some progress has been made for the protection of river basins in the EU since the introduction of the WFD in 2000, there are still shortcomings at a large scale. Already in 2012, the Commission's 'Blueprint to Safeguard Europe's Water Resources' found out that about half of EU surface waters were unlikely to reach a good ecological status by 2015[6]. The WFD implementation process also revealed major monitoring gaps in EU Member States; in 2012 the status of more than 40 % of European water bodies was completely unknown. Recently, the European Environment Agency (EEA) highlighted in its water status report from 2018, that currently only 38 % of the monitored lakes, rivers and other surface water bodies fulfil the good chemical status - i.e. only about a third of the controlled water bodies do not exceed the EU-wide applied environmental quality standards (EQS) addressed to limit the concentrations of priority substances.[7] Furthermore, around 40 % of the surface water bodies do not fulfil the good ecological status or the good ecological potential.[8]

One of the main pressures for aquatic environment is attributed to pesticides and biocides, which - per se - pose toxic effects on organisms.[9] It is clear that the implementation of the WFD is yet to be fulfilled.

Based on experience with EU policy, on own work and on published scientific literature, PAN Europe and PAN Germany emphasize that the failure to reach the environmental objectives of the WFD is mainly due to the shortcomings in the WFD implementation phase. Necessary efforts have still to be made by EU member states in order to facilitate the implementation of WFD targets and to incorpo-

5 European Commission (2018): Public Consultation. Fitness Check of the Water Framework Directive and the Floods Directive. Link: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-5128184/public-consultation_en

6 European Commission (2012): A Blueprint to Safeguard Europe's Water Resources. COM/2012/0673 final

7 EEA (2018): European waters - Assessment of status and pressures 2018, Report No 7/2018: https://www.eea.europa.eu/publications/state-of-water/at_download/file

8 ibid.

9 Helmholtz Zentrum für Umweltforschung, UFZ (2013): Pestizide reduzieren die Artenvielfalt in Gewässern deutlich. Momentane Risikobewertung schützt nicht ausreichend. Pressemitteilung vom 17. Juni 2013: http://www.ufz.de/index.php?de=35329

rate the requirements of the WFD in the relevant sector policies like the common agriculture as well as chemical policies.

Even in the framework of the water policy there are still only few responsible bodies that consistently apply the WFD implementation tools, which have been established to help reaching sustainable water uses and a good status for European waters.

Findings from comprehensively designed scientific research demonstrate that almost half of the freshwater bodies within the European Union are contaminated with organic pollutants. A 2014 meta-analysis of water samples taken from 4,000 monitoring sites across Europe showed that in 42 % of the sites, the water was contaminated with chemicals at levels that cause chronic toxicity to the aquatic life.[8] This pressure does not only generate harmful effects on aquatic biocoenosis and biodiversity but also reduces the availability of easily useable drinking water supply or other sustainable water uses. The study also indicates that potentially acute risks to aquatic communities are almost exclusively caused by pesticides. Therefore, the extent of contamination of European waters by pollutants is underestimated due to a lack of monitoring, and the "toxic pressure" upon aquatic ecosystems due to pollutant mixtures is misjudged.[10]

In addition, in the context of specific sampling - and not as a result of the common monitoring practice - residues of veterinary pharmaceuticals are detected in groundwater bodies; substances which are predominantly applied in intensive livestock operations.[11] Further, the models used in the environmental risk assessment of pesticides have been proven to underestimate the concentration of pesticides in water and their toxicity.[12,13]

The situation of ‘water-dependent Natura 2000 sites’ as well as of groundwater ecosystems remains widely unclear. Similarly, the status of the majority of small water courses below a basin area of 10 km² or lakes with a size below 0,5 km² are not usually considered in the management plans and reports of the member states. Consequently, there is a big knowledge and data gap regarding the contamination of small watercourses.

