

**EU Water Framework Directive Navigation Task Group
Meeting at PIANC Offices, Brussels
1300 hours for lunch, Monday 11th September 2017**

DRAFT Minutes

Present

Emma Barton, European Boating Association
Jan Brooke, PIANC, Chair
Marc Eisma, ESPO
Erik Mink, EuDA
Chantal Martens, MSFD
Henrich Roeper, CEDA

Apologies

Kai Kempmann, CCNR
Paris Sansoglou, EuDA
Albert Willemsen, ICOMIA

1. Welcome, introductions and apologies

JB welcomed those attending. Apologies were noted.

2. Minutes of last meeting and matters arising

The minutes of the 4th October 2016 meeting were agreed.

Amongst the outstanding actions not already on the agenda:

- Item 1: ME confirmed that the new ESPO point of contact Sotiris Raptis.
- Item 2: EB to forward to JB the CEFAS paper on WFD hydromorphology vs. MSFD hydrographical conditions. **Action: EB**

Matters arising were:

- Item 4b: it was agreed that JB would continue to try to find an opportunity to raise with COM the problems with (inadequate) dialogue between DG SANCO and DG Env on the biocides (anti-fouling) issues. **Action: JB**

3. SCG meetings

a. 9th February 2017

JB reported that the main point of interest from the 9th February 2017 SCG meeting was the start of the discussion about the Article 4(4) and 4(5) exemptions, and in particular how natural conditions should be interpreted. This has increasingly become the focus of attention given the forthcoming mandatory evaluation (2019 review) of the Directive as well as looking ahead to the 2027 deadline. This meeting also discussed the EU approach to the UN's sustainable development goals (SDGs); introduced the BLUE2 study; and clarified that there will be no legislative proposal on priority substances in the next cycle. EM added that there were several reasons for the decision not to progress a legislative proposal, including the high level of outstanding disagreement on which substances should be included and a desire to harmonise with the RBMP reporting cycle. A pragmatic approach has therefore been adopted.

b. 17th – 18th May 2017

At the SCG of 17th – 18th May 2017, COM reported on the process to be followed for their assessment of the second round RBMPs (due to be finalised in spring 2018). In addition, EEA presented some of the initial outcomes of their State of Water assessment (only very small improvements in status overall, due in part to the one-out-all-out process; also to new monitoring data in previously unmonitored water bodies) and there was lengthy discussion on the need to ensure a continued high level of ambition in the 2021 third round RBMPs (see Item 4d. below)

4. CIS activities

a. ECOSTAT and Ad Hoc Hydromorphology Task Group Meetings

JB confirmed that her participation in ECOSTAT has increased significantly in 2017 because there are now several issues of relevance to the EU navigation sector on the WFD agenda. These include:

- the GEP inter-comparison exercise, including inland navigation in 2017 (JB noted that an equivalent activity on GEP inter-comparison for transitional and coastal (TraC) water body uses is anticipated in the next 12-18 months)
- COM's work to understand Member States' hydromorphological assessment methods for all water body types including heavily modified and artificial water bodies (and the links to the CEN standards work)
- the CIS work to understand Member States' approaches to transitional and coastal water bodies (both with regard to hydromorphological assessment and in terms of GEP mitigation measures, etc.). JB explained, however, that it is first necessary to understand the uses for which heavily modified water bodies have been designated in TraC waters: an initial questionnaire sent to Member States identified very significant differences both in the range of uses and in the existence of lists of mitigation measures for those uses.

b. GEP inter-comparison including Inland Navigation workshop

JB explained that the water storage GEP good practice mitigation measures report is largely complete and the floods and agricultural drainage reports are also nearing completion, although all of these have yet to address the question of how to define 'significant adverse impact on use' (SAIOU). Prior to the workshop, no equivalent work had been completed for navigation-related physical water body modifications, either inland or maritime. The inland navigation GEP workshop was therefore organised jointly by JB (for the WFD NAVI Task Group) and COM. The outcomes of the workshop comprised a workshop report and a list of good practice mitigation measures. Workshop participants and NAVI TG members have been invited by COM to respond to the latter, identifying any measures that could be added.

