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ENVIRONMENT
Directorate C - Quality of Life, Water & Air
ENV.C.1 - Water



**BILATERAL MEETING WITH SPAIN
IMPLEMENTATION OF THE WATER FRAMEWORK DIRECTIVE IN SPAIN**

**10 NOVEMBER 2014 FROM 09.00 TO 18:00 H
AVENUE DE BEAULIEU 5, ROOM BU-5 0/C
BRUSSELS**

DRAFT ACTIONS

List of participants:

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	Javier Sánchez - Ministry
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The list below is an overview of the actions to be taken by Spain, as discussed at the bilateral meeting on the WFD implementation on 10th November 2014 with the European Commission. Please note that some of the actions were not specifically presented in the meeting due to time constraints. These are clearly indicated at the beginning of each section.

Given the range of issues discussed it has been considered useful to summarise the main points at the beginning of the document in the section "Priority areas for improvement/actions". Nevertheless, the Commission expects Spain to take remedial action in all areas.

The question numbers correspond to the list of questions that were previously sent by the Commission and discussed at the meeting. The Actions in this document are numerated consecutively for ease of reference. If the information provided by Spain was considered to be sufficient for the time being by the European Commission, no actions were formulated and the questions have not been included in this document. For those questions that were not covered at the meeting, an action generally requiring a written reply has been formulated.

Some of the actions that derive from the meeting concern the preparation of the second River Basin Management Plans (RBMPs) and are therefore linked to the **calendar for adoption and submission of those Plans**, as foreseen in the WFD. For other actions requesting additional information for clarification but not explicitly concerning elements to be included in the 2nd RBMPs, the European Commission expects to receive this information or proof of taking the actions within **two months** of the action list being agreed.

The Commission thanks the Spanish authorities for their preparations for the bilateral meeting and for the fruitful and constructive meeting.

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Main areas for improvement / actions

Given the complexity of the Spanish RBMPs and the high number of RBDs, it is considered useful to summarise the main areas for improvement that were identified through the assessment of the plans and the bilateral meeting:

- There is a **lack of integration of the WFD principles and objectives in the planning process**. The Spanish plans contain two different approaches that have not been properly integrated: the quantitative aspects of water management, including infrastructure measures to guarantee water supply, and the analysis of pressures and status and design of the programme of measures as required by the WFD. In the next RBMPs, the measures to achieve the WFD environmental objectives should be clearly identified and detached from other objectives (e.g. satisfying water demand). The revision of all permits should be consistent with the achievement of good status and, where relevant, with the conservation of protected areas.
- The first RBMPs have not succeeded in establishing the **link between the pressures and impacts analysis, the status assessment, and the design of the programme of measures**. For the second RBMPs, a gap analysis should be carried out to design the programmes of measures and to properly justify the exemptions.
- There are important gaps that need to be addressed in the **status assessment**. For the second RBMPs, the reference conditions and the assessment methods need to be completed for all quality elements as soon as possible, in order to ensure that a reliable status assessment for all water bodies is carried out, including coastal and transitional waters. The reference conditions and the boundaries for quality elements should be binding. The assessment methods of the draft Royal Decree should reflect the results of the intercalibration and the standards for existing priority substances (Directive 2013/39/EU). The draft Royal Decree should be binding for the Autonomous Regions which have full competences over intra-community river basin districts.
- The **monitoring programmes** should be adequately resourced and maintained. The monitoring information provides the basis for the development of RBMPs, in particular for establishing the current water status and therefore being able to define the environmental objectives and appropriate programmes of measures. The high number of water bodies in unknown status is unacceptable. The quality elements monitored should be sensitive to all existing pressures, including hydromorphological pressures. Monitoring programmes should include all priority substances, appropriate frequencies and trend monitoring, and should consider atmospheric deposition. A robust model for extrapolation for non-monitored water bodies should be developed.

The Partnership Agreement under the EU Regional Funds that has been adopted. The Operational Programmes, currently under development, can be used as a source of funding to contribute to the improvement of the monitoring programmes for the next cycle of RBMPs.

- **Objectives and exemptions including new infrastructure:** in the second RBMPs, environmental objectives should be established for all water bodies, including heavily modified and artificial water bodies. The national approach to the definition of ecological flows should be clearly linked to the good status objective. In the first RBMPs, the extensive use of exemptions has not been properly justified, in particular on whether measures are disproportionately costly or

technically unfeasible. This needs to be improved and brought in line with the WFD provisions in the second RBMPs. The new infrastructure, in particular dams, liable to deterioration or prevent the achievement of good status of water bodies, can only be executed if the conditions of Article 4(7) are fulfilled. The justification should be done on a case by case basis, and should include clear and transparent criteria, reasons for overriding-public interest (which cannot be considered equivalent to the "declaration of general interest" in the Spanish legislation), strategic assessment of alternatives and definition of mitigation measures (including ecological flow for dams).

- **Protected areas:** Improvements are needed in the management of water dependent protected areas to ensure they reach a favourable conservation status. The water quantity and quality requirements of protected areas need to be assessed and should be translated into specific additional objectives for each protected area and reflected in the RBMPs, including appropriate monitoring and specific measures. For shellfish protected areas, the same level of protection that the Shellfish Directive (now repealed) should be ensured, in particular considering that the microbiological standard is no longer included in the Spanish transposition instrument.
- **Cost recovery:** Spain needs to develop the necessary instruments to recover the environmental and the resource costs, in particular for the agriculture sector. There is an urgent need to take measures to enhance the control of abstractions and metering and volumetric pricing should be generalised for all users. This will in turn provide the river basin authorities with real data on water use, which is crucial for a proper planning. It will also provide adequate incentives for an efficient use of resources and water saving, as required by the WFD. The river basin authorities need sufficient and stable funding for proper control of water uses and water status.
- The first cycle of **RBMPs of the Canary Islands** should be approved as soon as possible. The European Court of Justice condemned Spain for the lack of RBMPs (C-403/11), and the Canary Islands have not complied with this judgment yet. The EU regional funds, i.e. the Operational Programme for the Canary Islands and the elements of the Spanish horizontal programme on measures related to water, will only be available for the next period 2014-2020 when the RBMPs are adopted. Furthermore, the Commission is concerned about how this situation is going to be addressed for the second RBMPs, of which the drafts should be published for consultation from December 2014, and final approval is due by the end of 2015.
- **Baleares:** the draft RBMPs published for consultation do not solve many of the issues identified in Commission's assessment of the first RBMPs. The pressures and impacts assessment should be updated and the monitoring programmes re-established. Urgent measures should be taken to recover the aquifers in Baleares. It is essential to modify the regulation that allows for new concessions to exploit groundwater to be granted while the groundwater bodies are in bad quantitative status.

1. General issues

COM welcomes the Spanish commitment to comply with the WFD deadlines for the 2nd RBMPs. ES confirmed that it expects to publish the draft RBMPs on 13 December for public consultation.

There is very little time from now to December 2014, when the public consultation of the draft second RBMPs should start. It is important that this timetable is respected. Spain has basically lost one planning cycle. COM expects a significant effort in this short time to improve the plans as much as possible, in particular in those issues that have been identified already months ago and we have been discussing and exchanging since then. Where it is not possible to fully implement the actions arising from the bilateral meeting by the second RBMP, COM expects clear commitments in the RBMPs including specific actions and associated timetable to implement them.

Gaps in WFD transposition

COM recalled that had not yet received a reply to the Letter of Formal Notice following the judgement of the Case C-151/12¹. COM stressed the need to comply with the ECJ judgment as soon as possible.

Beyond the ECJ judgement, which refers only to a number of articles, the Regions² which are competent in their intra-community River Basin Districts (RBDs) need to ensure full transposition of the EU legislation. Proper transposition is an essential element for the implementation of the Directive. COM recalled that the deadline for transposition was December 2003.

ES is working in the implementation of the judgement and will soon reply.

In addition, it is not clear to COM which legal instruments are used intra-community RBDs to adopt the normative part of the RBMPs. The Royal Decrees adopting the inter-community RBMPs include the normative part of the RBMPs, which is not the case for the intra-community.

1. **ACTION:** ES to provide COM with a complete list of references and links to
 - the legislative and regulatory instruments transposing the WFD in the regions competent for intra-community RBDs and
 - to the regional regulations developed to implement the normative part of the RBMPs.

RBMPs of Canary Islands

COM reminded that the regional and agricultural funds for investments in water will only be available for the next period 2014-2020 when the RBMPs are adopted. This applies for the

¹In the meantime a reply has been received.

²Regions refer to Autonomous Communities.

Operational Programme for the Canary Islands and the elements of the Spanish horizontal programme on measures related to water.

ES commitment is to adopt these plans in early 2015.

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| 1. ACTION: ES to approve all remaining RBMPs as soon as possible. |
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Reporting

COM: Even if there are no legal obligations to report electronically there is an agreement at Water Directors level to use the CIS approach. The electronic reporting has been received very late for several important basins (Ebro, Segura, Tajo, Jucar, Baleares) and there are important gaps and errors in the reporting which makes the information not reliable. This has in turn affected the Commission's assessment of the Spanish RBMPs.

COM acknowledges the effort to be made but recalled this is done only every six years.

COM will publish the assessment of the RBMPs in March 2015 and asked ES to verify the factual information on the report before the 24 November.

ES acknowledged the shortcomings of its electronic reporting, and informed that it is working on improving it for the next cycle.

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| 2. ACTION: Spain to ensure that electronic reporting is properly resourced and is adequately planned. For the second cycle, ensure that the electronic reporting reflects properly the RBMPs and is quality assured before being submitted to WISE. |
| 3. ACTION: Spain to comment by 24 November on the factual information of the Commission preliminary assessment in order to ensure it reflects the information in the 1 st RBMPs ³ . |

Cost recovery and application of Article 4(7) for new infrastructure projects were also dealt with in the general discussion. The summary of the discussions has been included in the specific chapters here below.

³In the meantime this action has been completed.

1. Characterisation of the RBDs

Question 4: Is there any reason why the average length of river water bodies in ES030, ES040 and ES050 is much higher than for the rest? Is there a common methodology?

1. **ACTION:** ES to provide clarification on the average length of rivers in ES030, ES040 and ES050 in writing.

Question 6: The results of the quantitative IMPRESS were not used to report to the Commission. This means the reporting data is incomplete.

ES has developed a qualitative and quantitative analysis, and is trying to improve the inconsistencies.

