

NEEIP JOINT POSITION PAPER ON WATER FRAMEWORK DIRECTIVE



The impact of the Water Framework Directive revision on the competitiveness of the European non-energy extractive sector

Joint position from the European non-energy extractive industry panel

Aggregates Europe-UEPG, Cerame-Unie, Euromines, European Carbon and Graphite Association (ECGA), The European Cement Association (CEMBUREAU), European & International Federation of Natural Stone Industries (EUROROC), European Expanded Clay Association (EXCA), Industrial Minerals Europe (IMA-Europe), Association des Producteurs Européens de Potasse (APEP)

26TH of March 2025 *The undersigned associations of the European non-energy extractive industry panel*

are calling for the European Parliament and Council to consider the following:

Rules on groundwater protection against pollution and the review of the list of pollutants are currently under revision. As such, the EU Water Framework Directive (“WFD”) and its daughter directives, the Groundwater Directive (GWD) and the Environmental Quality Standards Directive (EQS) are being amended.

The European Non-Energy Extractive Industry Panel (NEEIP) recognizes the valuable resource that water represents and works actively to promote sound water management across all European extractive sites.

The extractive industry is fully committed to actively take part in the achievement of the objectives of the Directive 2000/60/EC (WFD) and of the Directive 2006/118/EC (GWD). This is supported by the following facts:

□ *The extractive activity is strongly regulated, and administrative authorisations are required, where consideration is given to possible unfavourable ecological impact and appropriate guarantees are required for returning the environment back to its adequate conditions.*

□ *Extractive site operations are subject to environmental impact assessment and complex administrative processing that takes into account possible effects on surface and underground water, and generally good practices are applied in managing it. The recirculation of process water, minimising consumption up to*

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- The extractive activity is strongly regulated, and administrative authorisations are required, where consideration is given to possible unfavourable ecological impact and appropriate guarantees are required for returning the environment back to its adequate conditions.
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lowest possible levels and, not carrying out any uncontrolled releases are some examples of good practices. For many years now the undersigning associations have made an enormous effort to implement these best practices by the companies in the sector.

One of the key environmental objectives of the sector is to protect existing surface water courses and to optimise the need for water extraction through good water management practice. The national regulations specify specific water quality standards which operators have to comply with.

We are calling for:

1. A realistic extension of the deadline in accordance with Article 4 (4) (c) WFD is required.

The option to extend the deadline for achieving good status is limited until 2027 in the case of anthropogenic impacts in accordance with Article 4 (4) (c) of the WFD, and thereafter only on the basis of "natural conditions". This is unlikely to be achieved in many cases if an industrial facility with water utilisation is to be continued beyond 2027.

2. Consideration should be given to whether the 'no further deterioration' requirement in Article 4 (5) WFD could be deleted.

According to Article 4(5) WFD, the possibility of setting less stringent objectives requires that no further deterioration of the water body occurs. In view of the ECJ's very strict interpretation of the concept of deterioration (Weser-Ruling), this condition is often difficult to fulfil with legal certainty,

3. Article 4 (7) WFD should be amended so that no constellation of circumstances is excluded from the scope of the exemption from the outset.

In its current wording, Article 4 (7) does not provide for any derogation at all in the case of failure to achieve good chemical status of surface waters.

1. Support Recital 14 (d) and expansion to the Council General Approach on the “non-deterioration and exemption clauses” in Art.4.7 and Art. 4(4C) and (5)

Recital (14d) The judgements of the Court of Justice of the European Union, combined with additions to the lists of substances as well as stricter standards for existing pollutants, have highlighted the difficulty for Member States to comply with the non-deterioration objective of Directive 2000/60/EC, may hamper the implementation of certain activities and entail a considerable administrative burden for Member States. This is especially the case if short-term effects of activities occur or if pollutants are relocated within or between waterbodies without however causing an overall increase in pollution. As a result of the relocation, the pollution in the source-water body might be reduced and the pollution in the receiving water body might increase whilst the overall pollution mass balance is null. As far as possible, remediation measures should be taken to mitigate the adverse effects. Activities such as discharge of PFAS contaminated drainage water from construction works or the displacement of dredged sediments for flood safety or navigation should be allowed provided the necessary and proportionate safeguards are in place and their compliance can be verified

Remarkably the issue “non-deterioration clause and exemption clause” has only been addressed by the **Council in its General Position**. Indeed, the Council recognises that the WFD poses an increasing risk to new and existing permits. **We support Recital 14d of the Council of the EU's general approach (GA)**. The Council underlines that the rulings of the European Court of Justice (ECJ), combined with additions to the lists of substances and stricter standards for existing pollutants, will make it more difficult to achieve the objectives of the EU WFD and that this may hinder or even prevent the implementation of important projects and activities in the Member States. This also matches our perception, especially in light of the recurring additions of new substances/revisions of EQS.