In discussion, EB highlighted that the EBA representative attending this workshop had raised concerns that some of the mitigation measures being suggested as good practice for commercial navigation could potentially impact negatively on recreational boating. JB indicated that it would be helpful if EB could make this point to COM (Raimund Mair, with JB in cc.) as soon as possible and including concrete examples. **Action: EB**

ME emphasised the need for a balanced approach, in particular the need for COM to confirm that "measures have been considered" by Member States rather than a simple "measures are (or are not) in place". This is because some measures might not be justified (e.g. there is no requirement to avoid dredging in sensitive periods of the year if the waterway is wide enough for fish passage whilst dredging is ongoing and the measure has therefore been ruled out for good reason). With regard to the latter point, JB confirmed that she has already stressed this point to COM using the example of a silt curtain where there is no benefit in using such a device if background suspended sediment levels already exceed 500mg/l.

It was agreed that EB, ME and others wishing to respond to COM with such comments should do so as soon as possible (send to Raimund Mair, with JB in cc.). **Action: ME, all**

It was also agreed that JB should continue to stress these concerns as the GEP work progresses – whether to a single overall GEP mitigation measures CIS publication or to a sector-specific publication. If the latter approach is selected (a decision on this could be made at the end September 2017 ECOSTAT meeting in Ispra), JB highlighted that additional resources for the sector's participation would need to be found (unless COM can call on consultants).

EM questioned the inclusion in the mitigation measures table of the column dealing with mitigation appropriate to new developments. JB responded that this would not be used in the GEP guidance, rather that the workshop had taken the opportunity to gather this information to inform the ongoing work on Article 4(7). The project- or site-specific nature of mitigation measures for new developments was acknowledged.

JB explained that the next steps in the GEP work have yet to be decided, but that there will undoubtedly need to be work on defining SAIOU, and that there will be an opportunity to comment on both this and any new GEP/mitigation publication whether sector-specific or generic. **Action: JB to advise NAVI TG members of any opportunities to provide input**

c. Article 4(7) guidance

JB explained that the Article 4(7) Ad Hoc Task Group is reviewing the CIS guidance document 20 on the WFD environmental objectives and supplementing or elaborating this guidance based on experience in the meantime (including case law). A new guidance document (CIS No. 35) will be prepared. However, this will not repeat 'still-valid' sections of the guidance document 20 so the latter will not be withdrawn.

JB also highlighted some of main changes and additions being made to the guidance as a result of discussions, workshops, etc. to date. These include the elaboration of the screening, scoping and assessment steps intended to determine whether or not Article 4(7) needs to be applied; and attention to the question of what are temporary, non-temporary and permanent effects? This is relevant because temporary effects do not trigger the application of the Article 4(7) tests.

There was also some discussion, based on JB's personal experience in the UK, about:

- (i) the use of the balancing test vs. reliance on over-riding public interest: this is particularly pertinent if the effects triggering the Article 4(7) tests are relatively small changes in status at element level but which could prove a show-stopper to an otherwise beneficial / sustainable development
- (ii) with reference to the Natural Resources Wales guidance, which clarifies that effects on status should be observable/measurable: this pragmatic approach is especially if the modification or alteration will take place in a water body where one or more elements are already in the lowest status class – and possibly also in determining the significance or otherwise of biocide inputs from antifouling paints, or discharges from scrubbers (see below).

EM noted that such pragmatism is important in the context of the Weser ruling because the ruling does not consider the 'big picture'.

d. Water Directors' activities

JB explained that the papers on natural conditions are considered by COM to be an initiative of the Water Directors and it is therefore difficult for stakeholders to make a formal input. Nonetheless, these papers are being discussed at the SCG meetings. JB highlighted that there was significant disquiet amongst participants at the May SCG meeting about the interpretation of conditions under which less stringent targets might be set, in particular regarding some of the examples presented to WDs by the CIS Working Groups.

