

Feedback Form on CIS Guidance Document on Art 4(7) – Norway

Dear expert,

A **first draft version of CIS Guidance Document on Article 4(7)** was provided to you for a first round of feedback and consultation. Please note that a **step-wise approach** will be followed for the elaboration of the document. Specific case studies and further details in the different chapters will be added step-wise at a later stage during the elaboration process in 2017. You will be consulted accordingly.

Please use this form for the provision of feedback and comments on the first draft version. At this stage we are not asking for comments on the specific "wording" but for **feedback on the substance**. Please also indicate in the feedback form **in case you are able to provide specific practical experiences** as input for the further elaboration of the Guidance.

For logistical reasons allowing processing the feedback, please note that **only comments can be considered which were provided via this commenting form**.

For the further elaboration and treatment of your comments, it is important that all your requests for modification are duly justified and argued. Other ways of feedback will not be considered.

Please send your comments via this form **latest by 9 March 2017** to Raimund.MAIR@ec.europa.eu and thomas.dworak@fresh-thoughts.eu.

Your comments will be taken into account for the elaboration of a second draft version of the Guidance, which is planned to be provided in spring 2017 and further discussed at the next meeting of the Ad-hoc Task Group (ATG) on the Article 4(7) Guidance.

Many thanks for your efforts.

Co-chairs of the ATG on Article 4.7

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Comments

Line Nr.in the draft guidance	Comment/change request	Justification of the comment/change request
460-462	<p>The guidance document indicates that the article 4(7) assessment apply, not only to completely new activities, but also to "modifications at existing infrastructure".</p> <p>It is suggested to change the wording in order to better clarify that the assessment shall apply both for completely new activities (modification and sustainable development activities), and to amendments (i.e. expansion or increased) to existing activities or establishments.</p>	<p>The use of the word "<i>modification</i> to existing infrastructure" is difficult in this context, since it could easily be misinterpreted as referring only to art. 4.7 first indent, i.e. the alternative "modifications to the physical characteristics".</p> <p>Therefore, it is unclear whether an Article 4.7 assessment is necessary for instance in the case of increased emissions from an existing industry facility increases.</p>
493-508	<p>It difficult to understand what "new sustainable human development activities" could be and therefore difficult to make it operational. It would be useful with examples, for instance a type of industrial facility.</p> <p>The attempt to clarify what sustainable development activity is, in the guidance document seems now even more complicated than the description given in Guidance document No. 20.</p> <p>One way to clarify that sustainable development activity is, could be that the industry would be able to operate without compromising the achievement of the environmental objectives of the directive, except preventing the deterioration from high to good ecological status. This means that any activity could fall under this alternative.</p> <p>In addition, most examples in the guidance document concern "modifications to the physical characteristics". It would be very useful if the document could also give examples on new sustainable activity, for example emissions from an industry facility.</p>	<p>The guidance document aims at clarifying different aspects of Article 4.7 and the intention is to further guidance on issues that are not clear in existing guidance documents. The draft is an attempt to further give guidance to the understanding of the term "sustainable development activities", but we cannot see that the text bring any clarification or more practical information on how to understand this provision of article 4.7.</p>

639-640	<p>Case C-346/14 has clarified when there is a deterioration in the status when the quality element is already in the lowest class:</p> <p>When a quality element is in the lowest class, "any deterioration of that element constitutes a deterioration".</p> <p>It would be useful to specify what "any deterioration" is in this context, since "deterioration" overall is defined as a quality element falling by one class. See also our remark to sentence 793 – managing uncertainty. Uncertainty relating to sampling methodology will make it challenging to assess whether it might be "any deterioration".</p> <p>It should be avoided defining deterioration by using the word deterioration.</p>	<p>The guidance uses many different terms "any deterioration", "adverse effect", "significant impact", but it is easier to understand if the use of terminology is consistent, unless the meaning intends to be different. The terms must be defined properly and the term used consistently.</p> <p>"Any deterioration", ref. Weser could be interpreted in different ways:</p> <ul style="list-style-type: none"> - As any new or increased emission. - Negative change in status (quality elements/EQS), verified by samplings (note: uncertainty relating to analysis). - Negative change in status (quality elements/EQS), verified by trend monitoring (note: uncertainty relating to analysis). - Change in status (quality elements/EQS) that will jeopardise the attainment of good status.
713-715	<p>A deterioration in a groundwater body in the lowest class is defined as any adverse effect. Does the criteria "adverse effect" also apply on surface waterbodies, cf. "any deterioration" above. See also our remark on "significant impact".</p>	
793-826 869-901 902-918	<p>In our experience with issuing discharge permits for industrial facilities, the level of uncertainty with regard to specific pollutant and waterbody status is significant, even with extensive monitoring data sets. In that regard, the screening process is challenging to perform within a certain level of confidence.</p> <p>The guidance should address these uncertainties in more detail, and perhaps give examples.</p>	<p>For specific pollutants, QS are developed the same way as they are for priority substances, with only good and poor status. In some cases biota QS are developed based on toxicity data-set for a specific species.</p> <p>Applying these QS on other species might be associated with significant uncertainties. Trophic level, age, lipid content, seasonal variation and tissue type are all factors, which will influence results.</p>

		<p>In sediment analysis factor like various types of sediment, particle binding, organic carbon content and other factors will influence results. In addition there is inherent uncertainties in relations with sampling and analysis. For some substances, the analysis variation is significant.</p> <p>In our experience, monitoring results in sediment, water and biota for the same element often results in difference in classification of the status.</p>
854	<p>Why adding a question to the screening that address whether the project is likely to have a <i>significant impact</i>, when it is not a criteria in the assessment to be carried out in accordance with art. 4.7? Would not considering whether the project would cause deterioration be sufficient, since that is what Article 4.7 require MS to assess?</p>	<p>"Significant impact" is used several places in the directive, but not in Article 4.7 itself. It is for instance relevant when giving normative definitions to ecological status, and more precisely to moderate status ("significantly more disturbed", in Annex V, point 1.2.</p> <p>It is therefore confusing to introduce this concept as a checkpoint in the screening process, when the directive itself does not mention it. Does this mean that Article 4.7 will apply only for emissions that have a significant impact on water status?</p>
925	<p>It would be useful to describe the link to directive 2010/75/EU on industrial emissions (IED).</p>	<p>It would be useful if the link to the IED directive could be described, and if an industry complying with BAT, would be considered to comply with the environmental objectives WFD, and in particular with the requirement on mitigation measures?</p>
1046	<p>It would be useful to describe the link to best available techniques (BAT) under the directive 2010/75/EU (IED).</p>	<p>See remark above.</p>
1174	<p>The judgement in Case C-346/14 for the European Court of Justice could be referred to in the guidance document, before giving guidance on how it could be understood.</p>	<p>Case for the European Court of Justice – C-346/14, clarifies the following regarding the term "overriding public interest".</p>

		<ul style="list-style-type: none">- "In that regard, Member States must be allowed a certain margin of discretion for determining whether a specific project is of such interest"... "- "Thus, the directive does not seek to achieve complete harmonisation of the rules of the Member States concerning water".
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