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TO: EU Water Directors

Commission discussion paper on future Groundwater Directive potentially weakens groundwater protection

Brussels, the 19.11.2002

Dear Water Director,

Europe's groundwater is a precious resource for both people and ecosystems. Due to the great value of groundwater for ecosystems and drinking water supply and due to our limited understanding of the behaviour of synthetic substances in groundwater, current EU legislation provides the most stringent protection principle of this resource - prevention of any pollution. This was explicitly recognised by the Council in 1995.

Despite this principle of high level of protection and strong obligations from the 1980 Groundwater Directive, Europe's groundwater is still deteriorating - creating a huge burden for future generations to deal with. Therefore urgent action is needed!

We believe that the WFD provides useful instruments to protect groundwater by specifically considering interactions between groundwater and aquatic and terrestrial ecosystems, however it completely fails to spell out which substances to prevent from entry and which to limit or what measures must be taken.

The groundwater provisions of the WFD were a compromise, giving the Commission 2 years to bring forward proposals for groundwater protection (Article 17). The EEB expects the Commission to build this new legislation on the existing principles of preventing hazardous substances from entering any groundwater and limiting the entry of all others, established by 80/68/EEC Directive. The new proposals must fill the obvious gaps of the WFD and ensure the protection of groundwater is maintained when the 80/68/EEC Directive is repealed.

We demand that new legislation achieves:

- 1. Protection of pristine and near to pristine groundwater from quality deterioration;**
- 2. The prevention of input of hazardous substances; and**
- 3. The limitation of input of all other pollutants in order to achieve article 4 WFD objectives and to progressively reduce the level of purification treatment needed to produce drinking water.**

The Commission's discussion paper fails to address these objectives in a coherent way but instead proliferates confusion about terminology and definitions.

We urge you to advise the Commission to rewrite the paper in order to

- i) address the gaps between the WFD and the 1980 GWD;

- ii) update the List I and II approaches of the 1980 GWD; and
- iii) propose appropriate EU measures and processes to prevent input of hazardous substances of EU level importance.

We are not convinced that the current Commission's proposal to develop aggregated/average standards for some selected natural and synthetic substances will have much benefit for the environment and would allow the repeal of the current prevention approach of the 1980 Groundwater Directive. Further it potentially undermines existing protection standards if wrongly applied.

For example the Commission proposes a pesticides standard of 0.1 microgram/litre as the boundary for good/poor status. However, this standard was politically adopted as zero proxy for drinking water and market authorisation tests rather than a level to which Europe's groundwaters can be legally polluted. Similarly the Nitrates Directive aims at ending eutrophication, an aim which will require much stricter standards than the proposed threshold of 50 mg Nitrates per litre, taken directly from the drinking water standards.

As they stand, the Commission's proposals effectively divide EU groundwaters into pollution zones and protection zones. They would require Member States to prevent the input of substances into specific protection zones, while allowing Member States to decide what substances to prevent and what to limit in all other groundwaters. .

The EEB believes that the new Directive must implement an effective precautionary approach to the release of hazardous substances into the groundwater environment. The new Directive must focus on the adoption of clear and targeted EU and Member States measures to **prevent** the release of hazardous substances and **limit** the input of all other of all other pollutants.

Please find attached EEB's detailed comments for a future groundwater Directive, followed by our comments on the Commission discussion paper.

Yours Sincerely,



John Hontelez,
Secretary General

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EEB's comments for a future Groundwater Directive

Brussels, July 2002

By Stefan Scheuer, EEB and Robert Cunningham, The Wildlife Trusts

Our main Objectives

We believe that future EU groundwater protection should achieve following specific objectives, which are in line with the WFD concept for surface waters:

1. Pristine and near to pristine groundwater must be prevented from quality deterioration;
2. Prevention of input of hazardous substances; and
3. Limitation of input of all other pollutants in order to achieve article 4 WFD objectives and to progressively reduce the level of purification treatment needed to produce drinking water.