Taking into consideration the unrestricted loss of biodiversity as well as the threat that climate change poses upon aquatic ecosystems, drinking water sources and public health, it is irresponsible

[10] Malaj, E. et al. (2014). Organic chemicals jeopardize the health of freshwater ecosystems on the continental scale. Proceedings of the National Academy of Sciences of the United States of America 111(26): 9549–54. DOI:10.1073/pnas.1321082111

[11] Hannappel, S. et al. (2016): Aufklärung der Ursachen von Tierarzneimittelfunden im Grundwasser – Untersuchung eitragsgefährdeter Standorte in Norddeutschland. UBA-Texte 54/2016: https://www.umweltbundesamt.de/sites/default/files/medien/378/publikationen/texte_54_2016_aufklaerung_der_ursachen_von_tierarzneimittelfunden_im_grundwasser.pdf

[12] Stehle S, Schulz R (2015). Pesticide Authorization in the EU – environment unprotected? Environ Sci Pollut Res 22: 19632-19647

[13] Knäbel A, Meyer K, Rapp J, Schulz R, (2014). Fungicide field concentrations exceed FOCUS surface water pre dictions: Urgent need of model improvement. Environ Sci Technol, 48, 455-463

to further delay a strict implementation of WFD requirements or not to prioritise an increased water protection.

Fifth WFD implementation report confirms shortcomings

PAN Europe and PAN Germany agrees to the picture drawn and welcome the suggestions for improvement highlighted by the fifth implementation report released by the European Commission at 26th February 2019.[14]

In particular PAN welcomes the report identifying that:

- For a large part of protected areas, knowledge about, for example, status and pressures is lacking and no objectives are set.
- Member States have to step up their efforts as soon as possible.
- Further efforts are needed to have appropriate monitoring networks reaching sufficient spatial coverage and assessment reliability.
- Member States clearly need to identify the gap to good status for individual pressures and water bodies. They shall design, fund and implement targeted action programmes to close the gap.
- European Commission's proposal establishes new WFD-relevant requirements for the farmers in the context of the revision of the CAP.
- Attention will also be paid to new emerging substances, e.g. pharmaceuticals.

At the same time, PAN Europe and PAN Germany regret that the implementation report and the explaining Commission Staff Working Document accompanying the report[15] have been published only just before the end of the public consultation and therefore too late for many stakeholders to include findings from this report in their comments. Furthermore, PAN disagrees with the vague conclusions concerning Member States' efforts to control chemical pollution.[16]

[14] European Commission (2019): REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of the Water Framework Directive (2000/60/EC) and the Floods Directive (2007/60/EC). Second River Basin Management Plans First Flood Risk Management Plans. Brussels, 26.2.2019. COM(2019) 95 final. Link: https://ec.europa.eu/info/files/commission-report-european-parliament-and-council-implementation-water-framework-directive-assessment-second-river-basin-management-plans-and-floods-directive-first-flood-risk-management-plans_en

[15] European Commission (2019): A European Overview of the second River Basin Management Plans & Country-specific assessments for EU Member States' second River Basin Management Plans. SWD(2019) 30 final: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=SWD:2019:30:FIN&qid=1551267381862&from=EN

[16] ibid. For instance, page 3: "[...]Better implementation of other closely linked pieces of EU law also had a positive effect. This concerns in particular [...] EU law on chemicals. [...];" page 5: pollution caused by inputs of pesticides or veterinary pharmaceuticals from agricultural activities is not mentioned; page 5: "[...]Basic measures to deal with pressures from sectors other than agriculture, such as industry or energy generation,

PAN Europe and PAN German highlight that contamination from pesticides, biocides and veterinary pharmaceuticals remains mostly unresolved because relevant measures lack efficiency or are simply not in place. The implementation report does not clarify which concrete steps are taken at EU-level in order to tackle the input of relevant pollutants in due time (e.g. EU efforts before 2021) and to overcome with relevant EU-wide delays in implementation. For instance, the Commission still leaves it open when it releases its outstanding draft EU strategy concerning pharmaceuticals in the environment. According to Art. 8 EQS-Directive, this should have been done in 2015.

