Overview of CIS Guidance No 36 "Exemptions to the Environmental Objectives according to Article 4(7)"

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Budapest, 11 April 2019

EU Water Framework Directive (WFD)

Scope, objectives and tools

- **Scope**
  - Protection and management of all waters, including rivers, lakes, transitional-, coastal- and groundwater
  - Covering all impacts on waters

- **Objectives**
  - Protect and enhance water bodies
  - **Achievement of good status / potential**
  - **No deterioration**
  - **Exemptions under certain conditions**

- **Tools**
  - River Basin Management Plans and Programmes of Measures
  - Existing legislation: urban waste water treatment, nitrates from agriculture, habitats, etc.
  - Public participation

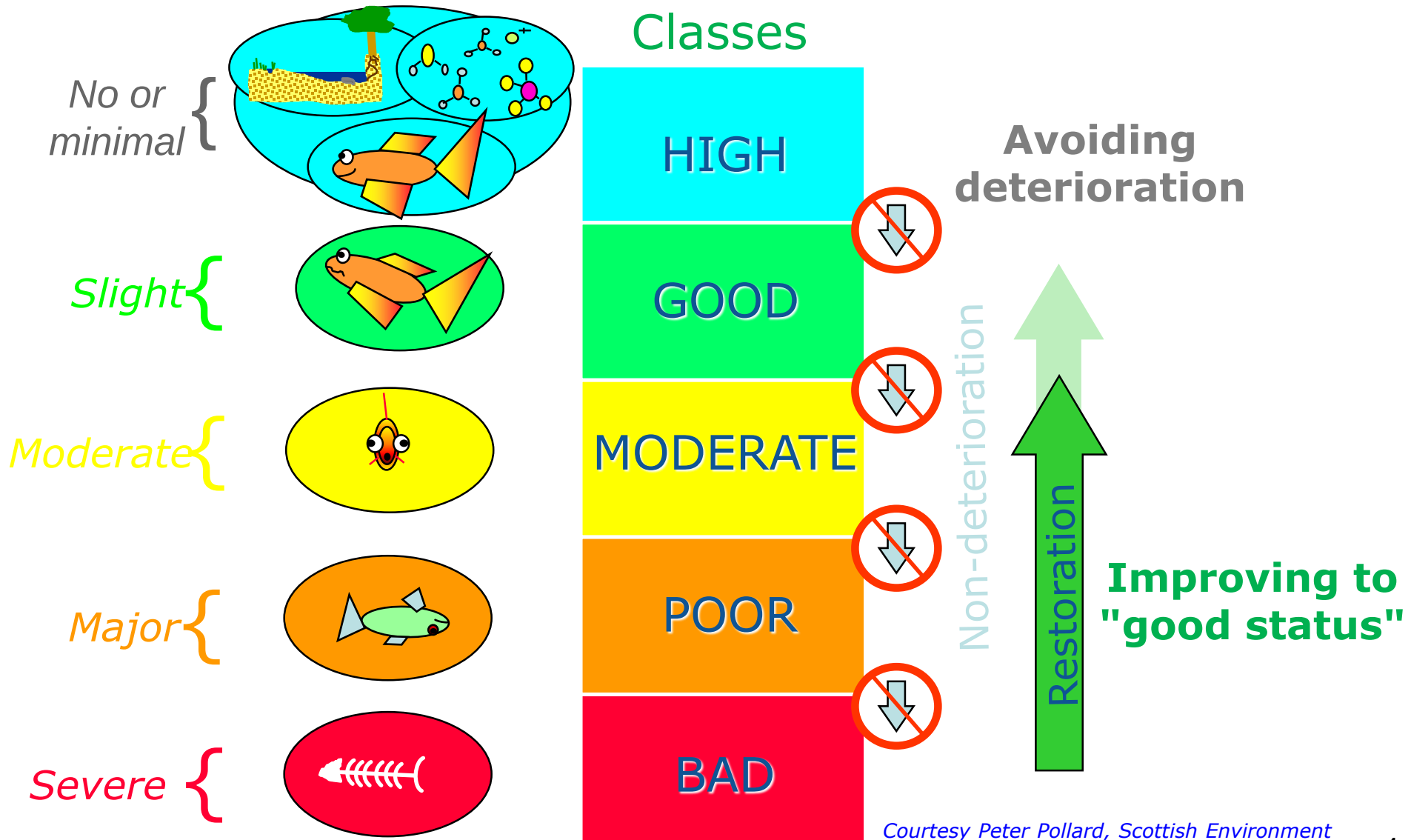
What is WFD "Good Status"?