The comments raised by Hamburg Port Authority, particularly in relation to Table 2b. in the attached, were noted. It is expected that the papers discussed at the June Water Directors'

meeting will be discussed again at the November SCG meeting, which JB will attend. JB will therefore seek an opportunity to raise HPA's and any other Task Group members' concerns, during the SCG. Those wishing to make comments were asked to provide them to JB by 20th October 2017. **Action: all**

HR asked what was meant by the term 'legacy domestic use of a banned substance'. It was agreed that this probably refers to products purchased before the ban by householders, recreational boaters, gardeners, etc. that are still being used even though they are no longer sold.

e. WG Chemicals

EM provided an update on WG Chemicals activity, noting that nothing especially urgent is happening but that there are some interesting developments on the priority substances list. He noted with regard to the priority and priority hazardous substances lists that some chemicals are likely to be phased, and that the thresholds for certain metals are expected to be changed (e.g. to take account of background concentrations). However, he also confirmed that Water Directors would like to align future changes to the priority substances list with the RBMP planning and reporting cycle: this will make it easier for Member States to react promptly to changes.

Similar changes are proposed to the 'Watch list' where new substances are reviewed to determine whether there are specific concerns. Several substances are likely to be removed from the current Watch list, whereas others will remain for further monitoring and a number of new substances are being proposed. Experience is typically showing, however, that the low concentrations of the Watch List substances that are typically present in water bodies mean that alternative 'effects based methods' are increasingly being cited as the best way forward: there is increasing consensus that these methods, which consider the effect on biota of everything in the water rather than looking only at a specific sub-set of substances, provide a more useful indicator of water body health than monitoring individual substances. The first effects-based methods are still being fine-tuned, so the existing methods will continue to be applied in the immediate term.

EM also reported that the question of food standards vs. toxic effects standards is currently being looked into by SCHER.

The next meeting of Working Group chemicals is scheduled for the end of October.

5. Related activities

a. Good Navigation Status expert group meeting

JB explained the concept of Good Navigation Status (GNS) for TEN-T waterways, and summarised the main outcomes of the 12th July 2017 expert group meeting insofar as the inter-relationship with the WFD is concerned. The evolving requirements for a TEN-T waterway are minimum depth of 2.5m and minimum clearance under bridges of 5.25m. However, it was already clear from the Inland Navigation GEP workshop that these fixed demands are not acceptable to all stakeholders, with CCNR noting that the proposed minimum bridge headroom potentially compromises inland waterways' ability to compete with rail for the transport of containers; and that the proposed minimum depth (2.5m on 365 days per year) is neither necessary nor physically achievable on the Rhine.

Insofar as the WFD is concerned, the TEN-T Regulation envisages that waterways must meet these requirements subject to complying with relevant environmental legislation, so it seems likely that TEN-T deepening projects would need to demonstrate compliance with the Directive and in some cases at least, go through the Article 4(7) tests. It was highlighted at the Inland Navigation GEP workshop that the critical test for these projects is more likely to be the mitigation measures test rather than necessarily the alternatives or OPI tests. This is because there may be technically feasible and not disproportionately costly mitigation

measures that would significantly reduce the effect on water body status but could also impact on the achievement of optimum navigation efficiency.

The GNS expert group meeting highlighted the above concerns alongside many other issues. Responses to the draft document were sought by 31st August and a revised draft is awaited.

