

IS THE WFD FIT FOR PURPOSE?

**Recommendations for the Implementation
of the Water Framework Directive (WFD)**



Comparative Study
Justice and Environment 2020

TABLE OF CONTENT

| | |
|--|----|
| Introduction..... | 3 |
| Overall Observations | 4 |
| Findings concerning the Screening Phase | 6 |
| Findings concerning the Assessment Phase | 11 |
| Findings concerning the Expert Opinion | 14 |
| Conclusion..... | 17 |
| Recommendations..... | 18 |
| Annex - Summary of the Questionnaires | 19 |

Introduction

The *Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy* (in short: Water Framework Directive, WFD) was adopted on October 23rd, 2000. Following an extensive “fitness check” with overwhelming feedback by the general public, it is found to be *fit for purpose*: The WFD meets all the requirements and provides a strong tool for the protection of the member states’ water bodies. In fact, almost 400.000 citizens replied to the call by the European Commission (EC), with thousands of scientists to back them up. A key element of the directive is its non-deterioration principle. Yet, the analysis has shown that its effectiveness depends strongly on the national implementation and its application by the authorities. This paper aims to sum up our results and issue recommendations for a better implementation of the WFD. A special focus will be on screening, cumulative effects, independence, and the qualification of experts.¹ The following findings and conclusions are based on the research of Justice and Environment in Austria, Croatia, Bulgaria, the Czech Republic, and Hungary. A detailed summary of the national answers is enclosed as Annex to this study.



Danube river, Source: pixabay

¹ J&E has already done an analysis with expert interviews regarding Article 4/7 WFD in 2018; Guidance Document No. 36 Exemptions to the Environmental Objectives according to Article 4(7), online available: https://circabc.europa.eu/sd/a/e0352ec3-9f3b-4d91-bdbb-939185be3e89/CIS_Guidance_Article_4_7_FINAL.PDF.

Overall Observations

EU citizens and wildlife alike need clean surface and groundwater bodies for survival (e.g. as drinking water supply, habitat) and usage (e.g. fishing, tourism). Intact communities can only exist if the hydro-morphological, biological, and material conditions are favourable. Therefore, the protection and regeneration of its water bodies is one of the main priorities of the respective directives. One of the central pieces of EU environmental legislation concerning the protection of water bodies is the WFD. Its national implementation and enforcement by the member states' authorities is central to the protection efforts. The REFIT process has shown that the directive contains all the necessary instruments for reaching the goal of a good status of the EU water bodies. Yet even though the directive is sufficient, its implementation and enforcement are not. In fact, the national transposition of the WFD poses several (technical) challenges - particularly because many of the European river basins are trans-/ international, crossing various territorial borders. Furthermore, the European water bodies fulfil several socio-economic as well as biological functions, which may stand in conflict with each other.

Therefore, a comparison across several EU states can show insights into best and worst practices. The overall consensus of the surveys carried out in Austria, Hungary, Bulgaria, Croatia and the Czech Republic shows that the WFD has great potential, but that the results and public participation vary greatly depending on how much the methodology of the WFD is adhered to. The outcomes of our research show the following:

- In Austria and the Czech Republic there is **no official pool of experts**, which is different in Hungary and Croatia. In general, they are required to have sufficient work experience and/ or an academic degree in the respective field. Furthermore, concerns have been expressed, regarding the experts' independence - especially with regard to the experts that are hired by the project developer (e.g. in Bulgaria).
- The study has shown that there are states, where **public participation** as stated in the Aarhus Convention hinges on the question on whether the procedure according to the WFD is required or not. In other words: procedures for projects where the public authority finds that there is no deterioration in water quality, public participation and access to justice may not be granted. In Austria for example, the project solicitor has to apply for water usage rights, providing an expert report stating the likeliness of a deterioration and laying down whether an exception pursuant to Art 4/7 WFD is necessary or not. This report is then being assessed by the in-house experts of the

public authority, their screening decision on the type of procedure in some countries like Austria, cannot be challenged. This is similar in Hungary, where the screening procedure is carried out in the frame of other assessment procedures.

- **Cumulative effects** are often not considered properly: In Croatia, for example, the national legal expert mentioned that when a project is located in a water area, the competent authorities often fail to take into account its impact in its entirety. Furthermore, the effects on groundwater are not processed. Similarly, in Austria, (existing) projects must be handled on a case-by-case-basis - in most cases a larger scale plan, taking into account similar planned projects, is not given. This is analogous in Hungary: In fact, the environmental policy expert highlighted that ‘salami slicing’ is one of the most urgent problems in Hungary.
- **Lack of data:** It was negatively mentioned that Croatia does not have enough estimation of the condition and no data on the hydro-morphological state of its water bodies, which makes it difficult to estimate the impact of a project on the environment. One expert there also criticized that there is a problem of laboratories not having sufficient capacities.
- Overall, the study has shown that **NGOs do not have sufficient legal standing** in Austria or the Czech Republic. In Hungary, NGOs may have legal standing in environmental administrative procedures, particularly in environmental impact assessments, in environmental audits, in consolidated environment use permit procedures and in procedures where the environmental authority acts as an expert authority. In Austria, NGOs cannot call for a screening decision, which it is usually done automatically and without public participation. The same is true for the Czech Republic and Croatia.
- The results of screenings are mostly **published on the webpages:** In Austria, the result of the screening usually is published on the “WISA” platform.² Similarly, in Bulgaria there is a public register for EIA/ SEA decision on the homepage of the MoEW.³ In Croatia it is published at the ministry website.

² Online available at: <https://wisaplattform.bmnt.gv.at/bescheide.html>.

³ Online available for EIA: <http://registers.moew.government.bg/ovos/>, and for SEA: <http://registers.moew.government.bg/eo/>.

Findings concerning the Screening Phase

The screening procedure is incremental in establishing which projects must undergo a WFD procedure. While it is usually explicitly specified, which projects need to do so, there are some cases where an individual assessment is needed. Additionally, there are states, where public participation as stated in the Aarhus Convention hinges on the question on whether the procedure according to the WFD is required or not:

In Austria, the screening decision is carried out via the “normal” procedure of assessing projects pursuant to the WRG⁴. This means that there is no separate “screening” procedure. The project solicitor must apply for water usage rights, provide an expert report stating the likeliness of a deterioration and laying down whether an exception pursuant to Art 4/7 WFD is necessary or not. This report is then being assessed by the in-house experts⁵ of the respective authority. Usually, in-house experts of the public authority in question take part in the screening procedures.

Similarly, in Hungary, public authorities are required to assess the impacts that certain projects (e.g. dams for hydropower production or flood protection) may have on the status of water bodies. The screening procedure is carried out in the frame of other assessment procedures, e.g. in an SEA or EIA proceeding, based on Art 14/2(a) Gov. Decree 2/2005 (in short: SEA Decree) and Art 1/6a Gov. Decree 314/2005 (in short: EIA Decree). The SEA Decree mentions that it complies with the provisions laid down in the WFD, however, further references to the ‘applicability assessment’ are not provided. The national WFD guidance document explains that if a project (potentially) affects water bodies, its likely impacts on water bodies shall be identified within the SEA. In addition, this document indicates that plans/ programs usually do not contain sufficient details on the planned projects. Consequently, the SEA Reports only refer to the necessity of the applicability assessment in the EIA proceeding. However, the SEA Decree does not regulate how the assessment under Art 10 Gov. Decree 221/2004 should be carried out. - The national guidance document does not clarify this either. Art 1/6a EIA Decree stipulates that during the EIA proceeding it shall be verified that the conditions set out by Art 10 Gov. Decree 221/2004 are met. The water authority shall assess the report. However, it was criticized that it often does not have sufficient capacities or the necessary expertise. Thus, the impacts on water bodies are

⁴ In German: Wasserrechtsgesetz 1959, BGBl. Nr. 215/1959 idgF.