Good surface water status

Good **ecological** status	Is an expression of the quality of the structure and functioning of aquatic ecosystems including: **biological, hydromorphological and physico-chemical elements**	High Good Moderate Poor Bad
Good **chemical** status	Means meeting all **environmental quality standards** for chemicals set at EU level in Directive 2008/105/EC (priority substances) as amended by Directive 2013/39/EU	Good Failing to achieve good

Good groundwater status

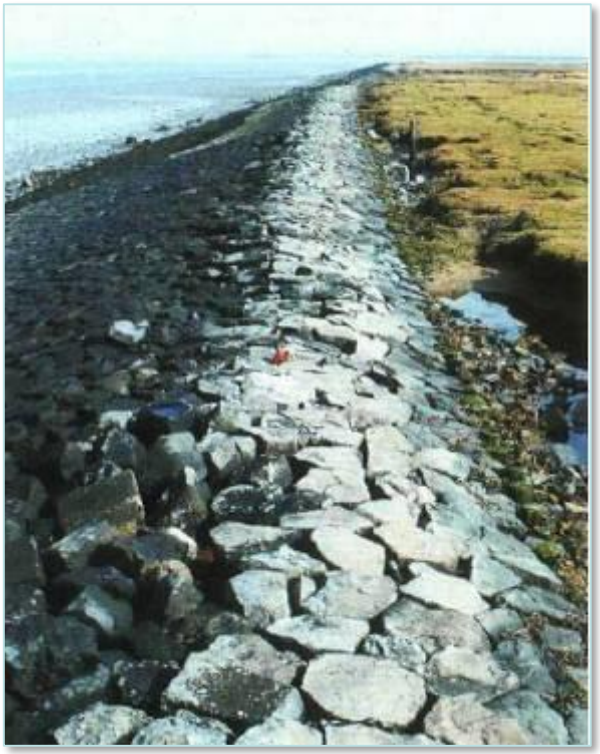
Good **quantitative** status	Means ensuring a **long-term balance** between abstraction and recharge, protecting as well associated surface waters and ecosystems.	Good Poor
Good **chemical** status	Means meeting all standards for chemicals, either set at EU level (pesticides and nitrates) or at national level (threshold values)	Good Poor



Courtesy Peter Pollard, Scottish Environment Protection Agency

Examples for modifications which may impact water body status

Embankments
(e.g. for floods protection)



Impoundments
(e.g. hydropower)

Abstractions
(surface- and groundwater)

Interruption of
sediment transport

New projects may impact WFD water body status

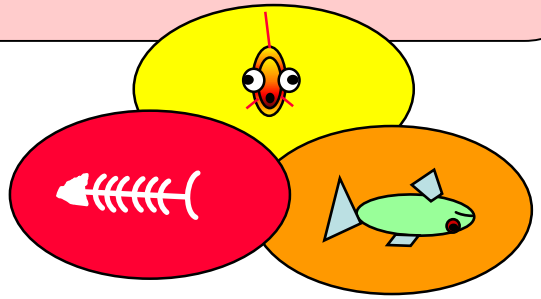
New hydromorphological modification
or
Alteration to the level of groundwater
or
New sustainable human development activity

