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Oslo, 24 January 2019

## Information regarding Norway's River Basin Management Plans and Programmes of Measures for 2016–2021

This is to inform ESA on remaining issues in the Norwegian implementation of the Water Framework Directive, seen in the light of the Norwegian implementation report.

### Issues regarding Article 4.3 – Heavily Modified Water Bodies and Good Ecological Potential.

On this issue, we refer to our complaint (Case No. 69544, [March 2011](#)) concerning Norway's compliance with WFD requirements in watercourses regulated for hydropower production and the numerous follow-ups: [June 2012](#), [October 2012](#), [October 2013](#), [November 2013](#), [February 2016](#), [October 2016](#), and [June 2017](#).

According to Vann-nett, approximately 4.500 water bodies in Norway are impacted by hydropower production. About 700 of these are estimated to reach good ecological status, meaning that they need not be designated as Heavily Modified Water Bodies (HMWBs). As a result of the [national screening \(2013\)](#) and the [ministerial approval of the River Basin Management Plans \(RBMPs\) \(2016\)](#), close to 400 water bodies (8.9 %) have been prioritized for implementation of measures, either through the revision of licensing terms or through application of the standard environmental terms. Time extension according to art 4.4 has been applied for many of the prioritized water bodies, delaying achievement of deadlines from 2021 to 2017 or 2033, as detailed in the annexes 2 and 3 to the ministerial approval (2016).

For the remaining approximately 3.400 water bodies impacted by hydropower, the environmental objectives seem to be the present condition ("business as usual") since no new or increased environmental measures have been included. We estimate that less stringent objectives according to art 4.5 have been applied to approximately 1.500 of these water bodies where water flow is insufficient to reach Good Ecological Potential (GEP), and approximately 1.900 water bodies have GEP set equal to the present condition.

One of the main Action Points [proposed by ESA in the document following the trilateral meeting in 2014](#) was: Handling of hydromorphological impacts, including HMWB designation, setting GEP, justification of exemptions and defining hydromorphological related measures such as environmental flows.

### Issue 1 - The use of individual assessments for designation of HMWBs and setting of GEP.

Our understanding of the WFD art 4.3 is that the setting of environmental objectives requires individual assessment of each water body, concerning designation as HMWB as well as setting of the environmental objective GEP. A consensus European understanding of the approach to individual

assessment of water bodies is summarized in figure 1 in the [CIS-guidance document no. 4 \(2003\)](#), and reflected in the [national HMWB-guidance document \(2014\)](#).

Already in the [first reply from the Norwegian Ministry of Environment to ESA \(May 2012\)](#), it was promised that "Water Bodies in regulated watercourses used for hydropower production have not been generally classified as HMWBs, but have and will be, subject to individual assessments" and the term "examined case by case" was also used. In the [second reply from the Norwegian Ministry of Environment to ESA \(July 2013\)](#), it was stated that "Norway carries out the process that the Directive requires for all water bodies". A subsequent [letter from Norwegian Ministry of Environment to ESA \(December 2013\)](#) refers to "the requirement of individually set environmental objectives which applies to all heavily modified water bodies".

- We cannot find any documentation that individual assessments, for instance according to CIS-guidance no 4 and the Norwegian HMWB guidance, have been carried out for HMWB-designation or the setting of GEP. We are especially concerned about the large number of water bodies that seemingly systematic and by great generalization got their environmental objectives set to GEP or less stringent objectives equal to the present situation, signifying there is no ambition at all for any environmental improvement. We fear that this has been done *en bloc*, without any real assessment of realistic restoration measures.

#### Issue 2 – Review and update of HMWB-designation and setting of GEP.

The WFD articles 4.3 and 4.5 state that the designation of HMWBs and the establishment of less stringent objectives shall be reviewed every six years. It is our understanding that this review is meant to be part of the process to review and update the RBMPs, as required under article 13.

Already in the [first reply from the Norwegian Ministry of the Environment to ESA \(May 2012\)](#), it was promised that Norway would perform a "determination of environmental objectives every six years in line with the Directive" and further that "Norway will every six years when revising the management plans consider the need for updating the environmental objectives". In the [second reply from the Norwegian Ministry of the Environment to ESA \(July 2013\)](#), it was stated that "Norway carries out the process that the Directive requires for all water bodies". A subsequent [letter from Norwegian Ministry of the Environment to ESA \(December 2013\)](#) refers to "the requirement of individually set environmental objectives which applies to all heavily modified water bodies".

