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[EEB's letter to the Commission \(05.08.2021\)](#)

[Annex to EEB's letter](#)

[The Commission's reply \(07.09.2021\)](#)

Brussels, 5 August 2021

**RE: Systematic EU wide failures on lack of public access to Water abstraction data and possible recommendation of actions**

Dear Ms. Jill MICHELSEN, Dear Mr. Rolf-Jan HOEVE, Dear Mr. Alex RADWAY

The EEB did send out access to information requests to 22 Member States regarding abstraction and consumption volumes, emissions to water and other relevant parameters on coal/lignite mines and Large Combustion Plants (an example of this access to document request is attached – see Attachment).

Unfortunately, our experience on accessing data for the purpose of this investigation has been greatly disappointing. Out of 22 requests sent out to Member States, only 5 provided us (mainly in part) with requested information.

With this email, we would like to draw your attention to the main shortcomings encountered at EU level that point to a systematic failure in ensuring public access to key environmental information and would kindly request the European Commission to take remediation measures / policy interventions.

The main results as to the processing of our request and shortcomings at member state level are listed in the Annex 1 to this letter and are as follows:

- 16 countries failed to respond to our access to document request, despite the 1-month deadline of response set under the Aarhus Framework. Of those countries, 10 were sent with a confirmation of delivery and requesting a read receipt. In the countries Poland, Germany, Croatia and Estonia the receipt of the letter has been acknowledged either by an automatic response or by a written acknowledgment in Belgium (Wallonia), Italy, Portugal and Romania - but no follow-up actions were taken.
- In most cases, the authorities were not able to extract the relevant water data in user friendly electronic formats (e.g. Excel). The only notable exceptions were France for LCPs related data (temperature, release information and abstraction volumes were provided at installation level) and the Czech Republic, where a publicly accessible web portal provides information, even if limited.
- Details about water fees collected as per the water cost recovery provisions of the Water Framework Directive are either not available or were not provided.
- Responses sent by Denmark, Austria and Spain were either insufficient or unsatisfactory. Austria declared that the water book does exist, but the water quality in Austria is deemed to be sufficiently high, to exempt them from reporting as specified under the WFD
- The countries Romania and Italy indicated follow up actions within non-specified timeframes, but no action has been taken so far.

We see those shortcomings as systematic and EU-wide failures in implementation practices of EU acquis related issues – notably on improved water quality and availability, access to information and benchmarking of economic actors as well as public accountability with regards to the correct application of EU laws - that require follow up action by the European Commission.

We would like to highlight the following EU acquis in particular, please share with other relevant colleagues in other units or DGs:

## **1. Water Framework Directive 'WFD' (2000/60/EC of 23 October 2000)**

As stated in the Water Framework Directive (WFD) Article 11(e), information on water abstraction must be recorded in "*a register or registers and a requirement of prior authorisation for abstraction and impoundment*", which is part of the '*basic measures*' i.e. minimum requirements to be complied with under the programme of measures.

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Article 9 of the same Directive requires Member States to ensure a recovery of costs for water services, to provide, amongst others, for adequate incentives for users to use water efficiently which shall be disaggregated into “at least industry, households and agriculture”. This disaggregation is aimed to allow the proper implementation of the recovery of cost of water services (based on the economic analysis further specified in Annex III and based on the polluter pays principle).

Member States are requested to report in the RBMPs on progress and “on the contribution made by the various water uses to the recovery of the costs of water services” (see Article 9(2)).

Further, Article 10 of the WFD requires a “combined approach” (emission controls) so to achieve the quality objectives or standards (see point 3).

*Our findings suggest that data on water use by important users of the industry, namely for cooling of Large Combustion Plants or water abstraction from coal/lignite mining activities is not made available or otherwise not accessible in a user-friendly manner. We kindly ask you to provide your views on the following:*

1. *Are the European Commission Services aware of the lack of water abstraction data across Europe? Does your department have the list of the said registers and can your services access the data from all industrial facilities at the national level at the required dis-aggregation level?*
2. *Do you see a lack of compliance with notably article 11 .3 (e) implementation of the WFD?*
3. *Is the European Commission considering to establish guidance or (better) a COM implementing decision as to adequate reporting of water data under WFD, in advance of the finalization of the 3rd RBMPs?*
4. *Does the EU have the means to assess compliance with the cost recovery principle, if the respective contribution made by the various water uses is not available / not comparable? Would you agree that this shortcoming does not help achieving an environmental level playing field and that a harmonised EU approach is desirable?*