⁵ In German: Amtssachverständige.

assessed during the EIA proceeding; the ‘applicability assessment’ is, therefore, part of the EIA.

According to Art 2/A EIA Decree, where an activity listed in Annex 3 does not reach the threshold value, or where the criteria specified for the activity are not met, the assessment of whether the activity is expected to have significant environmental impact and whether an environmental impact assessment is necessary shall be carried out without a preliminary assessment procedure: This means that if an activity is not subject to an EIA regime but can have significant impacts on waters, the project solicitor has to apply for the authorisation of water usage. The application documents shall present “the results of the assessment of the significance of environmental impacts”. The obligation of screening for the Art 4/7 WFD-assessment is based on the data provided by the developer. Based on the interviews, however, one of the main problems seems to be that there is no possibility to significantly influence the content of the application documentation. At the time of initiating the permitting procedure, the main features of the project are already decided on (including the question whether an applicability assessment is necessary or not).

In Bulgaria, the legal framework for the Art 4/7 WFD assessments (in short: Applicability Assessments, ApA) is laid down in the Water Act 2000 (WA)⁶ and the Methodology for applying the exemptions in Art 156b-156f WA 2016 (Art 4/7 WFD exemptions)⁷. The ApA is integrated into the EIA of investment proposals or in the SEA of river basin management plans. When the investment proposal falls within the scope of Annex 2 of the Environmental Protection Act, the fulfillment of the requirements under the WA (e.g. all practical measures have been taken to reduce the adverse impact) and alternative decisions under Art 156f/7 for the respective investment proposal shall be taken into account. The experts of the Ministry of Environment and Water (MoEW) or the Regional Inspectorate of Environment and Water (RIEW) are the competent authorities for EIA/ SEA procedures. They are obliged to consult the River Basin Directorate which is in charge of the water management at river basin level.

In the Czech Republic, the screening procedure is conducted by the water authority (section 17/5 Water Act). If it concludes that the project can lead to a deterioration or cannot achieve good environmental status/ ecological potential of the water body concerned, it will stipulate that the applicant must apply for an exemption (section 23a/8 Water Act). The assessment is

⁶ Online available in English: <https://www.mrrb.bg/en/act-on-waters/>, and in Bulgarian: <https://www.lex.bg/laws/ldoc/2134673412->.

⁷ Online available: <https://lex.bg/bg/laws/ldoc/2136888329>.

conducted by the water authority, which must consider the opinion of the river basin management authority.

Concerning Croatia, two legal experts said that Art 4/7 WFD is not being applied sufficiently. This was, however, disputed by another expert: According to him, the water impact assessment is an independent administrative procedure that needs to be decided by an administrative act. According to Art 63/1 Water Act (in short: WA) it is necessary to assess the impact of the intervention from the point of view of water protection objectives. This procedure is carried out jointly with the administrative assessment procedure on the need for an environmental impact assessment. According to Art 62/1 WA, the decision that the intervention negatively affects the objectives of water protection must be made if due to its implementation the good groundwater status, good ecological status/ potential cannot be achieved or if it leads to a deterioration of the surface or ground water body. In fact, he mentioned that the violation of WFD occurs in the entire Croatian territory. When a project is located in a water area, the competent authorities often fail to take into account its impact in its entirety. Furthermore, the impact on groundwater is not processed or considered. Several procedures of the environmental impact assessment and appropriate assessment were conducted without taking into account the basin area where the project is located or disregarding the objectives of the management plan of the Croatian water areas. In this regard he mentioned an infringement procedure against the Republic of Croatia pursuant to Art 110 WA (EC Infringement Procedure No. 20192276 of October 10th, 2019): The infringement proceedings for violation of EU law were initiated by the EC regarding the exploitation of gravel from rivers.

Another Croatian expert said that the screening procedure is done within the SEA/ EIA, as part of the assessment of the needs for the project to undergo an EIA or within other environmental assessments. She said that the problem is that Croatia does not have enough estimations of the condition and no data on the hydro-morphological state of its water bodies. She also criticized that there is a problem of the under-capacity of laboratories. In these procedures, public institution experts are used from Hrvatske vode, Environmental ministry. Two of the experts criticized that Croatia does not have experts who know how to prepare an assessment on water bodies in accordance with the WFD. Usually, hydrologists prepare that part of the assessment, without explaining how the change of the respective water body affects the environment. One expert mentioned that often companies authorized for the assessment consist of persons who just finished university, lack experience, and do not know anything about the WFD. - The same is true for officials in specific departments.

Overall, NGOs do not have legal standing in Austria or the Czech Republic. In Hungary, they have legal standing in environmental administrative procedures, in particular in environmental impact assessments, environmental audits, consolidated environment use permit procedures and procedures where the environmental authority acts as an expert authority. In Austria, they are restricted to being a “participant”, rather than a party, which grants them some but not all rights of parties in the procedure.

Yet, in Hungary where the water authority is the main decision-maker and the environmental authority is not involved as expert authority, the legal standing of NGOs is not ensured. In the case of the Art 4/7 WFD-assessment being carried out in an SEA, there is no possibility to challenge the result of the screening. In Bulgaria the screening decision is subject to legal review (Art 93(10) EPA) and NGOs as well as individuals are granted legal standing. In Croatia NGOs and the public have legal standing. Yet, one expert mentioned that even though NGOs have the right to participate in the screening procedures, this is often neglected.

In Austria, NGOs cannot call for a screening decision, but it is usually done automatically. The same is true for the Czech Republic and Croatia. In case of the latter, they can request the ministry to initiate such a procedure or they can file an administrative lawsuit for the omission. As part of the consultation, the general public and NGOs can comment that no assessment has been done but there is no obligation to accept. In Bulgaria the integration of the ApA into the EIA/ SEA is provided for in the law. If the impacts on water bodies are not taken into account and the procedure for consultation with the River Basin Directorate is not being followed, the screening decision can be challenged and annulled. However, the administrative procedure is led by the competent authority and the public is not directly involved in it. NGOs can challenge the result in Austria, if the authority finds that there is most likely no exception (Art 4/7 WFD) necessary. This is similar in Bulgaria, where NGOs and the public can challenge negative screening decisions. In Croatia they are also able to challenge it by an administrative lawsuit, if it is issued in the form of an administrative act. They are not able to challenge negative screening decisions in the Czech Republic.

In Austria, the result of the screening is published on the “WISA” platform.⁸ Similarly, in Bulgaria there is a public register for EIA/ SEA decision on the website of the MoEW.⁹ In

⁸ Online available at: <https://wisaplattform.bmnt.gv.at/bescheide.html>.

⁹ Online available for EIA: <http://registers.moew.government.bg/ovos/>, and for SEA: <http://registers.moew.government.bg/eo/>.