- We worry that there will not be a real, individual review of designation and environmental objectives for each single HMWB during the process to update the RBMPs for the 2022-2027 cycle.

#### Issue 3 – Making standard environmental terms part of all licenses.

Standard environmental terms are included in all hydropower licenses since 1992, and to some extent since 1960. Older licenses do not contain such environmental terms. About 50 % of hydropower licenses in Norway do not contain the modern environmental terms introduced in 1992. Already in the [first reply from the Norwegian Ministry of the Environment to ESA \(May 2012\)](#), it was promised that Norway would assure that "these standard terms will be made part of all licenses". This was also indicated in two white papers to the Norwegian parliament: the [white paper on biodiversity \(2015\)](#) stated that the government would "look into ways to apply environmental terms more effectively in watercourses with environmental concerns", and the [white paper on energy \(2016\)](#) stated that an aim was to "bring license terms closer to modern terms".

- We still cannot, six years later, find that any action has been taken by the government to make standard environmental terms part of all licenses, as promised in 2012. Only a few cases of license revision have been initiated, but there has been no action to introduce modern environmental terms across-the-board. This means that about half of all hydropower licenses in Norway still lack modern environmental terms.

#### Issue 4 – Summoning of old, unlicensed hydropower.

An unknown but probably significant number of hydropower installations in Norway were established before the acts that require licenses came into force. The legal instrument to set terms for these is section 66 of the Water Resources Acts. Already in the [first reply from the Norwegian Ministry of the Environment to ESA \(May 2012\)](#), it was promised that "section 66 may be considered at any time and is believed to be an adequate instrument to improve the aquatic environment in line with the Directive". In the white paper to the Norwegian parliament on [biodiversity \(2015\)](#) (which is also the formal Norwegian Plan of Action related to The Convention of Biodiversity) it was stated that "there is a need to get a better overview of old installations that lack license, including hydropower. The Ministry of Oil and Energy and the Ministry of Climate and Environment will together perform a mapping of installations that lack licenses and elaborate an overview of these". Similar signals were given in the white paper to the Norwegian parliament on [energy \(2016\)](#).

The [national screening \(2013\)](#) included those hydropower installations that have licenses, and thus can be subject to revision, and resulted in about 80 hydropower licenses being included for revision in the RBMPs and Programmes of Measures (PoMs) by 2021, in many cases by 2027 or 2033 by application of time extension according to article 4.4. However, the unknown but probably significant number of hydropower installations that lack licenses have never been assessed in a similar screening exercise and were not considered for environmental improvements when the RBMPs and PoMs for 2016-2021 were developed and approved.

- In 2019, we still cannot find that any action has been taken by the government to elaborate an overview of old installations that lack licenses. We fear that, under heavy influence by the Ministry of Oil and Energy, time is left running out for the possibility to seriously assess these old hydropower installations and include them in the work to review and update the RBMPs and PoMs for the 2022-2017 cycle.

#### Issue 5 – Use of hydromorphological assessment methods.

The WFD articles 4 and Annex V state that GEP for HMWBs should be based also on hydromorphological elements like flow, continuity, depth and width, structure and substrate, as well as the riparian zone. The countries shall establish classification systems that include biological, hydromorphological and physio-chemical quality elements for all categories of water bodies, including HMWBs.

- Our view is that [the Norwegian classification system](#) has a very simplistic approach to the hydromorphological elements, and there are also very few data on hydromorphology available in the national water information system (Vann-nett). We fear that this causes insufficient assessment of the impact of hydromorphological pressures on the ecological status, not only in the preparation of the RBMPs and PoMs, but also in the individual case handling of new and existing license and permits, or when applying article 4.7 for new modifications.

#### Issue 6 – Lack of updated HMWB guidance.

The Norwegian [HMWB-guidance document \(2014\)](#) and [national instructions regarding RBMPs in regulated watercourses](#) have not been updated, even if there has been substantial development under the Common Implementation Strategy (CIS). New consensus developments include the [CIS-guidance no. 31 on Ecological flow \(2015\)](#), the [JRC Technical report on mitigation measures for reaching GEP \(2016\)](#), and ongoing work on GEP-setting as an annex to CIS-guidance no. 4 on HMWBs.