## 2. Regulation establishing the EU-Pollutant Release and Transfer Register ‘EU-PRTR’ (Regulation EC no 166/2006)

A cause of failure of access to this environmental information is the lack of an explicit requirement set under the EU-PRTR to require the operator to report on the volume of abstracted / consumed water for the industrial activities covered under the EU-PRTR. The Commission is due to adopt a Commission Implementing Decision in Q3 of 2021 (Units and Metrics for Production Volume’ under Commission Implementing Decision (EU) 2019/1741 (Ref. Ares(2021) 1967941 of 19/3/2021). It seems the Member States PRTR expert group did not discuss whether to include reporting on water inputs (e.g. m3/annum). Input volume of water is only considered in the current draft to be reported for Urban Waste Water Treatment Plants Activity 5(f) and independently operated industrial waste water treatment plants Activity 5(g) in cubic meters of incoming wastewater.

The EEB considers that it is necessary to require mandatory reporting on water use volumes for the industrial activities covered under the E-PRTR (as well as per IED - see point 3), currently under review, irrespective of whether this is wastewater or other type of water. More background as to the EEB position on the E-PRTR review<sup>1</sup>.

5. *Do the Commission Services agree that requiring the industrial activities covered under the E-PRTR to report on consumption (such as water) is useful for the purpose of correct implementation of the EU acquis instruments, such as those mentioned in this letter?*

<sup>1</sup> <https://eeb.org/library/eeb-input-to-e-prtr-impact-assessment/>

6. *If the answer to Q5 is positive, would you agree that it would be more time-efficient and effective to add a requirement for E-PRTR activities to report annual water consumption e.g. m3/annum in the upcoming COM implementing decision on "production volume" (currently under review)?*
7. *The mineral industry needs to report on "tonnes of extracted material". Does this include water abstracted (mine drainage)? In the case of extracted material such as lignite mining, the moisture content is known to the operator and in average at 50% and higher, hence it should not be complicated to report on water use/abstraction.*

### 3. Industrial Emissions Directive 'IED' (2010/75/EU)

The IED requires operators to send, at least annually, the necessary evidence enabling compliance assessment with the permit conditions (Article 14.1 point d). Permit conditions must include all measures necessary for compliance with the requirements of Articles 11 and 18. This includes *'appropriate requirements ensuring the protection of the soil and groundwater'* (Article 14.1 point b), *'preventive measures taken against pollution'* (Art 11(a)), the application of best available techniques (Art 11(b)). The permit must contain information on the raw and auxiliary materials used (Article 12). Article 18 requires compliance with environmental quality standards, such as the achievement of the good ecological and chemical status for surface waters set under the WFD.

It is correct that the IED is not very explicit as to the requirements to address consumption of raw materials including water, but we consider this as being covered in the IED objective to prevent pollution as a whole, which covers resource use (see Article 1 and 3(2) notably) and the link to Article 18.

Most EU BAT-C now explicitly require the annual reporting of raw materials and energy consumption as well as water consumption, at least on an annual basis (see final draft BAT-C on FMP, TXT BREFs notably). Although BAT 3 of the EU 2017bLCP BREF does not require the monitoring of water use for all purposes, it is a standard practice and also a requirement in the water permit (mainly due to Article 18 and the WFD obligations).

In short, we regard that water consumption data (for cooling, waste water treatment or other uses) should be available and hence be part of the required Article 14 annual compliance report.

8. *Do the European Commission services agree that the use of water (consumed/ abstracted) for cooling purposes or other purposes forms an integral part of the IED Article 14 annual compliance report, and thus should be available?*
9. *If the answer to Q7 is positive, would you agree that it would be more time-efficient and effective for environmental level playing field to make this data publicly available through an EU centralized Industrial Pollution Portal?*
10. *Would you agree that a necessary first step is to require mandatory reporting? (see related Q5, Q6 and Q8)*

### 4. Water Reuse Regulation 'WRR' (2020/741/EU)

The Water reuse Regulation (WRR) places a very strong emphasis on making water data publicly available. As per recital 31, information on water use shall be provided to the public with the argument that *"clear, comprehensive and updated information on water reuse would allow for increased transparency and traceability"*, while recital 33 makes a reference to the Aarhus Convention and the right of access to environmental information.

Article 9 requires Member States in which wastewater is reused for agricultural irrigation to set up awareness-raising campaigns on savings of water resources as a result of water reuse. These campaigns can also promote the benefits of water reuse.

