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ROADMAP - FITNESS CHECK – FRESHWATER POLICY

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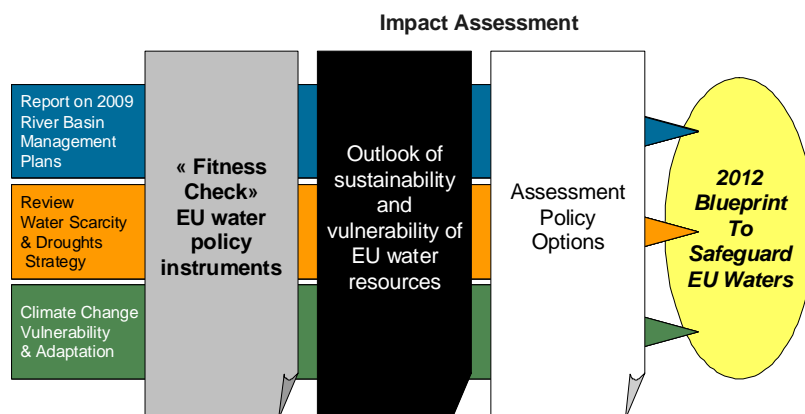
1. INTRODUCTION

As part of its smart regulation policy, the European Commission announced in its Work Programme for 2010¹ that, "to keep current regulation fit for purpose, the Commission will begin reviewing, from this year onwards, the entire body of legislation in selected policy fields through "fitness checks". The purpose is to identify excessive burdens, overlaps, gaps, inconsistencies and/or obsolete measures which may have appeared over time. Pilot exercises will start in 2010 in four areas: environment, transport, employment and social policy, and industrial policy." In the area of environment, the protection of EU freshwater resources has been selected as the pilot area.

DG Environment is preparing for 2012 a Blueprint to Safeguard Europe's Water, with a twofold purpose:

- Assess the implementation and achievements of the current policy while identifying gaps and shortcomings
- Look forward at the evolving vulnerability of the water environment to identify measures and tools that may be needed in several EU policy areas in order to ensure a sustainable use of good quality water in the EU in the long term.

The Blueprint will synthesise policy recommendations building on three on-going assessments: 1) the assessment of the River Basin Management Plans delivered by the Member States under the Water Framework Directive, 2) the review of the policy on Water Scarcity and Drought and 3) the assessment of the vulnerability of water resources to climate change and other man made pressures.



Against that background, the Fitness Check will be a building block of the Blueprint. Its objective will be to assess the effectiveness of the policy measures taken, both in environment policy and in other policy areas, in achieving the objectives already agreed in the context of water policy and identify whether any gap needs to be filled to deliver our environmental objectives more efficiently. The Fitness Check will look, *inter alia*, at:

- any barriers (including in other policy areas) to meeting the already agreed objectives;

¹ http://ec.europa.eu/atwork/programmes/docs/cwp2010_en.pdf

- issues related to implementation and measures that could improve implementability;
- coherence of the legislation in place and whether there are any overlaps, inconsistencies and/or obsolete measures.

The Fitness Check is about evaluating a policy sector, about identifying what works and what does not work - and where things do not work sufficiently well, about suggesting improvements.

2. EU WATER POLICY

Water legislation in the European Union is mainly based on the following Directives:

- The ***Water Framework Directive***² establishes a strategic framework for the protection of all water bodies, i.e. rivers, lakes, coastal waters and groundwater in a highly integrated manner. As the cornerstone of EU water policy, the Water Framework Directive provides that all water bodies must meet the standard of “good status” as a rule by the end of 2015. The Water Framework Directive (WFD) has already streamlined and simplified the existing body of EU legislation repealed by repealing several EU water acts as from December 2013³.
- Under the WFD, complementary Directives have been adopted on the protection of ***Groundwater*** against pollution and deterioration⁴ and on ***Environmental Quality Standards (EQS)***⁵ establishing the standards which constitute the chemical status criteria for the Water Framework Directive.

² 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 (OJ L 327, 22.12.2000, p. 1–73).

³ Council Decision 77/795/EEC of 12 December 1977 establishing a common procedure for the exchange of information on the quality of surface freshwater in the Community; Council Directive 79/869/EEC of 9 October 1979 concerning the methods of measurement and frequencies of sampling and analysis of surface water intended for the abstraction of drinking waters in the Member States; Directive 2006/44/EC (codified version of 78/659/EEC) on the quality of freshwaters needing protection or improvement in order to support fish life; Directive 2006/113/EC (codified version of 79/923/EEC) on the quality required of shellfish waters; Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances as amended by Council Directive 91/692/EEC (further amended by Council Regulation 1882/2003/EC); Directive 2006/11/EC (codified version of 76/464/EEC) on pollution caused by certain dangerous substances discharged into the aquatic environment of the community; Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water as amended by Council Directive 91/692/EEC (further amended by Council Regulation 1882/2003/EC), and Council Regulation 807/2003/EC.

