

**Opinion on the proposal for a Council Directive concerning the ecological quality of water**

(94/C 397/23)

On 8 September 1994 the Council decided to consult the Economic and Social Committee, under Article 130s(1) of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Protection of the Environment, Public Health and Consumer Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 29 November 1994. The Rapporteur was Mr Gardner.

At its 321st Plenary Session (meeting of 21 December 1994), the Economic and Social Committee unanimously adopted the following Opinion.

**1. Introduction**

1.1. The Committee welcomes the proposals made in relation to the improvement of the ecological quality of water. The incorporation of the principle of subsidiarity is appropriate and practical in this context. The following comments, however, are necessary for Council consideration before the Directive is finally approved, particularly as it is a framework Directive setting parameters for the future.

**2. General comments**

2.1. The Committee believes that it is essential that the evolving Directives will be put in place and operate without delay, in particular the groundwater proposals.

2.2. The following are examples of relative Directives which will bring about significant improvement to surface water quality, such as:

- urban waste water treatment Directive;
- nitrates from agricultural sources Directive;
- discharge of dangerous substances Directive;
- the 'Integrated pollution prevention and control Directive' should be adopted as soon as possible so that greater improvement can be achieved.

2.3. These Directives represent the 'Baseline' requirements to limit pollution.

2.4. As, however, there are other factors beyond the scope of these Directives contributing to pollution, the aim of the proposal to ensure complementary measures,

beyond the Baseline measures, is endorsed. They will assist in achieving widespread good ecological water quality.

2.5. The Committee welcomes the application in this case of the principle of subsidiarity whereby Member States will define the targets, the means of meeting them and the pace thereof, so long as they comply with the framework of this Directive.

However, the varied pace of implementation by individual Member States may at times apparently lead to distortions of competition; even though these are of only a temporary nature, the Commission should carefully monitor this situation.

2.6. The definition of ecological quality is expressed in qualitative terms and this is approved. Taken in conjunction with 2.5 it should provide a basis for cost effective decisions tailored to individual waters.

2.7. Essential to proper operation of the proposals is a transparent mechanism for consistent monitoring, analytical procedures and classification.

2.8. The fact that the Directive is a framework, enabling the Member States each to set its limit values and pace of achievement of all the terms of this Directive means that there will inevitably be a number of years before the present targets can be reached. With the advancement of the new techniques, new horizons will appear: in such a situation the Commission should be enabled to inform the Council of any Member State that is not proceeding with reasonable diligence, and send appropriate reports to the EP and ESC.

2.9. The biggest problems surrounding the proposal concern the potential costs as no cost/benefit analyses

are available. The Commission expects that the extra investments arising from the proposal will not exceed ECU 2 000 to 3 000 million and new administrative costs will be no higher than ECU 350 million. Preliminary calculations by a number of Member States indicate that these estimates may be much too low. Also cost/benefit analyses are essential throughout to justify the considerable expenditure resulting from this proposal which must be justified by a major reduction in risks or improvement in quality.

### 3. Specific comments

#### 3.1. Article 1

3.1.1. The scope of this framework Directive can be accepted with the proviso given by the Commission that the individual subject Directives will be available in the near future.

3.1.2. Add to the second paragraph of Article 1.1 of the Directive:

‘and based on the terms of the Operational Targets (Article 5) and Integrated Programmes (Article 6) which are established in the Member States.’

#### 3.2. Article 2

3.2.1. The definitions in this Article are so closely linked to the Annexes that the Committee believes a great deal of care must be taken in interpreting Article 15 — i.e. when amendments are to be made to the Annexes. When proposed changes involve matters of principle rather than pure technical detail they must include wide consultation in line with 3.15 below.

#### 3.2.2. Article 2.6

Best Available Techniques (BAT) is the correct wording — a change in the text is necessary.

#### 3.3. Article 3

##### 3.3.1. Article 3.2

The Committee realizes that the Council has earlier decided that there should be a three-year-cycle for reporting from the Member States. For practical and economic reasons a five-year-cycle would be much more realistic and the proposal should be changed accordingly.

##### 3.3.2. Article 3.4

The important task of the European Environment Agency needs to be defined more clearly. The Agency should provide comparative data on environmental quality throughout the EU as a means of keeping in line progress in different Member States.

#### 3.4. Article 4.1

The administrative effort needed for qualitative and quantitative assessment of both point and diffuse sources appears totally out of proportion with the benefits. At the least, action should only be required to the extent that this is needed for Article 3.