Croatia it is published at the ministry webpage. Another expert said that the SEAs are sometimes available on the portal for e-consultation (“e-savjetovanja”). If the result of the screening procedure rules out possible deterioration of the water body then the result is published via decision of project realization in the Czech Republic. The decision is delivered to the parties concerned. If the result of the screening procedure suggests possible deterioration or that the realization of the project might prevent the good environmental status/ ecological potential of the water body concerned, then the water authority will issue a resolution, which will be addressed to all the parties concerned.

For Hungary, Bulgaria, the Czech Republic, and Austria no best practice examples have been mentioned: The Austrian NGO expert feels that there are too few procedures which require an exception following Art 4/7 WFD, considering the number of procedures altogether. A study conducted by the WWF in 2018 suggested that there are several cases, where a deterioration has not been found, even though the materials suggested that there would be one. There also seems to be an issue with transparency, i.e. whether the permissions provided allow for an accurate assessment.¹⁰ One example for a “bad” screening decision is the hydropower plant “Lesachbach” in Tyrol, where an expert confirmed a deterioration in water quality but the authority ruled it out to be “too insignificant” to trigger Art 4/7 WFD. The public authority noted that there are standards set for screening decisions, especially in the catalogue of the Federal Ministry, which can help improve the quality of decisions.¹¹

In Croatia, the environmental expert mentioned that there are no good practice examples because they are not done properly. However, she said that in the screening procedure for SEA concerning changes in the spatial plan for Karlovac County, the County decided not to approve 8 new small hydropower plants. The reason for this were a couple of comments from the public and NGOs which stated that there was a lack of data and assessment of the impact of several hydropower projects (and their correlation with existing hydropower projects).

¹⁰ The report can be found online at: <https://www.wwf.at/verschlechterungsverbot>.

¹¹ Online available at: https://www.bmlrt.gv.at/wasser/wasser-oesterreich/wasserrecht_national/planung/Kriterienkatalog.html.

Findings concerning the Assessment Phase

The study shows that cumulative effects are dealt with differently in the examined countries:

In Austria, all (existing) projects seeking permission should be considered as soon as they enter the permitting procedure. Relevant here is the status of the water body at the time of the permission, therefore including present cumulative effects. This means, that they are handled on a case-by-case-basis and that in most cases a larger scale plan is not given. In turn this means, that the project solicitor has the right to be issued a permission, if the project fulfils all legal criteria. The expert added that in critical cases, the question of cumulative effects has to be raised by the opponents. One “worst practice” example the expert mentioned was the River Isel with seven ongoing projects, where cumulative effects were not checked out thoroughly.

This is similar in Hungary: During EIA procedures, existing projects as well as projects already permitted should be taken into account when considering the likely cumulative effects. Unfortunately, however, projects which are currently being permitted, are not considered. The environmental expert highlighted that ‘salami slicing’ is one of the most important issues. As a bad example she mentioned a project concerning the floodplain management of Tisza River. This project was divided into several sections and the authorities of the counties concerned conducted separate permitting procedures without considering the likely cumulative effects. In Bulgaria, the cumulative effects of proposals are assessed within the EIA. The cumulative effects of plans/ programs are assessed within the SEA procedure. A special provision for cumulative effects within the ApA (which is integrated into the EIA) is provided for in Art 156f (6) WA. The assessment of the cumulative impact of already permitted activities within the boundaries of the water body shall be reported under Art 156f (3)-(4) WA. This is different in the Czech Republic: Neither the Water Act nor any other regulation deals with cumulative effects. In Croatia, one expert mentioned that cumulative effects are not considered properly. Another one said that they should be taken into consideration according to the law but complained that this is often not done in practice.

Concerning the question, at what stage projects must be considered as cumulative in assessments, the answers varied as well: In Austria they have to be considered as soon as they are submitted to the public authority. In Hungary, projects must be permitted in order to be considered. Similarly, in Bulgaria, new investment proposals are assessed for cumulative effects with the already permitted activities. In Croatia they have to be considered in EIA/ SEA

studies. One legal expert said that he guessed that they should be considered at the assessment stage, before the decision of their approval has been taken.

As the study has shown, that not in all countries the public and NGOs are able to bring forward claims of cumulative effects in ongoing proceedings: In Austria, in procedures, generally an NGO bringing up the question of cumulation is sufficient to have it checked by the experts. However, in court procedures, this is sometimes not enough, and an expert opinion must be presented as proof. Here the issue is with the fact that NGOs are only party to Art 4/7 WFD procedures, all other permission procedures can only be challenged if they are under the rule of EU law. In procedures in Hungary, usually an NGO bringing up the question of cumulation is sufficient to have it checked by the authority, which means in practice that the project developer is ordered by the authority to amend the application documentation in this respect and the authority approves the explanation. If the NGO would challenge the developer's expert opinion - approved by the authority - in the court procedure (judicial review of the administrative decision), as evidence, an expert opinion has to be brought.

In Bulgaria, the public is involved in the consultation of the EIA report with the opportunity to provide opinions and participate in the public hearing of the EIA report where they can put forward claims of cumulative effects. These are examined by the project developer. According to the characteristics of the investment proposal the project developer determines with which specialized authority departments and representatives of the affected public he/ she intends to carry out the consultations under Art 95, para 3 EPA. In case of declared written interest in the EIA procedure by persons or organizations other than those specified above, the project developer ensures consultations with the interested parties. The consultations may be declared and organized via announcement in the mass media, sending messages to the local authorities, preparation and distribution of a brochure with brief information about the investment proposal or in any other suitable form. During the consultations, the project developer provides sufficient information to clarify its intentions and time for specialized agencies and the public concerned to express an opinion. The project developer prepares a report on the consultations carried out and on the reasons for the acceptance or non-acceptance of recommendations. After the public hearing of the EIA report within 10 days, the project developer submits written opinion on the proposals, recommendations, opinions, and objections as a result of the public hearing. When, as a result of the public hearing, other possible ways of implementing the investment proposal and/ or new information are proposed in writing on the basis of an expert assessment that differs from the one presented in the EIA

report, the project developer assigns supplementing the EIA report and its annexes. The assessment not to assign a supplement to the EIA report together with the reasons for it shall be included in the opinion.

In Croatia the public can be bring forward claims during the public consultation process but there is no obligation for the authority to accept these comments. One expert said that NGOs and the public can provide comments on the study. If cumulative effects have not been taken into consideration the lawsuit can be submitted to the administrative court. One Croatian expert said that the ministry/ authority has no burden of proof. The public and NGOs can claim cumulative effects by participating in the specific procedure.

Findings concerning the Expert Opinion

Experts play a major role in any procedure, as they inform the public authority's decision and lay the foundation for the whole case. Only if they are sufficiently independent and their input is up for control by the public, transparency can be guaranteed.

The main experts in Austria are the authority's own experts, if none is available, an outside expert will be appointed by the authority. Aside from that, the project solicitor has to bring expert opinions to prove his claims are warranted. The role of the experts in the proceedings is different. Usually, the project solicitor employs subcontractors to prepare his project and to hand in the necessary paperwork. These consultants are in their employ. Then the technical experts of the public authority examine these documents and project opponents may bring their own consultants/ (technical) experts to challenge the assumptions made. To challenge them successfully in court, the experts have to be recognized by the court. In practice the technical experts of the public authority are followed by the authority in their reasoning. To be recognised as an expert they need to have finished their academic studies and/or years of professional experience. The same is true for Hungary.