⁴ 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, 27.12.2006, p. 19–31).

⁵ 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, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council (OJ L 348, 24.12.2008, p. 84–97).

- The *Urban Waste Water Directive*⁶ is a key element of EU water policy for achieving the Water Framework Directive environmental objective of good status (as well as the objectives of the *Marine Strategy Framework Directive*: see below). It requires that wastewater generated by agglomerations is collected and made subject to secondary treatment before being discharged into the natural environment. More stringent treatment must be applied when wastewater is discharged into so called sensitive areas.
- The *Nitrates Directive*⁷. is also an important instrument which deals with the relationship between agriculture and water quality. In order to reduce and prevent water pollution caused by nitrate pollution originating from agricultural sources, Member States must monitor waters, designate so called nitrate vulnerable zones and then adopt and implement action programs and codes of good agricultural practices with the aim of improving fertiliser management and reducing nitrate leaching towards waters. Monitoring programs are required to be set up to assess the efficiency of these action programs.
- The *Floods Directive*⁸ requires Member States to assess flood risks and to establish flood risk management plans by 2015, with the aim to reduce flood risk for human health, economic activity, the environment and cultural heritage.
- The *Drinking⁹ and Bathing Water¹⁰ Directives* require Member States to meet binding quality standards to ensure safe drinkable water from the tap and clean water for bathing, to monitor whether the standards are complied with and to inform consumers and the public accordingly.
- The *Marine Strategy Framework Directive*¹¹ established a strategic framework for the protection of the marine environment in a highly integrated manner. It provides that all marine waters must meet the standard of “good environmental status” as a rule by 2020, and that coordination and cooperation between Member States has to take place in shared marine regions. To this end, Member States must draw up the necessary programmes of measures by 2015

⁶ Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ L 135, 30.5.1991).

⁷ Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 375, 31.12.1991, p. 1–8).

⁸ Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks (OJ L 288, 6.11.2007, p. 27–34).

⁹ Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ L 330, 5.12.1998).

¹⁰ Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ L 031, 5.2.1976). This Directive is in the process of being replaced by Directive 2006/7/EC of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC (OJ L of 4.2.2006).

¹¹ Directive 2008/56/EC of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19-40).

As mentioned above, the Blueprint will review policies and measures in place to ensure the protection and availability of EU water resources. In order to maximize the synergies between the development of the Blueprint and the results of the Fitness Check and to ensure an efficient use of resources, their timing and scope need to be reconciled, so that the Fitness Check can usefully feed into the Blueprint¹².

Scope of the Fitness Check:

For a proper coverage of the drivers of the **Water Framework Directive (WFD)** environmental objective of good status, it is therefore essential that the Fitness Check covers both the **Urban Waste Water Directive (UWWD)** and the **Nitrates Directive, (ND)** on top of the complementary Directives adopted under the WFD (**Groundwater (GD)** and **Environmental Quality Standards (EQSD)**). The inclusion of the **Floods Directive (FD)** is also essential as its implementation is closely tied in with the WFD Common Implementation Strategy.

The Fitness Check will also look at quantitative and adaptive water management issues, for which there is currently no legislation at the EU level (except for Floods), namely the Communication on water scarcity and drought (COM(2007) 414) and its annual follow-up report, and the Commission staff working document accompanying the White paper "Adapting to climate change : towards a European framework for action" on Climate Change and Water, Coasts and Marine Issues (SEC(2009) 386).

3. QUESTIONS TO BE ADDRESSED BY THE FITNESS CHECK

As mentioned above, other major assessment and reviews related to the policy instruments included in the scope of the Fitness Check are on-going. In particular, the on-going assessment of the 1st River Basin Management Plans will already provide some insights on the degree of achievement of the objectives of the WFD. However, the WFD is also leading to important governance reforms, essential for the achievement of environmental objectives, which can already be assessed in the context of the Fitness Check. Against that background, a preliminary list of questions for which the Fitness Check should contribute to provide an answer can be established as follows:

