

PROPOSAL FOR A FRAMEWORK DIRECTIVE ON WATER**INTRODUCTION**

1. This paper is the initial response of the European Landowners' Organisation (ELO) to the Proposal for a Framework Directive on Water which was adopted by the Commission on 26 February 1997. The ELO represents the interests of many millions of rural landowners throughout the Union. The landowners represented by the ELO are involved in a diverse range of business activities in rural areas: agriculture, forestry, fisheries, tourism, recreation, and other rural industries. They lie at the heart of the rural economy, rural society and - not least - the rural environment. Water resources and water quality are important concerns for them and are, in turn, strongly influenced by their land management activities.
2. It is important to recognise that many landowners undertake considerable work, often at their own expense, to protect, maintain and enhance water resources and water quality. Examples include: the maintenance of wetlands (which store water and benefit biodiversity); provision of on-farm reservoirs (which enable water abstraction to take place in the winter rather than in the summer); management of small-scale dams and mill-pools (which regulate water flows in streams and rivers); maintenance of private water supplies (which relieve pressures on public water supplies); the management of lakes (benefiting, biodiversity, amenity and recreation); and the protection and improvement of fisheries. The provision of public benefits to society at large - above and beyond the private benefits to landowners - deserves greater recognition by policy-makers. Where appropriate, landowners should have the power to recover, from users, the full resource costs of providing public services in relation to water resources and quality.
3. The ELO accepts that rural land management activities can have damaging impacts - either chronic or acute - on water quality and water resources. The seriousness of specific problems in different Member States, and priorities for action, may be matters for debate, but the ELO sees no value in trying to pretend that the problems do not exist. Development in the Community must be sustainable - not only in economic and social terms but also in environmental terms - not least in relation to water.
4. All Government institutions at EU and national level need to recognise that action to tackle water-related issues in the Community takes place within the context of the market economy, not of a centrally-planned economy. Regulation - state interference in the operation of that market economy - should always be a last resort. Regulation should be applied only where the market fails to deliver public benefits and once alternative mechanisms have been fully tried and found to be

ineffective. Against this background, the ELO suggests that priority should be given to advice, then market-based instruments and then voluntary agreements:

- (a) **Advice** is important to improve the awareness of land managers of the (often invisible) problems that their activities can pose for water quality and water resources, and to encourage the widespread adoption of "best practice" to avoid or minimise these problems. The aim should be to ensure that all land managers adopt "best practice" by the year 2000.
 - (b) **Market-based instruments** - such as incentives or charges - should also be used to influence behaviour. The Common Agricultural Policy demonstrates the success of market-based instruments and provides a precedent for their wider use. A central aim should be to create effective and adequate incentives for land managers to maintain, protect and enhance water quality, and to safeguard water resources, across the EU.
 - (c) **Voluntary agreements** can also be used to encourage action: River basin (or Catchment) Management Plans which set out to establish a voluntary consensus on objectives for river catchments provide an example.
 - (d) **Regulation** should always be viewed as a last resort, not a first resort, for action. It should always: follow sound science; be subject to cost/benefit analysis; be geographically contained; and be monitored and reviewed regularly. Provided these requirements are met, the ELO accepts that there is a need for a regulatory floor to set minimum standards.
5. The ELO considers that action to influence water quality and water resources in rural areas is probably best secured at the level of the individual rural business - be it a farm, estate or whatever. Such action is probably best co-ordinated at the level of the river catchment or sub-catchment. The ELO accordingly sees a central role for river basin management plans in establishing a voluntary consensus on water quality and resources problems and possible solutions. They should also provide a basis for agreeing on costs and benefits for different options and thus help in assessing priorities and securing cost-effective action.
 6. It is essential that all provisions of the Directive recognise the very different climatic, development and population pressures on water resources and water quality in the Member States. The principle of subsidiarity needs to be strengthened throughout the Directive. For example, the Commission is correct to state in section 3.3 of the Explanatory Memorandum that "uniform emission limit values and quality standards...are not always the appropriate policy response". Given the variation in conditions across a Community that stretches from Finland to Greece this must be true. Common standards will provide too much protection - at an unnecessary cost - in some places and too little - with resulting environmental damage - in others. Standards should always be related to the use made of water. Equally, it is essential that river basin management plans reflect local conditions, not arbitrary Community-wide standards. Member States must also be able to determine their own pricing structures for water.
 7. Against this background, the following response is intended to provide a basis for initial discussions with Commission officials, Members of the European Parliament, and other interests at both EU level and in the Member States. It is expected that the ELO will produce further papers on specific issues as the discussions on the Proposal continue in the coming months. This initial response deals with each of the Articles of the proposed Directive in turn.