May cause

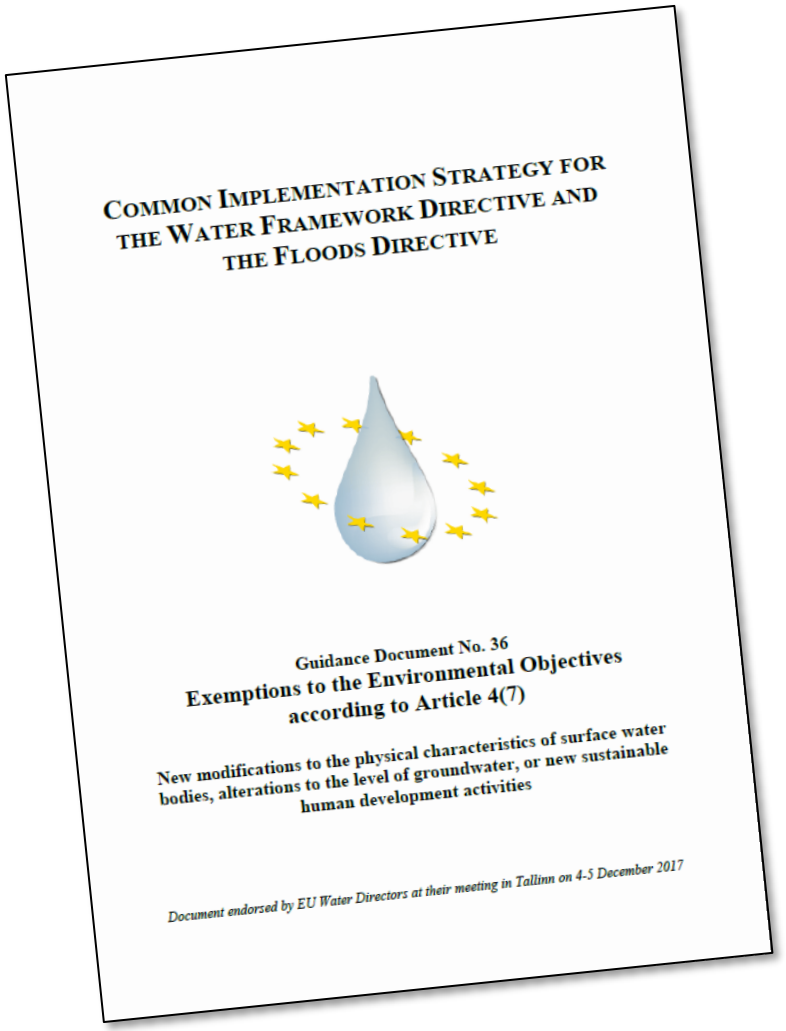
Deterioration of water body status/potential

or

Non-achievement of WFD objectives



Project needs to meet conditions of WFD Article 4.7 for authorisation



CIS Guidance No. 36 (2017)

Exemptions to the Environmental Objectives according to Article 4.7

Available at
https://circabc.europa.eu/sd/a/e0352ec3-9f3b-4d91-bdbb-939185be3e89/CIS_Guidance_Article_4_7_FINAL.PDF