2. **ACTION:** in the 2nd RBMPs, ES should report to WISE the complete information as regards significant pressures, including the results of the quantitative analysis. These need to be translated into the WISE qualitative reporting.

This information is also a necessary prerequisite before any investments in irrigation through the RDP can be considered.

Question 10: The IPH⁴ does not include thresholds for significance of pressures, only for inventories of pressures. The thresholds are in the IMPRESS guidance⁵. In fact the IPH does not require the identification of water bodies at risk due to significant pressures, nor does the RPH⁶.

COM: There are important gaps in the reporting of significant pressures, and it is not clear if all basins have used the criteria in the Spanish guidance to identify significant pressures. The pressure and impact analysis that is needed for the implementation of the Directive is necessarily more detailed than the information requested in the electronic reporting, which is a simple qualitative identification of significant pressures at water body level. The more detailed analysis needs to be translated into the simple reporting template.

ES has not included the identification of ‘water bodies at risk’ for surface waters in its legal instruments. Water bodies affected by significant pressures should be considered at risk of not achieving the WFD objectives, so appropriate measures can be taken to ensure achievement of environmental objectives. Identifying these water bodies at risk is also the basis to define the monitoring network. Measures are then defined on the basis of the information from the pressures and impacts analysis and the assessment of status derived from monitoring.

ES explained that in the first cycle the identification of water bodies at risk was made in 2004, as part of the pressures and impacts assessment. However, in the second cycle they do not find it necessary to

⁴“Instrucción de Planificación Hidrológica”

⁵National Guidance on pressure and impact analysis.

⁶“Reglamento de Planificación Hidrológica”

identify the water bodies at risk because the information on status is available. Moreover, the authorities in charge of the permits have all the relevant information on pressures affecting the water bodies. Modelling also helps identify the water bodies that would fail to achieve the objectives.

COM is not convinced that this approach is totally in line with the WFD and fit for purpose in the implementation cycle. The identification of the water bodies at risk should take into account not only the water bodies that are failing the objectives, but should consider the evolution of various pressures affecting water bodies and therefore should also cover the risk of status deterioration. The identification of water bodies at risk is also the basis for the design of the monitoring programmes. If such an identification step is not explicit it would not be possible to design the monitoring programmes in a transparent way. Modelling tools are useful but the analysis cannot rely only on them as the tools do not cover all pressures.

3. **ACTION:** ES to improve the link between the different steps (pressure-impact analysis, design of monitoring programmes and design of programmes of measures) in the 2nd RBMPs and clearly identify which are the water bodies at risk of not achieving the objectives, with a consistent methodology across all RBDs.

4. **ACTION:** ES to consider the review of the legislation to incorporate explicitly the identification of water bodies at risk as a result of the pressures and impacts analysis. Clarifying this step in law will also enable better demonstration of compliance with Article 46 of the rural development regulations.

5. **ACTION:** ES to explain in writing why there are less water bodies affected by hydromorphological pressures than large dams.

Question 73: There are different interpretations as regards the impact categories (e.g. altered habitats). Reporting is confusing if the understanding of the categories is not harmonised. The categories for WISE reporting were extracted from the CIS guidance, on which ES claims the national guidance is based. Moreover, the lack of harmonisation questions whether the national guidance has been used.

6. **ACTION:** ES to develop a consistent approach across all RBDs as regards pressure and impact categories, making clear links with the results from monitoring networks.

Question 17:

COM asked where the different basins are with the update of the pressures and impacts assessment due by the end of 2013.

7. **ACTION:** ES to provide in writing a list of RBD indicating the status of the update of the pressure and impact analysis and provide a link if the result is available on line. If the RBD has not completed the update please indicate the expected timeline by when will it be concluded.

1. Monitoring of surface waters

Question 31

COM: from the ES replies, it is clear that the reported monitoring programmes have not been executed as initially planned. Sound and robust monitoring is an obligation in the WFD. It is key for successful implementation of subsequent steps in the planning process. Lack of monitoring inevitably impacts on the correct determination of impacts of pressures on environmental objectives. Moreover, just as with the incomplete of reference conditions (mentioned above) and assessment methods, this raises questions about ES ability to effectively determine the applicability of exemptions (notably Article 4(7)). Cutting back on monitoring can lead to expensive mistakes and conflicts with WFD obligations. The knowledge base is essential for sound management and should always be prioritised. EU funds can be used to support monitoring. In contrast, it will be much more difficult to approve the use of other EU funded investments without the necessary overview of the status of water bodies.

COM is concerned with the significant reduction in monitoring over the past few years. Some basins have not monitored since 2010.

ES explained that the different regional authorities are trying to solve this issue of monitoring, including the development of programmes to increase monitoring according with the design under reporting of Article 8 WFD.

1. **ACTION:** ES to ensure that monitoring is adequately resourced and maintained to inform adequately the RBMPs and the decisions on the Programmes of Measures. Urgently fill gaps and implement robust and consistent monitoring programmes with appropriate coverage to ensure a coherent and comprehensive overview of water status within each river basin district (and thereby assess status of all water bodies and avoid having a significant number of water bodies with unknown status). This should include a robust use of extrapolation for non-monitored water bodies consistently across RBDs. The set of BQEs should allow the detection of all existing pressures (esp. hydrological ones).

Monitoring of ecological status

Question 44

The extent of monitoring in the past years is unclear.

1. **ACTION:** Report to the Commission a detailed picture of the situation as regards monitoring in the last 5 years in each RBD, detailing for each water category and quality element the number of sites that have been monitored each year.

Monitoring of chemical status

Question 35: Why have monitoring of sediments and biota not been considered in most of the RBMPs? What actions have been taken to improve the situation for the second cycle? Please provide

(links to) methodological background documents, if available. How and when will they be monitored to identify the pressures in all (relevant) RBDs?

COM: There is an obligation to monitor in sediment and biota for trends, for a number of substances. It seems that mercury and the two other substances for which biota EQS were set in the EQSD were not monitored in biota. If the biota EQS were not applied, an equivalently protective standard should have been established for water.

Question 36: Has atmospheric deposition been taken into account in deciding where to monitor pollutants?

COM: Several pollutants come not from point sources but from diffuse sources such as atmospheric deposition. If the selection of monitoring sites does not take this into account, exceedances of EQS for those substances could be missed. Substances such as mercury should be monitored away from industrial areas as well as near them. Some RBDs show exceedances of the EQS for PAHs, but the number of RBDs with exceedances is not as high as might have been expected given the ubiquitous nature of PAHs.

Question 54: Why are there a high number of surface water bodies for which the chemical status has not been defined, in particular ES010, ES018, ES064, ES080, ES091, ES110 and ES100?

COM: The forecasts imply that most of the water bodies in unknown status in 2009 will be in good status in 2015, but no explanation is given of how this is expected to be achieved.

There is confusion (see question 76) between priority substances (PS) and river basin specific pollutants (RBSP). Even if the Decree makes the distinction, these are mixed in the reporting. The PS have been included under ecological status, where only RBSP should be included. It was not clear how RBSPs had been identified in the ES RBDs.

In the next cycle, exceedances for all substances should be reported, also in the RBMPs.

ES acknowledged that atmospheric deposition is generally not considered. This needs to be improved. **ES** does try to determine the origin of exceedances. PAHs have been monitored in Spain since the 1980s, and not many exceedances have been found. **ES** has been monitoring in biota and sediment since the 1990s, but has not reported the data. **ES** has not been able to find fish without mercury, not even in pristine Pyrenean lakes (due to atmospheric deposition), therefore it had decided to assess mercury against the water EQS in the Table in EQSD Annex I, otherwise all the RBD status maps would be red. (**COM** noted that similar exceedances occur across the EU but that this is not a reason not to report them.) **ES** expressed surprise about the reporting of PSs as RBSPs, since they are clearly separate in the Directive. RBSPs had been identified on the basis of an inventory of point sources and information on pesticides use.

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| <ol style="list-style-type: none">1. ACTION: ES to report to the Commission a detailed picture of the situation as regards monitoring in the last 5 years in each RBD detailing for each water category and priority substance the number of sites that have been monitored each year and the frequency of monitoring.2. ACTION: ES to ensure that all priority substances are sufficiently monitored and taken into account in the assessment of chemical status for the next RBMP in all RBDs. Consider all potential sources of substances, including atmospheric deposition, to design an appropriate monitoring |
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programme.

3. **ACTION:** ES to ensure that mercury, hexachlorobenzene and hexachlorobutadiene are monitored in biota in all RBDs, with the appropriate frequency, and that the results are used for the assessment of chemical status. (Otherwise an equally protective water standard needs to be derived which can be reliably measured).
4. **ACTION:** ES to report exceedances explicitly in the RBMPs (which water bodies and which substances) and in WISE.
5. **ACTION:** ES to ensure that trend monitoring is set up in all RBDs in accordance with the EQSD obligations. ES to report to COM which substances have been monitored for trends in sediment and biota in each RBD in the past 5 years, how many sites and which frequency.
6. **ACTION:** On RBSPs, see under Question 76.

1. Framework for the assessment of chemical and ecological status of surface waters

COM is concerned about the important gaps in the monitoring networks and the assessment methods, which has a direct impact in the subsequent steps of planning: establishing objectives and exemptions and defining the programmes of measures.

COM: ES has many water bodies with unknown status, and others are classified with limited confidence. ES needs to have reliable information on the status to design the PoM and to monitor its effectiveness. Even if assessment methods and intercalibration is not finalised monitoring should still take place. The list of remaining tasks to complete the assessment framework seems very significant (cf. reply to question 49).

Again this has implications for funding under the RDP, where known status of water bodies is necessary before irrigation can be funded. Where the status is not known it must be assumed to be "less than good for quantitative reasons" and the relevant conditions of art 46 applied. ES should ensure coordination between water and agriculture departments on this issue.

Question 2: The current regulation to reference conditions and boundary values (the IPH) is incomplete and seems to be too lax. The values are not binding for the basin authorities (they have to be used "in general" and different values have been used in some RBMPs). In addition, the values will not be applicable "in case of prolonged drought". This is not in line with the WFD. Moreover, the values can be different depending on the sampling protocol.

Questions 34 and 44: What is the timetable for the completion of the fish assessment method?

COM: the assessment for fish and phytoplankton, both in terms of species composition and abundance, is not completed. The lack of available methods for fish puts into question the ability to assess hydromorphological impacts and hence to perform the necessary assessments that should underpin the application of article 4(7).

The justification to disregard fish in lakes and reservoirs and phytoplankton in large rivers is not considered sufficient (following the position of the majority of the GIG and the scientists consulted).

