

To: Ms Veronica Manfredi, Director of Zero Pollution, DG Environment, European Commission

Cc: Ms Claudia Olazabal, Head of Unit ENV.C.1, Mr Stefan Leiner, Head of Unit ENV.C.4 at DG Environment, European Commission

Re: EC proposal on priority substances in surface and groundwater (deleting article 16 of the Water Framework Directive)

Brussels, 19 December 2022

Dear Director Manfredi,

On behalf of the EEB I am writing to share with you our concern about the proposed deletion of Article 16 of the Water Framework Directive (WFD), as part of the European Commission's proposal for a Directive on priority substances in surface and groundwater published on the 26 October 2022.¹

The EEB welcomes the EC proposal as the update of regulatory standards for water pollutants is overdue, however, we are concerned by the proposed deletion of the Art. 16 of the WFD with the argument that it has become **obsolete**. This is only **partly correct** as key provisions of the article stand and should have been kept in the Commission's proposal. We are particularly concerned with the elimination of the 20-year deadline for the phasing out of priority hazardous substances (stated in paragraph 6 of Article 16).

The phase-out obligation - one of the main objectives of the WFD - is only enforceable if it is linked to a clear deadline. The implementation of the WFD has not been based on the strict application of the phase-out obligation. The less concrete it becomes the more authorities can ignore it.

The phase-out is not taken care of by other legislation. While the Industrial Emissions Directive (IED), via the BREFs, does set concentration-based emission levels for certain industry, they do not stipulate a complete phase out of priority hazardous substances. On the contrary, they still allow emissions to a considerable extent, defined in ranges of emission limit values. Even for the largest point source mercury emitters (coal combustion), the proposed BAT-AEL range allows business as usual since permits ignore the strict level. **The revised IED proposal does not remediate the absence of clear phase out requirements** due to failure of setting clear safety net requirements and expecting the Member States to set stricter permits in the next decade.

Additionally, **many BREFs do not contain strict pollution prevention control measures for priority hazardous substances** in water. There is for example a lack of meaningful standards on mercury for iron and steel as well as cement production although they are large emitters.

¹ COM (2022) 540 final



Need for clarity. There is already some legal uncertainty regarding the deadline for the phase-out of emissions, discharges and losses of existing priority hazardous substances.² Removing the 20-year deadline from the WFD leaves competent authorities without a concrete timeline for compliance and creates more uncertainty when instead more clarity is needed.

Additionally, we would like to highlight that the potential deletion of the phase-out timeline for priority hazardous substances **has not been raised in the stakeholder meetings preceding the Commission's proposal**, nor was it part of the public consultation or expert survey.

The ongoing revision of the priority substances should not touch on basic obligations of the WFD. The conclusion of the fitness check of the WFD³ showed that it is broadly fit for purpose and should not be opened up.

Removing the cessation / phase-out deadline is in contradiction to the zero-pollution ambition of the European Green Deal. Therefore, we urge the European Commission to re-assess its proposal and push for the relevant obligations of Art. 16 WFD to be re-introduced while it is engaging with the co-legislators towards adoption of the Directive.

We would be happy to exchange with you on this and other points raised in our [joint NGO assessment of the proposal](#) in a meeting at your earliest convenience.

Thank you in advance for your consideration of these points which support the ambitions of the European Green Deal and the need to protect and restore the aquatic ecosystems our economy, livelihoods and wildlife all depend on.

Yours sincerely,

A handwritten signature in black ink that reads 'Sergiy Moroz' in a cursive, slightly slanted script.

Sergiy Moroz

Policy Manager for Biodiversity and Water

European Environmental Bureau

² See legal reasoning in EEB briefing [Why coal combustion must end by 2027 at the latest](#) (2021) as well as in EEB/ClientEarth briefing [When the exception becomes the rule](#) (2022)

³ COM (2019) 439 final