CIS Guidance No. 36 (2017) Content

1. INTRODUCTION (What is it for)

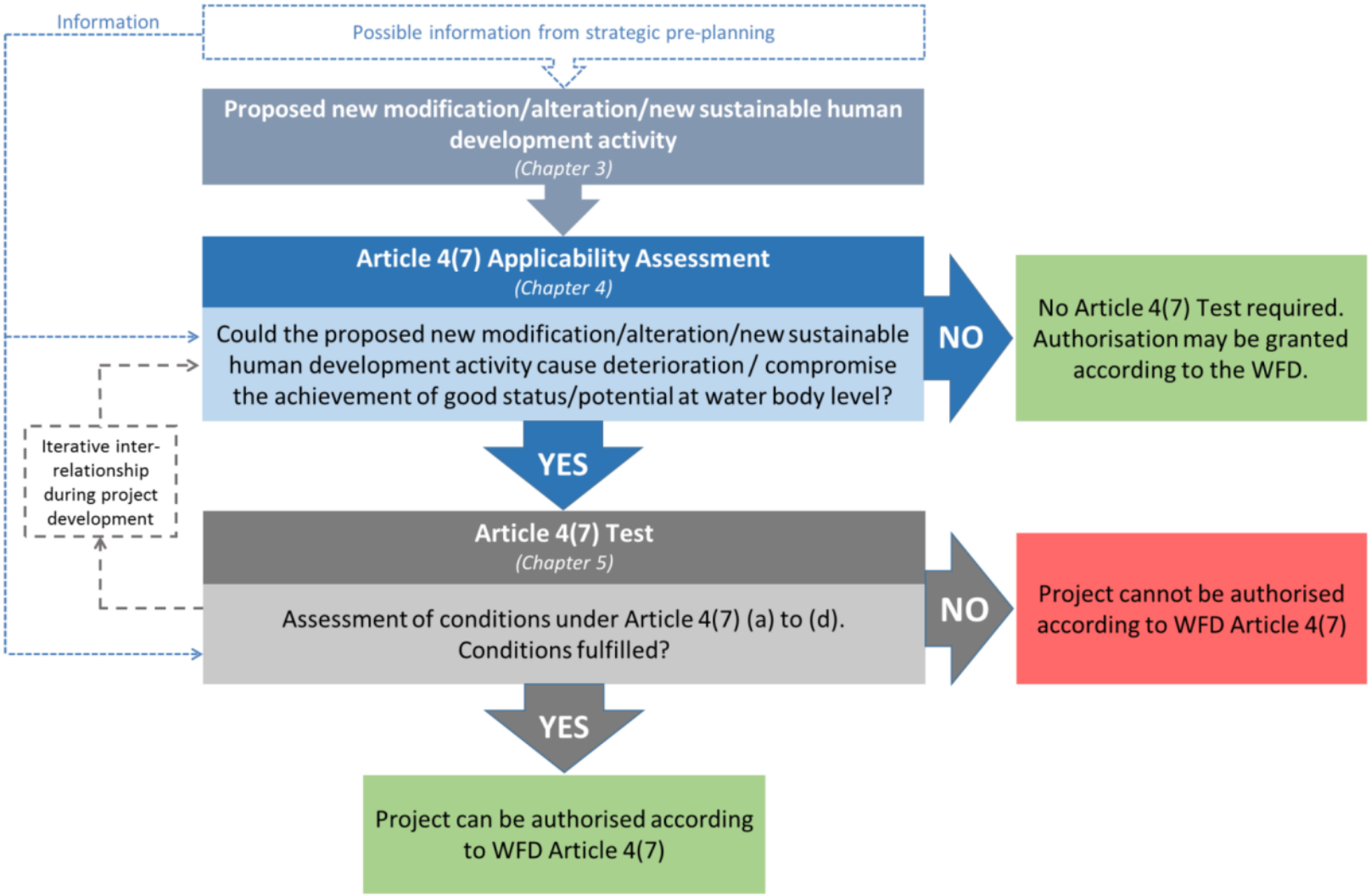
2. INTEGRATION OF SECTOR POLICIES AS PREREQUISITE FOR POLICY COHERENCE

3. GENERAL CONSIDERATIONS AND SCOPE OF ARTICLE 4(7)

4. ARTICLE 4(7) APPLICABILITY ASSESSMENT AND STREAMLINING WITH OTHER DIRECTIVES

5. ARTICLE 4(7) TEST AND RELATIONSHIP TO THE RBMPs

Figure 1: Principle relationship between "Article 4(7) Applicability Assessment" and "Article 4(7) Test"



Modifications according to Article 4(7), quality elements and possible effects

Modification / alteration / sustainable human development activity according to Article 4(7)	Surface water bodies				Groundwater bodies	
	Ecological status / potential			Chemical status	Quantitative status	Chemical status
	Biological quality elements	Supporting elements				
		Hydro-morphological quality elements	Chemical and physico-chemical quality elements			
1) Modification to the physical characteristics of a body of surface water	Possible direct and/or indirect effects	Possible direct and/or indirect effects	Possible direct and/or indirect effects	Possible indirect effects	Possible indirect effects	Possible indirect effects
2) Alterations to the level of bodies of groundwater	Possible indirect effects	Possible indirect effects	Possible indirect effects	Possible indirect effects	Possible direct effects	Possible indirect effects
3) New sustainable human development activities*	Possible direct and/or indirect effects	Possible direct and/or indirect effects	Possible direct and/or indirect effects	Not applicable (because no definition of high status)	Not applicable (because not addressed in this specific context)	

Surface water body: Example for deterioration

Example 1 – Deterioration of overall status

Starting point: Overall ecological status determined by quality element in worst condition (in this case moderate).