In Austria and Hungary, experts are liable for their testimony, ensuring their independence. However, in the case of the latter, the NGO expert explained that although there are legal requirements on the experts' independence, this does not ensure their independence, as the experts are paid by the developers. In fact, they experienced that experts often try to facilitate the development instead of considering all relevant aspects objectively. The main experts are the project solicitor's experts and the documentation prepared by them is checked by the authority's experts during the procedure. In EIA proceedings in which the environmental authority is making the decision on the EIA permit, the water authority is involved as expert authority relating to water issues. Based on the wording of Art 10 (4) Gov. Decree 221/2004, benefits to the environment and to society are considered as reasons of public interest. The interviews pointed out that experts of the authority often do not have sufficient expertise to appropriately evaluate the necessity of an applicability assessment or - if such an assessment is carried out - the sustainability of the project. The developer employs an expert to prepare the application for permit (including the EIA report if necessary). The officials of the public authority examine the application documents. In practice, the expert opinion of the developer is followed by the authority in the reasoning of the decision. However, as the expert also pointed out, due to insufficient capacities and expertise, it often occurs that the staff of the authority fails to discover instances of non-compliance in the documents. Other parties of the procedure (e.g. NGOs, individuals whose rights/ lawful interests are affected) may bring their

own experts to challenge developer's statements. In the court proceeding, these experts have to be recognized by the court.

As a good example for Hungary, the water management expert mentioned the expert study on the rehabilitation of the water level at the Mosoni-Danube estuary. In her opinion, the aspects according to Art 4(7) WFD were properly assessed in the study prepared for development. A further, interesting example mentioned by the OVF's expert is the SEA on the navigability of the Danube, which contains all the elements under Art 4(7) WFD. The draft assessment did not establish coherence between ecological and social benefits which problem has been solved in the final report.

In Bulgaria, the ApA is part of the EIA. The experts are hired by the project developer to prepare the EIA report. These experts must submit a personal declaration that:

- meets the requirements of Art 83, para 2 EPA;
- knows the requirements of the current Bulgarian and European environmental legislation and in his work on the assessments under Art 81, para 1 EPA refer to and comply with these requirements and with applicable methodological documents;
- is not personally interested in the implementation of the investment proposal (e.g. are not related persons within the meaning of the Commercial Act or not in an employment relationship with the assignor).

The experts are responsible for the completeness, reliability, and objectivity of the sections of the EIA report developed by them under Art 12/1, item 4 and of the conclusion given by them in the sense of Art 83/5 EPA. The experts are fully liable for damages occurring due to the non-fulfilment of these obligations. They are Bulgarian or foreign natural persons who have a master's degree and have declared to know the requirements of the current Bulgarian and European environmental legislation and in their work on the assessments under Art 81, para 1 EPA refer to and comply with these requirements.

For the Czech Republic, the following has been described: According to section 54 (4) Water Act the water authority builds upon the expert opinion of the river basin management authority while conducting an Art 4(7) WFD assessment. Yet, neither the Water Act nor any other legal regulation ensures the independence of the river basin management authorities, which are governed by the ministry of agriculture. In Croatia, according to the interviews, there are no experts who have knowledge of the WFD, let alone of Art 4/7 WFD. Furthermore, their independence is not ensured since they are chosen and paid by the developer. Regarding experts in the committee later (EIA for example) these "experts" are officials from different

authorities (e.g. ministries) and are there for political reasons and not by their expertise. They have to possess a specific certificate and the respective company has to have a specific number of employees - in order to be able to prepare environmental documents.

There is no official pool of experts in the Czech Republic or Austria, although there seems to be a similar list of some technical experts handled by the Ministry of Justice for the latter. In Hungary, the official register of experts is maintained by the Ministry of Justice, furthermore, water management engineers are members of the Hungarian Chamber of Engineers. In Bulgaria consultancy companies specialized in EIA/ SEA are usually hired by the project developers. In Croatia there is a pool of experts, which is managed by the Ministry of Economy and Sustainable Development.

In Austria, every party to a procedure may seek for the dismissal of an expert due to bias if it is the expert by the public authority. This does not apply to procedures of the first instance, as NGOs are not “parties” there, but only “participants”, meaning that they are stripped of some rights such as this one. The same is true in Hungary. In Bulgaria, the experts are selected by the project developer and liable for their expert assessment. They are under contractual terms only with the developer and only he could dismiss them. This institute is not anyhow regulated within the Water Act of the Czech Republic. There is some chance according to the General Administrative Act in Croatia but it has never been used. One expert mentioned that there is a mutual understanding between the authorities, experts and environmental committees which decide on the approval of the studies. Although there is a possibility that specific experts or company may lose the licence, there is no available data that this has ever been done.

Conclusion

The WFD brings about a holistic approach to water as a resource, protecting it not only as a commercial good but also as an important habitat that fulfils a number of ecological functions. It aims to create a framework for the sustainable management of water. At the heart of this EU legislation are the environmental objectives, outlined in Art 4 WFD: The basis of this is the good status that all European waters must reach. Surface water bodies must reach the good ecological and chemical status. Similarly ground waterbodies have to reach the good chemical and quantitative status. Furthermore, it is stipulated that their status must not be deteriorated. At the same time, economic considerations are given more importance.

Overall, the WFD is found to be fit for its purpose: Following an extensive “fitness check” with an overwhelming feedback by the general public, it became clear that it meets all the requirements and provides a strong tool for the protection of the member states’ water bodies. In sum, the evaluation has shown, that the WFD brings benefits to the EU, is coherent with other European legislation and does not cause disproportionate costs. It also showed that its efficiency and effectiveness differ a lot - depending on the national transposition. Among the main findings are:

- Experts play a key role in all procedures. But there often is no official pool of experts who are involved in the WFD process, creating a rather non-transparent situation.
- The study shows that the involvement of the public is limited. They are mostly not involved in the screening process. Furthermore, in most countries there are no legal remedies for NGOs provided. However, it was positively mentioned that the results of screenings are mostly published on the national websites.
- Cumulative effects are often not considered properly and there seems to be a lack of data to effectively assess the environmental impact on the condition of water bodies. There is an overlap of planning that an increase in planning via the Strategic Environmental Assessment (SEA) could potentially help with.

Recommendations

As a result of our research, Justice & Environment recommends the following:

1. *Cumulative effects should be properly assessed.*

- ✓ Authorities should assess the impact of a project on a water area in its entirety;
- ✓ The impact on groundwater should be processed;
- ✓ Planning on a larger scale (e.g. river-sections or whole rivers) can assist assessing cumulative effects early and transparently. This could potentially be done with the instrument of SEAs;
- ✓ The practice of 'salami slicing' is one of the most important problems in Hungary and should be dealt with accordingly;
- ✓ There should be sufficient data on the condition and hydro-morphological state of water bodies.

2. *Ensure more transparency and consultation within the WFD procedure*

- ✓ It should be transparent which experts are involved in WFD procedures. Their independence and expertise should be assured by binding standards;
- ✓ NGOs should be allowed to participate in the entire WFD procedure and have access to legal remedies in accordance to the Aarhus Convention: Most importantly, they should have legal standing in environmental administrative procedures, in particular in environmental impact assessments, in environmental audits, in consolidated environment use permit procedures and in procedures where the environmental authority acts as an expert authority.
- ✓ Furthermore, public participation should be given a broader application.