Article 10 requires Member States to ensure that *adequate and up to date information* on water reuse is available to the public online or by other means. The Regulation requires the information to include at least:

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- a) the quantity and quality of supplied reclaimed water;
- b) the percentage of treated urban wastewater that is being reused;
- c) the granted or modified permits;
- d) results of compliance checks;
- e) contact points where water reuse is of cross-border relevance.

The aim of the WRR is water saving as the EU's water resources are under increasing pressure, “*leading to water scarcity and deterioration in water quality*” (recital 1). In our view, it is equally important to promote water saving and water efficiency also for industry. Therefore, the same transparency around industry's use of freshwater from groundwater or surface water should apply as those applied to reused wastewater under the scope of the WRR.

10. *Do the European Commission services agree that industry should be under the same transparency provisions as those regulating water reuse? If not, can the Commission Services explain the rationale of this differentiated treatment for the EU's largest industrial activities?*

## 5. Drinking Water Directive (DWD) (Directive 2020/2184)

Article 17(2) of the revised DWD covers the information on volumes to be provided by the Member States to the public, which includes, details like quality of water, price, volume consumed by the household, yearly trends. The provision require the information to be “*adequate and up-to date*”, with an active dissemination obligation laid on Member States “*at least once a year, without having to request it, and in the most appropriate and easily accessible form*” (e.g. Digital means) and a link to the website containing that information, further specified under Annex IV.

Annex IV for instance provides for an obligation of water users (exceeding annual use of 10 000m<sup>3</sup> per day) to provide further information e.g. on the performance of the water supply (use) system and cost recovery. As highlighted in Recital 39 “[...] *additional information on, inter alia, performance efficiency, leakage rates, ownership structure and tariff structure should also be available to consumers on-line*” as highlighted by recital 41 “*With the improvement of monitoring techniques, leakage rates have become increasingly apparent. To improve the efficiency of water infrastructure including avoiding over-exploitation of scarce resources of water intended for human consumption, water leakage levels should be assessed by all Member States and reduced if they are above a certain threshold.*”

Recital 37 of the DWD recalls that the “*7th Environment Action Programme to 2020, ‘Living well, within the limits of our planet’*”(18), **requires that the public have access to clear environmental information at national level**. Directive 98/83/EC only provided for passive access to information, meaning that Member States merely had to ensure that information was available. **Those provisions should therefore be replaced to ensure that up-to-date information is accessible to consumers on-line, in a user-friendly and customised way. Consumers should also be able to request access to this information by other means, upon justified request.**”

Again, we see no rationale on why this data reporting is not possible for industrial water uses, even more if water use does affect the drinking water availability and quality. Industry is a big water user. This differentiated treatment is not justified. Based on the above we consider that water consumption data in general shall be available at EU level so to understand yearly trends and pressures on water availability, including the use data by the industry. There is no reason why this data should not be available for industry and other human activities.

11. *Do the European Commission services agree that industry should be under the same transparency provisions as those regulating water reuse? If not, can the Commission Services explain the rationale of this differentiated treatment for the EU's largest industrial activities?*

## 6. Directive on the protection of groundwater against pollution and deterioration (Directive 2006/118/EC)

The Groundwater Directive requires Member States to assess groundwater chemical status (Article 4) and to track trends in concentrations of pollutants, or indicators of pollution found in bodies or groups of bodies identified as risk (notably pursuant to Article 5 and Annex IV). This requirement shall also address risk to actual or potential legitimate uses of the water environment and links to Article 11 of the WFD, with the aim to progressively reduce pollution and to prevent deterioration of groundwater. This requires the setting of a baseline assessment further specified under part B of Annex IV. Trend reversals need to be demonstrated; hence monitoring is required so to enable a change in the physical and chemical temporal characteristics of the body of groundwater, including groundwater flow conditions and recharge rates and percolation time through soil or subsoil (see subpoint iii of point 2 under Part A). This is particularly relevant for mining activities.

Measures necessary to limit inputs into groundwater and the no-deterioration principle are to be set, with a clear link to BAT (see Article 6(1) point b in particular). Annex II Part 4 requires control of data collected and evaluation of data quality. Part C on the indicators requires reporting on the actual and potential legitimate uses or functions of water bodies (see point A subpoint iii). Hence qualitative data on water uses should be available.