Effect due to modification: Overall status may deteriorate due to deterioration of individual quality elements (in this example benthic invertebrate and fish fauna as an effect of deterioration of morphology), therefore triggering an Article 4(7) Test. The example includes in this case a change in overall status of the water body from moderate to poor.

Quality elements	Biological quality elements			Hydromorphological quality elements supporting the biological elements			Chem. and phys. chem. quality elements supporting the biological elements		Overall ecological status
	Aquatic flora	Benthic invertebrate fauna	Fish fauna	Hydrology	Morphology	Continuity	General conditions	River basin specific pollutants	
Starting point	2	2	3	worse than 2**	2*	worse than 2**	2*	2	3
Effect due to modification	2	3	4	worse than 2**	worse than 2**	worse than 2**	2*	2	4

Surface water body: Example for deterioration

Example 2 – Overall status remains but deterioration of a biological quality element

Starting point: Overall ecological status determined by quality element in worst condition (in this case good).

Effect due to modification: Overall ecological status maintained as good but one biological quality element may deteriorate, in this example fish fauna due to deterioration of the quality elements hydrology and continuity, therefore triggering an Article 4(7) Test.

Quality elements	Biological quality elements			Hydromorphological quality elements supporting the biological elements			Chem. and phys. chem. quality elements supporting the biological elements		Overall ecological status
	Aquatic flora	Benthic invertebrate fauna	Fish fauna	Hydrology	Morphology	Continuity	General conditions	River basin specific pollutants	
Starting point	2	1	1	1	1	1	2*	1	2
Effect due to modification	2	1	2	2*	1	2*	2*	1	2

Groundwater body: Example for deterioration

Example 5					
Starting point: Overall groundwater quantitative status is classified as "good" since each criterion meets the conditions for "good". **Effect due to modification**: Due to the modification one criterion is expected to deteriorate from "good" to "poor" (in this example due to the damage of a groundwater dependent terrestrial ecosystem), as well as the overall quantitative status, therefore triggering an Article 4(7) test.					
	Criteria				Overall quantitative groundwater status
	1) Available groundwater resource is not exceeded by the long term annual average rate of abstraction	2) No significant diminution of surface water chemistry and/or ecology resulting from anthropogenic water level alteration or change in flow conditions that would lead to failure of relevant Article 4 objectives for any associated surface water bodies	3) No significant damage to groundwater dependent terrestrial ecosystems resulting from an anthropogenic water level alteration;	4) No saline or other intrusions resulting from anthro-pogenically induced sustained changes in flow direction.	
Starting point	G	G	G	G	G
Effect due to modification	G	G	P	G	P

G: Good; P: Poor;

Example Deterioration of a surface water body which is already in the lowest class

Example 4 – Deterioration of quality element which is already in the lowest class

Starting point: Overall ecological status bad since one quality element in bad status class (fish fauna).

Effect due to modification: The quality element which is already in the lowest class (bad) is further deteriorating (in this example e.g. further loss of composition or abundance of fish fauna due to morphological changes), therefore triggering an Article 4(7) test. Note that any further deterioration of a quality element which is already in the lowest class is considered as deterioration and drives the water body further away from achieving the WFD objectives.

Quality elements	Biological quality elements			Hydromorphological quality elements supporting the biological elements			Chem. and phys. chem. quality elements supporting the biological elements		Overall ecological status
	Aquatic flora	Benthic invertebrate fauna	Fish fauna	Hydrology	Morphology	Continuity	General conditions	River basin specific pollutants	
Starting point	2	3	5	worse than 2**	2*	worse than 2**	worse than 2**	worse than 2**	5
Effect due to modification	2	3	5↓	worse than 2**	worse than 2**	worse than 2**	worse than 2**	worse than 2**	5