DETAILED COMMENTS ON THE DRAFT DIRECTIVE

Article 1: Purpose

8. The stated purpose of the Directive in Article 1 is, in fact, a means to an end, not an end in itself. The purpose should reflect the first principle of the Rio Declaration: "Human beings are at the centre of concerns for sustainable development." **The ELO suggests that the words "increase the well-being of the population in EU Member States by the establishment of" should be substituted for "establish" in the first line of Article 1.**
9. The Directive is not solely concerned with the "protection" of water (as in the first line of Article 1(1)) but with the improved management of water to meet a range of needs (Article 1(1)(i)-(iii)). **The ELO suggests that the word "management" should be substituted for "protection" in the first line of Article 1.**

Article 2: Definitions

10. Comments on specific definitions are made in comments on specific Articles. The ELO considers that the statement in Article 2(1) that "the following definitions shall apply for all Community legislation concerning water" could give rise to confusion. **The ELO suggests that the words "for all Community legislation concerning water" should be deleted in the second line of Article 2(1).**

Article 3: Co-ordination of Measures Within River Basin Districts

11. It is proposed to assign "coastal waters" to "the nearest or most appropriate River Basin District" (Article 3(1)). In some Member States, vital flood and coastal defence initiatives are managed through "coastal cells" into which several different rivers may discharge. It would hinder efforts to secure integrated management of the cells if they had to be split up between different rivers. **The ELO suggests that the last line of Article 3(1) should be amended to read: "...Districts, while ensuring that coastal cells are managed in an integrated fashion".**
12. The ELO notes that Article 3(2) calls for the establishment of "appropriate administrative arrangements, including the designation of appropriate competent authorities" for River Basin Districts. It should be made clear that it may sometimes be appropriate for private bodies (e.g. landowners) to act as such authorities. **The ELO suggests that the words "which may be public or private bodies" should be inserted after "competent authorities" in the second line of Article 3(2).**
13. The ELO welcomes the provisions in Article 3(4) in relation to River Basins which cover land in Member States and in non-Member States. However, it is not clear how the work required by the Directive in these Basins will be carried out: Member States should be responsible only for such work as is needed within their own territory. Work within non-Member States should be funded by those States, perhaps with Community assistance. **The ELO suggests that the following words are added at the end of Article 3(4): "In such circumstances, the Member State shall be bound to observe the obligations of this Directive only in respect of that part of the District within their own territory."**

Article 4: Environmental Objectives

14. The extent to which Member States will be able to determine what is meant by "good surface water status" and "good groundwater status" in their own territories

is not clear from Article 4. It is important for Member States to be able to determine their own objectives, taking account of their own problems of water quality and water resources, and then to establish their own priorities for action. It would be inefficient for Member States to be required to meet throughout their territories a very wide range of quantified standards for water set at EU level.