Questions 71 and 72: Have standards for total phosphorus and total nitrogen been developed and tested; can corresponding information be provided; and when will these QEs be applied in the RBMPs? Have systems for physico-chemical QEs for coastal waters been developed and tested; can corresponding information be provided; and when will these QEs be applied in the RBMPs?

COM: the standards for nitrates in rivers are the same for most types, 10 and 25 for the H/G and G/M boundaries. For some types is 20 and 25. For ammonia the standards are (almost) always 0.2 and 0.6 and for phosphate are 0.2 and 0.4. These are clearly not linked to biological boundaries. For reservoirs there are no standards for phosphorus. The standards for coastal waters are also not linked to biological assessments. The standards for the assessment of physico-chemical quality elements have

to correspond with biological thresholds, which is not the case in Spain as standards seem to be the same for all (or many) types and are not related to biological boundaries.

Question 46 on table 6.1

COM: it is difficult to understand how the percentage of water bodies in good or high ecological status is relatively high in some RBDs that are subject to very significant pressures, in particular in Tajo, Guadalquivir and Jucar. In addition, there is a striking percentage of water bodies reported as "unknown status". This is particularly important in the Ebro RBD, where a large amount of infrastructures (such as dams) are planned. COM reminded that EU funds may well be used to improve the monitoring programmes. COM has noticed that a high percentage of the RDPs funds will be allocated to irrigation instead. Given the conditions in article 46 of the new Rural Development Regulation, the status needs to be known before investments can be planned.

Question 48

COM: in Jucar RBD, the characterisation of intermittent water bodies (S.A.M: no water during sampling) is incomplete and/or inconsistent. It is not clear whether the model used can detect if intermittent water bodies are due to natural conditions or to over exploitation (as for example taking into account groundwater abstractions). Some of the S.A.M water bodies overlap with groundwater bodies in bad quantitative status due to over-abstraction. If the reason for the lack of water is the over-abstraction, the classification of the water body should be bad status.

It should be clear if the lack of water in certain water bodies (mainly in the Mediterranean basin) is caused by natural causes or human intervention (abstractions in particular). These water bodies are currently not classified. If it is demonstrated that their ephemeral condition is due to natural causes, it would be up to ES to not identify them as water bodies. Clear criteria need to be defined and explained in the RBMP. These should not be purely hydrological (e.g. average number of days with water per year) but ecological.

ES explained that water bodies without pressures have not been assessed and have been assigned 'unknown' status. For the Mediterranean RBDs, the lack of confidence in the assessment implies gaps in the status information. The hydromorphological quality elements have been heterogeneous among different basins. ES is now developing a new regulation (Royal Decree) for all basins that will replace the IPH tables. It will maintain the current method for phytoplankton, and will include fish, but not for lakes, which is not considered as a good quality element for the types of Spanish lakes. Models will include point and diffuse pollutants.

Question 78: Are updated data available regarding the ecological status assessment for those RBDs whose RBMPs have been approved only recently, and have not yet been reported to WISE (ES030, ES070, ES080, ES091, and ES110)? Can these be reported/added to Table 6.8?

COM considers the forecast for the Tajo unrealistic. The data for Jucar is not consistent: if there are only 43% of water bodies in good status in 2015 it means that exemptions have to add up to 57%. For the Ebro the current assessment sets 90% of water bodies in good status, which is difficult to have confidence in, considering the significant pressures in this RBD.

Question 48: How can the very different figures for some basins (between zero and 45 %) for unknown ecological status of SWBs be explained?

COM: MS should have developed monitoring and classification systems by the end of 2006. The lack of intercalibration is not a valid excuse not to develop a classification system and apply it. The adoption of the first list of priority substances was in 2001, and cannot be used as an excuse for the first RBMPs.

It is not acceptable that there are still water bodies with unknown status, as the monitoring programmes should have started 8 years ago. Extrapolation is an option if there is no information for some water bodies; also a low confidence value can be reported attached to the classification in these cases. Low confidence however will have implications for drawing down EU funding for investment in developments that could negatively affect water status,

Draft Royal Decree on monitoring and status assessment

COM: In its replies to the questions prior to the meeting, ES indicated that a Royal Decree is in preparation which seems to be essential to ensure harmonisation of reference conditions, monitoring and status assessments. The Decree also includes the results of the 2013 intercalibration exercise and the transposition of the 2013 priority substances Directive.

However, there is no information on coastal and transitional waters in the draft Decree⁷. The meaning of ‘reference conditions as guidelines’ in the draft Decree is not clear, nor whether these are legally binding.

ES acknowledged the need to solve assessment and status gaps and explained that this is given special attention in the 2nd RBMPs. ES is preparing an assessment which will be presented for public consultation in order to ensure good level of compliance.

ES explained that its high levels of biodiversity make it difficult to identify the relevant quality elements and good indicators. ES is aiming at adopting a general regulation for class boundaries and status. ES will prepare a legally binding instrument for all river basin authorities to comply with this provision, including the intra-community basins.

<p>20. ACTION: ES should urgently take the necessary actions to fill the gaps in reference conditions, assessment methods and monitoring (including the use of extrapolation for non-monitored water bodies) for all water categories, types and relevant quality elements (biological, physico-chemical and hydromorphological), in order to ensure that a reliable status assessment for all water bodies is carried out. ES to provide COM with a timeline in writing, indicating resources dedicated to</p>
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⁷A new version was handed over at the meeting which includes coastal and transitional waters.

this work, responsible authorities, actions and timelines to complete the work.

21. **ACTION:** ES to ensure that the draft Royal Decree for the completion of the framework for status assessment is adopted as soon as possible. The Royal Decree should be expanded to include the assessment systems for coastal and transitional waters and physico-chemical standards (esp. nutrients) should be reviewed to ensure consistency with the related biological quality classes . The reference condition and boundaries for quality elements have to be binding.

The contents, in particular the intercalibration results of 2013 and the new standards for existing priority substances introduced by Directive 2013/39/EU should be considered in the status assessments for the 2nd RBMPs, according to the new reporting guidance. ES to report transparently the confidence and limitations of the assessments as appropriate. It should be binding for the Autonomous Regions which have full competences over intra-community river basin districts.

22. **ACTION:** ES to report to COM how intercalibration results are incorporated into their assessment system. This has to be transparently presented by displaying corresponding national and IC types and showing any differences by RBD. Given the relationship between national and IC type an analysis per water body is deemed necessary.

23. **ACTION:** ES to complete the assessment method for fish in all surface water categories as soon as possible. Monitoring should be carried out even if the assessment method is not finalised.

24. **ACTION:** ES to justify with detailed scientific argument the possible non-relevance of some BQEs. Non relevance of fish and phytoplankton in rivers and lakes (among others) is currently not considered as properly justified. This position will be submitted to experts through WG ECOSTAT.

25. **ACTION: ES** should:

a) Establish scientifically sound criteria and methodology to differentiate situations of dry rivers due to natural causes (temporary streams) from human induced (due to over-abstraction);

b) Develop ecologically-based criteria to define which temporary streams would be delineated as WFD water bodies, linked to their capacity to develop an aquatic ecosystem which can be assessed under the WFD framework and/or sustain uses that need to be protected; and

c) For those temporary streams delineated as WFD water bodies, develop specific methods when methods for permanent rivers are not suitable.

Explain the criteria and methodological approach in the RBMPs.

(In case the developments referred to in this action have been completed, report the information to the COM)

26. **ACTION:** Revise the physico-chemical standards to make them type-specific and consistent with the biological boundaries. Develop physico-chemical standards for reservoirs, in particular for phosphorus.

Question 30: Are there (common) criteria for the grouping of water bodies for monitoring?

COM: Annex I to the draft Royal Decree does not include any information on how to do grouping and extrapolation of status. The best is to have monitoring in all water bodies, but if this is not the case, a methodology needs to be established.

27. **ACTION:** ES to establish a homogeneous methodology for grouping and extrapolation of status for those water bodies which are not monitored, for both ecological and chemical status.

Question 45: When will the existing monitoring gaps be filled?

28. **ACTION:** ES to ensure that the outstanding sampling protocols are completed as soon as possible.

Question 74: Why are “altered habitats as a result of hydromorphological alterations” related to point source pressures (e.g. ES014, ES017, ES020, ES050, ES060)?

29. **ACTION:** ES to ensure that the set of BQEs used is able to detect all pressures, in particular hydrological and morphological pressures.

Question 76: Which River Basin Specific Pollutants have been identified in which RBDs, what EQS have been set, and what exceedances have occurred?

COM: There is confusion between river basin specific pollutants (RBSP) and priority substances (PS). Exceedances are provided for PS, not for RBSP.

The RBSP are the same as those established in 2000 for the implementation of the 76/464/EEC List II provisions. Neither the list of substances nor the values have been updated. For example the values for Zinc are of the order of hundreds of micrograms per litre, whereas the value derived at EU level during the last prioritisation exercise was of the order of micrograms per litre.

30. **ACTION:** ES to perform the necessary studies as part of the update of pressures and impacts analysis to review the list of RBSPs including adapting the EQS values in accordance with the 2011 Technical Guidance Document.

Questions 92 and 93: What accounts for the difference between the number of exceedances found for pesticides in different RBDs with intensive agriculture, e.g. between ES060, ES040 and ES050 and ES100? Can ES explain the differences between the RBDs in relation to the exceedances caused by substances such as mercury and PAHs which are known to be transported long distances?

COM: The explanations of the differences in exceedances for pesticide and for long-range transport substances across the RBDs are not convincing. In addition, disregarding one exceedance may not be

justified, particularly in the case of pesticides which are usually applied only for a limited time period during the year, when there could be brief exceedances of the MAC.

31. **ACTION:** ES to establish a harmonised approach for dealing with individual exceedances. This could be included in the draft Royal Decree.

Question 96: Can ES explain why this information is not part of the RBMPs?

COM: Exceedances of priority substances are not reported in all RBMPs.

32. **ACTION:** Ensure that exceedances of priority substances are reported in the RBMPs identifying relevant substances and water bodies.

1. Designation of HMWBs and establishment of GEP

Questions 10 and 50: Are there harmonised criteria for significant water flows regulations and hydromorphological alterations, and have they been applied in ES110, ES030, ES014, ES010, ES091, ES080, ES060 and ES050? And table 6.2

COM: the figures of large dams per RBD are significantly higher than the number of surface water bodies with significant hydromorphological pressures and also higher than the surface water bodies designated as HMWB.

