

European Commission Feedback Form on CIS Guidance Document on Art 4(7) – Draft 2

A EURELECTRIC response paper

July 2017

EURELECTRIC is the voice of the electricity industry in Europe.

We speak for more than 3,500 companies in power generation, distribution, and supply.

We Stand For:

Carbon-neutral electricity by 2050

We have committed to making Europe's electricity cleaner. To deliver, we need to make use of **all low-carbon technologies**: more renewables, but also clean coal and gas, and nuclear. Efficient electric technologies in **transport and buildings**, combined with the development of smart grids and a major push in **energy efficiency** play a key role in reducing fossil fuel consumption and making our electricity more sustainable.

Competitive electricity for our customers

We support well-functioning, distortion-free **energy and carbon markets** as the best way to produce electricity and reduce emissions cost-efficiently. Integrated EU-wide electricity and gas markets are also crucial to offer our customers the **full benefits of liberalisation**: they ensure the best use of generation resources, improve **security of supply**, allow full EU-wide competition, and increase **customer choice**.

Continent-wide electricity through a coherent European approach

Europe's energy and climate challenges can only be solved by **European – or even global – policies**, not incoherent national measures. Such policies should complement, not contradict each other: coherent and integrated approaches reduce costs. This will encourage **effective investment** to ensure a sustainable and reliable electricity supply for Europe's businesses and consumers.

EURELECTRIC. Electricity for Europe.

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Feedback Form on CIS Guidance Document on Art 4(7) – Draft 2

Dear expert,

A **second draft version of CIS Guidance Document on Article 4(7)** was provided to you for feedback and consultation.

Please use this form for the provision of feedback and comments on the second draft version. For the further elaboration and treatment of your comments, it is important that all your requests for modification are duly justified and argued. Other ways of feedback will not be considered.

For logistical reasons allowing processing the feedback, please note that **only comments can be considered which were provided via this commenting form**. Please send this form only in word format.

Please also indicate in the feedback form **in case you are able to provide specific practical experiences and case studies** on particular elements as input for the further elaboration of the Guidance.

You are asked to send your comments via this form **latest by 7 July 2017** to Raimund.MAIR@ec.europa.eu and thomas.dworak@fresh-thoughts.eu.

Your comments will be taken into account for the elaboration of a third draft version of the Guidance, which is planned to be provided in Autumn 2017 and further discussed at the next meeting of the Ad-hoc Task Group (ATG) on the Article 4(7) Guidance.

Many thanks for your efforts.

Co-chairs of the ATG on Article 4.7

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Comments

[please add rows as appropriate]

Line nr. in draft 2 of the guidance	Comment/change request	Justification of the comment/change request
line 234	Add "climate protection and adaption"	
line 283	"these targets" or "the latter target"	
line 402	"WFD" instead of "WDF"	
line 513	"deteriorates water status or relevant quality element"	In line with ECJ definition of deterioration
lines 613-615	Delete 613 to 615.	Renewal or review of existing permits: the existing permits of authorized activities are reviewed under strict conditions specified in an appropriate legal framework
line 633	Delete "or new sustainable human development activity"	"New sustainable development" is referred only in conjunction with the deterioration from high ecological status to good ecological status. This is not applicable in the case of HMWBs which are referred to the high/good ecological potential term. Line 633 should be corrected accordingly.
line 643-653		This means that any modification, however small or insignificant, will be required to pass the Applicability Assessment. This is too stringent, particularly for small HPPs and abstractions for water supply of small rural communities
line 672	Along with the other principles, add the principle of "sustainable development".	The principle of sustainable development is also in the EC Treaty with equally importance (article 3).
lines 722-740		The question is whether the capturing by regular water body monitoring intervals is a reliable indicator for short vs. medium

		term effects because the result will be dependent on the relative timing. If a short term effect occurs shortly before the next monitoring assessment it would be captured and therefore wrongly classified as “medium term effect”.
line 738		Short-term and medium-term are not clearly distinguished and this might lead to confusion regarding the Applicability Assessment. This might be improved if the six year planning period were invoked as a criterion instead of the monitoring frequency.
lines 743-749		From the wording of the directive maintenance should only be subject to Article 4(7) test if it can be considered as a new modification of physical characteristics with at least medium term effect.
line 760	Restoration instead of restauration (typo)	
lines 919 to 926	Delete.	If there is no change in the quality elements; supporting elements shouldn't be considered as a reason for determining whether there is a deterioration and be used to trigger an article 4.7 test. Not relevant.
line 961 to 963		To our opinion, re-definition of the EP should be compulsory. See also 4.5.2.
lines 1128 to 1223	Merge step 1 and step 2: “Which quality elements could be significantly affected by the proposed activity and which information needs to be collected to evaluate if the proposed new modification/... could cause...”	The proposed 3-step approach does not seem fully useful for practical application: Without a “significance” threshold the step 1 can hardly deliver a selective function, i. e. rather every water related project which needs a permit can be expected to have “any” (not necessary significant) direct or indirect effect on a quality element