15. In line with the principle of subsidiarity, the Directive needs to take the variability of conditions across the EU into account. For example, differences in mean temperatures affect the rate at which pollutants are broken down naturally, and should therefore be taken into account in controlling discharges. Action needs to be proportionate to the problems in each Member State, not harmonised across the EU at a level that may be excessive in one area and inadequate in another.
16. The provisions in Article 4(3) as regards extending deadlines, and the provisions in Article 4(4) as regards setting less stringent environmental objectives, take insufficient account of the variability of conditions across the Union. In particular, it is wrong to require three different conditions **all** to be met before deadlines can be relaxed, and four conditions **all** to be met before less stringent standards can be established. Greater flexibility is needed - e.g. to cope with situations where future levels of groundwater pollution cannot be predicted given lack of knowledge about the nature and movement of pollutants through the rock column above an aquifer. **The ELO suggests that the word “all” in line two of Article 4(3) and in line two of Article 4(4) should be replaced by “any”.**
17. The provisions of Article 4(3) and 4(4) do not apply to Protected Areas. The ELO considers that this is an error. For example, it is stated in the preamble to the Nitrate Directive (91/676) that “...it is recognised that the hydrogeology in certain Member States is such that it may be many years before protection measures lead to improvements in water quality”. This point also needs to be recognised in the Framework Directive. **The ELO suggests that the references to “4.1.i and 4.1.ii” in Articles 4(3) and 4(4) should be replaced with a reference to “4.1” only, so as to apply both of these provisions to Protected Areas too. (This suggestion applies only if it is decided to retain Article 9: see below.)**

Article 5: Characteristics of the River Basin District

18. The analyses of land use and economic activity required under Article 5(1)(iv) need to be accurate and to give proper weight to the importance of economic activities within a catchment. To this end, the analyses should be made available in draft for comment by interested organisations. Inviting comment, and taking account of views expressed, should help to establish consensus on the current situation. **The ELO suggests that the words “shall be subject to public consultation and” should be inserted after “Such analyses” in Article 5(3).**

Article 6: Review of the Environmental Impact of Human Activity

19. No indication is given in Article 6, or in Annex III, of the level of detail of the “estimations” required in the review of environmental impacts. It is important that Member States are not required to carry out burdensome and wasteful assessments of problems where none exists. A targeted approach is needed, focusing on recognised environmental problems. **The ELO suggests that the words “insofar as this is recognised to be significant and damaging” should be inserted after “groundwater” in the second line of Article 6(1).**

20. The reference to “Annex IV” in Article 6(3) appears to be an error: the relevant Annex is Annex III. **The ELO suggests that Article 6(3) should be deleted.**

Article 7: Economic Analysis of Water Use Within the River Basin District

21. Article 7(1)(iii) requires environmental and resource costs and benefits to be assessed, but it is not clear what is meant by these. Furthermore, there is no guidance in the Article or in Annex II as to how this extremely difficult exercise should be done. Nor is it clear how Member States, even if they are able to calculate gross costs and benefits, will be able to apportion them between different economic sectors (under Article 7(1)(iv)).
22. Moreover, Article 7(1) appears to suggest that **all** costs and benefits should be assessed, rather than just those which are significant or associated with abstractions which are clearly known to be implicated in environmental damage. It would be ridiculous to require an assessment of the costs and benefits associated with a private water supply serving one property, but equally it would be wrong to ignore the environmental and resource implications of major abstractions for public water supply serving tens of thousands of customers.
23. A more practical approach is needed. Member States should be allowed to determine their own thresholds for assessing environmental and resource costs (e.g. in terms of the volumes of water abstracted or discharged, numbers of customers supplied, or area of land irrigated). **The ELO suggests that the words “where these are significant” should be inserted after the words “costs and benefits ” in the first line of Article 7(1)(iii).**