RBD	SWB significant Water flow regulations and morphological alterations	Total HMWB	Total dams ⁸
ES010	47	51	76
ES014	54	40	24
ES017	89	72	85
ES018	198		
ES020	439	90	145
ES030	20	126	284
ES040	113	69	190
ES050	84	118	122
ES060	32	45	47
ES063	35	30	27
ES064	26	17	45
ES070	34	30	43
ES080	140	60	54
ES091	120	116	299
ES100	109	78	16
ES110	11	14	2
Canarias		10	77
ES150		1	2
ES160	2	2	
TOTAL		966	

ES: some water bodies affected by hydromorphology have not been designated as HMWB because the objective has been kept to achieve GES. Some small and medium sized dams are planned to be removed. ES acknowledged the gaps in the definition of GEP, which ES intends to solve as more information is now available.

20. **ACTION:** ES to send information on which dams are planned to be removed and which water bodies affected by which dams have not been designated as HMWBs to explain the differences in the numbers.

Questions 82 and 83: Which criteria or thresholds for significant adverse effects have been applied in the HMWB classification; and are these criteria or thresholds available (to the public)? How have better environmental options in the HMWB classification process been identified and analysed; and are these evaluation criteria available (to the public)?

⁸Taken

from

http://sig.magrama.es/93/ClienteWS/snczi/default.aspx?nombre=PRESA_ESTADISTICA_1&claves=&valores=

COM: The designation process is too generic. There should be clear criteria used for the designation of HMWBs, in particular for the significant adverse effect on the use and the question on possible better environmental options. This is especially relevant in stretches downstream of dams.

The methodology for designation of HMWBs should be completed in Galicia.

21. **ACTION:** ES to develop clear criteria / thresholds to define the significant adverse effect of the restoration measures on the water use and a proper (real) assessment of other alternatives that could represent a better environmental option.

22. **ACTION:** Galicia Coast needs to ensure that designation of HMWB is included and justified in the next RBMP.

Question 87, 88 and 89: What are the difficulties in defining the ecological potential of surface water bodies for heavily modified water bodies? Which steps are being undertaken to ensure that GEP is defined by those indicators that best respond to the pressures/uses that motivate the HMWB designation? Is there information at water body level about the biological condition and the mitigation measures consistent with GEP? And table 8.1.1.

COM: The GEP has not been defined in many basins, and this should be done for the next cycle. The reply on GEP (question 87) is quite theoretical. It seems that GEP is more developed for reservoirs than for any other HMWB. The IPH takes a very generic approach which seems to be independent of the type of physical modification in the water body (e.g. "coastal waters affected by ports"). The draft Royal Decree does not include the used values.

23. **ACTION:** ES to ensure that GEP is defined (at water body level in terms of biological condition and mitigation measures) and environmental objectives are set for all HMWB and AWB, including coastal and transitional waters, for the next RBMP, in all RBDs.

1. Framework for the assessment of chemical and quantitative status of groundwater

Questions 6, 92 and 105: Why have no significant diffuse source pressures been identified for large NVZ in ES020 GWBs 31, 38, 43, 45, 47 and 52? Are harmonized criteria being applied in Spain, and if yes, what are they? 92. What accounts for the difference between the number of exceedances found for pesticides in different RBDs with intensive agriculture, e.g. between ES060, ES040 and ES050 and ES100? Which pollutants cause risk of pollution for GWBs? Have methodologies been developed for the establishment of threshold values (TVs) of groundwater pollutants? For which pollutants were TVs established? Is there a methodology established on how to define acceptable exceedances of TVs?

COM: On chemical status, it is unclear how the exceedances in specific monitoring points are assessed in relation to the global chemical status of the groundwater bodies.

ES explained that it uses a guidance for developing threshold values. It has been used for the 1st cycle, but acknowledged that amendments may be needed. The monitoring programmes have incorporated new point sites.

20. **ACTION:** ES to develop a harmonised approach to deal with local exceedances of quality standards and threshold values. This could be included in the draft Royal Decree in preparation.

21. **ACTION:** ES to ensure that local exceedances are reflected in the RBMP and appropriate measures are taken to address them.

Question 59 on table 6.6.

22. **ACTION:** ES063, ES064, ES123 and ES150 to expand/establish their monitoring programmes for quantitative status to allow for a proper and reliable assessment of all groundwater bodies.

Question 60: The information in map 6.6 seems to indicate that the increase in good status (shown in tables in the same section) will in many cases simply be due to having fewer WBs in unknown status rather than fewer in less than good status. Why is no reduction in the proportion in poor status expected in most cases?

COM raised concerns about the reliability of the information provided in the reply to question 60 for ES070 Segura: the number of GWB in good chemical status is reduced until 2021 from 39 to 38 and then sharply increases to 53. Similar situation is indicated for good quantitative status. In addition, it is difficult to see how 10 out of 11 GWBs in less than good chemical status in ES050 Guadalquivir will achieve the objectives in 2015.

Regardless the size of the GWB, all pressures should be reflected in the status assessment and appropriate measures should be taken.

ES explained for the Jucar that they have worked with a sectorial approach (19 GWBs divided in 300 sectors) and have improved the modelling both for quantitative and qualitative aspects. For the Guadalquivir that they are developing new delineation of the groundwater bodies (have divided the GWBs).

23. **ACTION:** ES to explain how the estimates of the evolution of the chemical status of GWBs in the Segura and Guadalquivir have been established.

Question 101: Have all the criteria for the classification of quantitative status of Annex V.2.1 been used? It seems that only the balance between abstraction and recharge has been used.

24. **ACTION:** ES to ensure that the assessment of quantitative status considers all aspects of the definition, including local drops of the water table that may lead to a risk in water-dependent ecosystems, and including protected areas.

Question 40: There is no groundwater operational monitoring in ES014 and ES018, and no groundwater quantitative monitoring in ES063, ES064 and ES070. What is the reason? Are there improvements planned?

25. **ACTION:** ES to correct the information submitted to WISE as regards monitoring stations (at least ES063 and ES064 but ensure that information is correct for all).

Question 104: Have methodologies been developed for the assessment of groundwater chemical and quantitative status (considering groundwater dependent aquatic and terrestrial ecosystems, saline intrusions, etc)?

ES: on groundwater dependent surface water bodies and terrestrial ecosystems, a high number of studies have been reported. ES will consider the results of such studies in the 2nd RBMPs.

26. **ACTION:** ES to integrate in the 2nd RBMPs the results of the available studies on groundwater dependent surface waters and terrestrial ecosystems so that the assessment of chemical and quantitative status of groundwater bodies can be completed, in particular as regards protected areas.

1. Control of abstractions (including specific questions on Alto Guadiana)

Question 21: How many abstractions <20,000 (or 7,000) m³/yr exist or are estimated in the RBDs?

COM: The Royal Decree 670/2013 is the last attempt to complete and regulate the Water Register, a large exercise which is on-going since the adoption of the Water Law in 1985. This Decree sets a new deadline for completion of the Register by 1 January 2020.

A proper register of all abstractions is an essential tool for water management. There are thousands of abstractions which are not yet in the databases. This is basic information for sound water management. Although a significant amount of budget has been invested in the process, the development of this register seems to have suffered from lack of resources and lack of priority.

There appears to be no guarantee that the new Decree is going to solve the problem. The Decree explicitly establishes that it will not imply an increase in the expenditure and the new Water Register Offices will be resourced with existing officials from the basin authorities. It is difficult to see how these provisions can provide the necessary push for the completion of the register.

COM is concerned about the abstractions of 'private waters' from springs or wells authorised before the Water Law of 1985 (Catálogo de Aguas Privadas), and in particular those that have not been registered in section C of the Water Register. This is closely linked to the control of abstractions, as there are abstractions that are not registered at all.

The Ministry and other competent authorities should take all necessary measures to ensure that the Water Register will be completed as soon as possible, and that is binding for the regions.

ES explained that each RBA is responsible for registering the permits for water use, and there are estimates of water use in irrigation using satellite imagery. The ALBERCA program was set up to gather and analyse this information, although other systems have also been used. There are around half a million abstraction points. With the new Royal Decree ES will establish a national system for a Water Register on abstractions. ES acknowledged the need to allocate more funding to this, and linked this with the RDPs requirements. Farmers are supportive to establish controls to avoid illegal abstraction.

Question 127: What efforts are being done to extend the use of metering and to register real consumptions of water, in particular in the agriculture sector?

COM: the RBMPs do not contain figures for actual consumptions as it could be expected if metering would be generalised. And there appears to be no urgent intention to implement metering. For example in the Guadiana the measure to install flow meters is only planned for 2016 onwards.

The control of abstractions is linked to cost recovery. Controls may be expensive, but could be offset by incomes from water users. All water users should have metering and be subject to a payment scheme. The Spanish RBMPs are not built on consumption figures but rather on the granted concessions and estimates on use. There is not enough information on consumption of water, so the actual consumption may well be very different than the one included in the plans.

The reference ARM/1312/2009 is an administrative order to install meters, but it is not being implemented and enforced in practice (only for new concessions). Furthermore, it is only applicable in intercommunity RBDs.

ES did not agree that there is no control of abstractions. **ES** argued that they have information of abstractions at water body level, which needs to be aggregated (difficult process to obtain useful information, e.g. in Duero there are around 18000 wells). **ES** has also tried sampling checks and remote sensing (every 3 years). For surface water information is available on the flow that goes through the main channels exiting the reservoirs, but not at the parcel level.

In Jucar, 80% of abstractions of surface water are measured, but the groundwater is the main problem.

ES considers that the WFD requires a permitting regime and this is what **ES** has.

According to **COM**, the WFD requirement is to establish an effective regime to control abstractions *in order to achieve* the WFD objectives. Therefore, not any regime is WFD compliant.

20. **ACTION:** **ES** to present to **COMM** a detailed plan on how to generalise the use of flow meters and the report to the river basin authorities of the volumes actually abstracted.

Alto Guadiana

Question 142: Is Spain going to adapt on a permanent basis the granted water rights for irrigation, which are currently over and above the available resources?

COM: the volume of rights in Alto Guadiana potentially affected by the management measures included in the RBMP comes to around 547 hm³/year, which is the difference between recognised rights (around 850 hm³/year) and the available resources established in the RBMP (over 303 hm³/year). This situation is illogical: farmers are legally entitled to abstract much more water than it is sustainable, then the aquifer is declared overexploited, and there are annual exploitation plans that limit the abstraction of farmers well below the volumes in their concessions. This creates false expectations on the basis on non-existent resources. The concessions should be updated to make them consistent with the reality of available resources and consistent with the ability to attain good status.