- (1) Concerning **effectiveness**, notwithstanding the ongoing implementation of the existing regulatory instruments in the area of EU freshwater resources, are the preliminary achievements in line with the stated objectives?
- (2) Concerning **efficiency**, the ongoing implementation of the WFD and FD should be assessed, with a special focus on the degree of co-operation and policy integration between the river basin level and the different administrative units in Member States, and between Member States in trans-boundary basins. Moreover:

¹² Although the achievement of the objectives of Drinking, Bathing Water and Marine Strategy Framework Directives is linked to the achievement of environmental good status of EU freshwater bodies driven by the WFD, their field of application is very much downstream and they are therefore excluded from the scope of the Fitness Check. However, these elements of regulation, as well as other in the area e.g. of food or drinks production, will be considered in the analysis of how instruments under the scope of the Fitness Check contribute to other EU policy objectives.

- Are availability of and access to funding a constraint in the implementation of the Directives, as well as of agreed policies on water scarcity and droughts?
 - Are there regulatory gaps, inconsistencies, overlaps or evidence of excessive administrative burdens?
- (3) Concerning **coherence**, what is the degree of integration of all instruments covered by the FC? Moreover:
- What is the degree of integration of water policy across Member States and sectors, asking in particular whether there are substantial divergences between Member States in defining and implementing the key concepts of the WFD, such as ecological objectives, inter-calibration, monitoring, integrated management of ground and surface waters, pricing policies, etc.?
 - What is the degree of integration and coherence with other policy instruments addressing the use (or re-use) of water for specific purpose, such as drinking water, bathing water, use of water for irrigation, food and drink production, industry, etc?
 - Is the scope for integration of EU freshwater policy objectives with other policy objectives (e.g. biodiversity & nature protection, flood protection, management of water availability, adaptation to climate change) fully exploited?
- (4) As regards **relevance**:
- Are current instruments sufficient for the sustainable management of freshwater resources? For example, is the management of water demand (pricing, "gaps", buildings, agriculture, leakage, implementation of the water hierarchy and land use) and water availability (hydro-morphology, land use and green infrastructure) well covered by existing EU legislation? Are there shortcomings to address?
 - Is enough attention being given to the control of pollution at the source to reduce the reliance on end of pipe solutions (e.g. for waste water treatment), which may have higher costs for end-user and higher externalities?

4. STEERING GROUP

DG Environment will set up a Steering Group comprising officials from the SG and other DGs (i.e. AGRI, REGIO, MOVE, ENER, SANCO and ENTR). It is proposed to merge this Steering Group with the planned Inter-Service Group for the Blueprint. The group would meet approximately every two months, starting in March 2011.

5. TASKS/PHASES

5.1. Preparation of Roadmap (July 2010 - January 2011)

The present version of the Roadmap was finalised on 11/2/2011, following a series of meetings and discussions with the SG and relevant DG.

5.2. Evaluation (January – June 2011)

During this phase, an integrated evaluation of the effectiveness and efficiency of the body of legislation affecting EU water policy will be carried out. The objective is to determine what works well on the one hand and what does not on the other.

A service contract with Deloitte Consulting and IEEP was signed in December 2010, to provide technical assistance to the Commission for this phase. The work started on 10/1/2011, an inception meeting took place on 3/2/2011.

- (1) The contractor will develop, based on the above listed evaluation questions, judgement criteria and indicators for the areas covered by the FC and provide a clear description of the methodology proposed, including the questionnaire for the stakeholder interviews. The contractor will also compile a matrix mapping the tools used for collecting and analysing evidence based on the evaluation questions.
- (2) The contractor will review existing evaluations, studies, reports, audits, information on infringements and complaints, recommendations from stakeholders, etc. covering the body of legislation affecting the sector. The literature review should lead to the preliminary identification of key issues to be discussed with the stakeholders, and conversely should cover additional documents suggested by the stakeholders during the interviews.
- (3) The contractor will perform face-to-face, telephone or web-based interviews or focus groups with a large sample of stakeholders (minimum 100).
- (4) The contractor will provide a report including an evaluation of the degree of effectiveness and efficiency of EU freshwater policy, by identifying instruments and tools that work well / does not work well and by defining indicators of inefficiencies: Overlaps, gaps, inconsistencies, obsolete measures, excessive burdens, etc.
- (5) A workshop will be organised in Brussels on 10 May 2011 with the stakeholders contacted in task 3. The objective of the workshop is to present the main findings of the draft evaluation report, and gather the feedback of the stakeholders, including potential options for improving the effectiveness and efficiency of the body of legislation affecting the EU freshwater policy sector.
- (6) The final report will take on board the feedback received from the stakeholders at the workshop and the comments received from the Commission on the draft evaluation report. It should be delivered before 13/6/2011.