12. *How can the correct application of the ‘no-deterioration principle’ and ‘risk to actual or potential legitimate use conflicts’ be enforced or verified by the EU Commission if the water abstraction volume data (linked to groundwater) is not transparently available at EU level? Can the Commission Services explain the rationale of this differentiated treatment for the EU’s largest industrial activities?*
13. *What concrete measures will the European Commission further take to address the reporting and data access deficit in relation to industrial activities?*

## 7. Other considerations / relevant policy initiatives

The 8<sup>th</sup> EAP puts a strong emphasis on a proper environmental monitoring framework and consultation on “headline indicators” are currently up for review<sup>2</sup>. The EU Green Deal also calls for a ‘digital transformation’ and tools that act as enablers. ‘Transformation pathways’ are also developed under the Industrial Forum of which the digital transformation is part of the tools available to achieve the Zero Pollution Ambition. We very much welcome the ongoing initiatives to make better use of data, for various purposes and therefore we think it is well placed to highlight data sharing about water impacts.

We call on the EU Commission to provide a response to the above questions and look forward in overcoming the deficit in making available key information as to water use /availability and quality.

We look forward to your feedback and to the opportunity to discuss this issue with you further.

Best regards,

Christian Schaible

Policy Manager for Industrial Production

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<sup>2</sup> [https://ec.europa.eu/environment/news/8th-environment-action-programme-commission-consults-monitoring-framework-headline-indicators\\_en](https://ec.europa.eu/environment/news/8th-environment-action-programme-commission-consults-monitoring-framework-headline-indicators_en)

**Annex I**  
**(water data access letter)**

<b>Cou ntry</b>	<b>First ATD request sent</b>	<b>Date receipt acknowl edged</b>	<b>Date data was received</b>	<b>Main issues/overall appreciation</b>	<b>Art 11.3e Register existing / available?</b>
AT	19/04/2021	12/05/2021	n.a.	Austria declared no reporting obligations under the WFD due to good quality of their water bodies and negligent abstraction volumes mostly used for cooling purposes	(Austria mentioned a water book "Wasserbuch" but could not provide the requested information)
BE	19/04/2021	19/04/2021 (Wallonia)	-	Brussels was the only region that came back to us with information regarding our request. Wallonian authorities confirmed the receipt but did not promise any action	Not communicated
BG	19/04/2021	n.a.	n.a.	No response	Not communicated
CZ	n.a.	n.a.	n.a.	Czech Republic has a publicly accessible web portal with limited information from where data could be extracted	<a href="http://eagri.cz/public/web/mze/voda/">http://eagri.cz/public/web/mze/voda/</a>
DE	27/04/2021	n.a.	n.a.	No response	Not communicated

DK	19/04/2021	29/04/2021	n.a. (17.05.2021 unsatisfactory)	Denmark has sent us an unsatisfactory response by providing a link and a report. Our follow up questions were not considered.	Not communicated
EE	19/04/2021	20/04/2021	n.a.	No response	Not communicated
ES	19/04/2021	01/06/2021	-	Spanish authorities argued that the requested information “is not covered by the European and international PRTR legislation in force” and they redirected us to the national E-PRTR portal, emissions to water and water consumption are reported at facility level	Not communicated
FI	19/04/2021	11/05/2021	28/05/2021	Data received	Not provided
FR	n.a.	n.a.	n.a.	No access to documents request was sent to France, because the country already provided us with relevant water data in a user-friendly format (excel) for a previous	n.a.



				case study [abstraction volume per installation, flow rates, pollutants concentrations]	
GR	19/04/2021	12/05/2021	29/06/2021	Greece authorities were given a one-month extension and came back to us with complete datasets.	no available public database in Greece
HR	28/04/2021	28/04/2021	n.a.	No response	Not communicated
HU	19/04/2021	27/04/2021	29/05/2021	Hungarian authorities were amongst the very few exceptions that provided us with sufficient data in a user-friendly format within a timely matter	E-PRTR data are available at <a href="http://web.okir.hu/hu/eptr">http://web.okir.hu/hu/eptr</a> , public online database for water abstraction data has not been elaborated yet
IE	19/04/2021			Data provided, abstraction volumes and purpose only (28/06/2021)	Not provided
IT	28/04/2021	-	-	Responded but did not provide any data to date.	Not provided
LT	19/04/2021	-	-	No response	Not communicated
LV	19/04/2021	-	-	No response	Not communicated

MT	19/04/2021	12/05/2021	13/05/2021	Requested data was received in a user-friendly format and within the 1-month deadline	Data is not available to public via an online database but a request by the public can be made to the Authority and data is provided free of charge, upon such request.
NL	19/04/2021	22/04/2021	25/05/2021	Dutch authorities prepared a comprehensive response to our request, sending us complete data and giving background information on the Netherlands water management	<a href="#">National Groundwater Register (NGR)</a>
PL	19/04/2021	12.05.2021	n.a.	No response	Not communicated
PT	19/04/2021	19/04/2021	-	Portuguese authorities confirmed the receipt but did not promise any action	Not communicated
RO	19/04/2021	14/05/2021	-	Romanian authorities confirmed by phone that they forwarded our request to the relevant water management authorities but so far no data has been received.	Not communicated