Despite the big impact that abstraction has in the status of water bodies in Spain, there has been no significant change since the adoption of the WFD to adapt the instruments to control abstraction to the new needs and obligations. The instruments available are basically those coming from the 1985 Law, which after 30 years have not allowed effective control of abstractions. The regularisation of pre-1985 abstractions is still on-going and depends very much on the willingness of the concession owner to request its inclusion in the water register.

COM stressed that the problem will only be solved by adapting the situation to the reality of water availability. The current legislative instruments should be adapted to provide the authorities with a framework for appropriate management of water resources. This is a necessary prerequisite for the drawdown of certain EU funds and it is in Spain's best interest to make urgent progress on this.

ES: it is different to give a concession and to give a right to use the water, which has been a historical right for owners of the water resources. The abstractions increased considerably in the 70s, with

overexploitation and lowering of the water table as a result. With the 1985 law it was recognised that water is a publicly-owned resource but it kept the ancient rights to use water. No new concessions are being granted under the new law but the old ones are being incorporated into the new administrative framework. The competent authority establishes annual limits on abstractions, and have recovered GW levels, e.g. in Ojos del Guadiana. It is however not possible to cancel all permits in the register, as the rights are still valid (usual period of validity is 50 to 75 years).

Question 144: Can Spain explain further explain the measures "Transformación de derechos privados a concesión administrativa", including how many water rights or number of abstractions will be affected and what is the expected improvement in the control over abstractions?

COM: After 30 years of the Water Law, still the situation is far from being solved. The benefits of the measure in the RBMP of “transforming private rights into administrative concessions” seem to be limited to an administrative control of the abstractions. This falls clearly under the obligation in WFD under 11(3)e, controls over abstractions of freshwater, due in 2012. There are many abstractions that are outside the administrative control of the authorities (given also the vast amount of abstractions).

Question 145: Can Spain explain further the measures "Sistemas de reasignación de derechos", including how many water rights are expected to be released? Do these measures only depend on the willingness of the farmers to release those resources?

COM: the RBMP includes the measure “reallocation of water rights”. The reply received from the ES authorities demonstrates that:

- there is a problem of illegal abstraction
- the systems to reallocate rights do not actually save water in an scenario where users respect the law
- the main driver is the benefits raised by the owner of the water right.

There is no clear environmental benefit apart from that resulting from the presumed reduction of illegal abstraction.

Question 146: Can Spain explain further explain the measures " 1) Actualización y mantenimiento del Registro y Catálogo de Aguas en el Alto Guadiana y 2) Revisión de concesiones", in particular on the estimation of its effectiveness?

COM: related to the measures “revision and maintenance of the Water Rights Register and review of concessions”, included in the RBMP. The ES reply states that “*The effectiveness of this measure is limited by the lack of a priori information on specific cases (number of uses, wells) in which it could be applied, making it difficult to estimate the potential reduction in abstractions. However, it should be considered that these uses would not be abstracting resources in an effective manner at the current time.*”. After 30 years of Water Law, the Water Register is still to be consolidated.

This reply demonstrates that planning is done on the basis of incomplete information as regards something as fundamental as the water use.

Question 184: Bearing in mind the existing significant governance problems with non-authorised abstractions in several parts of Spanish RBDs, and the information gaps on GW recharge and

abstractions, the European Commission expresses its concern that deterioration could happen due to measures of re-allocating GW abstractions between GWBs, i.e. for ES040 for the Northern Daimiel GWBs (Sierra de Altomira, La Obispalía, Lillo-Quintanar and Consuegra-Villacañas); ES080 for Measure 08_083_031; and ES110 for a large number of GWBs, including e.g. 1801M4, 1803M1, 1818M3, and 1817M6. What are the levels of confidence that no deterioration will occur in the GWBs with additional abstractions, and which are the background documents that provide the corresponding evidence?

COM: An example is given where the volumes abstracted are estimated using remote sensing and theoretical use by crop – it seems the figures in the plan reflect only the reality on paper. With only satellite data, it is difficult to know how much is being abstracted, as it does not provide any information on the efficiency in the water use. Satellite data can be used as a complement to a robust monitoring in the ground, not as a substitute.

An appropriate control system should allow for making the link between real consumption and a pricing scheme for the water used. These are clear WFD obligations, with pricing in the agriculture sector a clear priority for Spain given that the sector is the highest user. The information should be available at the project level, in particular as concerns funds for irrigation.

There are some tools for control in the different RBD, but they are generally for surface waters. The groundwater bodies are much less controlled, in particular the ‘self-abstraction’.

ES acknowledged the need to have cost-efficient tools that provide useful information on water abstraction.

In Guadalquivir the main abstractions are controlled by the basin authority in real time. Concessions are forced to install metering and inform the authority on the level of abstractions, but this is only for new concessions, and mainly for surface water bodies.

21. **ACTION:** The process of including abstractions in the Water Register should be compulsory and not voluntary, no matter under which regime they got their permit. Spain needs to make the necessary regulatory changes to ensure that:
- all abstractions are registered and adapted to the available resources, taking into account ecological flows necessary to support WFD good status or protected area objectives
 - all abstractions (surface and ground water) are metered and subject to control of the river basin authorities- no investments in irrigation facilities can be authorised until the necessary permit revisions and abstraction controls are in place.
22. **ACTION:** ES to present a plan detailing how and when the Water Register is going to be completed, including information by RBD on dossiers concluded and fully registered (meaning all essential data on abstracted volumes, use, etc), dossiers pending and a quantitative analysis of what the progress has been in the past years and what is estimated in the coming years until completion.
23. **ACTION:** ES to prioritise the allocation of resources to the completion of the Water Register.

1. Objectives and exemptions

Question 114: How can the non-establishment of environmental objectives in ES091 be explained; and which further steps are planned in the second cycle to overcome this situation, clearly not in line with the WFD requisites?

COM: in the ES reply, the Ebro RBD acknowledges that the gaps in the characterisation affect the capacity to set objectives. This is in sharp contrast with the significant development of water uses planned in the RBD. Until there is a complete picture of pressures, impacts and status it is not possible to develop water uses further without putting at risk the environmental objectives of the WFD to an extent which is unknown.

Question 115: In the Ebro RBD (ES091), what new dams are planned in water bodies with unknown status or for which the objectives have not been established in the RBMPs? Please provide the list of dams and the details of the affected water bodies (code, status and objectives).

COM: the ES reply on new dams indicates large plans for new infrastructure for Ebro RBD (there are 51 dams planned that will affect the status/potential of water bodies), while the assessment of status is very weak.

20. **ACTION:** ES to ensure that the status of all water bodies is assessed in accordance with the WFD before considering any further infrastructure that would be liable to cause deterioration of the status of water bodies or prevent the achievement of good status.

Question 124: How many and which infrastructure works (dams, weirs, sluices, channels, riverbed changes, etc.) are currently listed to be considered under Article 4.7?

COM: the table provided in the ES reply demonstrates the massive developments that are foreseen across all basins. There are a very high number of new infrastructures foreseen: 104 new dams have been reported (no information has been provided on other infrastructure works). In some cases, this is the case for water bodies for which environmental objectives have not yet been established. If no objectives are defined, appropriate measures cannot be established either (this is linked to the gaps on status assessment methods and monitoring).

21. **ACTION:** Spain should ensure that environmental objectives are established for all water bodies in the second cycle, including for HMWBs and AWBs.

Question 117: How the ecological flow in the Ebro Delta (in ES091) has been established. Are there technical studies that justify that the value of the flow is compatible with the WFD objectives?

COM: (in particular on Ebro Delta, but extensive to all other RBDs). The ecological flow is not specifically mentioned in the WFD. However, it is indeed the link between the allocation of water resources and the establishment of ecological status.

However, the ES methodology for establishing the ecological flow is not linked to the achievement of good status. The concept of ex-ante limitation seems to be fine if it guarantees that good status can be achieved. But the technical documentation provided shows that the established flow does not have a

link to GES. In the case of the Ebro Delta this is obvious because GES has not been set. The studies rely on hydrological statistical analysis, all kind of studies made with methods which have nothing to do with the WFD objectives. The result of all the analysis is barely different from the flows established in the 1998 Hydrological Plan, which did not have any ecological target. COM is very concerned about this issue as there have been very modest improvements on this as compared to the situation before the WFD was in place.

ES agrees that the assessment of quantitative elements and establishing limits to the uses is essential for achieving WFD objectives. ES states that the ecological flows are a very strong restriction.

In the **Ebro RBD** there is no clear link between status and eflows, because there was no data for relevant quality elements for transitional waters. But this does not imply that there is no commitment for improving the status. For the 2nd cycle, the environmental objectives for transitional waters will be established.

22. **ACTION:** establish a national framework for the development of ecological flows which is linked to good status and reassess the flow needs on this basis.

Question 120: Is there already any forecast by ES on the number (and details) of WBs for which Article 4.5 (instead of Article 4.4) might be applied in the second planning cycle?

COM: the use of exemptions should include appropriate justifications and explained and included in the RBMPs. In particular a proper analysis should be done on whether the measures necessary to comply with WFD objectives are not technically feasible or disproportionately costly, taking into account the current status of water bodies and the natural conditions. The use of Article 4(5) exemption just because of financial constraints is not in line with WFD.

The approach used in Spain is not in line with the WFD. The RBMPs show that the starting point has been the existing measures and a non-transparent assessment of measures considered feasible. On this basis, with the help of models, ES estimated which water bodies will not achieve GES. For the rest, exemptions are applied without proper justification. This approach should be revised. The focus should be on the objectives to be achieved and not what will need to be exempted.

ES explained that the reported use of Article 4(5) has been a mistake. The boundaries between affordability and natural conditions are not clearly defined in the ES implementation. ES confirmed that these exemptions will be changed into Article 4(4) exemptions in the 2nd cycle in all RBDs. The Ministry proposes to prepare guidance on the correct approach to this.

23. **ACTION:** The criteria used for assessing and justifying the use of exemptions should be in line with WFD provisions and an explanation included in the RBMPs. In particular, it is not acceptable the extensive use of the extended deadlines under Article 4(4) or even lowering the ambition of the objectives under Article 4(5), and just providing as justification general statements about financial constraints.

