

Navigation as a water use vs. water service WFD Navigation Task Group¹ Position Paper

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Background

Article 9(1) of the EU Water Framework Directive (WFD) requires Member States to 'take account of the principle of recovery of the costs of **water services**, including **environmental and resource costs**.....in accordance.....with the polluter pays principle'.

Water services are defined in Article 2(38) of the Directive as all services which provide, for households, public institutions or any economic activity: (a) abstraction, impoundment, storage, treatment and distribution of surface water or groundwater; (b) waste-water collection and treatment facilities which subsequently discharge into surface water.

Environmental and resource costs, or economic externalities, are costs that may not currently be included in the price paid by consumers. These are described in advice published on the Europa website² as relating respectively to:

- the cost of the waste caused by water use on the ecosystem (for example salination or degradation of productive soils), and
- the cost of resource depletion leading to the disappearance of certain options for other users.

Water use, meanwhile, includes water services plus 'any other activity identified under Article 5 and Annex II having a significant impact on the status of water (Article 2(39)). Thus activities may be either a water use and a water service or only a water use. The CIS WATECO Guidance³ "Economics and the Environment" does not include navigation on its list of water services. Indeed, Annex B3 of the WATECO guidance specifically identifies navigation as being amongst the "important water **uses** which may cause significant impacts and therefore have to be taken in consideration."

Article 9 of the WFD only applies to activities that are both a water use and a water service. It does not apply to activities that are only a water use.

Navigation as a water use or a water service?

Based on the above, it is clear to members of the WFD Navigation Task Group that navigation is not a water service, but a use of the water body. *This is not to say that navigation and its associated infrastructure do not impact on the status of water - of course there may be impacts which require measures under Article 11(1) of the Directive. Rather it is to make the point that **navigation should be considered only as a water use (Article 2(39)) not also as a water service (Article 2(38)).***

This position is in line with the vast majority of EU Member States who, in their 2005 Article 5 reports, treated navigation as a water use not as a water service. It is also consistent with Article 9(4), which indicates that Member States shall not be in breach of the Directive if they decide not to apply water pricing and cost recovery for a given water-use activity, as long as

- i) this does not compromise the purposes and the achievement of the objectives of the Directive [*eg. it does not prevent measures being implemented*], and
- ii) the associated reasons are reported in the river basin management plans.

The Task Group believes that any measures needed to address impacts can be identified and delivered without recourse to treating navigation as a water service. Both the requirement to ensure improvements in water status and the need to guard against deterioration can be achieved by including any necessary measures in the programmes of measures required by Article 11(1). There is, therefore, no reason to expect that either the purposes or the

objectives of the Directive would be compromised by continuing to consider navigation as a water use.

The advice on the Europa website (op.cit.¹) further suggests that each user must bear the cost of consuming water: to promote efficient water use, water prices should be 'directly linked to the amount of water consumed and/or pollution produced'. The concept of efficiency of water use is not really appropriate to (typically non-consumptive) navigation uses and there are rarely any significant environmental or resource costs to recover.

'Water pricing' and 'cost recovery' are difficult concepts to apply across the navigation sector, not only for the aforementioned reasons, but also because international treaties such as the Rhine Convention and the Belgrade Convention (Danube) establish the right to free navigation for vessels of all nations. For maritime navigation, the 'right of innocent passage' is similarly enshrined in the UN Convention on the Law of the Sea.

Overall, therefore, it does not appear to the WFD Navigation Task Group that considering navigation as a water service will assist in achieving the purpose of Article 9.

Conclusion: the WFD Navigation Task Group position

The Navigation Task Group supports the position of the majority of Member States in defining navigation and its associated infrastructure as a water use in line with Article 2(39) of the Water Framework Directive, but not as a water service as defined in Article 2(38), and requests that the Commission provides clarification to this effect.

Notes

¹ the WFD Navigation Task Group comprises a 'thematic cluster' of European navigation-related organisations which provides the navigation sector's contribution to the WFD Common Implementation Strategy (CIS). The Task Group comprises the following professional bodies, trade associations and other stakeholders concerned with ports, commercial and leisure navigation and dredging: Central Dredging Association; European Barge Union; European Boating Association; European Community Shipowners' Associations; European Dredging Association; European Federation of Inland Ports; European Sea Ports Organisation; EU Recreational Marine Industries Group; PIANC; and Inland Navigation Europe. Central Commission for Navigation on the Rhine, the Danube Commission and the International Sava River Basin Commission are also invited to attend our meetings as observers.

² see <http://europa.eu/scadplus/leg/en/lvb/l28112.htm>

³ CIS WATECO Guidance (2003): Economics and the Environment - The Implementation Challenge of the Water Framework Directive