Intention, Mechanism, Definitions and Obligations necessary for the achievement of the objectives

Following table outlines the intentions, criteria, application field, obligations for Member States and Commission, and further considerations in order to achieve these objectives:

OBJECTIVE 1 <i>Prevention of deterioration of pristine and near to pristine groundwater</i>	
Intention	To protect the best groundwater we have left. This is a clear conservation approach, which takes into account the vulnerability of groundwater and the largely unknown values of unpolluted groundwater (eco-) systems. Making the no-deterioration obligation of Article 4.1(b) WFD operational.
Mechanism	Establishment of a “ high chemical status ” class for groundwater bodies, similar to surface waters, using the Article 4.1(b) (WFD) obligations. The ongoing discussion about whether the objective can also be achieved via a protected area mechanism is not helpful, as the delivery of objectives would require similar definitions, criteria and obligations. Although in many ways the discussion appears to centre purely what these pristine groundwater bodies are called the EEB believe there are clear advantages to protecting pristine waters through a high chemical status class.
Application field	Bodies of groundwater, which ensures that efforts are targeted on groundwater with significant flow or which could provide significant levels of abstraction.
Definition high chemical status	There are no, or only very minor, anthropogenic alterations to its physico-chemical (similar to Table 1.2 normative surface water status classification in WFD Annex V.1.2)
Detailed criteria	<ol style="list-style-type: none"> 1. The concentrations of pollutants in the groundwater should be compatible with the achievement of high ecological status in any associated surface water bodies (even where for other reasons the surface water bodies do not achieve high status) 2. The concentrations of pollutants in the groundwater should not be such as would cause any adverse effects on directly dependent terrestrial ecosystems 3. Concentrations of non-synthetic substances should be within the natural range expected given the hydrogeological characteristics of the groundwater body 4. Concentrations of synthetic substances should be close to zero.

Obligations	<ol style="list-style-type: none"> 1. Member States should be required to classify bodies of groundwater with high chemical status within XX years of the entry into force of the new groundwater directive. 2. The objective for these groundwater bodies should apply from the date of their identification. 3. The classification of high chemical status should be periodically reviewed 4. Article 4.1.b and 4.6 of the Water Framework Directive will automatically apply to these groundwater bodies 5. The groundwater bodies classified as high chemical status should be identified on the maps of the River Basin Districts included in the River Basin Management Plans 6. A summary of the measures taken to protect these groundwater bodies should be reported in the River Basin Management Plans 7. Monitoring for bodies or groups of bodies should be required in the surveillance and, where relevant, operational monitoring programmes for groundwater. Such monitoring should be scientifically based and designed to provide such additional information as is relevant to assessing the achievement of no-deterioration objective. 8. Failures to achieve the objective should be reported in the River Basin Management Plans, together with the reasons for the failure
Other provisions	<p>Similar derogations to Article 4.7 of the Water Framework Directive but applying to deterioration of high chemical groundwater status may need to be introduced, but should be less ambiguous, e.g. avoiding the use of terms such as “sustainable developments”.</p>

<p>OBJECTIVE 2</p> <p>Prevent the input of hazardous pollutants</p>	
Intention	<ol style="list-style-type: none"> 1. Contribute to achieving the WFD aim to cease emissions of hazardous substances (Article 1, WFD) 2. Prioritised approach for EU controls of pollutant inputs based on intrinsic substance criteria such as hazardous substances (Article 2.29 WFD: substances or groups of substances that are toxic, persistent and liable to bio-accumulate, and other substances or groups of substances which give rise to an equivalent level of concern) are quickly identified and subjected to the strictest control requirements. For example, inputs of substances that would be extremely persistent in groundwater, and hence potentially compromise future uses of groundwater or which may have environmental consequences that are difficult to predict should be prevented from entering groundwater. 3. To clarify the Article 4.1.b.i objective of prevent or limit inputs of pollutants into groundwater 4. To ensure the protection provided by the 80/68/EEC is carried forward and made more effective
Mechanism	<p>1. Community Substance Criteria for Prevention</p> <p>Establishment of hazardous criteria, which identify all substances to be prevented from entering groundwater. The criteria should be based on Article 2.29 WFD including properties of special concern in groundwater, like persistency in groundwater or persistence, toxicity and potential to bioaccumulate of substances in terrestrial ecosystems dependent on groundwater. For this group of substances Member States have a general obligation to prevent inputs into groundwater.</p>