- We fear that Norway is lagging in the use of updated approaches to HMWB-designation and GEP-setting, as a consequence of not taking the agreed state-of-art European guidance on board in the national HMWB-guidance.

#### Issue 7 – Scope of WFD implementation for hydropower.

The WFD is the European version of the global paradigm of [Integrated Water Resources Management \(IWRM\)](#), now incorporated in the [UN Sustainable Development Goal 6.5.1](#) on implementing IWRM at all levels. The development of the WFD was heavily influenced by the outcome of the [International Conference on Water and the Environment](#) in Dublin in 1992. One of the important Dublin principles is that water management should be based on a participatory approach, involving water users at all levels. The issue of public participation is underlined in the WFD preamble (14) and (46), in article 14, and in the Common Implementation Strategy [Guidance document no. 8 from 2003](#).

It is our understanding that this requires the planning process and RBMPs to cover the water management issues that are of significant interest and concern to the public and stakeholders, including the wider impacts inflicted upon society by deteriorating water status, but also the wider benefits gained by protecting and enhancing the water environment. All issues that are considered relevant in the national water management, should also be included under the WFD implementation. This is necessary to ensure the relevance of the RBMPs, as well as public, stakeholder and political commitment to the RBMPs and PoMs.

However, we find that the Norwegian government has a narrow and legalistic approach to the implementation of the WFD, not in line with the integrated approach we believe to be the aim of the WFD. The RBMPs and PoMs produced as part of WFD implementation in Norway only to a rather limited degree represent an integrated approach to water management. Several issues that are considered to be of significant interest and concern of the public and stakeholders during national water management processes and schemes are not included in the RBMPs and PoMs. We exemplify this in the following:

The energy authority's [national guidance document on licensing procedure](#) has a wide scope of issues to be assessed in the permitting process (see part V), including not only biodiversity and nature issues but also societal values as landscape and recreational values. The licensing procedure requires an impact assessment (IA) according to the [national IA regulation](#) (implementing the Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) directives) that also requires societal issues like landscape and recreational values to be assessed (§ 21). For the public and stakeholders, these societal issues often tend to be of higher interest than the purely scientific issues of biodiversity and water quality. During licensing we have seen that landscape and recreational values sometimes appear as the basis for setting license requirements, for instance regarding minimum flow.

The Norwegian Government, in its [instructions on how to handle hydropower in the preparation of the RBMPs](#) (2014), stated that the WFD implementation aims at improving the ecological status (biological

and chemical quality elements), and that societal values like landscape and recreation could not trigger environmental objectives that require a minimum flow. In the [documents for national approval of the RBMPs](#) (2016), the Government repeated that issues like landscape and recreation should not influence the environmental objectives for the regulated water bodies.

- We find that WFD implementation in Norway is limited to a legalistic focus on the WFD status indicators and does not take into account issues of significant interest and concern to the public and stakeholders that are part of the national water management. The result is that we still do not have a fully integrated water management in Norway, but instead have ended up with two parallel water management schemes: one narrow implementation of the WFD, and a Norwegian management with a wider legal scope.

#### Issue 8 – Strategic planning for hydropower.

In 2010, the EU's water directors endorsed a statement on [Hydropower development under the WFD](#) summarizing the key principles and recommendations agreed during the common implementation strategy process (CIS). One clear recommendation is that pre-planning mechanisms allocating 'no-go' areas for new hydropower projects should be developed. This designation should be based on a dialogue between the different competent authorities, stakeholders and NGOs.

The European Commission's [third implementation report on the WFD](#) (2012) stated that the significant environmental impact of hydropower needs to be properly addressed, and that new developments should be underpinned by a strategic assessment at the river basin scale, selecting optimal locations in terms of energy production and lowest environmental impact.

The recently published [guidance document on the requirements for hydropower in relation to EU nature legislation](#) also contains a whole chapter dedicated to the benefits of having an integrated planning approach to hydropower, implemented through the national RBMPs. The document describes how strategic planning approach can be helpful by identifying the most suitable locations for hydropower generation that are potentially appropriate from both an energy and an environmental perspective, and at the same time, helps to identify areas where there is a high risk of significant effects and, consequently, there is little chance of obtaining a permit.