Core expectations of PAN Europe and PAN Germany

It is essential for PAN Europe and PAN Germany, that all background documents are published before the public consultation of the WFD review is finished and that all participants of the consultation receive enough time to comment on them. In this context, the non-exhaustive list of relevant documents which is presented in the European Commission's roadmap[17] to the WFD - fitness check should be updated.

Furthermore, PAN Europe and PAN Germany support the position of several European environmental organisations[18] concerning the assessment and further approach with respect to the WFD.

Having regard to the above observations, PAN Europe and PAN Germany wish to highlight the following "substance-related" needs for action:

- Fully consolidate the current level of protection of WFD and avoid any attempt to weaken down its provisions. The present WFD-provisions and objectives, deadlines and instruments should be maintained. Since its entry into force in 2000, the WFD set clear environmental objectives to be met by 2015. The option to postpone this binding deadline until the year 2021 or - at the very latest - until the year 2027 should only be applied in exceptional cases. As a precondition, the concerned Member State should have to demonstrate that it fulfils one of the specified reasons for claiming the relevant derogation. PAN expects that the 2027 deadline can be met as long as all responsible bodies and stakeholders make the necessary efforts.
- It is crucial to enforce and track the implementation of the available WFD-tools.[19] Amongst others, a "CIS-task force"[20] should be established in order to identify and rapidly solve the central,

are generally in place as well. These are, in most cases, specific measures to deal with pollutants which are causing failures of chemical or ecological status, such as, for example, measures to reduce or stop the release into water of certain pollutants. However, more progress is needed.[...]."

17 European Commission (2017): Evaluation and Fitness Check Roadmap, Link: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-5128184_en

18 Living Rivers Europe: Save guarding healthy water for people and nature. Link: http://d2ouvy59p0dg6k.cloudfront.net/downloads/lre_vision_statement_final_1.pdf; Living Rivers Europe: The EU Water Framework Directive. Fit for purpose. Link: http://d2ouvy59p0dg6k.cloudfront.net/downloads/2018_wfd_fc_briefing_final.pdf; https://www.livingrivers.eu/

19 According article 11, 13 and Annex VI WFD these tools include, amongst others, water fees, detailed management plans for certain problems or water types. or financial or administrative instruments

inter-sectoral shortcomings of the implementation. Moreover, Member States should elaborate detailed management plans, in order to better assess the real extent of pollution in their river basins, which results from the input of pesticides, biocides and veterinary pharmaceutical products. In this context they should transparently clarify the source of the relevant pollution and immediately introduce effective measures, particularly at the source of the pollution - so that the pressure is minimised.

- Detailed management plans should guarantee, that all aquatic habitats are fully protected and any kind of human influence that would alter their condition to be prevented. Habitats that should be protected include water-dependent nature protection sites, groundwater ecosystems or small water bodies (i.e. water courses < 10km² basin area) due to their important contribution to biodiversity.
- There should be an effective and quick feedback-mechanism between chemical regulations and water protection legislations in order to enhance the synergies of both legislative areas. These efforts should include provisions concerning a mandatory and sensitive "post-monitoring" of substances in the context of their approval or authorisation. Once biocides, pesticides or veterinary pharmaceutical residues are detected in the water, there should be consistent restrictions for placing such substances at the market and concerning their use. This is also in line with Pesticides Regulation 1107/2009 (Art 21) and Biocidal Products Regulation 528/2012 (Art 15). The European Commission and Member States should thus much more quickly adjust approval/authorisation conditions.
- It is necessary to screen significantly more substances under the EU-wide watch list scheme established with the EQS-Directive as well as to control more chemicals as priority substances. The serious shortcomings in the context of monitoring and minimising the input of pesticides (e.g. through direct entry, run-off, percolation, spray drift or dust) and biocides in water bodies (eg. through losses from toxic paints on boats - antifoulings - or on facades) should be immediately resolved. In order to prioritise the relevant substances, a systematic recording of market and use data should be established. This is currently missing, particularly for biocides and in part for veterinary medical products (e.g. gaps concerning use data for anti-parasitics).
- EQS should be established for all water-relevant substances and assessment methods should be developed and applied to address the effects of chemical mixtures. A sensitive analytical method should be available to check the compliance with EQS, which is often not the case at present. As long as there is no sensitive analytical approach for monitoring the specific EQS for a pollutant, the input of the relevant substance/ metabolite into the water should be consistently prevented. Substances should only be authorized for use only when standard methods for their