Annex – Summary of the Questionnaires

A key element to the WFD is its non-deterioration principle: According to Art 4/7 WFD projects with potentially negative effects on the water quality must undergo an assessment and may only be approved under strict conditions. However, the effectiveness of this system depends not only on the directive itself but also on its national implementation and application by the authorities. In order to identify the state of national transposition as well as best practice examples from the countries, questionnaires were given to NGOs, experts and decision-makers in the field. Within these, priorities were placed on screening, cumulative effects, independence and the qualification of experts. They were divided into three parts:

- Section I. is concentrated on the screening procedure;
- Section II. is concentrated on cumulation;
- Section III. is focused on the expert opinions.

The names and contact data of the national legal experts and decision-makers can be provided on request upon approval of the person concerned. The same stands for the national answers on the questionnaire.

Countries involved include: Austria, Bulgaria, Croatia, the Czech Republic and Hungary.

1. To find out whether or not an assessment pursuant to Art 4/7 WFD is necessary, the public authority can do a screening.

1.1 How does this screening procedure work in your country?

In **Austria**, the screening decision is done via the “normal” procedure of assessing projects pursuant to §§ 104, 104a WRG (“*Wasserrechtsgesetz*”). The project solicitor has to apply for water usage rights (e.g. for hydropower). He/ she has to provide an expert report stating whether a deterioration is to be expected and whether an exception pursuant to Art 4/7 WFD is necessary. The public authority will then hand over the expert report to its in-house experts (who are employed by the public authority) that assess the report and prepare a recommendation to the authority who is responsible for the final decision. - There is no separate “screening” procedure, but it is part of the normal permission procedure.

In **Hungary**, public authorities are required to assess the impacts that certain new projects (e.g. dams for hydropower production, flood protection) may have on the status of water bodies.

The list of these projects includes new modifications to the physical characteristics of surface water bodies (hydro morphological alterations), alterations to the level of groundwater and new sustainable human development activities. The screening procedure is carried out in the frame of other assessment procedures, e.g. in an SEA/ EIA proceeding, based on Art 14/2(a) Gov. Decree 2/2005 (in short: SEA Decree) and Art 1/6a Gov. Decree 314/2005 (in short: EIA Decree). The SEA Decree mentions that it complies with the provisions laid down in the WFD, however, further references to the ‘applicability assessment’ are not provided. The national WFD guidance document explains that if a project (potentially) affects water bodies, its likely impacts on water bodies shall be identified within the SEA. In addition, this document indicates that plans/ programs usually do not contain sufficient details and/ or data on the planned projects. Consequently, the SEA Reports only refer to the necessity of the applicability assessment in the EIA proceeding. An SEA shall be prepared for plans/ programs which may have significant adverse impacts on waters or registered protected areas regulated by the national legislation regarding river basin management. However, the SEA Decree does not regulate how the assessment under Art 10 Gov. Decree 221/2004 should be carried out. The national guidance document does not clarify this either. Art 1/6a EIA Decree stipulates that during the EIA proceeding it shall be verified that the conditions set out by Art 10 Gov. Decree 221/2004 are met. Thus, the impacts on water bodies are assessed during the EIA proceeding; the ‘applicability assessment’ is, therefore, part of the EIA. According to Art 2/A EIA Decree, where an activity listed in Annex 3 that does not reach the threshold value, or where the criteria specified for the activity are not met, the assessment of whether the activity is expected to have significant environmental impact and whether an environmental impact assessment is necessary shall be carried out without a preliminary assessment procedure. This means that if an activity is not subject to the EIA regime but can have significant impacts on waters, the project solicitor applies for the authorisation of water usage. He/ she has to submit the application with the content stipulated by law (BM Decree 41/2017; Annex 13 EIA Decree) to the water authority. The application documents shall present “the results of the assessment of the significance of environmental impacts”.

The obligation of screening for the Art 4/7 WFD assessment is based on the data provided by the project solicitor. However, as one expert mentioned, at the time of initiating the permitting procedure, the main features of the project are already decided on (including the question whether an applicability assessment is necessary or not). The alternatives presented in the documentation usually do not entail remarkable differences to the project or are unrealistic.

In **Bulgaria** the legal framework for the Art 4/7 WFD assessments (in short: Applicability Assessments, ApA) is provided for within the Water Act 2000 (WA)¹² and the Methodology for applying the exemptions in Art 156b-156f WA 2016 (Art 4/7 WFD exemptions)¹³. The ApA is integrated into the EIA of investment proposals or in the SEA of river basin management plans (RBMP). When the investment proposal falls within the scope of Annex No. 2 of the Environmental Protection Act, the following shall be taken into account:

- the fulfillment of the requirements under the WA:
 - o all practical measures have been taken to reduce the adverse impact on the condition of the water body;
 - o the reasons for the established changes or deviations have to be explicitly indicated and explained in the river basin management plan and the objectives have to be reviewed every 6 years;
 - o the reasons for these changes or deviations have to be in the interest of society or the benefits from them for the human health/ safety or for the sustainable development have to exceed the benefits for the environment and for the society from the achievement of the goals under Art 156a/1 WA;
 - o the benefits achieved by these changes or deviations in the condition of the water body, due to technical reasons or excessive costs, cannot be achieved by other means, the undertaking of which is more favorable for the environment;
- the alternative decisions under Art 156f/7 WA for the respective investment proposal.

In the **Czech Republic** the screening procedure (in short: Application Assessment) is conducted by the water authority according to section 17/5 Water Act. If the water authority concludes that the project can lead to a deterioration or cannot lead to the achievement of good environmental status/ ecological potential of the water body concerned, it will stipulate that the applicant must apply for exemption pursuant to section 23a/8 Water Act.

Two **Croatian** legal experts said that Art 4/7 WFD is not being applied in Croatia and that most likely environmental institutions would not know how to apply it. This was disputed by another national expert: According to him, the water impact assessment is an independent administrative procedure that needs to be decided by an administrative act. According to Art 63/1 Water Act (OG 66/19, hereinafter: WA) it is necessary to assess the impact of the intervention from the point of view of water protection objectives.

¹² Online available in English: <https://www.mrrb.bg/en/act-on-waters/>, and in Bulgarian: <https://www.lex.bg/laws/ldoc/2134673412->.

¹³ Online available: <https://lex.bg/bg/laws/ldoc/2136888329>.

This procedure is carried out jointly with the administrative assessment procedure on the need for environmental impact assessment. According to Art 62/1 WA, the decision that the intervention negatively affects the objectives of water protection must be made if due to its implementation the good groundwater status, good ecological status/ potential cannot be achieved or if it leads to a deterioration of the surface or groundwater body.

In fact, he mentioned that the violation of WFD occurs in the entire Croatian territory. When a project is located in a water area, the competent authorities often fail to take into account its impact in its entirety. Furthermore, the impact on groundwater is not processed or taken into account (Art 4/b (ii) WFD). - Several procedures of the environmental impact assessment were conducted without taking into account the basin area where the project was located, or disregarding the objectives of the management plan for the Croatian water areas. In this regard he mentioned an infringement procedure against the Republic of Croatia pursuant to Art 110 WA (EC Infringement Procedure No. 20192276 of October 10th, 2019): The infringement proceedings for violation of EU law were initiated by the EC regarding the exploitation of gravel from rivers. In 2018 Croatia tried to circumvent the obligation to implement procedures for assessing the compatibility with the ecological network and for assessing the impact on the environment. In fact, a new legislative act introduced a special procedure for approving projects related to the exploitation of gravel and sand by extraction from renewable deposits in watercourses and other surface water bodies. The EC considered this to be a breach of the provisions on environmental impact assessment of the Habitats Directive (Council Directive 92/43/EEC), the WFD and the EIA Directive.