Action: JB to advise / circulate when a revised document is available.

b. Navigating a Changing Climate initiative

JB introduced the key messages from the March 2017 Navigating a Changing Climate conference. EM confirmed that the technical content of the conference was very good but noted the poor attendance. He also suggested sending the conference outcomes to DG MOVE and DG ENV, along with a covering letter. **Action: JB**

JB explained that the NaCC partners met on 6th September and *inter alia* agreed that it was no longer appropriate to seek a recreational boating partner but that recreational users such as RYA and EBA would be encouraged to sign up as supporters. **Action: JB.** EB suggested that World Sailing should also be approached. **Action: JB-EB.**

JB confirmed that organisations can now register as supporters of the Navigating a Changing Climate initiative online at <http://navclimate.pianc.org/supporters>, and encouraged all WFD NAVI TG members to sign up. **Action: all**

EB suggested that JB might find the UK Adaptation Committee report on marinas useful.

Action: JB to review

c. European Sustainable Shipping Forum / use of scrubbers

There was no news amongst those attending the meeting, but ME undertook to provide a written update. **Action: ME**

d. SedNet

ME advised that SedNet has concluded a new Policy Brief, which was published in June 2017. This Policy Brief, entitled 'Effective river basin management needs to include sediments', was handed to Raimund Mair of COM at the 'Sediments on the Move' conference in Genoa, Italy in June. **Action: ME to provide link to the Policy Brief.**

ME also reported that:

- SedNet has applied for SCG membership; the outcome of the application is awaited
- a new SedNet Working Group on initiative on sediment quantity has recently been commenced.

6. Other business

a. MSFD update

CM advised on the main points/state of play with the MSFD, highlighting that:

- the new GES Decision was published in May 2017
- the Article 8 reporting guidance is concluded for now – although it is not completely finished or aligned so Member States' end 2018 reporting will test and identify any changes or elaboration needed
- there is still a lot of uncertainty, especially how the Decision and guidance will be interpreted by MS; and
- there is no agreement yet on the application of the one-out-all-out principle to the MSFD.

As the emphasis is now on Member States' reporting, there is not much else happening in the CIS process. The MSFD NAVI Group is therefore taking the opportunity over the next few months to gather its thoughts and to review the main outstanding concerns to the sector.

b. Inconsistencies between the requirements of different EU regulations

AW requested that a number of issues be added to the agenda; EM presented some of these on AW's behalf:

- EM explained that the IED Directive has been revised. This calls for the industry sector to develop and revise good practice. AW makes the point that the good practice guide deals with waste water from ship yards or repair yards: in some cases PAHs are present in the discharge, but this is 'not allowed' under the WFD (even though phasing out of PAHs in water is difficult because PAHs are derived from burning most fuels)
- AW further advised that the WFD will be connected to the Industrial Emissions Directive (IED): meeting participants were not clear what this means in practice. **Action: AW to clarify**
- EM-AW highlighted similar issues with biocide products i.e. the EU Biocides Regulation and the list of practices approved by DG MOVE are not consistent with the requirements of the WFD. In this case, however, there is also a risk to the achievement of WFD objective regarding non-native species if biocides are not used.

EM confirmed that COM is already aware of these inconsistencies and the apparent conflicts between the requirements of different EU Directives, but that further attention should nonetheless be drawn to these issues at the SCG if the opportunity arises. **Action: AW/JB**

AW will distribute a copy of the PowerPoint presentation given at the recent Genoa Boat show entitled 'The sustainable use of antifouling paints: how does the industry make it a reality?' **Action: AW**

AW's e-mail also noted that ICOMIA is preparing a XL spreadsheet showing the materials used in the navigation sector (marine industry) and the various substances (SVHCs (Substances of Very High Concern in REACH) or WFD Priority (Hazardous) Substances, etc.) used in these materials. This spreadsheet will be sent to the WFD NAVI TG. **Action: AW-EM**

7. Date next meeting

The date of the next meeting is provisionally set for Thursday 26th April 2018. **Action: JB to advise PIANC HQ to book a room**

Post-meeting note: this date coincides with the PIANC AGA and Congress; an alternative date will therefore be agreed. Possibilities are:

- March 29
- April 3-4-5
- April 16-17
- May 2

Please respond indicating your availability ASAP. Action: all