Article 8: Waters Used for the Abstraction of Drinking Water

24. It makes sense to target action on geographical areas where environmental problems are greatest (because this is cost-effective). However, this should generally be done without explicit “designation” - as this creates inequalities in the way in which land is viewed by landowners, prospective purchasers, statutory agencies, voluntary environmental bodies and local authorities. This difference is commonly reflected in a real or perceived difference in the value of land either side of “the line on the map” simply because land has been included within a “Zone”. There may also be no apparent environmental problem on the specific area of land designated. Indeed, experience of the definition of Nitrate Vulnerable Zones suggests that the science of designation is often inadequate.
25. As an alternative to designation, the ELO prefers the use of appropriate horizontal measures applied across Member States. The same standards need not apply everywhere. Nor should action be taken where a particular environmental problem does not exist: Member States should instead ensure that the mechanisms chosen allow for flexibility in implementation according to local conditions in individual catchments. Avoiding designation will help to avoid wasting time and money on the accurate definition of Zones which often cannot be precisely defined. It will also avoid the possibility of arbitrary and often unfair impacts on the capital value of land, and the concern which this arouses.
26. Against this background, the ELO has considerable concerns over the proposal to designate bodies of water as “Protected Areas”. The ELO questions why this is necessary. There is no evidence to suggest that such bodies of water - many of which have been used as sources of drinking water for decades - are subject to any greater threats than other water bodies. Where there are water quality

problems - whether caused by natural elements or human activity - then water treatment is used to ensure that EU standards are met. Viewed in this light, the proposal can be seen to be merely an unnecessary administrative exercise. **The ELO suggests that Article 8 should be deleted.**

27. If Article 8 is retained, it will need to be amended in several respects. Firstly, Article 2(31) defines “significant body of water” as “all waters intended for the production of drinking water from an individual source serving more than 15 households”. This is a very low threshold to adopt as a basis for designating “Protected Areas” under Article 8. It would require an immense administrative effort to identify abstraction points and to designate zones (e.g. for thousands of boreholes). A more appropriate threshold would be sources serving more than 5,000 people or providing more than 1,000 cubic metres of water each day. Such an approach would identify all the major water supply zones within which many smaller abstractions would also be located. **The ELO suggests that the words “more than 5,000 people” should be substituted for “15 households” in the definition of “significant body of water” in Article 2(31).**
28. Secondly, Article 8(1) refers not only to sources already used for drinking water but also to those which may in the future be used for the abstraction of drinking water. This proposal would be very difficult to implement, as it would require Member States to predict where new sources might be needed without having any information on whether such sources could be exploited effectively. A more straightforward approach would be to confine any designations to sources which are already used, as suggested above. **The ELO suggests that the words “or which may in the future be used for the abstraction of such water” should be deleted from line 3 of Article 8(1).**
29. Thirdly, it is clear that the Proposal does **not** propose that raw water, prior to abstraction for drinking water purposes, should meet the quality requirements set by the Drinking Water Directive (80/778). It is important that this point is well understood, otherwise there might be a risk that regulatory bodies would start to insist that raw water must not contain any substances (including substances occurring naturally in water, as well as those related to human activity) at or above the levels laid down in the Drinking Water Directive. The Proposal instead refers to “the expected water treatment regime”. There is no definition of what is meant by “treatment regime”. It is important that this includes the blending of water (e.g. of water which is low in nitrate with water which is high in nitrate). **The ELO suggests that “treatment” should be defined in Article 2 and that any such definition should make it clear that “blending” is part of “treatment”.**
30. Fourthly, any confusion over the meaning of Article 8 could be increased by the failure of the preamble to refer to the “water treatment regime”. **The ELO suggests that paragraph 26 of the preamble should be amended by adding the words “under the expected water treatment regime” after “enable”.**

Article 9: Register of Protected Areas

31. The ELO can see no reason to justify the establishment of a new “Register of Protected Areas”. The EU Commission, Member States - and the competent authorities under the Framework Directive and (where different) under the other Directives mentioned in Annex IV - will already know the locations of the various areas and zones referred to. Moreover, the preparation of River Basin Management Plans under Article 16 will inevitably reveal the existence and location of any such “Protected Areas” without the need for them to be listed on a

separate Register. The preparation of such a Register would simply be a burdensome administrative exercise adding no real value to existing initiatives. **The ELO suggests that Article 9 should be deleted.**

Article 10: Monitoring of Surface Water Status and Groundwater Status

32. There is concern over the problems caused for agriculture and rural businesses and homes by groundwater abstraction for public water supply. As well as reducing surface water flows, this can also lead to subsidence (making it impossible to farm land and damaging buildings) and the lowering of the water table (resulting in damage to crops and trees from desiccation). It is important that such effects are monitored and thereby detected at an early stage so that appropriate action can be taken to avoid or minimise them. **The ELO suggests that a new item should be inserted under paragraph 3 of Annex V: “(v) monitoring of the effects of groundwater abstraction in relation to the subsidence of land and the desiccation of crops and trees at the surface.”**