line 1173		<p>Article 4.7 Applicability assessment: this stage corresponds in reality to the assessment of the existence of a deterioration which will then be followed by an assessment of the applicability of Article 4.7 therefore the wording of this stage needs to be changed.</p> <p>We also question the logic of the step wise approach as data collection should be the first step in the process before screening and scoping</p>
line 1251	“chapter 4”	
lines 1293 to 1358		The references to the EIA and Habitats Assessment are rather descriptive (which is partly redundant to chapter 2.7.2 and 2.7.3), the concrete linkages and potential synergies which are expected here are missing (deleted from the previous version, why?) or only high level (“cooperation ... during the data collection and assessment stage”)
lines 1324-1327		Establishing an EIA procedure where it is out of scope of EIA annex I & II in order to investigate the requirements of 4(7) does not look like streamlining/synergy, but like creating extra work by an additional formal EIA procedure. Why not just investigate the requirements of 4(7) by their own? Please explain the streamlining benefit of the extra EIA procedure.
lines 1416	Add “of the body or bodies of water”	More than one water body can be affected (up-, downstream, adjacent groundwater body)
lines 1435-1436 & lines 1492-1493		The term “all practicable mitigation measures” is vague and the risk that this could lead to a disproportionate or unreasonable process with measures not related to the best practices applicable should be limited.

lines 1506-1508	Proposal : “further implementation on other sites to be determined or prompted by monitoring of the measure at pilot sites”	Confusing: how can a measure be monitored when it is not implemented?
lines 1523-1528	Insert lines 1525 to 1528 after the sentence ending “...existing infrastructure”.	The last sentence (starting “Another important...”) connects better to the sentence ending “...existing infrastructure” because both refer to reasons why 4(7) can have a wider scope than GEP mitigation measures.
line 1538		The example is good but it doesn’t help to have a better understanding of the “practicability” concept;
line 1557	Complete the sentence : “ is a political, technical, social... decision ”	Disproportionality is not only a political assessment, several elements have to be taken into account.
line 1558 and 1559	Delete the sentence starting with “It is important to note”	This is already a bias. Reference should be made to the guide n°1 “Economics and Environment”. Correct footnote n°68 with reference to guide n°1 previously mentioned.
line 1566-1568		HEP authorization is thus referred to the strategic planning of the electricity sector. No problem provided that the electricity sector strategic planning is comprehensive and detailed, to the extent that it conciliates with the local planning at the water district level.
line 1597 and following		General comment : On the question of “overriding public interest”, the Schwarze Sulm judgment has made clear that the development of hydropower projects is of great public interest and likely to be an overriding interest in many cases as it serves fundamental policies of the EU especially regarding RES and climate policies . For each step/requirement there should be more “Case study type references” to the assessments the Austrian

		authority has performed in the “Schwarze Sulm” case because those assessments have been recognized as adequate by the ECJ.
line 1620	Add “rational utilisation of natural resources”	See article 191 of the Treaty
line 1621	Add at the end of the bullet as for the previous line examples as follows “.... society (climate and RES policies...)”	
lines 1625-1626	Delete the sentence starting with “Furthermore, public participation “or replace the terms “public participation“ by “relevant stakeholders“	The public might often not be best qualified in deciding or defining what is an overriding public interest. Their active involvement at the level of permitting procedures is welcomed and is in practice throughout Europe. Public has already the opportunity to comment during preparation of different national plans (RBMPs, future energy and climate plans...) see lines 1652, 1656 to 1661.
lines 1639-1640	Add at the end of the sentence : “hydropower plant may in fact be an overriding interest as the promotion of renewable energy sources is a high priority for the European Union ”	The message that a “hydropower plant may in fact be an overriding interest” seems rather weak against the background of the ECJ judgement: “Moreover, the promotion of renewable energy sources, which is a high priority for the European Union, is justified in particular because the exploitation of those energy sources contributes to environmental protection and sustainable development, and can also contribute to security and diversification of energy supply and make it possible to meet more quickly the targets of the Kyoto Protocol, annexed to the United Nations Framework Convention on Climate Change (judgment of 26 September 2013 in IBV & Cie, C-195/12, EU:C:2013:598, paragraph 56). It would be good to change the order of the list of sources as Court decisions are of higher legal value than guides.
line 1681	Replace the words “water costs” by a better known concept.	Avoid introduction of another fuzzy cost term “water costs”

		(equivalent to “environmental and resource cost”?)
line 1697 to 1709		In context of CBA or weighting interest in general it should be suggested as good practice that different authorities cooperate to bring in all relevant and necessary expertise. For example a water authority can hardly evaluate the benefits of a hydropower project for the energy system.
56 Box Case Study 7		The link below the case study box is identical to case study 6. Check if correct.
lines 1771 to 1797		A clarification should be included for the case that a new modification is added to an existing HMWB. For consistency with HMWB designation the GEP which was defined before (and not having significant adverse effects on the existing activities) has to be revisited/redefined in order to also cover the effect of the new modification (which also must not be significantly affected by GEP measures).

EURELECTRIC pursues in all its activities the application of the following sustainable development values:

Economic Development

▶ Growth, added-value, efficiency

Environmental Leadership

▶ Commitment, innovation, pro-activeness

Social Responsibility

▶ Transparency, ethics, accountability



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