5.3. In-depth assessments and Public consultation (July – December 2011)

Based on the results of the evaluation phase, DG ENV will prepare an online questionnaire on the fitness check, which will be published early September 2011.

A stakeholder meeting will also take place in December 2011 to discuss the outcome of the online questionnaire.

Specific in-depth assessments of issues identified by the evaluation report will also take place during the same period.

DG ENV will establish a final report with its findings by the end of 2011. The report will summarize the findings of the evaluation, in-depth assessments and public consultation.

5.4. Policy Options and Implementation (2012 and beyond)

A major Stakeholder Conference on water policy (3rd European Water Conference) will take place in the spring of 2012, where the results of the Fitness Check will be presented.

Subsequent to this Conference, the options identified will be subjected to an Impact Assessment (including review by Impact Assessment Board and inter service consultation), which will underpin the Blueprint, to be adopted and published in the autumn of 2012.

The Blueprint will include a roadmap for the implementation of policy options, further to an assessment of their impacts.

6. COMMUNICATION AND CONSULTATION

A far-reaching communication and consultation campaign will be organised, ensuring the necessary openness, transparency and visibility of the process. Wide consultations will be carried out to check the findings of the integrated evaluation and assess the practicability and enforceability of the different policy options.

DG ENV will open a dedicated page on the Europa website to describe the Fitness Check and provide links to key documents and to the online public consultation. This page will be accessible as of February 2011.

As mentioned above, two stakeholder consultations will be organised in Brussels in May and December 2011, in which preliminary findings from the studies and from the online questionnaire will be discussed with as broad a group of stakeholders as possible.

The outcome of both stakeholder consultations will be published on the website, as will the outcome of the fitness check.

A public internet consultation will take place following the conclusion of the evaluation study and will last 12 weeks.

The following list of stakeholders constitutes the list of interested parties that will be consulted by DG ENV across the Fitness Check process. Where possible, further stakeholders will be added to this list.

- (a) Water Directors and Strategic Coordination Group under the Common Implementation Strategy for the Water Framework Directive;
- (b) Experts from Member States in the working groups and expert groups of WFD Common Implementation Strategy (CIS)
- (c) Industry, NGOs and other Organisations, including i.e.:
 - CCNR - Central Commission for Navigation on the Rhine
 - CEDA - Central Dredging Association

- CEE NBO – Central and Eastern European Network of Basin Organization
- CEEP - European Centre of Employers and Enterprises providing Public services
- CEFIC-European Chemical Industry Council
- CEMR- Council of European Municipalities and Regions
- CEN – European Committee for Standardization
- COPA-COGECA – Committee of Agricultural Organisations in the European Union – General Committee for Agricultural Co-operation
- EAA-European Anglers Alliance
- EBI – European Boating Industry
- EBU – European Barge Union
- ECPA - European Crop Protection Association
- EMPA - European Mollusc Producers Association
- EEB-European Environmental Bureau
- EIC – Euromediterranean Irrigators Community - FENACORE
- ELO - European Landowners Organisation
- EPRO - Environmental Platform of Regional Offices in Brussels
- EREF – European Renewable Energies Federation
- ESHA-European Small Hydropower Association
- ESPO – European Sea Ports Organisation
- EUREAU –European Union of National Associations of Water Suppliers
- EURELECTRIC-Union of the Electricity Industry
- EUROMETAUX - European Association of Metals
- EUWMA – European Water Management Association
- EWA - European Water Association
- FEAP – Federation of European Aquaculture Producers
- FEAP – Federation of European Aquaculture Producers

- ICPDR - International Commission for the Protection of the Danube River
 - IKSR – International Commission for the Protection of the Rhine
 - INBO-International Network of Basin Organizations
 - UNICE –Union of Industrial and Employer’s Confederations in Europe
 - WMO- World Meteorological Organisation
 - WWF – World Wide Fund for Nature
- (d) Representatives of a sample of river basins management authorities or regional authorities, or other institutions, industry and NGOs not represented in the above mentioned CIS groups (in the context of the case studies of the evaluation contract).

APPENDIX

6.1. Existing and on-going evaluations

The 27th annual report on monitoring the application of EU law [COM(2010) 538 / SEC(2010) 1143] was released on 1/10/2010 and provides in Chapter 6.4. "Protecting Water Resources" a detailed description of the water legislation and its implementation (see section 7.2. below)

The Communication on Water Scarcity and Droughts, and 3 out of the 6 Directives under the scope of the Fitness Check have been subject to an Impact Assessments¹³.