Article 11: Monitoring of Protected Areas

33. The ELO sees no need to establish any separate programme of monitoring of Protected Areas. It would be better to rely upon the results of the monitoring programmes already in place (e.g. under the Nitrate Directive (91/676)) and the horizontal monitoring programmes established under Article 10. **The ELO suggests that Article 11 should be deleted.**

Article 12: Charges for the Use of Water

34. The ELO draws attention to its earlier comments on Article 7, many of which are also relevant to Article 12. It is also important to respect the point made by the Commission in section 3.7 of the Explanatory Memorandum that: “Price differentials stemming from differing natural conditions in different River Basin Districts should not be viewed as distortions to competition, as long as they are genuine reflections of the environmental costs and resource depletion costs involved”. The ELO also considers that justified costs should be recouped from the specific points where they fall due: they should not be converted into some generalised form of taxation. The ELO further considers that, so far as possible, consumers should be given a choice as to where they can “buy” their water.
35. The ELO notes that the emphasis in this Article is very much on ensuring that full cost recovery takes place, and that the issue of the environmental and resource costs associated with water use is deferred until such time as the Commission comes forward with proposals (see Article 12(2)). This pragmatic approach is welcome. However, it is important, as noted above, that in any such proposals, the Commission should focus attention only on **significant** costs and benefits. **The ELO suggests that the word “significant” should be inserted after “ensure that” in line three of Article 12(2).**

Article 13: Programme of Measures

36. The ELO is concerned at the suggestion, in Article 13(3)(vi), that “all activities with the potential to have an adverse impact upon the status of water” shall be subject to prior authorisation where this is not otherwise provided for under other EU legislation. This provision, if interpreted literally, could be used to justify excessive controls on almost every aspect of agriculture. For example, taking an extreme example, it could be argued that ploughing in stubble after harvest

should be subject to prior authorisation as nitrate produced as a natural result of the decomposition of cereal roots could potentially leach into water and have an “adverse” effect. Such a catch-all provision which is not targeted on specific problems is not appropriate. Instead, reliance should be placed on the targeted measures already adopted under existing Community or national legislation (see Article 13(3)(i)). **The ELO suggests that Article 13(3)(vi) should be deleted.**

37. The ELO also questions the reference in Article 13(3)(i) to “local legislation”. The EU surely has no competence in relation to “local” legislation and should not accordingly seek to secure it through the Framework Directive. The principle of subsidiarity should apply. **The ELO suggests that the words “or national” should be substituted for “national or local” in line one of Article 13(3)(i).**
38. An earlier reference to the need for “supplementary measures” to be “reasonable” has been dropped from Article 13(4). It is important that all measures, whether “basic” or “supplementary”, pay close regard to the costs and benefits involved. Measures should be put in place only where they are cost-effective - the costs must be fully justified by a proportionate reduction in environmental risks or damage. Environmental standards and measures must be appropriate and affordable. Detailed assessments of costs and benefits should always be provided to ensure that sound decisions are made. These points need to be underlined in Article 13. **The ELO suggests that the words “cost-effective” should be inserted before “measures” in line two of Article 13(1).**
39. The ELO welcomes the proposal in Article 13(3)(v) regarding the control of water abstraction. Such control systems should take account of the impact of abstraction on downstream users of water, on downstream water quality, the rights of riparian landowners, and the rights of other abstractors. Member States should also be required to promote efficiency in water use, effective control of leakage, and water conservation so as to manage and limit demand for water and to make it easier for all interests to secure adequate supplies for their needs.