#### 3.5. Article 5

##### 3.5.1. Article 5.1

Considering the delay in deciding on the terms of this Directive, the Committee believes the required date of 31 December 1998 may now be over-ambitious.

##### 3.5.2. Article 5.4

A further clause should be added in order to state that the operational targets mentioned in the Article should be judged against the criterion of cost-effectiveness as well as the other criteria referred to in the proposal.

#### 3.6. Article 6

The first sentence should read: ‘...integrated programmes to maintain and/or improve the quality of ...’ (in line with Article 1.1).

#### 3.7. Article 7.1

The two-month consultation period should be changed to six months.

#### 3.8. Article 8

Economic instruments should not be confined to ‘sectors specified by the Commission’. The fifth environmental action programme encourages the use of voluntary agreements alongside economic instruments. This attitude should be reflected in the text of the present proposal as follows:

## 3.8.1. Article 8.2

'As an alternative to applying paragraph 1, Member States may make use of economic instruments and/or voluntary agreements so as to facilitate natural persons and public and private undertakings to comply with the provisions of this Directive.'

## 3.9. Article 9.1

It needs emphasizing that this provision should apply subject to existing international agreements such as those covering the North Sea or the Rhine.

## 3.10. Article 9.2

This would effectively appoint the Commission as a referee between Member States. The Committee has serious doubts on such a procedure and it certainly needs to be checked against the EU Treaty.

## 3.11. Article 10

The administrative burden (and cost) of identifying all these small insignificant waters appears to be out of all proportion to the benefit. Member States should be left to decide where such identification is worthwhile.

## 3.12. Article 11

Leaving difficult waters such as ports in their present state and merely preventing further deterioration is not acceptable. Equally there is no point in trying to clean (say ports) to drinking water quality. Member States should be required to improve such waters to a level which warrants the expenditure involved.

## 3.13. Article 14

The Committee refers to earlier comments in 3.3.1 above relating to a preferred five-year cycle.

## 3.14. Article 15

3.14.1. The wording should be amended as follows:

'... to reflect scientific and technical progress and to make changes in the conditions....'.

3.14.2. The Committee takes the view that only technical details can be decided in the Committee procedure provided for in Article 16. Qualitative or substantial quantitative amendments must be dealt with under the procedure laid down in Article 130s) of the Treaty.

## 3.15. Article 16

The Committee recognizes the need for a competent technical committee to advise the Commission in making technical adjustments. However, there must always be detailed involvement and consultation of all those having an interest. In other fields this has been done by appointing advisory committees of those interests that have to be consulted by the official committee of Member States' representatives [see for example, Commission decision of 12 February 1982, 82/128/EEC<sup>(1)</sup>]. The Commission should look at this precedent or find other ways of involving the relevant interest groups.

## 3.16. Article 17

All the dates must be subject to revision should the Directive not be adopted in 1995.

## 3.17. Article 18

The Committee trusts that the repeal of the two fish Directives will not jeopardize the current quality standards.

## 3.18. ANNEX I — Point 4

This should start: 'Diversity of organisms (planktonic...)' so as to include protozoa which play an important role in the analysis of the ecological quality of water.

## 3.19. ANNEX II

The list of representative elements describe water bodies unaffected by human disturbance. The provisions in this Annex can therefore only be accepted if it is made quite clear that it consists of ideals or goals which are not legally binding provisions. In particular they cannot be used as elements to implement Article 1.1 of the Directive.

The contents of this Annex therefore need a thorough review. For instance if indeed the representative elements are merely meant as ideals or goals, then it is difficult to see why the reference in point 9 to riparian and coastal zones has been limited to non-urban areas.

<sup>(1)</sup> OJ No L 58, 2. 3. 1982.

In keeping with the above comments, the heading to Annex II and the first paragraph should be amended to read as follows:

Heading: 'Good ecological water quality — Guidelines'

First paragraph

'In order to comply with this Directive, the Member States shall, in line with the principle of precaution,

take into consideration the following aims which are relevant to the individual waters concerned, when setting their Operational Targets (Article 5) and Integrated Programmes (Article 6).'

### 3.20. ANNEX VI

This taken as a whole involves a great deal of administrative effort and the various items should be looked at for cost effectiveness, eliminating any that do not pass this test.

Done at Brussels, 21 December 1994.

*The President  
of the Economic and Social Committee*

Carlos FERRER

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