Adoption date	Commission proposal	IA final report + summary	Proposal reference	IAB Opinion
2007/07/18	Communication on water scarcity and drought	SEC(2007)993 + SEC(2007)996	COM(2007)414	SEC(2007)997 + IAB opinion 1st IA
2006/07/17	Environmental quality standards in the field of water policy	SEC(2006)947	COM(2006)397	
2006/01/18	Flood Management	SEC(2006)66	COM(2006)15	
2003/10/06	Directive of the European Parliament and of the Council concerning groundwater protection	SEC(2003)1086	COM(2003)550	

WFD Implementation reports:

- The Commission has to assess the progress in the implementation of the WFD in certain intervals and to inform the European Parliament, the Council and the public about the results of its assessments (see Article 18 WFD). The 1st implementation report on the first stage of implementation was published in 2007, and the 2nd implementation report on monitoring networks was published in 2009¹⁴.
- The Commission is preparing the third and major report on the implementation of the WFD in 2012 (as required by article 18 of the Directive), including a review of how Member States have tackled their river basin management planning. This review considers issues such as Member States' implementation of river basin based management approaches, water pricing policies, including full account and internalisation of environmental and resource costs, cooperation on trans-boundary rivers, public consultations, land use changes, setting of ecologically based objectives, protected areas, analysis of all pressures on water resources, integration of water concerns into sector policies, degree of achievement of good ecological and chemical

¹³ http://ec.europa.eu/governance/impact/index_en.htm. Covers the period 2003-2010.

¹⁴ http://ec.europa.eu/environment/water/water-framework/implrep2007/index_en.htm

status, good ecological potential and good groundwater, chemical and quantitative status by 2015, and the establishment of programmes of measures to reach the targets.

The Commission is also carrying out a policy review on water scarcity and droughts, which focuses on assessing what is being achieved and whether more action is needed on water efficiency, policy integration, land use, use of unconventional water resources, drought management and stakeholders' mobilisation.

DG Environment has produced in 2010 a report exploring the links between Water and Nature legislations¹⁵.

The 2010 State of the Environment Report from the European Environmental Agency also provides important insights for the Fitness Check.

6.2. Extracts from annex to 27th annual report on monitoring the application of EU law [COM(2010) 538 / SEC(2010) 1143] (1/10/2010) – Chapter 6.4. Protecting Water Resources

6.2.1. Management of the acquis, new legislation and preventive measures

The Common Implementation Strategy, an informal process set up in 2001, has delivered extensive guidance to promote the implementation of the *Water Framework Directive*. The objective of the strategy is to provide a forum for Member States, stakeholders and Commission's experts to work together towards a successful implementation of the core water law at EU level. In this context a number of expert groups comprising Member States and stakeholders' experts have contributed to the development of various implementation tools and measures.

The implementation of the *Water Framework Directive* in 2009 was characterised by the following main developments. Most Member States conducted consultations of the public and interested parties on draft River Basin Management Plans (RBMPs) in the first semester. The Commission monitored this process closely and further developed the concept of and methodology for compliance-checking in consultation with Member States in expert groups.

This will form the basis on which the Commission will start assessing the content of the final RBMPs in 2010, with a view to publishing a third Commission implementation report in 2012. The development of reporting structure and procedures via WISE, the Water Information System for Europe, further helps to simplify the reporting process for Member States, thus reducing administrative burden.

The second Water Framework Directive implementation report¹⁶ was published focusing on the implementation of the monitoring networks. In general, there is a good monitoring

¹⁵

http://circa.europa.eu/Public/irc/env/wfd/library?l=/framework_directive/implementation_conventio/biodiversity_legislation/faq-wfd-bhd_june2010doc/ EN 1.0 &a=i

¹⁶ COM(2009)156 final, of 01.04.2009, Report from the Commission to the European Parliament and the Council in accordance with article 18.3 of the Water Framework Directive 2000/60/EC on programmes for monitoring of water status, and the accompanying Commission Staff Working Document SEC(2009)415 of 01.4.2009.

effort across the EU, although some shortcomings were identified, including some of a serious nature. For the first time all Member States who reported, did so electronically through WISE.

Preparatory work continued for the next proposal, based on article 16 of the Water Framework Directive, on the identification of new priority substances and the development of environmental quality standards for them. This proposal is planned for early 2011.