The Norwegian Parliament commissioned the development of a national Master Plan for hydropower in 1980 ("Samla plan"). The Master Plan looked at all proposed hydropower schemes at a broader scale, including consideration of socioeconomic and environmental issues, and included many strategic elements comparable to a SEA. Altogether 310 hydropower schemes larger than 5 GWh/year were considered with respect to project economy and conflicts with other users and protection interests and categorized into "Go projects" licensing and "no go projects" due to high costs or conflicts. The Norwegian Master Plan was presented as an example of good practice (box 6) in the [issue paper from the Common Implementation Strategy Workshop Water management, Water Framework Directive & Hydropower](#) in 2011.

We would like to make ESA aware that the [white paper on energy \(2016\)](#) included abolishing the Master Plan, presumably to "allow for a more effective licensing". The report mentions that the WFD implementation has led to a significantly improved knowledge base about the environmental status in the watercourses, but there has been no action taken to replace the Master Plan with strategic level hydropower assessments as part of the RBMPs.

- We fear that abandoning the Master Plan without replacing it with strategic hydropower planning as part of the RBMP-process, will lead to a case by case licensing and deterioration of the status of Norway's watercourses. We have lost the benefits of a strategic planning approach in terms of a national approximation to costs and benefits of hydropower development, and the hydropower sector no longer gets predictable up-front information concerning areas with the risk of high conflict and little chance of acquiring a permit.

### **Issues regarding Article 4.7 – New modifications or activities**

The WFD article 4.7 allows for new modifications or activities that affect the status of the water bodies, subject to certain conditions. A common understanding of the requirements have been developed in the Common Implementation Strategy [guidance document no. 20 on exemptions](#) (2009) and more specifically in the [guidance on article 4.7](#) (2017). One of the main Action Points [proposed by ESA in the document following the trilateral meeting in 2014](#) was: Application of article 4.7, ensure project by project assessment based on the potential impacts on ecological status (quality element level); justification and conclusions reported transparently in the plans.

The Norwegian Government has transposed WFD article 4.7 into § 12 in the National Water Regulation, translated the initial [guidance document no. 20 \(2009\) into Norwegian](#), and issued a [national guidance letter](#) (2015) for the use of § 12. However, we see little mention of article 4.7 in the RBMPs, and also very limited documentation of the article 4.7 assessment in permitting and licensing by sectoral authorities, as well as in municipal land use planning.

One example is found in the energy authorities' licensing of new hydropower projects, where the documentation and justification of article 4.7 assessments are very limited. One recent case is the [justification document for the latest license for Åmotfoss power station](#) (2018), which describes the article 4.7 assessment in just a few lines beginning at the bottom of page 16. The assessment gives no details of quality elements and estimate of degradation, no description of to what extent the mitigation measures will limit the degradation, and no explanation on how the benefits of the project was weighed against the environmental degradation.

Another example has already been subject of a complaint from a Norwegian environmental NGO to ESA, that is the complaints from the Orkdal branch of the Norwegian Friends of the Earth and Sabima regarding the [removal of the Furumokjela oxbow lake in the Orkla river](#). It is difficult to see how article 4.7 of the WFD has been applied to the permitting decision, completely destroying one of the last remaining occurrences of this rare and threatened habitat type. We also observe that this lacking application and documentation of article 4.7 assessments is typical for infrastructure projects (roads etc.) and municipal land use planning. The government has also over the past few years weakened the County Governors' ability to arrest poor municipal decisions and secure over-arching planning.

- The complainants believe that insufficient consideration is given to the WFD article 4.7 when new modifications to water bodies are permitted in Norway. The result is that further deterioration of water status is continuing, insufficient mitigation measures are put in place, and other means to reach the objectives of the new activities are not assessed seriously.



## Issues regarding Article 5 – Impact of human activity

On this issue, we refer to our previous complaints concerning Norway's compliance with WFD requirements concerning pressures from salmon lice and escaped farm fish: [May 2014](#) and [November 2015](#) (Case No. 78330).