	<p>2. Member States prevent list and prevent measures</p> <p>Member States have an obligation to identify substances fulfilling the EU criteria as laid down in the groundwater directive, which are of specific concern in their groundwater and report them together with measures taken for prevention in the River Basin Management Plans.</p> <p>3. Community Prevent List and Prevent Measures</p> <p>Establishment at Community level of a list of substances that should be prevented from entering groundwater based on a prioritisation procedure that selects substances or groups of substances on the basis of (i) their hazardous properties – identical to the criteria in 1 - and (ii) evidence of occurrence in the groundwater environment in Europe, such as data showing their presence or potential presence (e.g. levels, and types, of use) in groundwater.</p> <p>The procedure for selecting substances for this list should be clearly identified in the daughter directive. It should:</p> <ul style="list-style-type: none"> - Be scientifically based - Build on an enhanced COMMPS procedure (the first list may need to be drawn directly from the Priority Substance list) - Take additional account of the persistence properties of substances in groundwater (in so far as these are different from those in surface waters) - Take additional account of the persistence, toxicity and potential to bioaccumulate of substances in terrestrial ecosystems dependent on groundwater (in so far as these are different from those in surface waters) <p>There should be a review process, coinciding with the reviews of the Priority List under Article 16 of the Water Framework Directive, at which times pollutants can be added to the list.</p> <p>For substances included on the list, the Commission should be required to come forward in a specified timescale with proposals for Community-wide measures designed to prevent further entry of the prioritised substances into groundwater. The controls should be able to take the form of product and process controls as well as emission controls.</p>
Application field	All groundwater
Obligations	<p>The Commission should be required to propose a Community-level prevent list within a specified timetable</p> <p>The Commission should be required to review and update the list at specified intervals. In doing so, the Commission should be required to take account of the lists of pollutants identified at Member State level for prevention.</p> <p>Within a specified timetable, the Commission should be required to propose measures designed to prevent the entry of the listed pollutants</p> <p>Acting on the proposals from the Commission, the Council and the Parliament should be required to adopt specific measures for the protection of groundwater</p> <p>Member States should be required to establish and report their own prevent lists, and take the necessary action to prevent the inputs into groundwater of pollutants on the lists.</p>
Other provisions	Member States may require a derogation similar to Article 4.6 of the Water Framework Directive to avoid failing the prevent objective as a result of exceptional circumstances or accidents.
Compliance assessment	<p>The Member State prevent lists should be reported in the River Basin Management Plans.</p> <p>Member States should maintain a register of uses, and the location of potential sources, of all the pollutants included on the Community-level prevent lists.</p>

	<p>The River Basin Management Plans should include a summary of the basic and supplementary measures taken to achieve the objective with respect to different types of potential sources of pollutants on the prevent list.</p> <p>Member States should establish a programme for auditing, monitoring and evaluating the effectiveness of the prevent measures. The results of the evaluation should be published in the River Basin Management Plans.</p> <p>Any failures to prevent inputs should be reported in the River Basin Management Plans together with a summary analysis of the reasons for the failure.</p>
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OBJECTIVE 3

Limitation of input of all other pollutants in order to achieve article 4 WFD objectives and to progressively reduce the level of purification treatment needed to produce drinking water.

Intention	<p>To clarify the Article 4.1.b.i objective of prevent or limit inputs of pollutants into groundwater</p> <p>To ensure the protection provided by the 80/68/EEC is carried forward and made more effective</p> <p>To clarify and with regard to drinking water protection strengthen the objectives of limitation measures.</p> <p>To guarantee high level human health protection and most cost-effective, environmentally sustainable approach to the provision of drinking water.</p>
Mechanism	<p>Member States should identify the pollutants whose entry into groundwater should be limited, and the degree to which it should be limited, as part of the Annex II risk assessment procedure and the Annex V surveillance monitoring programmes.</p> <p>Introduce objective of progressively reducing the level of purification treatment needed to produce drinking water to benchmark the limitation measures.</p> <p>No listing process is required as the limit objective would apply to all pollutants included in Annex VIII of the Water Framework Directive wherever they were liable to cause pollution, affect the achievement of one of the Directive's objectives or exceed any other EU standard.</p> <p>Member States should be required to limit the entry of all pollutants in order to avoid pollution, achieve the Directive's other environmental objectives and ensure inputs of pollutants comply with any marketing authorisation standards and environmental objectives established at Community level.</p>
Application field	All groundwater.
Other provisions	Member States may wish to use Article 4.4 and 4.6 derogations to ensure that the social, environmental and economic costs of reducing treatment levels do not outweigh the benefits.
Compliance assessment	<p>The River Basin Management Plans should also contain a summary of the measures taken to limit the input of other pollutants.</p> <p>Member States should establish a programme for auditing, monitoring and evaluating the effectiveness of limit measures. The results of the evaluation should be published in the River Basin Management Plans.</p> <p>Any failures to limit inputs should be reported in the River Basin Management Plans together with a summary analysis of the reasons for the failure.</p>