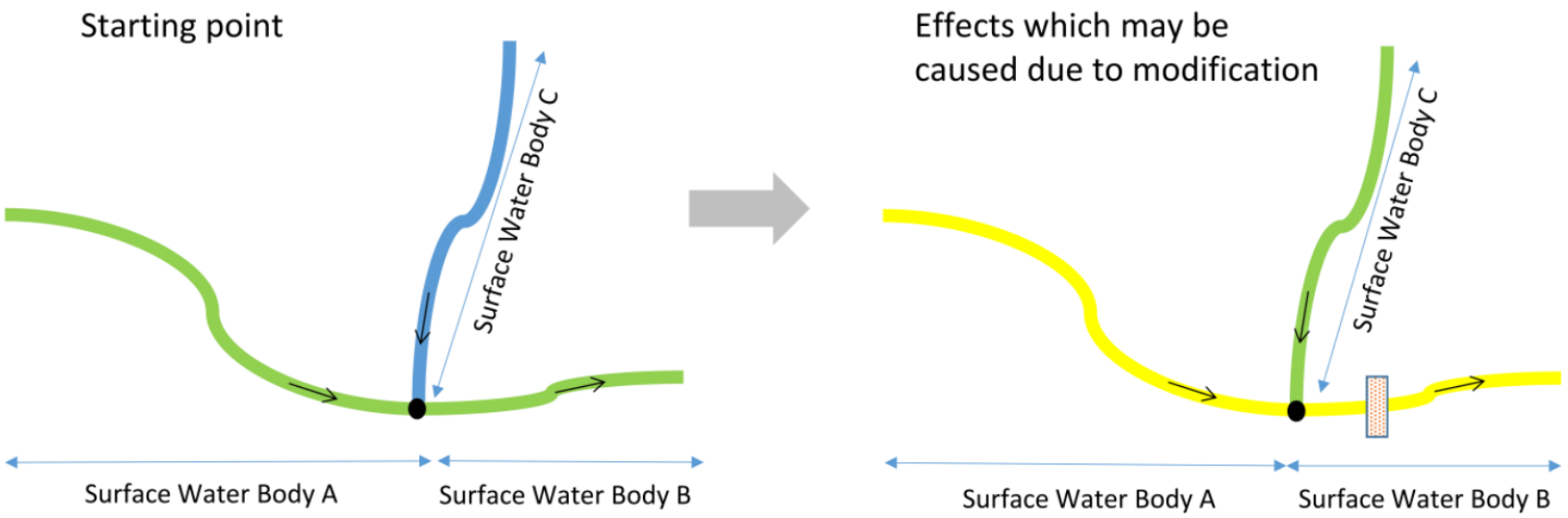
1: High; 2: Good; 3: Moderate; 4: Poor; 5: Bad

* Conditions consistent with the achievement of the values specified for good status of the biological quality elements

** Conditions not consistent with the achievement of the values specified for good status of the biological quality elements