Another Croatian expert said that the screening procedure is done within the SEA/ EIA, as part of the assessment of the needs for the project to undergo an EIA or within other environmental assessments. She said, however, that the problem is that Croatia does not have enough estimations of the condition or the hydro-morphological state of its water bodies. In fact, the condition of only 12% of the water bodies is estimated. This means that there is not enough data yet. Furthermore, the WFD methodology was not used in their “assessment”. She also criticized that there is a problem of the under-capacity of laboratories.

1.2 What experts, if any, are used in screening procedures?

In **Austria**, usually in-house experts take part in the screening procedures. Only if they are not available, other experts¹⁴ can be called upon (these are experts not in the employ of the public authority).

¹⁴ In German: Nichtamtliche Sachverständige.

In **Hungary**, the water authority shall assess the report. However, it often does not have sufficient capacities or the necessary expertise. Unless Natura 2000 sites or catchment areas are directly affected, the authority usually accepts the developer's declaration on whether a deterioration of water bodies is expected or not, and the authority proceeds accordingly.

In **Bulgaria**, the experts of the Ministry of Environment and Water (MoEW) or the Regional Inspectorate of Environment and Water (RIEW) are the competent authorities for EIA/SEA procedures. They are obliged to consult the River Basin Directorate which is in charge of the water management at river basin level: According to Art 4a EIA Ordinance, the MoEW or RIEW has to send the notification under Art 4 to the respective basin directorate for opinion under Art155/1, item 23 WA. This Art is regarding the admissibility of the investment proposal in relation to the regimes defined in the current river basin management plans and flood risk management plans, when the investment proposal envisages or is related to:

- water abstraction from surface or groundwater;
- use of surface or underground water bodies;
- discharge of wastewater into surface water bodies;
- discharge of wastewater into facilities that may create a danger of groundwater pollution;
- priority and/or hazardous substances from the activity, in which contact with waters is carried out or is possible.

The director of the respective basin directorate has to send its opinion to the respective competent authority within 7 days from receiving the request. The opinion shall contain:

- a conclusion on the admissibility of the investment proposal in relation to the measures for achieving good water status, defined in the river basin management plan, as in case of inadmissibility, the specific measures with restrictions and prohibitions shall be indicated;
- the prohibitions and restrictions provided for in the Water Act, in respect of this type of investment proposals and / or impacts, as a result of their implementation;
- information on existing or permitted impacts on the water body in the area, which must be taken into account in the subsequent procedure under chapter 6 of the EPA;
- information about the free water resources in the part of the groundwater body, from which water abstraction is envisaged (through existing or through new facilities), the danger of groundwater pollution in the process of construction of new pipe (drilling) wells and requirements for prevention of pollution;

- motivated assessment of the significant impact on the waters and the aquatic ecosystems;
- conclusion on the applicability of Art 93/9, item 3 EPA.

In the **Czech Republic** the assessment is conducted by the water authority, which takes into account the opinion of river basin management authority.

In **Croatia** public institution experts are used from Hrvatske vode, Environmental ministry. Two of these experts criticized that Croatia does not have experts who know how to prepare an assessment on water bodies in accordance with the WFD. Usually hydrologists prepare that part of the assessment and state, for example, that "the water body has changed", or that "it will most likely change", but without explaining how this change of the respective water body affects the environment. Assessments of the impact of specific projects/plans/programs on water are not prepared by experts who understand water management and its specific issues but by hydrologists who tend to interpret it too narrowly. An expert mentioned that often companies authorized for the assessment, consist of persons who just finished university, lack experience and do not know anything about the WFD. - The same is true for officials in specific departments, who do not have sufficient knowledge about the WFD.

1.3 Do NGOs or the public have legal standing in this procedure?

NGOs do not have legal standing in either **Austria** or the **Czech Republic**.

In **Hungary**, the legal standing in screenings is not clear cut. Environmental associations may have legal standing in environmental administrative procedures, in particular in environmental impact assessments, in environmental audits, in consolidated environment use permit procedures (EIA and IED together) and in procedures where the environmental authority acts as an expert authority. Where the water authority is the main decision-maker and the environmental authority is not to be involved as expert authority, legal standing of environmental NGOs is not ensured. This means that in case the applicability assessment is part on an environmental administrative procedure, legal standing is provided for NGOs and they can challenge the administrative decision before the court. In the case of the Art 4/7 WFD assessment is carried out in an SEA, there is no possibility to challenge the result of the screening, similar to the decision on SEA or the SEA Report.

In **Bulgaria** the screening decision is subject to legal review (Art 93 (10) EPA) and environmental NGOs as well as individuals are granted legal standing. They can challenge the decision in accordance with the EPA and Administrative Procedure Code.

In **Croatia** NGOs and the public have legal standing. Yet, one expert mentioned that even though NGOs have the right to participate in the screening procedures, this is often neglected. In fact, she criticized that in practice NGOs' opinions are mainly rejected (although it is said that their opinion is "taken into account").

1.4 Can NGOs or the public call for such assessments if they are not done?

In **Austria**, NGOs cannot call for such a screening decision, but it is usually done automatically. The same is true for the **Czech Republic**.

In **Bulgaria** the integration of the ApA into the EIA/ SEA is provided for in the law. If the impacts on water bodies are not taken into account and the procedure for consultation with the River Basin Directorate is not followed, the screening decision can be challenged and annulled. However, the administrative procedure is led by the competent authority and the public is not directly involved in it.

In **Croatia** they can request the ministry to initiate such a procedure or they can file an administrative lawsuit for the omission. As part of the consultation, the general public and NGOs can comment that no assessment has been done but there is no obligation to accept.

1.5 Can NGOs or the public challenge negative screening decisions?

In **Austria**, NGOs can challenge the result, if the authority finds that there is most likely no exception (Art 4/7 WFD) necessary. This is similar in **Bulgaria**, where NGOs and the public can challenge negative screening decisions. In **Croatia** they are also able to challenge it by an administrative lawsuit in front of the administrative courts, if it is issued in the form of an administrative act ("upravni akt"). They are not able to challenge negative screening decisions in the **Czech Republic**.

1.6 How are the contents/ results of the screening decision published? Who has access?

In **Austria**, the result of the screening is published on the Website "WISA".¹⁵ Similarly, in **Bulgaria** there is a public register for EIA/ SEA decision on the website of the MoEW.¹⁶ In **Croatia** it is published at the ministry webpage. There is an access for the general public. Another expert said that the SEAs are sometimes available on the portal for e-consultation ("e-savjetovanja"). In this case they are published; yet this is still not quite a practice. There is a summary of the screening decision at the end of the final decision - the same is true for EIA.

¹⁵ Online available at: <https://wisaplattform.bmnt.gv.at/bescheide.html>.

¹⁶ Online available for EIA: <http://registers.moew.government.bg/ovos/>, and for SEA: <http://registers.moew.government.bg/eo/>.