The deadlines for notification of national transposing legislation for the **Groundwater Directive** expired on 15 January 2009 and the **Floods Directive** on 26 November 2009. For the Floods Directive, compliance promotion took place in the form of the development of a transposition checklist, which was circulated to Member States. A transposition checklist is also in development for the EQS Directive. The Commission furthermore adopted a Directive on technical specifications for chemical analysis and monitoring of water status¹⁷.

In 2009, the Commission also published its 5th report on the implementation of the **Urban Waste Water Directive**¹⁸.

As to the implementation of the **Nitrates Directive**, the Nitrates committee made up of Commission and Member State representatives was convened four times in 2009 mainly to discuss derogations requested by Germany, The Netherlands and the United Kingdom. These meetings resulted in the adoption of Decision 2009/753/EC (Germany), Decision 2009/431/EC (United Kingdom) and Decision 2010/65/EU (The Netherlands) allowing those Member States to apply higher amounts of livestock manure to land.. In addition, the Commission continued to assess the implementation of the Nitrates Directive in the various Member States, in particular focusing on implementation in France, Greece, Spain, Portugal, Sweden, Denmark Poland, Latvia, Lithuania, Slovakia, Czech Republic, Bulgaria and Romania.

6.2.2. *Management of complaints and of infringements*

Despite the close cooperation with the Member States, certain infringement actions were necessary in 2009.

Assessment of conformity of national legislation: The Commission continued the assessment of conformity of the transposition of the **Water Framework Directive**. At the end of 2009, the Commission still had to pursue 17 cases of non-conformity which had been opened from 2007 onwards. The Commission sent new letters of formal notice to Spain in February 2009, to Belgium and the Netherlands in September 2009 and Bulgaria in November 2009. Additional letters of formal notice were sent to Denmark and Estonia in November 2009. Reasoned opinions were sent to Romania, France and the Czech Republic in October 2009. The Commission was however in a position to close the cases started against Slovenia and Latvia in 2009.

¹⁷ Commission Directive 2009/90/EC of 31 July 2009 laying down, pursuant to Directive 2000/60/EC of the European Parliament and of the Council, technical specifications for chemical analysis and monitoring of water status. OJ L 201, 1.8.2009, p 36.

¹⁸ Commission Staff Working Document SEC(2009) 1114 final, 3.8.2009 "5th Commission Summary on the Implementation of the Urban Waste Water Treatment Directive".

Non-communication of transposing national measures: On the **Groundwater Directive**, letters of formal notice on non-communication were sent to 20 Member States in April 2009. By the end of 2009 Belgium, Denmark, Estonia and the Netherlands had only submitted incomplete transposing acts. Reasoned opinions were sent to Belgium, Greece, Spain, the United Kingdom, the Czech Republic and Estonia in October 2009 and to Denmark, Luxemburg, Finland and Ireland in November 2009. The Netherlands and Ireland communicated their transposing acts early 2010.

Bad implementation: there were two cases of bad application related to the **Water Framework Directive** decided in 2009 concerning the absence of a report on monitoring networks. Whereas the case against Greece was closed, the case against Malta had to be referred to the Court of Justice.

Complaints: A horizontal complaint submitted in 2006 against 11 Member States, on the scope of the term "water services" was pursued during the year in the context of conformity cases concerning the relevant Member States. The Commission addressed this issue in the letters of formal notice relating to the non-conformity cases. A complaint against Austria on the basis of article 4.7 of the Water Framework Directive was closed in 2009 after the project was cancelled.

Court ruling: The Court ruled against Spain on 7.5.2009 (Case C-516-07) on the implementation of article 3 of the Water Framework Directive.

Regarding the **Urban Waste Water Directive**, the Commission's enforcement work has focused firstly on ensuring full compliance with the Directive's obligation to designate all sensitive areas and ensure that more stringent treatment is provided to discharges from agglomerations into these areas by 1998 for the EU 15 Member States. In June 2009, the Commission sent Belgium a reasoned opinion under the former Article 228 of the EC Treaty for its failure to ensure compliance with the earlier judgment of the Court of Justice in case C- 27/03. In May 2009 the Commission decided to refer Portugal to the Court of Justice for its failure to ensure compliance with its more stringent treatment obligations for sensitive areas. The Court of Justice also gave its judgments against Sweden in case C-438/07 and Finland in Case C-335/07 on 6 October 2009. The judgment from the Court of Justice in case C-390/07 against the United Kingdom was given on 10 December 2009. The Commission largely lost these three cases on the basis of the adoption by the Court of a strict approach to the burden of proof.

