

## **EEB response to the consultation on the Inception Impact Assessment for the revision of lists of pollutants affecting surface and groundwaters (Ref. Ares(2020)5809213 - 23/10/2020)**

EEB, Europe's largest network of environmental citizens' organisations, welcomes the opportunity to provide feedback to the European Commission's Inception Impact Assessment for the revision of lists of pollutants affecting surface and groundwaters as a follow up to the fitness check evaluation of the EU water legislation.

EEB strongly supports the conclusions of the fitness check evaluation that the reason that objectives of the Water Framework Directive (WFD) have not been reached fully is largely due to insufficient funding, slow implementation and insufficient integration of environmental objectives in sectoral policies, and not due to a deficiency in the legislation. Furthermore, "as for future challenges, this fitness check finds that the WFD is sufficiently prescriptive with regard to the pressures to be addressed, and yet flexible enough to reinforce its implementation as necessary with regard to emerging challenges not mentioned in the Directive such as climate change, water scarcity and pollutants of emerging concern (e.g. micro-plastics and pharmaceuticals)" and PFAS. Thus, we believe it is time to use the review mechanisms established in the Ecological Quality Standards Directive (EQSD) and the Groundwater Directive (GD) to revise the lists of pollutants affecting surface and groundwaters and set the EQS for them.

This initiative is important for achieving the Zero Pollution ambition of the European Green Deal and should build upon the Chemicals Strategy, Strategic Approach to Pharmaceuticals in the Environment as well as revision of the Urban Waste Water Treatment Directive (UWWTD) and the Industrial Emissions Directive (and E-PRTR Regulation).

### **Addition of substances and groups of substances in surface and groundwater and setting of corresponding EQS**

The Watch List mechanism was specifically established to have pollutants of emerging concern carefully monitored by EU Member States to determine the risk they pose to the aquatic environment and provide justification for the EU Environmental Quality Standards (EQS) to be set for them.

The EQS Directive determined the Watch List should be reviewed every 2 years. However due to a failure to regularly review the list of priority substances under the WFD, opportunities for moving Watch List substances to the priority substances list have been missed.

The last revision of the priority substances in 2013 established that a review of the list of priority substances should be undertaken every 6 years, thus in 2020 it is long overdue.

WFD Fitness Check evaluation concluded that in relation to chemical pollution, the EU water legislation does not sufficiently address a number of pollutants of emerging concern, such as pharmaceuticals, (micro)plastics and PFAS. Data from monitoring substances on the surface water watch list and the voluntary groundwater watch list, as well as numerous scientific reports, confirm that these substances pose a risk to the aquatic environment. It is therefore necessary to revise the lists and set the EQS standards for the priority substances under the EQS Directive and Groundwater Directives as part of regular update mechanism enshrined in these Directives.

Mixture toxicity can be addressed through improved monitoring methods such as effect-based monitoring to gather more information on chemical mixtures as well as give an early warning to identify compounds in future risk assessments. Those methods can be used to complement traditional chemical monitoring.

One of the policy options to be assessed includes possible removal of existing priority substances and this should be considered very carefully as this can allow a pollutant to then re-occur at a later stage due to lack of legal obligations or to undermine the achievement of the EQS: only where this pollutant is banned (including for imported products), cannot contaminate water and previously the EQS is achieved with a good margin those considerations may be considered.

### **Amendments to provisions as regards surface water watch list monitoring;**

There is also a need to improve the Watch List mechanism that was established to have pollutants of emerging concern carefully monitored by EU Member States to determine the risk they pose to the aquatic environment and whether EU Environmental Quality Standards (EQS) should be set for them.

Member States have argued that the availability of analytical methods is a prerequisite for listing an emerging pollutant on the Watch List; they have at the same time opposed listing well known hazardous substances with known impacts on aquatic environment, arguing that sufficient monitoring data is not available. For example as regards pyrethroids – used in commercial insecticides - it is clear for more than 10 years that they should be prioritised, however this hasn't happened due to non-availability of monitoring data (e.g. Deltamethrin, Permethrin, Esfenvalerate). Moreover, pyrethroids have not been introduced into the last revision of the Watch List because Member States have argued that the analytical method is still not available.

It is not acceptable to wait for the availability of analytical methods – if a substance is identified as priority hazardous substance in the absence of sufficient monitoring data, it has to be put immediately on the Watch List, even if no analytical method is available yet and use sampling and verification schemes and take a group approach on those substances e.g. PFAS, pharmaceuticals, pesticides.

Effect-based tools can also be used in the context of pollutants of emerging concern as an early warning system for substances not currently under monitoring obligations. The new monitoring approach of using effect-based monitoring (EBM) and passive sampling, as well as the prioritisation process and Watch List, together with the strategy on pharmaceuticals in the environment provide a robust framework for identifying and monitoring pollutants of emerging concern in the aquatic environment. However, the consequent implementation of these methods, and thus the successfulness in reducing these contaminants will largely depend on the political willingness of Member States to address them through listing them on the Watch List and priority substances list and adopting effective measures to tackle them.

### **Ensure policy coherence**

We would wish to highlight the lack of stronger upstream prevention and control trigger and policy in-coherence to force prevention at source. For any industrial wastewater the allowable

emissions (BAT-AELs) should be set on the technical feasible levels so to achieve the MAC level “at the gate” of when the waste water leaves the industrial site, irrespective of the discharge being direct or indirect (UWWTPD). Where the effluent contains re-calcitrant pollutants that the UWWTP cannot effectively abate (e.g. Heavy metals and any other EQS) the EQS / IED and BAT Conclusions within the BREFs shall make sure that indirect discharge via the UWWTP is prohibited. For priority hazardous substances we expect the cessation objective to be implemented to reach “0” loss and discharge by the WFD set deadline, “dilution” being strictly prohibited and to set load-based BAT-C in combination of concentration limits for the pollutants with PBT/vPvB properties. Cocktail effects need to be properly tackled, which requires a multi-source permitting procedure that is complementary (strict IED permit conditions and subject to REACH authorisations), this interplay is not yet working however see potential progress if the standard BAT on ‘waste water inventory’ is made “interactive” with other EU-instruments. The “no- deterioration” principle should also prevent high water use / contamination potential activities, in particular if further deteriorating the climate e.g. coal/lignite mining.

### **Ensure better reporting and monitoring**

We see a significant gap in improved transparency and access to environmental information element. Data of source control instruments (e.g. IED/BREFs, REACH, Mercury Regulation etc), need to interact/“communicate” with downstream/media control instruments (e.g. UWWTP, WFD/EQS-D, GD etc). There is a general lack of fit for multi-purpose EU database allowing tracking of progress in pollution prevention/reduction and identifying “hot spots” for prevention measures as well as priorities for action.

See *EEB input to the E-PRTR review, which equally apply to this initiative:* <https://eeb.org/library/eeb-input-to-e-prtr-impact-assessment/>

### **Cost recovery and polluter pays**

The extra costs of tackling pollutants of emerging concern have to be covered according to the polluter-pays principle through various tools, including extended producer responsibility which can be applied when the source, characteristics and relative contribution of water relevant impacts can be known. On this basis the water cost recovery principle can be properly applied. Instruments that tax the production and use of harmful chemicals are also very effective and need to be set (e.g. 0.1% levy on profits made by any polluting industrial sector).

Water intensity benchmarks should also be set for high water consuming activities, “essential uses” should be defined which may justify lower water use fees.

See further relevant *EEB inputs:*

<https://eeb.org/library/competition-policy-supporting-the-green-deal-goal-eeb-contribution/>