If the result of the screening procedure rules out possible deterioration of the water body then the result is published via decision of project realization in the **Czech Republic**. The decision is delivered to the parties concerned. If the result of the screening procedure suggests possible deterioration or that the realization of the project might prevent the good environmental status/ good ecological potential of the water body concerned, then the water authority will issue a resolution, which will be addressed to all the parties concerned.

1.7 Do you have best practice examples of screening decisions as they should be?

For **Austria** no examples have been mentioned: The interviewed NGO expert feels that there are too few procedures which require an exception following Art 4/7 WFD, considering the number of procedures altogether. In a study conducted by the WWF in 2018, it was found that there were several cases, where a deterioration could not be noted, even though the materials suggested that there would be one. There also seems to be an issue regarding transparency, i.e. whether the provided permissions even allow for an accurate assessment.¹⁷ One example for a “bad” screening decision would be the hydropower plant “Lesachbach” in Tyrol, where an expert confirmed a deterioration but the authority ruled it out to be “too insignificant” to trigger Art 4/7 WFD. The public authority noted that there are standards set for screening decisions, especially in the catalogue of the Federal Ministry.¹⁸ Furthermore, there is an interesting decision by the Upper Austrian administrative court, showing how such a decision is done (LVwG-550480/45Wg). This was also upheld by the Supreme Administrative Court.

There were no best practice examples provided for **Hungary**, **Bulgaria**, the **Czech Republic**, or **Croatia**: For the latter, the expert mentioned that there are no good/ best practice examples because they are not done properly. However, she said that in the screening procedure for SEA concerning changes in the spatial plan for Karlovac County, the county decided not to approve 8 new small hydropower plants. The reason for this were a couple of comments from the public and NGOs which stated that there was a lack of data and assessment of the impact of several hydropower projects (and their correlation with existing hydropower projects).

2. An important question in assessments following Art 4/7 WFD is about cumulation with other projects:

2.1 How are cumulative effects dealt with in your country?

¹⁷ The report can be found online at <https://www.wwf.at/verschlechterungsverbot>.

¹⁸ Online available at: https://www.bmlrt.gv.at/wasser/wasser-oesterreich/wasserrecht_national/planung/Kriterienkatalog.html.

In permission procedures in **Austria**, all projects and projects seeking permission as soon as they enter a permitting procedure should be taken into account, thus checking for cumulative effects. What's relevant is the as-is status of the water body at the time of permission, therefore including present cumulative effects. This means, that they are handled on a case-by-case-basis, a larger scale plan is often not given. In turn this means, that they have the right to a permission, if they fulfil all legal criteria. The environmental expert added, that in critical cases, the question of cumulative effects has to be raised by the opponents.

In **Hungary**, during ongoing EIA procedures, existing projects and projects already permitted should be taken into account when considering the likely cumulative effects. However, projects which are currently being permitted, are not considered. The environmental policy expert highlighted that 'salami slicing' is one of the most important problems in this regard. A bad example that she mentioned is the project of floodplain management of Tisza River. The project was divided into sections and the authorities of the counties concerned conducted separate permitting procedures without considering the likely cumulative effects.

In **Bulgaria**, the cumulative effects of the proposals are assessed within the EIA. The cumulative effects of plans/ programs are assessed within the SEA procedure. A special provision for the cumulative effects within the ApA, which is integrated into EIA, is provided in Art 156f (6) WA, so that the assessment of the cumulative impact of all already permitted activities within the boundaries of the water body shall be reported in the cases under Art 156f (3)-(4) WA - for each investment proposal.

In the **Czech Republic** neither the Water Act nor any other legal regulations deal with cumulative effects. One national legal expert in **Croatia** mentioned that cumulative effects are not considered properly. Another one said that they should be taken into consideration according to the law, but supported the view that this is often not done in practice.

2.2 At what stage do projects have to be considered as cumulative in assessments?

In **Austria**: as soon as they are submitted to the public authority. In **Hungary**, the projects must be permitted already to be considered. In **Bulgaria** the new investment proposals are assessed for cumulative effects with the already permitted activities. In **Croatia** they have to be considered in EIA and SEA studies. One legal expert said that he guessed that they should be considered at the assessment stage, before the decision of their approval has been taken.

2.3 How can the public or an NGO bring forward claims of cumulative effects in ongoing proceedings? What is the threshold for the burden of proof for such claims?

In **Austria**, in procedures, usually an NGO bringing up the question of cumulation is sufficient to have it checked by the experts. In court procedures, this is sometimes not enough and an expert opinion has to be brought forward as proof. Here the issue is with the fact that NGOs are only party to Art 4/7 WFD procedures, all other permission procedures can only be challenged and only if they are under the rule of EU law.

In procedures in **Hungary**, usually an NGO bringing up the question of cumulation is sufficient to have it checked by the authority, which means in practice that the developer is ordered by the authority to amend the application documentation in this respect and the authority has to approve the explanation. If the NGO challenges the developer's expert opinion - approved by the authority - in the court procedure (judicial review of the administrative decision), an expert opinion has to be brought.

In **Bulgaria** the public is involved in the consultation of the EIA report with the opportunity to provide opinions and participate in the public hearing of the EIA report (part of which could be ApA) where they can put forward claims of cumulative effects. These claims are examined by the project developer. According to the characteristics of the investment proposal the project developer determines with which specialized authorities, departments and representatives of the affected public he/ she intends to carry out the consultations under Art 95, para 3 EPA. In case of declared written interest in the EIA procedure by persons or organizations other than those specified above, the project developer ensures consultations with the interested parties. The consultations may be organized in any of the following ways:

- announcement in the mass media;
- sending messages to the local authorities;
- preparation and distribution of a prospectus/ brochure with brief information about the investment proposal;
- distribution of letters/ questionnaires to interested organizations or persons living in close proximity, with a request for information and comments on the investment proposal;
- placing information boards or posters;
- organization of expert or public groups on the scope of the assessment;
- organizing meetings with the affected population.

During the consultations, the project developer provides sufficient information to clarify its intentions and time for specialized agencies and the public concerned to express an opinion. The project developer prepares a report on the consultations carried out and on the reasons for the accepted and not accepted notes and recommendations. After the public hearing of the EIA report, within 10 days, the project developer submits the written opinions on the proposals, recommendations, opinions and objections. When, as a result of the public hearing, other possible ways of implementing the investment proposal and/ or new information are proposed in writing on the basis of an expert assessment that differs from the one presented in the EIA report, the project developer assigns supplementing the EIA report and its annexes. The assessment not to assign a supplement to the EIA report together with the reasons for it shall be included in the opinion.

In **Croatia** they can bring forward claims during the public consultation process but there is no obligation for the authority to accept these comments. One expert said that NGOs and the public can provide comments on the study. If cumulative effects have not been taken into consideration the lawsuit can be submitted to the administrative court. Yet, one expert mentioned that the ministry/ authority has no burden of proof. The public and NGOs can claim cumulative effects by participating in the specific procedure

2.4 Can you share best practice examples of cumulating effects being considered?

In **Austria**, there have been no good practice examples given in the interviews. One “worst practice” example named was the river Isel with 7 ongoing projects, where cumulative effects were not checked enough according to the interview by the NGO partner. The interviews in **Hungary, Bulgaria, Croatia** and the **Czech Republic** did not mention best practice examples.

3. Regarding expert opinions:

3.1 What experts are usually called upon in Art 4/7 WFD assessments? Do they lend their expert opinion as part of the public authority, as independent parties, or as part of the project solicitor?