Question 122: Which – if any – complementary criteria or guidance have been established in ES for reasoning exemptions under Articles 4.4 and 4.5; and are the criteria for doing so available (to the public)?

COM: while a high number of exemptions have been applied in many RBDs (in particular Duero, Tajo and Ebro), there are no explanations on the criteria for the use of exemptions in accordance to Article 4(4) and 4(5), in particular for technical infeasibility or disproportionate costs, including the economic analysis. The information provided does not include the explanation of the methodologies.

24. **ACTION:** the justification of exemptions is insufficient. There is no analysis of the measures needed to achieve good status. Therefore, it is not possible to justify whether measures are disproportionately costly or technically unfeasible. It seems that the PoM has been set out on the basis of business as usual and “what can be done”.

Question 125: When and how will exemptions according to Article 4(7) be justified?

Article 4(7) exemptions

COM stressed the importance of proper application of Article 4(7), and raised concerns on the high number of infrastructure projects foreseen in different regions. The assessment for the application of exemptions under Article 4(7) rely on having adequate previous steps in place (reference conditions, monitoring), etc.

Article 4(7) is not an ex-post paper exercise to justify the already decided projects. It needs to be underpinned by a real assessment of alternatives and cost/benefits. This should be part of the decision making whether to go ahead or not with a particular project. The exemptions on environmental objectives should only be granted when certain conditions are met. This implies a proper assessment of impacts and benefits. It is very complicated to make an appropriate assessment given the gaps on the status assessment, as it would be difficult to know whether there is deterioration. The EIA and Article 4(7) WFD assessment may be done at the same time, but the requirements are different, so the EIA cannot replace the assessment under WFD. The fact of including projects on the PoM is not a justification for the application of the exemption of Article 4(7). The concept of ‘public interest’ in the ES legislation is not equivalent to the WFD ‘overriding public interest’. The assessment of the best environmental option should be done at strategic level: not only considering variants of the same project, e.g. different designs of a dam, but considering obtaining energy or availability of water with different means. A strategic assessment of cumulative impacts should be carried out when many infrastructure projects are foreseen. This should also be used for decision making to assess the better environmental option as required by Article 4(7).

The "viability reports" for new infrastructure are not in line with the WFD. If an infrastructure is going to deteriorate or prevent the achievement of good status in water bodies, it has to fulfil the conditions of Article 4(7) and the justifications have to be included in the RBMP.

Given that the current regulatory framework resulted in bad application of Article 4(7), COM thinks that ES needs to consider the regulatory means to ensure that all RBDs (including the intracommunity RBDs) are bound by a proper framework.

ES acknowledged the limitations of the approach taken in the first RBMPs and is committed to improve the assessments for the 2nd RBMP.

25. **ACTION:** ES to report to COM how and when a clear framework for the application of article 4(7) will be developed to be applied in the 2nd RBMP. The infrastructure that has not yet been constructed and is liable to cause deterioration or prevent the achievement of good status of water bodies, can only be executed if the conditions of article 4(7) are fulfilled. If the conditions are not fulfilled, the works cannot go ahead. The assessment is done to underpin decision making, whether to construct or not the infrastructure, it should not be performed as a rubber stamping process.

26. **ACTION:** the "declaration of general interest" in the Spanish legislation cannot be automatically equated with the concept of "overriding public interest" in article 4(7)c. This has to be justified case by case.

(The following was not discussed at the meeting)

COM: In assessing the benefits of the infrastructure, ES should not consider ecological flow below new dams as a benefit, but rather as a mitigation measure that should be implemented according to article 4(7)a.

As regards considering the benefits for flood protection, the approach across the various RBDs differs, but in general the justification is lacking. In most cases there is a general reference to the contribution of the new dam to flood protection but without further specification. The benefits for flood protection need to be justified case by case and an assessment of alternatives needs to be carried out at strategic level to ensure that there are no better environmental options. COM expects that when the benefits for flood protection are claimed, an assessment of the flood risk has been carried out and the flood protection goals are clearly justified. This has also repercussions in the cost recovery. In some RBDs a fixed percentage of contribution to flood protection is applied to all new dams without justification.

27. **ACTION:** ES should not consider the maintenance of ecological flow in new dams as an ecological benefit of the dam, but as a mitigation measure.

28. **ACTION:** ES to develop a methodology to be applied in all RBDs to justify the flood protection contribution of new dams on a case by case basis. Fixed or arbitrary percentages should not be used. An assessment of alternatives needs to be carried out at strategic level to ensure that there are no better environmental options.

1. Nature of the RBMP, link between pressures, status and measures

There is a serious problem with the PoMs in that they:

- are disconnected from the analysis of pressures and the assessment of status
- include infrastructure measures which are not designed to contribute to the achievement of environmental objectives, quite the contrary will deteriorate the status of water bodies or will prevent them from achieving good status in the future.

20. **ACTION:** ES to separate very clearly in the PoMs the measures designed to achieve the environmental objectives from others. The latter need to be treated as 4(7) exemptions whenever appropriate (i.e. modifications to water bodies liable to cause deterioration or prevent the achievement of good status).

In addition, most basic measures are presented only by reference to legislative acts, but it is not clear how these obligations are implemented, e.g. what is the intensity of action, what technical measures are involved.

21. **ACTION:** Spain should clarify in the RBMPs what actions are taken in practice (including e.g. technical measures) to implement the basic measures (generally listed in the first RBMPs by reference to legislative acts) and how much they contribute to closing the gap to good status.

On the other hand, it seems that Spain has models to assess different scenarios and sets of measures. It appears that the models are actually used for the purpose of assessing the achievement of WFD objectives and also to define scenarios for further exploitation of water resources.

The Commission assessment shows that ES has planned the measures on the basis of "what is in place and/or in the pipeline already" and "what is feasible", without linking them to the current status of water bodies and to the pressures which have been identified in the RBMPs as preventing the achievement of good status. According to Article 11(1) the programme of measures needs to be established in order to achieve the environmental objectives of the Directive. Therefore, for the purpose of designing the programme of measures, ES should carry out a gap analysis to identify which (most cost-effective) combination of measures would achieve good status. This gap analysis is necessary to understand what needs to be done to achieve the objectives, how much time it will take and how much it will cost to whom. Only on the basis of this analysis, proper justifications of exemptions due to technical unfeasibility or disproportionate costs are possible. Moreover, even if exemptions are applied, ES needs to ensure that measures are taken as far as possible to progress towards the objective.

The WFD environmental objectives are quantified and linked to a clear timetable. Therefore, the approach taken of "moving in the right direction" on the basis of (largely) business as usual scenarios is clearly not sufficient to deliver on the achievement of environmental objectives for a significant proportion of water bodies.

In the "environmental measures" there is little more than UWWT to contribute to WFD objectives.

Concerning the measures to reduce quantitative pressures, there is no assessment of how these measures contribute to the achievement of the WFD objectives either. They are assumed as "good"

enough if they are going in the right direction, but this is not sufficient. In addition, many measures focus on increasing water supply, not on reducing demand.- which is unlikely in Spain to secure compliance with the WFD objectives.

22. **ACTION:** ES to ensure that there is a proper integration of the pressure and impact analysis, the status assessment and the design of the programme of measures. A gap analysis needs to be performed to underpin the design and scale of the PoMs and where not all measures are possible in the 2nd RBMP, to justify any exemptions.

1. Agriculture: nitrates directive and irrigation

COM: there appears to be no systematic review of concessions to align them to the WFD objectives. This needs to be done to access RDP funding for future irrigation investments: a WFD compliant RBMP is a requirement of article 46 (permits with allowed water abstraction, metering, determination of water saving, verification in the field that water saving has been made).

20. **ACTION:** ES to carry out a systematic review of the concessions to ensure that they are aligned to the WFD objectives.

COM: the projects to modernise irrigation are claimed to be contributing to the WFD objectives but there is rarely an assessment of how much water the projects save and the link to the environmental objectives of particular water bodies. Most of the projects do not have an environmental aim. The water savings obtained are not quantified. There is no follow-up on whether the projects have achieved what they aim at. All estimated savings do not seem to be related to the environmental objectives. Moreover, it is difficult to understand how it is possible to know the amount of water saved if there is no follow-up or systematic report of water used.

ES explained that the modernisation of surface irrigation has helped reducing diffuse pollution levels. Modernisation results also in better quality of life for farmers and increased production. Depending on the cases, increased efficiency results in net reductions of water use, even if consumption increases.

21. **ACTION:** change the way modernisation of irrigation is carried out. The concession/permits should be reviewed and modified to meet the WFD objectives (e.g. reduction of 20% of water used where necessary to secure good status) - then irrigation efficiency projects are the measure that is put in place to achieve compliance with the new permit condition.

22. **ACTION:** the way the modernisation of irrigation is considered in the PoMs needs to be reviewed. Only those projects which genuinely contribute to the WFD objectives (where there is demonstrable water savings that go back to the environment) should be labelled as such. Such contribution should be justified and quantified in the RBMPs on a case by case basis.

Questions 18 and 164: Which different preliminary results have been obtained in this second review and assessment of the Analysis of Pressures? How will compliance with NVZ requirements be improved – e.g. slurry storage requirements? CAP/ supplementary measures

COM is concerned about the shutdown of manure treatment facilities. **COM** is aware of the problem produced by a change of energy regulation which had as a consequence that several manure treatment plants were shut down. This seems particularly important in Catalonia.

In the **ES** reply to question 164 it is stated that *“In view of the problem posed by slurry, on 01/08/2014, the Government approved special funding of 10 million euros towards alternative slurry*

management”, but it is not clear what the funding covers and over what timeframe it will be implemented.

23. **ACTION:** ES to send clarification in writing. How will the slurry capacity issue nationally be tackled in the medium- term perspective? This should take into account that controls on slurry and manure (storage and spreading) are necessary for all farming areas to comply with WFD article 11.3.h.

Question 158: Article 11.3. h requires that basic measures be put in place to control diffuse pollution (nutrients, pesticides, sediment etc.)

COM: reliance on cross-compliance controls alone for water policy purpose is not acceptable. The minimum level of control is very low and not all agriculture is subject to cross compliance.

COM: the basic measures for diffuse pollution to implement article 11.3. h should go beyond the Nitrates Directive codes of practice, which are voluntary instruments limited to nitrates issues – they don’t address other agricultural pressures (phosphates, pesticides etc). Mandatory measures that are controllable should be included in the 2nd RBMP and measures need to be set beyond the Nitrates Vulnerable Zones (NVZ). COM invites ES to participate more actively in the WG Agri where such issues are discussed.