[20] CIS = Common WFD-Implementation Strategy. Since 2001 EU-Commission, Member States and stakeholders work together in order to develop a common understanding and guidance in order to enhance the implementation of the WFD requirements.

analysis and for their relevant break down products (metabolites) are in place, when there is a monitoring scheme in place and when the substance toxicity had been assessed.

- Special attention should be given to so-called "cut-off" substances[21]- and candidates for substitution[22]. For such substances, an effective and quick feed-back mechanism to the authorisation/approval procedure should be granted in order to phase-out these substances more effectively than it is the case today.
- It is urgent for Member States to develop and implement WFD-consistent and binding action plans and minimise the risks linked to the use of pesticides, biocides and veterinary pharmaceuticals. They should also include quantitative objectives, indicators and timelines of use reduction strategies.
- Environmental and economic instruments should be implemented according to the provisions of the WFD. Using the 'polluter pays principle', users of these substances should appropriately contribute and bear the costs of water pollution, identification of the pollution source and water quality restoration, e.g. by means of a pesticide risk-based fee. Effective incentives for supporting sustainable water uses should be strengthened, for instance in the context of the Common Agricultural Policy in order to guarantee and promote environmentally friendly farming (e.g. by introducing WFD-requirements as a cross compliance criteria). As organic agriculture has proven to reduce nitrogen, pesticide and pharmaceutical pollution of the environment and water bodies, it should be supported at EU and at Member State level. Subsidies that support pesticide-intensive agriculture and intensive livestock farming should be stopped immediately.
- The already existing mechanism for updating and technically adapting the provisions of the WFD-Daughter-Directives should be applied more consistently. This should be achieved by immediately identifying and addressing the pollution in all aquatic habitats, including groundwater ecosystems, water-dependent nature protection sites and small water bodies (e.g. water courses with a catchment size below 10 km²). These efforts should also include the monitoring of relevant substances which have not been considered for EQS yet as well as appropriate provisions to restrict them (e.g. by adopting mandatory measures to minimise the release of such substances at the source of pollution).

[21] Such candidates include substances, which are carcinogen, mutagen, toxic for reproduction, endocrine-disrupting or persistent, bioaccumulative and toxic (PBT) or very persistent and bioaccumulative (vPvB).

[22] Such candidates include substances which have a high potential of risk to groundwater, even with very restrictive risk management measures.

Contact

Pestizid Aktions-Netzwerk e.V.
(PAN Germany)

Susanne Smolka
Senior Policy Adviser Pesticides/Bioicdes
susanne.smolka@pan-germany.org

Christian Schweer
Speaker PAN Germany WG Water
wasser@pan-germany.org

Nernstweg 32
22765 Hamburg
Germany
Tel.: +49 (0)40 399 19 10-0
www.pan-germany.org

Pesticide Action Network Europe
(PAN Europe)

Angeliki Lyssimachou, PhD
Science Policy Officer
angeliki@pan-europe.info

Martin Dermine, PhD
Health and Environment Policy Officer
martin@pan-europe.info

67 Rue de la Pacification
1000 Brussels,
Belgium
Tel: +32 2 318 62 55
www.pan-europe.info