SI	19/04/2021	29/04/2021	19/05/2021	Slovenian authorities provided us with complete datasets within the 1-month timeframe.	data can be obtained by the interested public or institutions free of charge upon request to the competent authority for wastewater permits and for water use permits
SE	19/04/2021	19/04/2021	-	Authorities of the Swedish Ministry of Environment advised us to contact the Swedish Environmental Protection Agency, as they are the ones holding the requested data. After forwarding our request to the responsible authorities, we got an automatic confirmation but so far no data has been sent to us.	Not communicated





EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
ENVIRONMENT  
Quality of Life  
Clean Water

Brussels  
ENV.C.1/MP/AT (2021) 5085934

Dear Mr Schaible,

We would like to thank you for your letter concerning the implementation of the EU water policy and for forwarding the results of your analysis and sharing your concerns on public access to environmental information. Your contribution is very welcome and helpful to us and it will be taken into account by the Commission's services.

Let me start by emphasizing that the EU water policy is of great importance and is one of the priorities set out in the European Green Deal<sup>1</sup>, which is Europe's new growth strategy. In your message, you refer to shortcomings in implementation of several EU Directives and Regulations. We would like to note that it is the responsibility of Member States to implement EU law and ensure that any project is compatible with the EU Directives. For its part, the European Commission, as guardian of the Treaties, makes sure that EU rules are correctly transposed at national level and takes action in cases giving rise to any issue of wider principle, indicating the existence of a general unlawful practice or a systemic failure to comply with EU law.

As for the Environmental Information Directive<sup>2</sup>, all Member States have transposed it into their national laws. As you indicated, the national authorities must reply to a request for environmental information within one month from receiving an application. This deadline may be extended to 2 months in complex cases. Should you not receive any reply by then, you may use the national procedures foreseen in the Directive.

Regarding the Water Framework Directive<sup>3</sup> (WFD), we would like to stress that it sets the framework for sustainable and integrated water management, which aims at a high level of protection of water resources, prevention of further deterioration of water quality and restoration to good status. It follows from the recent Fitness check<sup>4</sup> on EU water

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<sup>1</sup> [https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en)

<sup>2</sup> Directive 2003/4/EC, OJ L 41, 14.2.2003, p. 26

<sup>3</sup> OJ L 327, 22.12.2000, p. 1

<sup>4</sup> [https://ec.europa.eu/environment/water/fitness\\_check\\_of\\_the\\_eu\\_water\\_legislation/index\\_en.htm](https://ec.europa.eu/environment/water/fitness_check_of_the_eu_water_legislation/index_en.htm)

Christian Schaible  
[christian.schaible@eeb.org](mailto:christian.schaible@eeb.org)

policy that the Water Framework Directive, 20 years after its adoption, is overall considered flexible enough to accommodate emerging challenges such as climate change, water scarcity and pollutants of emerging concern. In the light hereof, the focus now is on its broad implementation and enforcement. To this effect, the Commission works closely with the Member States to step up enforcement of the Water Framework Directive by closely following up to the 2<sup>nd</sup> River Basin Management Plans (RBMPs) assessment and relative recommendations for each Member State, issued back in February 2019<sup>5</sup>. Furthermore, the Commission puts efforts to provide the best possible support to Member States for the completion of the 3<sup>rd</sup> RBMPs by the Member States.

**Q1-** *Are the European Commission Services aware of the lack of water abstraction data across Europe?*

*Does your department have the list of the said registers and can your services access the data from all industrial facilities at the national level at the required dis-aggregation level?*

The 5<sup>th</sup> Implementation Report<sup>6</sup> on the implementation of the WFD (adopted 26/02/2019) stressed among others *‘The fact that most Member States exempt small abstractions from controls or registration is potentially problematic. A lack of control and registration can be of concern particularly in Member States that already have water scarcity problems and in water bodies that face quantitative problems’*<sup>7</sup>. In particular for what concerns the industry sector, the 5<sup>th</sup> Implementation Report underlined that *‘Basic measures to deal with pressures from sectors other than agriculture, such as industry... are generally in place... However, more progress is needed.’*<sup>8</sup>

The Commission has initiated, at the end of 2020, a dialogue with all Member States to assess how the WFD is complied with in practice. This included, inter alia, a request for information on the way in which the obligation for registration and authorisation of water abstractions are implemented in practice (i.e. whether all abstractions are indeed registered; how often the register is updated; whether it is publicly available and, if so, whether also on-line, providing the list of the register etc.). The analysis of the replies is under assessment by the Commission services.

