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Subject: Development of hydropower in Austria and the implementation of the Water Framework Directive

I would like to bring your attention to the development of hydropower in Austria and the implementation of the Water Framework Directive (WFD).

As you know, we have consistently defended that the WFD is compatible with the development of sustainable hydropower. In 2006, in the context of the WFD Common Implementation Strategy, with the active participation of the hydropower sector, and with the agreement of all Member States, the Water Directors agreed the document "Focus on hydropower, navigation and flood defence activities. Recommendations for better policy integration"¹. In that guidance, a number of recommendations were established to develop hydropower in a way that is sustainable and compatible with the WFD. Two important recommendations were the need to prioritise the upgrading of existing installations and to use pre-planning mechanisms to identify no-go areas.

From the legal point of view, WFD article 4.7 sets out a number of strict conditions that new projects have to fulfil in order to allow exempting from the application of the objective of non-deterioration. A guidance document was also agreed by Water Directors on the application of this article and other exemptions². The conditions established by WFD Article 4.7 include the justification and explanation of the projects in the river basin

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http://circa.europa.eu/Public/irc/env/wfd/library?l=/framework_directive/thematic_documents/hydromorphology/hydromorphology/EN_1.0_&a=d

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http://circa.europa.eu/Public/irc/env/wfd/library?l=/framework_directive/guidance_documents/document_n20_mars09pdf/EN_1.0_&a=d

P:\34 WATER\02 WFD\4.WFD.Implementation\4.4-Legal issues\WFD Art. 4.7 cases & examples\AT hydropower and WFD in general\Letter to AT Nov 2009.doc
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management plan and the demonstration that the beneficial objectives served by the project cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option. In case of significant development of hydropower in the same basin, these conditions call for adopting a strategic approach that ensures that the best choices are made, including the selection of the best sites, taking duly account of the impacts on the aquatic environment in accordance with the WFD.

We have noticed with satisfaction that the Austrian draft river basin management plan suggests that such strategic approach will be developed for the implementation of the final plan, which should allow balancing the development of hydropower as renewable energy and on the other hand the high levels of protection of the aquatic environment laid down by the WFD. Let me also recall in this context the importance in European terms of certain Austrian river types as examples of pristine or near pristine free-flowing Alpine rivers.

However, we are concerned about a number of projects that have been brought to our attention, and which do not appear in the draft river basin management plan. It seems that the development of hydropower in Austria is lacking the strategic approach outlined above. On the contrary, it seems that Austria is following a project-by-project approach, which would make it very difficult to fulfil the requirements of WFD article 4.7. Moreover, we believe that the lack of strategic approach will increase litigation and legal uncertainty. Ultimately, the development of a strategic plan would provide, in addition to the best option from the environmental point of view, a stable framework for the development of hydropower which the sector should welcome. Active participation of all stakeholders in the development of such strategic planning would also be essential. The link between the WFD river basin management plans and the national renewable energy action plans under Directive 2009/28/EC (due to be adopted by 30 June 2010) provide an opportunity to strike the right balance between the objectives of both renewable energy and water protection policy.

This letter is without prejudice to the further legal action that the Commission may decide to take in relation to the complaints received. However, from the policy point of view, and given that we are at a critical moment in the implementation of the WFD, I would like to transmit our concerns about the situation and request your consideration of the above elements in finalising the river basin management plans.

As we are now approaching the end-date for completion of river basin management plans, I would find it very helpful if you could let me have your views within the next month. If you would find it helpful, we would be happy to have a meeting to discuss the matter further..



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