24. **ACTION:** ES to ensure that appropriate basic measures (mandatory measures) are established for control of diffuse pollution, including all relevant pollutants and beyond NVZ.

25. **ACTION:** report to COMM statistics on inspections and sanctions under cross-compliance and national rules for abstractions.

Questions 165 and 166: What water related requirements have been included in greening of pillar 1 and what is this expected to deliver? What will the RDP deliver in terms of contribution towards WFD good status – (what we have seen in the draft RDP is priority for investment in irrigation –how will restoration measures (quality, quantity, hydromorphology, wetlands) be funded on agricultural land if not through the RDP?

COM stressed that there is a need for more environmental measures not only irrigation, and expects to see e.g. measures on soil erosion and desertification prevention, support for natural water retention measures and others that will ensure the agriculture funds help meet WFD objectives.

ES explained that the programmes have been developed by the regions, and that sometimes coordination between administrations can be lacking.

26. **ACTION:** The RDPs should focus beyond modernisation of irrigation to include other measures that protect and restore water. They should include measures to deal with soil erosion, desertification, saline intrusion, promote conversion to crops with lower water needs, Natural Water Retention Measures (NWRM), etc.

Appropriate safeguards must also be put in place for irrigation measures to ensure they contribute to

genuine water saving and do not lead to further exploitation of scarce water resources

(The following was not discussed at the meeting)

COM: The ES reply to question 167 refers to the objective of planning as stated in the Spanish Law, which seems not to be consistent with the WFD: "Water policy is intended to serve to the sectoral strategies and plans on water uses as established by the Public Administrations, notwithstanding the rational and sustainable management of this resource that should be undertaken by the Ministry of the Environment or the appropriate Water Authorities, which will be the ones responsible for granting any authorisation, concession or infrastructure as requested". The economic development is the aim, environment just an ancillary element coming after.

1. Protected areas (*not discussed during the bilateral meeting*)

Question 28: How do the RBMPs incorporate the specific protection elements (e.g. shellfish, habitats and birds), the conservation status of the PA, the pressures or threats that affect the protected area, etc. within their analysis? Have these elements been taken into account to establish the threshold values to define significant pressures?

COM: the ES reply refers to ecological flows as if this would cover the needs of water dependent habitats and species. The definition of ecological flow in the Spanish legislation (RPH article 3j and IPH article 1.2.15) does not include the objectives of protected habitats and species. However, section 3.4.1.1 of the IPH mentions the need to *take into account* the favourable conservation objectives.

In addition, the ecological flow could cover the quantitative needs, but what about quality objectives? Referring to the Fish life Directive of 1978 is not helpful in this regard. The protected habitats and species are much wider and may have more stringent needs.

The fish life directive has been repealed. Its objectives and level of protection should be attained by the WFD in all water bodies, through the objective of GES and the inclusion in it of the quality element fish.

20. **ACTION:** a comprehensive study should be carried out together with the responsible authorities for nature to derive the quantitative and qualitative needs for protected habitats and species, translated into specific objectives for each protected area which should be inserted in the RBMPs. Appropriate monitoring and measures should also be included in the RBMPs.

As regards **shellfish** objectives, COM is surprised to see that the key parameter in directive 79/923/EEC (codified 2006/113/EC) has been deleted from the transposing instrument, which is RD 345/1993. The RD referred to in the reply is not transposing the shellfish directive but the consumer protection legislation and has actually been repealed. The faecal coliform parameter is no longer in the Spanish law, at least attached to the obligations in the Shellfish Directive (SFD). Even if the values in the SFD could be equivalent to that in the consumer protection legislation "type A" production zones, the obligations attached to both pieces of legislation are very different. The changes in the legislation (which it seems they were never communicated to the Commission as they do not appear in the transposition database) have deleted the most useful parameter from the SFD, as the rest are largely covered by WFD ecological status.

21. **ACTION:** ES to report to COM in writing how it intends to ensure the same level of protection for shellfish protected areas, now that the Shellfish Directive has been repealed and the microbiological standard is no longer included in the Spanish transposition instrument.

Question 41: How has monitoring of PAs been developed? Are there specific monitoring programmes for PAs? Which gaps have been identified in the current set-up of PA monitoring? Which activities are in place for the second planning cycle?

COM: The ES reply gives the impression that monitoring of water related requirements in nature protected areas is a "nice to have". But we should recall the obligations resulting from Article 4(1)c and, specifically on monitoring, Annex V section 1.3.5. Also from WISE reporting it appears this monitoring is generally not happening.

Monitoring of drinking water protected areas needs to include all relevant parameters of the Drinking Water Directive.

Indeed the draft Royal Decree provided establishes specific additional monitoring requirements for drinking water protected areas, bathing waters, nitrates vulnerable zones, sensitive areas and Natura protected areas. It does not include shellfish.

Question 43 on table 5.3.1.

COM: the two first columns in the table are very confusing. We are interested only in the monitoring of the water bodies used for drinking water production. The duplication is due to a redundant structure of the reporting schema which basically asks twice for the same information.

For some basins the information is still missing.

As regards nature protected areas, it is questionable that the table has been correctly filled in. According to the previous replies, it seems that there is no really a targeted monitoring of water requirements in nature protected areas. For example ES110 states that there is no specific monitoring programme but there are stations in the areas. Just a geographical overlaying is not what is meant. We are asking about a specific programme for the water requirements of nature protected areas. Given that these water requirements have not been established (see Q28) it seems difficult that they are monitored.

22. **ACTION:** ensure that monitoring of water related requirements in nature protected areas is established as soon as possible in all RBDs.
23. **ACTION:** ensure that additional monitoring of shellfish areas is also included in the draft Royal Decree, at least as regards microbiological pollution.
24. **ACTION:** ensure that monitoring of drinking water protected areas include all relevant parameters of the Drinking Water Directive.

Question 108 on table 10.3.1.

COM: it seems there is a serious problem of interpretation. The status of protected areas is interpreted differently (see comments above on the part of status of Protected Areas).

Questions 109 and 110: Why have no status classifications of DWPA been developed and reported for most RBMPs; and which actions are being developed in the second planning cycle? Which common criteria and procedures regarding DWPA status assessment have been developed and/or will be developed in Spain?

COM: it is recognised that “*in water plans from the first cycle, common criteria for assessing the status of protected areas, in particular the DWPAs, could not be established*”. It is also stated that common criteria are “*under development*” and that “*these criteria involve establishing specific threshold values for the protected area, based on appropriate percentages of the standard values for drinking water*”. When are these going to be completed?

25. **ACTION:** Spain to send replies in writing.

26. **ACTION:** include in the draft Royal Decree a definition of status of protected areas to ensure a harmonised approach across the country.

1. Measures related to hydromorphology (*not discussed during the bilateral meeting*)

COM: The assessment of alternatives is limited to the EIA only. This does not guarantee the selection of the better environmental option, as the EIA looks at project level. There needs to be a strategic assessment of options that look at different ways of achieving the objectives.

<p>20. ACTION: ES to consider a proper assessment of alternatives early in the process that takes into account strategic options.</p>
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1. Cost recovery

COM:

The cost-recovery instruments in the water law have not been adapted to the WFD, they have not translated into any development as regards new instruments for cost-recovery nor any change in the water pricing policy, at least for agriculture. Existing water pricing policy does not provide adequate incentives to use the water efficiently. In addition, the water authorities do not have the necessary resources for water management tasks (update and maintenance of register of abstractions, monitoring, etc.).

The cost-recovery instruments for farmers cover part of the infrastructure and operation costs. They do not cover Environmental and Resource Costs (ERC), while the impacts on water status are high. In the case of self-abstraction farmers only pay financial costs incurred by them without contributing to the recovery of ERC. Furthermore, the generalized low prices of water imply cross-subsidies for farmers at the expense of public water supply and makes it difficult to use other alternatives (as for example the underused desalination plants).

The discount applied for flood protection in every dam project is arbitrary and appears in most cases overestimated, which it is de facto a subsidy to irrigators. Therefore there is a need for transparent and harmonised methodology of the discount rate calculation and implementation.

Resource costs calculation should not be an academic exercise. This should drive to implementation of water abstraction fees (especially self-abtractors in irrigation). The abstraction fees should be based not only on resource costs, but also on environmental costs related to water abstraction encompassing costs of the environment damage caused by abstraction.

Resource costs calculation is currently based on market prices. Where there are no markets, this is set to zero. This is difficult to understand and accept as resource costs exist even if markets are not in place. Moreover market prices in Spain do not reflect real prices, as subsidies are not taken into account. Ability to pay can be considered when establishing tariffs/fees (through the flexibility provided in last paragraph of Article 9.1), but not for calculation of the costs.

COM explained its interpretation of the recent Court ruling on water services (Case C-525/13): the water services are not limited to drinking water supply and waste water treatment. Cost recovery for water services is an instrument available to member states in the context of the implementation of the programmes of measures. Member States may under Article 9(4), under certain conditions, exclude a given activity from cost-recovery where this does not compromise the achievement of the objectives of the WFD. The reasons for excluding certain activities from cost recovery should be included in the RBMPs, together with the other measures that will be applied to ensure compliance with WFD objectives. This exclusion should relate to the existence of an established practice at the time of the entry into force of the WFD in 2003.

ES has developed a template as a follow up to the meeting in October on WG Economics in 2013, which will help understanding how cost-recovery is applied, including the self-service for agriculture, and is also working on establishing a common definition of water services. After gathering the available information with the template, ES will consider changes in the legal instruments, but this will not be possible for next year.

20. **ACTION:** ES to introduce abstraction volumetric fees for all users covering properly calculated environmental and resource costs.

Pricing for water supply and WWT for households.

COM: The application of cost recovery is very different across the regions and it is difficult to have an overview on how this obligation is being implemented. RBD wide figures hide differences in regions.

Income data in many RBMPs is based on AEAS⁹ figures, which are not necessarily representative of the various regions. COM wonders why the real data on income by different local and regional cost recovery instruments is not available in the RBMPs. Moreover, in cases of some public bodies and for the purpose of cost recovery calculation, income estimation is based on the expenditure made, which is wrong as it does not take into account depreciation and does not encompass external transfers, for ex. Moreover in some cases the expenditure of certain public bodies is equated to the income subsidies. These deficiencies on the basic data cast doubt on the reliability of the cost-recovery calculations.