One of the main Action Points [proposed by ESA in the document following the trilateral meeting in 2014](#) was that Norway should explicitly consider biological impacts of salmon lice and escaped farm fish in the pressure and impact analysis of the first full cycle RBMPs (2016-2021) with the available data, and set up a plan for improving this. However, in a [letter from the Ministry of Climate and Environment in April 2015](#), it was stated that the pressures from salmon lice and escaped farm fish would not be included in the basis for the 2016-2021 RBMPs, due to lack of conclusive evidence. The letter stated that further work would aim at including these pressures in the basis for the updated 2022-2027 RBMPs.

- The complainants wish to make ESA aware that the planning process toward the updated 2022-2027 RBMPs will start with a consultation of the Planning Programme and the Significant Water Management Issues in the spring of 2019, but a conclusive data set concerning the pressures from salmon lice and escaped farm fish has still not been presented by the beginning of 2019.

## Issues regarding Article 11 – Programme of Measures

In certain parts of Norway, the pressure from agriculture with crops and livestock cause eutrophication of the water bodies, and a package of measures will be necessary to protect and improve water ecosystems. Financing of these kinds of measures has not increased substantially after the implementation of the WFD in Norway, and the gap between the present status and the environmental objectives is not closing. In the two latest State Budgets (2018 and 2019), the funding for such measures has in fact been reduced.

We find this situation to be well described in the [European Commission's 4<sup>th</sup> implementation report](#) (2015): "many Countries have planned their measures based on 'what is in place and/or in the pipeline already', instead of designing the most appropriate and cost-effective measures to ensure that their water achieves 'good status' thus tackling the persisting performance gap. The WFD's environmental objectives are quantified and linked to a clear timetable. The approach of 'moving in the right direction' based (largely) on business-as-usual scenarios – is clearly not sufficient to achieve the environmental objectives for most water bodies".

- We fear that insufficient measures are being implemented to effectively limit eutrophication due to agricultural pressures in Norwegian water bodies. There has been no systematic assessment of the gap between the present status and the environmental objectives in these water bodies, and no systematic assessment of what measures are necessary, and we have seen no commitment at ministry level to secure the necessary funding.

## Incomplete transposition of the WFD into Norwegian legislation

The Water Framework Directive was transposed into Norwegian legislation through the [Water Regulation](#) entering into force on 1. January 2007. When comparing the regulation to the directive, we find that there are two serious omissions in the Water regulation, that can cause an incomplete or incorrect implementation in Norway.

- The Programme of Measures (PoM) is an essential element of the WFD, aiming to reach the goals by closing the gap between the present environmental status of the water bodies and the environmental objective. A crucial part of the PoM is the definition of basic and, if necessary, supplementary measures. These are defined in the WFD Annex VI, listing basic measures in part A and supplementary measures in part B. However, the Norwegian Water Regulation only contains part A of the annex, and lacks part B. The result is that the 2016-2021 RBMPs contain almost no reference to or explanation of the basic and supplementary measures, and how they work together to reach the objectives. We believe that a complete transposition of Annex VI is necessary to secure a correct understanding and implementation of the PoM, and that the lack of this has caused a misguided implementation in Norway.
- The WFD Article 1 describes the purpose of the Directive, with the main focus on protecting, enhancing and improving the aquatic environment, the promotion of sustainable water use, but also with the aim to contribute to mitigating the effects of floods and draughts. However, we find that the transposition into the Norwegian Water Regulation has omitted the crucial element concerning mitigation of floods and draughts. During an average year, Norway has serious challenges with floods, and less often challenges with drought. Predicted effects of climate change are generally increased precipitation, more extreme weather events, increased flooding, but also the risk of increased draughts in some areas. Even though Norway is implementing flood risk planning in several flood-prone areas, this is not seen in relation to or integrated with the RBMPs. Even if the Floods Directive is not incorporated into the EEA agreement, we cannot see that this limits the legal obligations under the WFD to integrate existing or new flood risk planning into the RBMPs, or at least secure coordination between the two types of plans.

We believe that the incomplete transposition of Article 1 has contributed to this lack of integration, thus preventing Norway from avoiding conflicts between flood protection measures and water environment measures, as well as preventing Norway from gaining the synergies of win-win measures for flood protection and ecological improvement for instance through nature-based solutions.

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We hope this information is useful in your evaluation of the Norwegian implementation so far, and not least in your feedback to strengthen the Norwegian implementation of the WFD for the future.

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Yours sincerely,

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