2. Support for the amendment of Article 4.7 of the Water Framework Directive

Since 2015, the ECJ published its [Weser ruling](#) which combined with the “one-out-all-out” approach, the non-deterioration principle should be interpreted as the **non-deterioration of a single quality factor, rather than the non-deterioration of the overall water quality of a water body**. The negative consequences of the detailed and strict interpretation of the non-deterioration requirement in the WFD, after the EU Court of Justice Weser Ruling, call for amending in particular art. 4.7., to allow its applicability to essential industrial and non-industrial activities and projects. Already now, **the non-deterioration principle has hindered the obtention of new permits or renewal of**

existing permits for societally important activities and sustainable projects to produce raw materials, leading to far-reaching negative consequences for the European Extractive Industry. Even though the enormous challenges we mentioned in the latter are currently not yet visible in all Member States, we foresee that this will only become increasingly a major concern in the coming years, especially with the new EQS Directive, Groundwater Directive, and WFD being enforced, e.g. by increasing the number of EQS for pollutants and by lowering existing EQS.

Moreover, the solution to this problem is seen in the introduction of two exemption clauses by the Council - Article 4 (7a) and 4 (7b) of the WFD itself - and Article 15 (4) of the Urban Wastewater Treatment Directive (UWWD). **However, these exemptions are tailored to particular cases and exclude industrial activities such as extractive industry activities. For the latter, exemptions need to be further adapted to consider industrial projects and moreover to ensure the green and digital transition through efficient permitting procedures.**

In consequence, we propose the following minor changes to the wording of Art.4 paragraph 7 of the WFD text under revision:

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.

It would also be useful to amend the other exemption clauses in Article 4(4c) and (5) of the WFD – which to date encounter problems in practice – in such a way that together with the above proposed amendment of Article 4(7) a functioning system of strict targets, requirements and exemptions is created:

The option to extend the deadline for achieving good status only exists until 2027 in the case of anthropogenic impacts in accordance with **Article 4(4)(c)** of the WFD, and thereafter only on the basis of ‘natural conditions’, which is unlikely to apply in many cases if an industrial facility with water utilisation is to be continued beyond 2027. **A realistic extension of the deadline extension option is required here.**

According to **Article 4(5)** of the WFD, the possibility of setting less stringent objectives requires that no further deterioration of the water body occurs. In view of the ECJ's very strict interpretation of the concept of deterioration (Weser-Ruling), this condition is often difficult to fulfil with legal certainty, so that Article 4(5) WFD - although this could actually be a good opportunity to weigh up environmental protection and exploitation interests - is not used enough in practice. **Consideration should be given to whether the ‘no further deterioration’ requirement in Article 4(5) WFD could be deleted.**

3. Support the Council General Approach to the maintenance of Art.16 on Strategies Against Pollution of Water

Our sector recognizes the need for robust, science-based risk assessments and stakeholder input in managing hazardous substances under the WFD. However, the proposed deletion of Article 16 raises significant concerns regarding transparency, legal certainty, and the comprehensive evaluation of substances **for future prioritisation.**

The Council position also grants the European Chemicals Agency (ECHA) an assisting



role in the review of Directive 2008/105/EC (also known as Environmental Quality Standards Directive or EQSD), by preparing scientific reports. We seek clarity on the European Chemicals Agency (ECHA) supportive and advisory role as outlined in Article 16.5 and its implication in the comprehensive risk assessment process.

Article 16 mandates the prioritisation of substances, targeted risk assessments, and the inclusion of recommendations from Member States, stakeholders, and the scientific community. Replacing this established process with delegated acts would create inconsistencies in Member State involvement in the matter and also diminish crucial stakeholder involvement. Given that Member States are responsible for implementing the legislation and complying with EQS values, their full participation is essential. In line with the positions of the EU Council and European Parliament, we advocate for retaining the ordinary legislative procedure for amending the priority substances list and setting EQS values. This approach ensures full democratic oversight and balanced input from all relevant stakeholders.

We support the Council's amendment regarding the phasing out of priority substances noting that it is not technically feasible to phase out naturally occurring inorganic substances. Maintaining this nuance is vital for realistic and effective policy implementation.

To safeguard both environmental protection and industrial competitiveness, we kindly urge for the reintroduction of Article 16. Retaining the current legislative process is essential for ensuring transparency, legal certainty, and meaningful stakeholder involvement in the prioritisation of hazardous substances in EU waters.

The signatories:

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