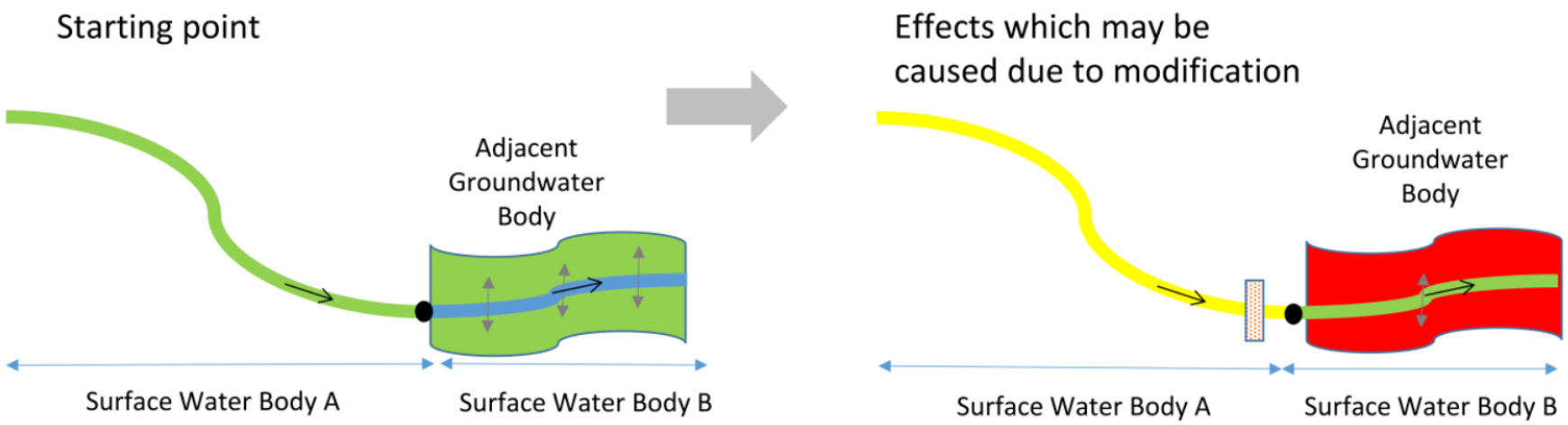
Effects on other water bodies

Figure 2: Example for effects beyond one surface water body



Effects on other water bodies

Figure 3: Example for effects beyond one water body in relation to groundwater



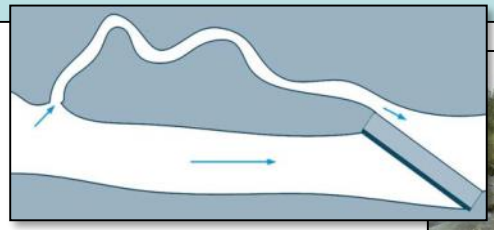
Conditions to be fulfilled for project authorisation in case project may deteriorate water body status

WFD Article 4.7(a)-(d)

Article 4.7(a)
*all practicable steps are taken to **mitigate the adverse impact** on the status of the body of water*

OBJECTIVE

→ Despite deterioration achieve best possible ecological condition by applying mitigation measures



Examples:

- Sufficient remaining flow in case of water abstractions
- Fish migration aids at dams
- Natural instead of armoured river banks

Article 4.7(d)
the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by **other means, which are a significantly better environmental option**

OBJECTIVE

→ ensure that the best environmental option is chosen to achieve the benefits of the intended project

Relevant at **strategic level**, e.g.

- Relevance of overall policy context (transport, renewable energy, …)
- Alternative project locations
- Link to SEA

Relevant at **project level**, e.g.

- Alternatives in the project design with less environmental impacts
- Link to EIA

Article 4.7(c)
*the reasons for those modifications or alterations are of **overriding public** interest **and/or** the **benefits** to the environment and to society of **achieving the objectives** set out in paragraph 1 are **outweighed by the benefits of the new modifications** or alterations to human health, to the maintenance of human safety or to sustainable development*

OBJECTIVE

→ ensure that deterioration of the public good is only allowed for a good reason

- **Range of "public interests"** exists (e.g. health, energy, security, environment)
- **Overriding public interest** – can be reasonably considered that simple declaration without well-grounded justification is not sufficient
- **Weighing of interests** - project benefits against project impacts
  - "Water costs" (i.e. negative effects of the project) to be weighed against project benefits
  - Appropriate mix of qualitative, quantitative and monetised information
- **Public consultation** helps