The Commission secondly continued to follow up compliance with the 31 December 2000 deadline in the **Urban Waste Water Directive** requiring collecting systems and appropriate treatment to be provided for urban waste waters discharges emanating from larger agglomerations of over 15,000 population equivalent. In December 2009, the Commission decided to refer France to the Court of Justice for its failure to comply with these obligations. Furthermore, a reasoned opinion was sent to Italy in February 2009 for the same failures. The Court of Justice gave its judgment against Portugal on 7 May 2009 in case C-530/07 for its failure to ensure compliance with these requirements for a number of agglomerations. The year 2009 also saw the launching of legal action by the Commission with regard to ensuring compliance with the collecting and treatment obligations for smaller agglomerations of 2,000 to 15,000 population equivalent for which the deadline of compliance was 31 December 2005. Letters for formal notice were sent to Belgium, France, Portugal, Germany and Luxembourg. This was the first wave of infringement action to follow up on this deadline for the EU 15 Member States. In addition to this, a reasoned opinion was sent to Greece on 23 March 2009 for its failure

to provide the Commission with a timely report on its implementation of the **Urban Waste Water Directive**. A reasoned opinion was sent under the former Article 228 of the EC Treaty to Greece in February 2009 with regard to its failure to ensure compliance with the first judgment of Court of Justice in case C-119/02. A reasoned opinion was also sent to Spain under the former Article 228 of the EC Treaty for its failure to ensure compliance with the earlier judgment of the Court of Justice in Case C-219/05. Finally, the Court of Justice provided clarification in a case against Ireland, Case C-188/08, in a judgment of 29 October 2009 that domestic waste water discharged through septic tanks in the countryside was covered by Community waste legislation.

As to the **Nitrates Directive**, in December 2008 the Commission decided to refer Luxembourg to the Court of Justice for having in place a non-compliant nitrate action programme (case C- 526/08). A hearing took place on 2 December 2009 and the case was still pending judgment in Court of Justice at the end of 2009. In 2008 the Commission services held meetings with the United Kingdom authorities to ensure the adequate amendment of its nitrate action programmes and as a result the United Kingdom adopted new compliant programmes, which led the case being closed in 2009. The same year administrative pre-action letters for having in place non-compliant nitrate action programmes were addressed to France and Greece. As a result a case was initiated against France for having in place the non-compliant nitrate action programmes. In addition a request for information was addressed to France for clarification regarding the designation of vulnerable zones. Discussions with Spain in order to ensure the adequate amendment of its nitrate action programmes continued in 2009. By the end of 2009 the required amendments to legal texts were not yet completed to ensure compliance with the Directive.

6.2.3. *Petitions*

In 2009, the Commission received 17 petitions related to water quality management and resource protection. Two petitions were closed during 2009. Most of the petitions concerned Spain, Germany and the United Kingdom.

6.2.4. *Evaluation based on the current situation*

Emission-oriented legislation, such as the **Urban Waste Water and Nitrates Directives**, has achieved great progress in protecting water quality. Much progress on integrated water management has been made with the gradual implementation of the **Water Framework Directive** and the publication of River Basin Management Plans. However, considerable challenges remain. These include addressing issues of water scarcity, droughts and floods, ensuring that waste water in the EU 12 and also originating from small towns in the EU 15 is properly collected and treated and bringing about the achievement of good chemical, ecological and quantitative status by 2015 as required by the **Water Framework Directive**.

On the implementation of the **Water Framework Directive**, the situation as regards the main 2009 milestone, i.e. the delivery of the 1st River Basin Management Plans, can be summed up as follows: 1/3 of the Member States published their Plans by the deadline, 1/3 are likely to publish them before the reporting deadline in March 2010, and the remaining 1/3 have accumulated significant delays in consultation procedures, which are likely to lead to substantial delays in the adoption and implementation of the plans. The Commission will start a comprehensive assessment of all available plans after the 22 March 2010 reporting deadline.

The conformity of the transposition of the *Water Framework Directive* has improved during the year as a result of the prioritised actions set for 2009, although a number of nonconformity cases still remain open. Late, incomplete and non-conform transposition of the main legal act is still an obstacle to the implementation of the Directive.

One key implementation challenge was identified in the 2nd implementation report on the *Water Framework Directive* in relation to monitoring, i.e. the absence of exhaustive national methods for assessing the ecological status of surface water bodies or the existence of noncompliant monitoring networks. This is an obstacle to the assessment of the ecological status.

The non-communication cases brought forward on the *Groundwater Directive*, have prompted the notification of the majority of transposition measures to the Commission. These will be subject to conformity assessment starting in 2010. Delays in transposing this act could in a few cases lead to delays in the implementation of certain groundwater related aspects of the *Water Framework Directive*. The implementation of the *Groundwater Directive* will be assessed in relation to the River Basin Management Plans referred to above.