Nevertheless, in 5 basins financial cost recovery (households and agriculture) rates are below 50%. The current recovery rates make water services dependant on public subsidies and there will be problems with financing replacement of the infrastructure in the future.

COM suggested that a solution for the urban cycle may be to use basic national regulation, which can be adapted by regional competent authorities if necessary and have another regulator that check if tariffs are appropriate. Similar approaches have been used in Portugal and Italy.

20. **ACTION:** ES to develop a basic harmonisation of the water tariffs calculation methodology for drinking water supply and waste water treatment in line with Article 9 which recover all costs, provide incentives to use water efficiently and ensures long term sustainability of investments.

⁹Asociación Española de Abastecimiento y Saneamiento

Transparency

20. **ACTION:** ES should consider water use for energy production (hydropower and cooling) as water service, and relevant information (cost recovery, ERC, "discount rates for dams") should be transparently presented in updated RBMPs.
21. **ACTION:** Dam discount calculation should be harmonised and subsidies should be transparently presented.
22. **ACTION:** ES should extend calculation of environmental costs to costs related to energy production (hydropower, cooling) and diffuse pollution from agriculture.
23. **ACTION:** Subsidies and cross-subsidies should be transparently presented (desalinated water, subsidies for construction of dams, etc.)

Question 171: Which is the proportion (and value) of not recovered costs assigned to “mitigation of flood risk” for each of the dams in Spain?

(An action related to this question is included in section 7)

COM: the ES reply states that flood protection is not a water service. However, the Spanish transposition includes it explicitly: Ley de Aguas Art 40bis.i) *“servicios relacionados con el agua: todas las actividades relacionadas con la gestión de las aguas que posibilitan su utilización, tales como la extracción, el almacenamiento, la conducción, el tratamiento y la distribución de aguas superficiales o subterráneas, así como la recogida y depuración de aguas residuales, que vierten posteriormente en las aguas superficiales. Asimismo, se entenderán como servicios las actividades derivadas de la protección de personas y bienes frente a las inundaciones.”*

1. Governance: international cooperation (*not discussed during the bilateral meeting*)

Questions 32 and 81: Why are no international monitoring programmes set up in ES010 and ES017? Which activities are foreseen in the second planning cycle to complete the international monitoring programmes? What improvements are being developed or foreseen in the second planning cycle regarding transboundary co-ordination of the status assessment, in particular regarding ES017 WB ES111T012010 with France?

COM: International cooperation is referred to in questions 32 for monitoring and 81 for status assessment, but the proposed actions below cover the issue more broadly. The on-going cooperation does not translate into tangible results.

20. **ACTION:** Produce common outputs with Portugal, as a result of cooperation in shared River Basin Districts, covering characterisation, pressures and impacts, monitoring, assessment of status, public consultation, measures, etc. Ensure that there is a common understanding for transboundary water bodies and catchments for these issues.

21. **ACTION:** as regards cooperation with France, ensure that there is a common understanding for transboundary water bodies and catchments covering characterisation, pressures and impacts, monitoring, assessment of status, public consultation, measures, etc. If common products are not developed due to the small catchments affected at least the RBMPs should report transparently which cooperation actions have been taken and which are the tangible results of such cooperation.

1. RBMP Balears (specific issues only, the above applies as well to Balears if relevant)

COM: how it is possible that concessions can be given in aquifers which are already in bad quantitative status.

Balears: the use of water for agriculture uses has dropped down in the last year significantly. The new concessions amount a maximum of 4 Hm³. So overall, the consumption has decreased more than the new concession. The sector is being reactivated and consumes much less than before.

COM: how reliable are these estimates of water use when there is no metering and no report of actual consumptions? The use of the legal instruments appears to be insufficient. Balears does not use of the possible instruments provided by the Spanish law to target illegal abstractions. There is a need for a better control on abstractions. For example the declaration of overexploitation gives the administration the right to limit abstractions annually. Metering should be generalised. It is possible to support these with EU funds.

COM also asked about the claim that the RBMP was significantly changed after the public consultation.

Balears clarified that as a result of the public consultation the plan had changed considerably and a new (updated) version of the plan was therefore again submitted to public consultation. Political interests involved on the previous plan may have raised the complaints.

COM underlined some issues identified in the draft second RBMP:

- The article 5 analysis has not been updated. The pressures and impacts are the same as in the previous RBMP, which were based on data from 2003-2006.
- Monitoring of surface water refers to campaigns carried out in the period 2005-2008. For chemical status it refers to a single campaign carried out in 2014. This seems to imply that there has not been monitoring over the past years. (This is recognised in the answer to Q31).
- The methodology for the designation of HMWBs has not been completed and there is no definition of Good Ecological Potential for HMWBs.
- Only 27% of GWB are in good status. Despite this, there is a long list of exemptions for groundwater bodies that is not justified. Just stated that the pressure is very high. 7 GWB have improved to good from last plan but 14 have deteriorated. 22 out of the 28 that had planned to achieve good status in 2015 will not achieve the objective. This looming picture is justified on the basis of the economic crisis only. This is not in line with WFD.
- In Balears RBD granting new concessions for agriculture is possible in overexploited GWBs. It is difficult to understand how the achievement of WFD objectives can be ensured in these water bodies.
- Cost-recovery: all is empty and there is a reference to a non-existing annex 8
- Programme of measures: a list of measures and suggestions but no quantitative link to objectives, no justification of why good status cannot be achieved.

Baleares:

On ecological status: regarding Q95 they notice that they have an issue with the water bodies called 'torrent'. In the 1st cycle they considered them as rivers but for the 2nd cycle they might not consider them as water bodies. Monitoring of torrents will not give any useful information. However these torrents do have riparian vegetation linked to it.

COM reminded Baleares that if there is a change this will need to be well justified with studies, historical records, etc. and reported in the RBMPs.

Baleares: the annex on cost recovery will be added to the draft RBMP (this is being developed).

On monitoring **Baleares** acknowledged that they need to ensure that monitoring is sustained.

20. **ACTION:** Baleares to ensure as soon as possible that
- regular monitoring programmes are re-established
 - an update of the pressure and impact analysis is carried out
 - the draft RBMP which is submitted to public consultation includes all the relevant information (cost recovery, justification of exemptions, justification in case of re-delineation of water bodies, etc.)
21. **ACTION:** Baleares to report in writing the process of consultation and adoption of the first RBMP and report how the comments from the public and stakeholders were considered.
22. **ACTION:** Baleares to change the regulation that allows granting of new concessions in groundwater bodies in bad quantitative status, at least until all abstractions are controlled and metered and a precise knowledge of the situation of the water bodies is available.
23. **ACTION:** Baleares to consider using the mechanism of declaration of overexploitation in those water bodies in bad status. In any case determined measures should be taken to recover the aquifers.
- (Only specific actions for Baleares RBD are listed in this section. The actions in other sections are also relevant to Baleares RBMP).

1. Urban Waste Water *(not discussed during the bilateral meeting)*

Q147. What about the needs in shellfish waters, bathing waters, sites of Community Importance? According to Annex II A (c) of the UWWTD, areas where further treatment than that prescribed in article 4 of this directive (biological) is necessary to fulfil Council Directives, must be identified as sensitive...it seems to be the case of other "rías", besides Ferrol and Pontevedra. There may also be requirements related to eutrophication in Annex II A (a). More stringent treatment is applied "de facto" in a number of treatment plants affecting the "rías", but its compliance cannot be ensured until the designation of "rías" as sensitive areas is recognised. The Authorities should be able to explain these contradictions.

What is the situation of the estuary of river Miñor, object of a recent petition due to the pollution affecting the site of Community importance ES1140003 "A Ramallosa", and also a shellfish production area?

Q148. This situation has been found in agglomerations under infringement cases (or mentioned in infringement cases) for instance: Cártama, la Laguna, Lepe, which cannot be found in the last implementation Report; this is also the case of agglomerations for which funds have been requested (Pontecaldelas, Ames), which have not been found either. There are, of course, others, but it is obviously difficult to identify what has not been reported, unless the Commission knows about them by other means apart from the reporting exercise. The situation of Tenerife, where many agglomerations above 2000 p.e. have now been declared as "inactive" in the Implementation Report (not being clear why in certain cases), should also be explained in more detail.

Q149. *This* reply does not take into account that the most developed regions will not (likely) receive EU funds and even so they have situations of breach. It also seems clear that EU funds cannot cover all the gaps (especially at treatment level) in less developed regions, where there are huge number of breaches (e.g., Andalucía). The Authorities should explain how they intend to cope with these situations.

Q151. Priority 2 would have to be, indeed, priority 1, due to the nature of the area of discharge

Q152. It has not been provided the expected calendar for development of works; it seems that the problem of overflows is due to illegal connections by households to the sewerage system, together with problems of bad maintenance (blockages), which produced discharges of waste water in the rain water collecting system, as initially described by the Authorities; indeed, the Authorities said to the Commission in an official communication (EU Pilot) that the project so-called "collecting systems and discharge points" (6.5 M€), was addressed to find and remove any connection of waste water to the rain water collecting systems, together with monitoring measures in the discharge points. Is it therefore possible to propose a "short term solution", besides the below-mentioned "longer term" solutions, which enable to start managing the existing problems of pollution in Gibraltar from La Línea as soon as possible?

In addition to this, the UK Authorities have informed about the construction of a new discharge outfall under construction in the area used as a car park immediately North-west of the border with Spain ("Santa Bárbara"), which might affect Western Beach. Are the Authorities aware of this?

20. **ACTION:** ES to provide to COM justification about the non-designation of the "rías" as sensitive areas despite the application of more stringent treatment in many treatments plants.

21. **ACTION:** ES to provide to COM information about the situation of the estuary of river Miñor in Pontevedra: agglomerations and treatment plants discharging in this ría or its catchment, treatment level which is applied, pollution problems and reasons why this ría is not designated as sensitive area.

22. **ACTION:** ES to provide to COM more detailed information about the situation in Tenerife as regards the deletion of agglomerations larger than 2000 p.e. that have been declared in the last reporting exercise as "inactive".

23. **ACTION:** ES to explain how financing will be ensured to cover all wastewater treatment plants needs that are not possible to cover with EU funds, both in developed and less developed regions. Also, to provide a (tentative) list of the projects which are foreseen to improve the implementation of the UWWTD in Spain, including estimated timing to be finished.

24. **ACTION:** ES to consider short-term solutions for the pollution problems in Gibraltar-La Línea, the timing for long-term solutions, information on the new discharge outfall under construction in the car park area named "Santa Bárbara", and to report them to COM.