**Q2-** *Do you see a lack of compliance with notably article 11 .3 (e) implementation of the WFD?*

The assessment of the abovementioned replies will present in a more accurate and detailed way the state of implementation of Art 11(3)(e) WFD. Should shortcomings be identified, the Commission will take the necessary steps to address these.

**Q3-** *Is the European Commission considering to establish guidance or (better) a COM implementing decision as to adequate reporting of water data under WFD, in advance of the finalization of the 3<sup>rd</sup> RBMPs?*

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<sup>5</sup> [https://ec.europa.eu/environment/water/water-framework/impl\\_reports.htm](https://ec.europa.eu/environment/water/water-framework/impl_reports.htm)

<sup>6</sup> [https://eur-lex.europa.eu/resource.html?uri=cellar:bee2c9d9-39d2-11e9-8d04-01aa75ed71a1.0005.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:bee2c9d9-39d2-11e9-8d04-01aa75ed71a1.0005.02/DOC_1&format=PDF)

<sup>7</sup> EC (2019), 5th Implementation Report, p. 5

<sup>8</sup> EC (2019), 5th Implementation Report, p. 5

There is already in place WFD reporting Guidance in [europa.eu](https://europea.eu)'s dedicated link<sup>9</sup>. The Commission services are always open to assist Member States to report data (via e-mail exchanges with authorities, webinars<sup>10</sup>, established working group Data and Information Sharing). As regards the recent progress in the preparation of the electronic reporting for the 3<sup>rd</sup> RBMPs, the 2022 reporting guidance was endorsed by the Water Directors at the end of 2019<sup>11</sup>, presently the descriptive schemas are in a testing phase. The aim of this exercise is to have everything ready by the end of the year so that Member States could start reporting (deadline 22 March 2022).

The WFD does not grant a mandate to the Commission for adopting an implementing decision on reporting.

**Q4**—*Does the EU have the means to assess compliance with the cost recovery principle, if the respective contribution made by the various water uses is not available / not comparable? Would you agree that this shortcoming does not help achieving an environmental level playing field and that a harmonised EU approach is desirable?*

In respect of water pricing, Art 9(4) WFD provides that Member States can decide, only *'in accordance with established practices'* not to apply cost recovery of water services if this does not compromise the purposes and the achievement of the objectives of this Directive. This must be justified and reported in the RBMPs. The 5<sup>th</sup> Implementation Report on the implementation of the Water Framework Directive noted on that issue of cost recovery: *'Steps were made in defining water services, calculating financial costs, metering, performing economic analysis and assessing both environmental and resource costs when calculating the cost recovery amounts for water services. However, significant gaps remain in translating these improved elements of economic analysis into concrete measures and achieving more harmonised approaches to estimate and integrate environmental and resource costs'*<sup>12</sup>. Nevertheless, the Commission provided recommendations to Member States in relation to Article 9 WFD implementation. In particular, in the same report, it is stressed that for the 3<sup>rd</sup> RBMPs Member States should *'....ensure the proper implementation of Article 9 on cost recovery, including the calculation and internalisation of environment and resource costs for all activities with a significant impact on water bodies and the economic analysis to underpin the PoM'*<sup>13</sup>.

**Q5.** *Do the Commission Services agree that requiring the industrial activities covered under the E-PRTR to report on consumption (such as water) is useful for the purpose of correct implementation of the EU acquis instruments, such as those mentioned in this letter?*

The Commission is currently undertaking a formal impact assessment of the E-PRTR Regulation with a view to addressing issues that were identified in evaluations of the Regulation and the Industrial Emissions Directive, as well as from other implementation feedback. The E-PRTR impact assessment considers the addition of a number of options for gathering data on resource consumption, including water consumption.

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<sup>9</sup> [Guide - Water Framework Directive - Environment - European Commission \(europa.eu\)](https://europea.eu)

<sup>10</sup> Last webinar took place 9<sup>th</sup> of June 2021

<sup>11</sup> [https://circabc.europa.eu/ui/group/9ab5926d-bed4-4322-9aa7-9964bbe8312d/library/95a91ac6-378d-4b2f-94d3-6a4982b037f8?p=1&n=10&sort=modified\\_DESC](https://circabc.europa.eu/ui/group/9ab5926d-bed4-4322-9aa7-9964bbe8312d/library/95a91ac6-378d-4b2f-94d3-6a4982b037f8?p=1&n=10&sort=modified_DESC)

<sup>12</sup> EC (2019), 5th Implementation Report, p. 6

<sup>13</sup> EC (2019), 5th Implementation Report, p. 6

**Q6.** *If the answer to Q5 is positive, would you agree that it would be more time-efficient and effective to add a requirement for E-PRTR activities to report annual water consumption e.g. m3/annum in the upcoming COM implementing decision on “production volume” (currently under review)?*

The envisaged implementing decision solely concerns ‘production volume’ i.e. outputs from industrial facilities that will allow existing release and transfer data to be normalised. It would not be appropriate to include water consumption.