Water quality has improved following EU 15 Member States' encouraging progress in implementing the *Urban Waste Water Directive*. Yet, there are still many agglomerations, for instance, in Belgium, Italy and Spain that lack complete waste water collecting systems and treatment facilities. As to the EU12 Member States, the implementation of the Directive is characterized by transitional periods foreseen in the Accession Treaties regarding the building of the necessary waste water infrastructure and by the fact that the EU has made financial support available.

As to the *Nitrates Directive*, significant progress has been made in the recent years, including in 2009, regarding the designation of "vulnerable zones" and the elaboration and implementation of monitoring programmes. However, further improvements are clearly needed, in particular, with regard to the quality of action programmes as nitrate concentrations are still major concerns in some intensively farmed areas. The Commission published on 9 February 2010 its report¹⁹ to the European Parliament and Council on the implementation of the Directive for the period 2003-2007.

6.2.5. *Planned evaluation action (2010 and beyond)*

Given that the preservation, improvement and restoration of water quality is so closely linked to the *Water Framework Directive*, apart from dealing with existing transposition-related cases, the Commission will focus on ensuring Member States fully meet their obligations, including in particular the adoption of appropriate River Basin Management Plans and programmes of measures for each river basin district and the development of national methods for assessing the ecological status of surface water bodies. Therefore, and in view of the above mentioned third report on the implementation of the Water Framework Directive, the following actions are planned:

¹⁹ Report from the Commission to the Council and the European Parliament on implementation of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources based on Member States reports for the period 2004-2007

- Enforcing the adoption of the 1st River Basin Management Plans and starting the compliance assessments of these plans in 2010, including checking the implementation of the Groundwater and the Environmental Quality Standards Directives.
- Supporting and enforcing the transposition of the Directives on Groundwater, Floods and Environmental Quality Standards, including starting conformity assessments.
- Continuing the development, together with the European Environmental Agency, of the Water Information System for Europe (WISE) in 2010 as a single platform for water information and reporting to simplify and reduce the overall administrative burden involved in reporting.

In addition, the Commission will launch, if necessary, appropriate legal enforcement action against Member States that fail to comply with the obligations set out in these Directives. In this respect, the Commission will continue to make use of the Common Implementation Strategy as an informal platform to foster better implementation and to exchange good practice.

Planned new legislation includes the preparation of a proposal on priority substances (amending annex X of the Water Framework Directive) and the establishment of related environmental quality standards.

The Nitrates Directive: The Commission's work to ensure compliant implementation will continue in 2010 on the basis of detailed assessments of the information provided by Member States in their 4-year implementation reports and via bilateral contacts. The assessments will focus on the main obligations of the Nitrates Directive, namely on water monitoring, the designation of "vulnerable zones" and the drawing up and updating of nitrates action programmes. It will then need to be decided whether these assessments need to be followed up with infringement action. The Commission will continue to organise meetings of the Nitrates Committee on Member States' derogation requests and to give Member States the opportunity to exchange information on implementation. The Commission published its 4 yearly report on implementation in February 2010.

6.2.6. *Sector summary*

Substantial progress regarding the implementation of EU water law has been observed in the past decade as a result of increased awareness among decision-makers of the critical importance of meeting water quality standards to preserve water resource and the associated natural environment and to protect human health. Better implementation has often been driven by informal and formal cooperation between Member States, industries, non-governmental organisations, consumers and the Commission as well as by infringement procedures.

However, more efforts need to be made to ensure full compliance with EU water Directives. In respect of the Nitrates Directive, the Commission has noted that several regions within the EU show worrying water quality trends for which reinforced action programmes will need to be developed. With regard to the Urban Waste Water Directive, Member States must ensure that it is fully applied, including in the new EU 12 Member States and in smaller towns for all 27 Member States. The implementation of EU water legislation and the enhancement, preservation and restoration of water quality will greatly depend on Member States meeting their obligation to take all required measures to guarantee the achievement by 2015 of the environmental objectives of "good chemical

and ecological status" for surface water bodies and of "good chemical and quantitative status" for groundwaters set in the Water Framework Directive. The Commission will continue to focus on the proper transposition of European water legislation, including of the new Floods and Marine Strategy Directives and their implementation. The Commission will continue its efforts to ensure that Member States fulfil their obligation under these Directives and will assist them, when necessary, via formal and informal cooperation channels.