Article 14: Interim Measures to Combat Pollution

40. The reference in Article 14(2) to consultation with “interested parties” where interim action is needed to tackle pollution is welcome. The competent authorities should be encouraged to work in partnership with landowners and other business interests as a matter of course in carrying-out their work, not merely where “interim measures to combat pollution” are needed. In particular, business interests should be consulted in advance on draft “programmes of measures” prepared under Article 13. **The ELO suggests that the words “following consultation with landowners, other business interests and the public” should be inserted after “December 2004” in line two of Article 13(5).**

Article 15: Issues Which Fall Outside the Competence of a Competent Authority

41. This Article does not appear to add a great deal to the Proposal. It merely states what would be the common-sense reaction by a competent authority to any issue outside its competence. **The ELO suggests that Article 15 is deleted.**

Article 16: River Basin Management Plans

42. The ELO supports the use of river basins - or catchments - as the basis for action in relation to water quality and water resources. The ELO also supports the use of River Basin Management Plans as a means of encouraging an integrated approach to the planning and management of water resources and quality.

Article 17: Public Information and Consultation

43. The ELO considers that it is essential that landowners are actively involved in the process of preparing River Basin Management Plans. This is because, for example, decisions made by landowners have the potential to affect diffuse pollution and water resources over large areas. Landowners should be directly consulted by river basin authorities on local problems, future land management aims, water quality objectives, and relevant mechanisms. They should not simply have to rely on a general public consultation process. **The ELO suggests that the words “by all relevant interests, including landowners and businesses” should be inserted after “access” in line two of Article 17(1).**
44. The ELO also considers that River Basin Management Plans should be seen as initiatives to secure a voluntary consensus among relevant interests. The willingness of those affected to discuss objectives and policy mechanisms openly will be greatly reduced if the Plans are seen as regulatory plans to be imposed regardless of local views. The aim should be to define a consensus on options and priorities for action to safeguard water quality and water resources, to establish costs and benefits, and to seek resources. **The ELO suggests that the words “with a view to achieving a voluntary consensus” should be inserted after “consultation” at the end of line two of Article 17(2).**

Article 18: Planning by Sub-basin, Sector, Issue or Water Type

45. The ELO is concerned that businesses could become buried by a plethora of “Plans”. Plans of the type envisaged by Article 19 should be regarded as the exception rather than the rule. **The ELO suggests that the words “where this is essential and cost-effective” should be inserted after “water management” at the end of line two of Article 18(1).**

Articles 19-20: Accidental Pollution Incidents, Reporting etc of Information

46. The ELO has no comment on these Articles.

Article 21: Commission Strategies Against the Pollution of Water

47. The ELO cannot see why it is necessary for the Commission to provide for it to be given powers under the Framework Directive to develop supplementary “Strategies”. The Commission is already able to bring forward such proposals. **The ELO suggests that Article 21 should be deleted.**

Article 22: Commission Report

48. The ELO has no comment on this Article.

Article 23: Plans for future Community Measures

49. The Explanatory Memorandum refers not only to a Committee (as proposed under Article 26) but also to a “Biannual Conference” (Explanatory Memorandum, section 3.8). The ELO considers that it is important that any report made available to the Committee established under Article 26 is also made more widely available for discussion, for example at the “Conference”. The ELO also considers that such a Conference should not be limited to water professionals but should include representatives of landowners (e.g. the ELO) and businesses.

Article 24: Repeals

50. The ELO welcomes the proposals for repeals, especially insofar as they will simplify existing Community legislation on water. It is very important that there is clarity over precisely what instruments, or parts of them, are being repealed, and over the relationship between the Framework Directive on Water and other current legislation (for example, the IPPC Directive).

Article 25: Amendments to the Directive

51. The ELO has no comment on this Article.

Article 26: Setting up of a Committee

52. The ELO draws attention to its comments in paragraph 49 above.

Articles 27-29: Implementation, Entry into Force and Addressees

53. The ELO has no comment on these Articles.

Annexes

54. ELO comments on Annexes are set out under the relevant Articles above.

ELO POLICY GROUP
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**Any comments or queries on this submission should be addressed to the
Chairman of the ELO Policy Group at the address below.**

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