**Q7.** *The mineral industry needs to report on “tonnes of extracted material”. Does this include water abstracted (mine drainage)? In the case of extracted material such as lignite mining, the moisture content is known to the operator and in average at 50% and higher, hence it should not be complicated to report on water use/abstraction.*

The draft of the implementing decision annex that was shared with E-PRTR Expert Group members in March 2021 proposed a ‘General rule 3’ that would include water contained in the extracted material but would exclude mine drainage (since this is not a product); viz:

**“Tonnes of products/extracted material:** *Unless otherwise stated, where units are expressed as a weight this refers to the weight of the stated metric and:*

- a. includes any inherent moisture content of the products; but*
- b. excludes any product packaging / containment.”*

**Q8.** *Do the European Commission services agree that the use of water (consumed/abstracted) for cooling purposes or other purposes forms an integral part of the IED Article 14 annual compliance report, and thus should be available?*

The IED does not directly regulate the use of water (consumed / abstracted) for cooling purposes or other purposes. However, BAT conclusions may include an environmental performance level associated with the techniques (BAT-AEPL) other than BAT AEL (more specific than a ‘narrative’ BAT as it is expressed in ranges), e.g. limitations for the consumption of material, water or energy, or the generation of waste, or a certain level of abatement efficiency on pollutants or of the duration of visible emissions (see Chapter 3 Point 3.3. of the Annex of Commission Implementing Decision 2012/119<sup>14</sup>).

The role of BAT-AEPLs other than BAT-AELs for permits is not specifically defined in Directive 2010/75. Being part of the BAT Conclusions, they are, in accordance with Article 14(3) of Directive 2010/75, the reference for setting permit conditions. It follows that BAT-AEPLs other than BAT-AELs are relevant as references to assess whether the desired overall level of environmental protection is achieved.

As mentioned in Article 14(d)(i) of the IED, the operator shall report annually to the competent authority ‘information on the basis of results of emissions monitoring referred to in point c and other required data that enables the competent authority to verify compliance with the permit conditions’. It is clear that if these permit conditions include performance levels in terms of e.g. water consumption, data on water consumption shall be part of the information reported annually.

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<sup>14</sup> OJ L 63, 2.3.2012, p. 1–39



Besides, in the context of the ongoing revision of the IED announced in the European Green Deal, the Commission is assessing options to enhance the IED contribution to circular economy objectives, including an Environmental Management System which would include annual reporting of indicators related to resource efficiency, such as water consumption.

*Q9. If the answer to Q7 is positive, would you agree that it would be more time-efficient and effective for environmental level playing field to make this data publicly available through an EU centralized Industrial Pollution Portal?*

Not applicable

*Q10. Would you agree that a necessary first step is to require mandatory reporting? (see related Q5, Q6 and Q8)*

See answers to Q5, Q6 and Q8, in particular concerning the ongoing revision of the IED and E-PRTR Regulation.

**Q10-(on Water Reuse Regulation)** *Do the European Commission services agree that industry should be under the same transparency provisions as those regulating water reuse? If not, can the Commission Services explain the rationale of this differentiated treatment for the EU's largest industrial activities?*

The Water Reuse Regulation<sup>15</sup> which currently only applies to water reuse for the purpose of agricultural irrigation, commits the Commission to evaluate the possibility of extending the scope to other uses in the framework of its review in 2028. According to Article 12(3)(a)<sup>16</sup>, the Commission shall assess (in 2028) the feasibility of ‘*extending the scope of this Regulation to reclaimed water intended for further specific uses, including reuse for industrial purposes*’. Meanwhile, the Commission is exploring ways to encourage industrial water reuse, by examining options through the Industrial Emissions Directive<sup>17</sup> revision. Besides, in the context of the new Circular Economy Action Plan<sup>18</sup> adopted in 2020, the Commission promotes the use of water-efficient technologies and water-saving techniques in industry sector.