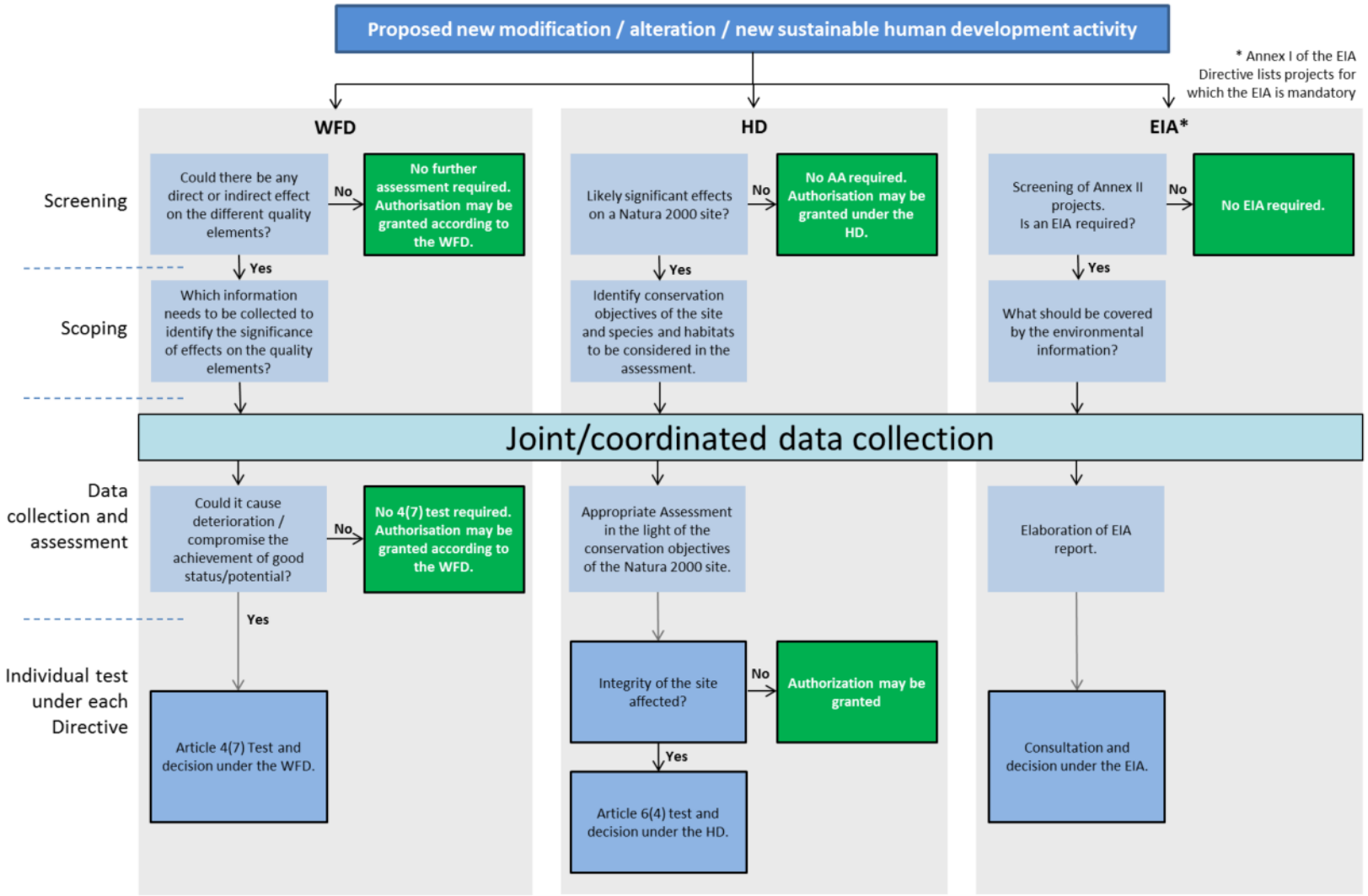
Article 4.7(b)
"the reasons for those modifications or alterations are specifically **set out and explained in the river basin management plan** required under Article 13 and the objectives are reviewed every six years"

OBJECTIVE

→ allow public scrutiny in the context of river basin management planning

- Ensuring that use of Article 4.7 exemptions is **transparent and traceable**
- MS **not required to wait** for next RBMP to authorise project, however,
- **Benefits** of including planned/envisaged projects in **draft RBMPs**
  - Allows for assessment of **interaction with other projects** and developments
  - Making **best use of public participation** process during RBMP elaboration
  - **Reduce likelihood** that interested **parties will challenge** subsequent decision on project
  - Also beneficial to include projects which may not cause deterioration

Potential for streamlining of assessments WFD, HD and EIA



Important issues related to WFD Art. 4.7

- Assessment required in advance whether planned project may cause deterioration / non-achievement of WFD objectives
- In case of expected deterioration/non-achievement: Project needs to meet Art. 4.7 conditions for authorisation
- Completing an EIA does not guarantee the fulfilment of the WFD obligations since specific assessments are needed, however
- Potential synergies with EIA/SEA and Habitats Directive are significant - MS are encouraged to exploit them at national level (e.g. data collection, consultation processes)
- National legal frameworks should allow for effective application
- Technical and environmental expertise needed – exchange and expertise of / with River Basin Management / water authority
- Transparency is important and the assessment and conclusions need to be documented in the River Basin Management Plan

Reference to JASPERS checklist

Thank you for your attention!

http://water.europa.eu/policy

Link to CIS Guidance Documents: http://ec.europa.eu/environment/water/water-framework/facts_figures/guidance_docs_en.htm