The main experts in **Austria** are always the authority’s own experts, if none is available, an outside expert will be appointed by the authority. Aside from that, the project solicitor has to bring expert opinions to prove his claims are warranted. The role of the experts in the proceedings is different. Usually, the project solicitor employs subcontractors to prepare his project and to hand in all necessary paperwork. These consultants are in their employ. Then the technical experts of the public authority examine these documents.

Finally, project opponents may bring their own consultants/ technical experts to challenge the assumptions made. To challenge them successfully in court, the experts have to be recognized by the court as such experts. In practice the technical experts of the public authority are followed by the authority in their reasoning.

In **Hungary**, the main experts are the developer's (project solicitor's) experts and the documentation prepared by them is checked by the authority's experts during the procedure. In EIA proceedings in which the environmental authority is making the decision on the EIA permit, the water authority is involved as expert authority relating to water issues. Based on the wording of Art 10(4) of Gov. Decree 221/2004, benefits to the environment and to society are considered as reasons of public interest. The interviews pointed out that experts of the authority often do not have sufficient expertise to appropriately evaluate the necessity of an applicability assessment or - if there is such an assessment carried out - the sustainability of the project, e.g. the benefits to the society. The developer employs an expert to prepare the application for permit (including the EIA report if necessary). The officials of the public authority examine the application documents. In practice, the expert opinion of the developer is followed by the authority in the reasoning of the decision. However, as the environmental policy expert also referred, due to the insufficient capacities and expertise, it often happens that the staff of the authority fails to discover instances of non-compliance in the documents. Other parties of the procedure (e.g. NGOs, individuals whose rights or lawful interests are affected) may bring their own experts to challenge developer's statements. In the court proceeding, these experts have to be recognized by the court.

In **Bulgaria** the ApA is part of the EIA. The experts are hired by the project developer to prepare the EIA report. For the **Czech Republic** the following has been described: According to section 54(4) Water Act the water authority builds upon the expert opinion of the river basin management authority while conducting an Art 4(7) WFD assessment. The river basin management authority is a state-owned company - a legal person conducting business activity with state property in its own name and responsibility. It does not have the position of administrative body, however, its opinion is the closest to the administrative body's opinion.

In **Croatia** there are no experts who have knowledge of the WFD, let alone of Art 4/7 WFD.

3.2 How is their independence ensured?

In **Austria** this is done via the experts being liable for their testimony.

In **Hungary**, experts are liable for their testimony, ensuring their independence. The NGO expert and the environmental policy expert explained that although there are legal requirements on the experts' independence, in their opinion, this does not ensure independence, as experts are paid by the developers. As they experienced, experts often try to facilitate the development instead of considering all relevant aspects objectively. In spite of this, the expert of the OVF did not see problems with the independence of experts, only with the lack of expertise to evaluate the benefits to the society.

In **Bulgaria** the EIA report is prepared by a team of experts with a leader, each of whom submits a personally completed declaration that:

- meets the requirements of Art 83, para 2 EPA;
- knows the requirements of the current Bulgarian and European environmental legislation and in his work on the assessments under Art 81, para 1 EPA refer to and comply with these requirements and with applicable methodological documents;
- is not personally interested in the implementation of the investment proposal.

The experts are considered as personally interested when they:

- are owners/ members of a management or control body of the legal entity - assignor;
- are related persons within the meaning of the Commercial Act and are not in an employment relationship with the assignor;
- are in a labor or official legal relation with the competent bodies under Art 10 EPA;
- are members of the expert ecological councils (Art 12, para 1, item 1; para 2 EPA);
- have not participated in the preparation and approval of the investment proposal.

The head of the team of experts shall be responsible for:

- the completeness and reliability of the information presented in the EIA report;
- the reflection of the opinions and the opinion of the affected public;
- the objectivity of the conclusion under Art 96, para 1, item 10 EPA and the proposed measures, including compliance with conclusions and measures in the report for the assessment and for compliance with the conclusions of the assessment under Art 99a, para 1 EPA upon requested application of Art 118, para 2 EPA and from the assessment under Art 99b EPA in connection with Art 109, para 4 EPA.

The experts are responsible for the completeness, reliability and objectivity of the sections of the EIA report developed by them under Art 12/1, item 4 EPA and of the conclusion given by them in the sense of Art 83/5 EPA. The experts are fully liable for damages occurring due to the non-fulfilment of these obligations.

In the **Czech Republic** neither the Water Act nor any other legal regulations ensure the independence of the river basin management authorities. River basin management authorities are governed by the Ministry of agriculture. In **Croatia** this is similar: Their independence is not ensured since they are chosen and paid for by the developer. Regarding the experts in the committee (EIA for example) these “experts” are officials from different authorities (e.g. ministries) and are there for political reasons and not their expertise.

3.3 What qualifications are necessary to be recognised as an expert by the authorities?

This has not been specified for the **Czech Republic**.

To be recognised as an expert in **Austria** and **Hungary**, finished academic studies and/or years of professional experience are required by the relevant legislation. In **Bulgaria** the EIA experts are Bulgarian or foreign natural persons who have a master's degree and have declared to know the requirements of the current Bulgarian and European environmental legislation and in their work on the assessments under Art 81, para 1 EPA refer to and comply with these requirements and with applicable methodological documents. In **Croatia** they have to possess a specific certificate and the respective company has to have a specific number of employees - in order to be able to prepare environmental documents.

3.4 Who can move for the dismissal of experts due to bias or other reasons?

In **Austria**, every party to a procedure may seek for the dismissal of an expert due to bias if it is the expert by the public authority. This does not apply to procedures of the first instance, as NGOs are not “parties” there. In **Hungary** too, every party can move for the dismissal.

In **Bulgaria**, the experts are selected by the project developer and liable for their expert assessment. They are under contractual terms only with the developer and only he could dismiss them. This institute is not anyhow regulated in the **Czech Water Act**.

There is some chance according to the General Administrative Act in **Croatia** but it has never been used. One expert mentioned that there is a mutual understanding between the authorities, experts and environmental committees which decide on the approval of the studies. Although there is a possibility that specific experts or company may lose the licence, there is no available data that this has ever been done.

3.5 Is there a pool of experts in your county? If so, how is it managed?

There is no official pool of experts in the **Czech Republic** or **Austria**, although there seems to be a similar list of some technical experts handled by the Ministry of Justice for the latter. In **Hungary**, the official register of experts is maintained by the Ministry of Justice, furthermore, water management engineers are members of the Hungarian Chamber of Engineers. In **Bulgaria** consultancy companies specialized in EIA/SEA are usually hired by the project developers. In **Croatia** there is a pool of experts, which is managed by the Ministry of Economy and Sustainable Development.

3.6 Do you have best practice examples to share regarding expert opinions in Art 4/7 WFD proceedings?

No examples have been mentioned for **Austria**, **Bulgaria**, the **Czech Republic** or **Croatia**.

As a good example for **Hungary**, the water management expert mentioned the expert study on the rehabilitation of the water level at the Mosoni-Danube estuary. In her opinion, the aspects according to Art 4(7) WFD were properly assessed in the study prepared for development. A further, interesting example mentioned by the OVF's expert is the SEA on the navigability of the Danube, which contains all the elements under Art 4(7) WFD. The draft assessment did not establish coherence between ecological and social benefits which problem has been solved in the final report.

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