*Q11- Do the European Commission services agree that industry should be under the same transparency provisions as those regulating water reuse? If not, can the Commission Services explain the rationale of this differentiated treatment for the EU's largest industrial activities?*

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<sup>15</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32020R0741&from=EN>

<sup>16</sup> The new rules will apply from 26 June 2023

<sup>17</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), OJ L 334, 17.12.2010, p. 17-119.. Best available techniques (BAT) for water efficiency and reuse are described in BAT Conclusions, which are the reference for setting the conditions of the permits of large industrial installations. BAT Conclusions for the various industrial sectors may be found here: <https://eippcb.jrc.ec.europa.eu/reference>

<sup>18</sup> [https://ec.europa.eu/environment/circular-economy/pdf/new\\_circular\\_economy\\_action\\_plan.pdf](https://ec.europa.eu/environment/circular-economy/pdf/new_circular_economy_action_plan.pdf)

Article 17 of the recast Drinking Water Directive<sup>19</sup> imposes to Member States to ensure that adequate, up-to-date information on water intended for human consumption is available in accordance with Annex IV, while complying with applicable data protection rules. In practice, Member States will have to ensure that water suppliers provide information (on water quality, supplied volumes, leakage rates, etc.) to the public (water users) on the drinking water supplied. Industries using drinking water will get transparent information from their water supplier(s), as well as households. Water users have the option of using the information provided, for example, to rationalize their consumption of drinking water.

The Drinking Water Directive imposes obligations on water **suppliers**. The inclusion of obligations on data reporting for large drinking water **users** would go beyond the scope of the Directive. The recast Drinking Water Directive is not the suitable EU legal instrument to integrate obligations on industries to report data on their water consumption.

***Q12-**How can the correct application of the ‘no-deterioration principle’ and ‘risk to actual or potential legitimate use conflicts’ be enforced or verified by the EU Commission if the water abstraction volume data (linked to groundwater) is not transparently available at EU level? Can the Commission Services explain the rationale of this differentiated treatment for the EU’s largest industrial activities?*

In relation to groundwater, the EEA State of Water Report (July 2018)<sup>20</sup> shows that 89% of the EU groundwater bodies have by now achieved good quantitative status. Moreover, for the year 2015, groundwater takes almost one quarter (23.6%) of the total freshwater abstraction. Both the WFD and the Groundwater Directive (GWD) urge Member States to use reliable methods for an efficient groundwater monitoring. Especially, according to WFD Annex II, point 2.3, Member States shall collect and maintain information on groundwater abstraction. Furthermore, the Commission continues to work towards streamlining environmental reporting in the EU<sup>21</sup>. Finally, besides the information gathered in the context of the reporting of the RBMPs, as mentioned above, the Commission services are in the process of further refining these data by means of a dialogue launched, at the end of 2020, with all Member States seeking information on, among other issues, the way the registers of water abstractions are used in practice. The provided info also concerns the abstractions of groundwater.

***Q13-**What concrete measures will the European Commission further take to address the reporting and data access deficit in relation to industrial activities?*

The EEA Report on use of freshwater resources (Dec 2019)<sup>22</sup> shows that in 2017 the economic sector of mining and quarrying, manufacturing and construction is responsible for 10.6% of the total water abstraction. For other industries the percentage of water abstraction amounts to 3,3% of the total water abstraction. It is noted that there is a high degree of uncertainty in relation to water abstraction for the mining industry.

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<sup>19</sup> Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption (recast) (Text with EEA relevance), OJ L 435, 23.12.2020, p. 1–62

<sup>20</sup> <https://www.eea.europa.eu/themes/water/european-waters/water-quality-and-water-assessment/water-assessments/groundwater-quantitative-and-chemical-status>

<sup>21</sup> [https://ec.europa.eu/environment/legal/reporting/pdf/action\\_plan\\_env\\_issues.pdf](https://ec.europa.eu/environment/legal/reporting/pdf/action_plan_env_issues.pdf)

<sup>22</sup> <https://www.eea.europa.eu/data-and-maps/indicators/use-of-freshwater-resources-3/assessment-4>

Nevertheless, it is estimated that there was a decrease in water abstraction by the mining industry during the 1990-2017 period. In 2017, Western Europe accounted for more than 40% of water abstraction for the purpose of mining, followed by southern Europe (22%).

The abovementioned dialogue with the Member States, initiated at the end of 2020, are also seeking information on the way in which the authorities promote compliance by water abstractors, carry out inspections and apply enforcement tools in case of detected infringements (industry sector is included);

Yours faithfully,

(e-signed)  
Bettina Doerer  
Head of Unit