

**Opinion of the European Economic and Social Committee on the 'proposal for a Directive of the European Parliament and of the Council on the protection of groundwater against pollution'**

(COM(2003) 550 final - 2003/0210 (COD))

(2004/C 112/11)

On 3 October 2003 the Council decided to consult the European Economic and Social Committee, under Article 175(1) the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 4 March 2004. The rapporteur was Ms Sánchez Miguel.

At its 407<sup>th</sup> plenary session of 31 March and 1 April 2004 (meeting of 31 March 2004), the European Economic and Social Committee adopted the following opinion by 97 votes and one abstention.

## 1. Introduction

1.1 With the entry into force of the Water Framework Directive (WFD) <sup>(1)</sup> the rules for implementing its legislative content must be adjusted, so that its main objective – to protect the European aquatic environment – can be fully achieved. A number of provisions <sup>(2)</sup> have already been put forward for this purpose, fleshing out the practical aspects of water protection, in particular the directive establishing the list of priority substances in the field of water policy <sup>(3)</sup>, which is of great importance for dealing with pollution of groundwater.

1.2 At present, protection of groundwater is basically governed by Directive 80/68/EEC <sup>(4)</sup> determining the dangerous substances which pollute such waters, and by Article 17 of the WFD, constituting the fundamental legislation for preventing and controlling pollution of this aspect of the environment.

1.3 The importance of groundwater has been made abundantly clear, not only as a vital source of domestic supply and for a range of human activities, but also as a corrective factor for surface water. Groundwater protection should therefore be looked at again, since in addition to direct pollution, groundwater is affected by diffuse pollution as a result of various processes (leaching, filtration of pollutants, etc.) over a period of years, and this is increasingly causing declining quality and deterioration of aquifers.

1.4 Protection of groundwater must be one of the main aims of European legislation, in order to deal with and prevent existing and future pollution. Contamination of groundwater is difficult and expensive to put right. The impact on abstraction of drinking water is significant; consequently boosting protection is a basic objective of all protection standards – not only of water, but also of human health and public quality of life.

1.5 When the WFD came into effect, its Article 17 became the basic rule imposing protection of this type of water from pollution, as part of the general framework of regulation of Community waters. It should however be pointed out that since this is an area affected by other Community policies such as the CAP, industrial policy, health policy, etc., legislation on specific aspects of protection also apply. Examples include the directives on drinking water <sup>(5)</sup>, nitrates <sup>(6)</sup>, plant protection products <sup>(7)</sup> and biocidal products <sup>(8)</sup>.

## 2. Content of the proposal

2.1 The present proposal for a directive was prompted by the requirement set out in Article 17 for specific measures to be adopted to prevent and control groundwater pollution in order to ensure good groundwater chemical status. The measures are to be adopted within two years following the entry into force of the WFD (i.e. 2006). It should however be pointed out that the standards contained in the present draft directive fall within the scope of the WFD, and consequently it is not necessary to repeat the provisions contained in the WFD, particularly with regard to environmental objectives, coordinated administration of river basins authorities which are to hold the groundwater registers, identification of waters for abstraction of drinking water and safeguard zones for them, public information and consultation requirements, etc.

<sup>(1)</sup> OJ L 327 of 22.12.2000, pp. 1-72.

<sup>(2)</sup> European Parliament and Council Decision establishing the list of priority substances in the field of water policy, COM(2000) 47 final; Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee on Pricing policies for enhancing the sustainability of water resources, COM(2000) 477 final.

<sup>(3)</sup> COM(2003) 847 final. Codified version 7.1.2004, on the aquatic environment of the Community. It does not include groundwater.

<sup>(4)</sup> OJ L 20 of 26.1.1980, p. 43.

<sup>(5)</sup> Amended directive 98/83/EC (OJ L 330 of 5.12.1998, p. 32).

<sup>(6)</sup> Directive 91/676/EEC (OJ L 375 of 31.12.1991, p. 1).

<sup>(7)</sup> Amended directive 98/47/EC (OJ L 191 of 7.7.1998, p. 50).

<sup>(8)</sup> Directive 98/8/EC (OJ L 123 of 24.4.1998, p. 1).

2.2 The overall purpose of the proposal is to introduce specific measures to prevent and control groundwater pollution, through the application of the following criteria:

- assessment of the good chemical status of groundwater;
- identification of significant and sustained upward trends in the concentration of pollutants and definition of starting points for trend reversals.

2.3 The conditions are laid down under which the Member States must set the threshold values for each pollutant listed in Annex III, so that they can be used as references for the review of groundwater status as provided for in the WFD.

2.4 A requirement is introduced to the effect that the Member States must establish measures in addition to those contained in the WFD to prevent and limit indirect discharges into groundwater which affect good groundwater chemical status.

2.5 The annexes lay down quality standards, procedures for the assessment of chemical status and threshold values for groundwater pollutants. The content of Annex IV is of particular importance, concerning the identification and reversal of significant and sustained upward trends to be carried out by the Member States.

### 3. General comments

3.1 The EESC views the proposal for a directive, based on consultation and discussion with the parties concerned, as positive and in particular welcomes the fact that it entails the establishment of a new methodology for analysing the status of groundwater in the EU compared to Directive 80/68/EEC. In this way, the criterion of integrating water policy as a whole into river basin plans, which requires an inventory of all groundwater bodies, can be brought into line with the geographical aspects of the measures adopted.

3.2 However, the list of pollutants affecting groundwater quality may be considered restrictive. Although there is a large proportion of nitrates and plant health products, other processes should be considered, such as filtration from petrol storage installations, leaching from industrial sites and, most of all, the effects of over-exploitation of aquifers in coastal regions, especially in the Mediterranean basin, triggering the progressive salination of such areas.

3.3 The integration of all Community standards relating to groundwater, pesticides, biocides etc. is also to be welcomed, since it enables horizontal application of all policies having an impact on water quality. This horizontal approach should also embrace further legislative measures extending quality criteria.

3.4 In this connection, implementation of the European standards relating to lists of established pollutants <sup>(1)</sup> (although they refer to surface water) and thresholds should perhaps be included in the content of Annex I of the present draft directive. This outcome would be more beneficial for the quality of groundwater, since a greater number of substances which can produce diffuse pollution would be covered.

3.5 The EESC welcomes the inclusion of statistics on significant and sustained upward trends of concentrations of pollutants, as stipulated in Annex IV, since this reflects the mandate set out in Annex V of the WFD which enables the Member States to identify trends over harmonised periods of time so as to take account not only of river basin plans, but also of the climate and soil conditions of each European region.

3.6 However, in order to ensure greater accuracy and to avoid misinterpretations of statistics, the Commission should introduce more specific criteria concerning the parameters, indicators, conversion functions, etc., making it possible to compare the effects of this directive.

3.7 The procedure for notification of the list of pollutants for which threshold values have been determined, which the Member States must provide by 22 June 2006, is of key importance in terms of the information which must figure in river basin plans for bodies of groundwater.

3.8 The system for informing and consulting interested parties <sup>(2)</sup>, farmers, NGOs and trade unions is of great importance in this context, as is the possibility of steps to ensure it is used properly. The system for approving river basin plans should therefore be strengthened by means of a public system for the information and participation of all those involved. It would be advisable for the Commission to draw up reports to check on the satisfactory conduct of such consultations.

<sup>(1)</sup> European Parliament and Council Decision establishing the list of priority substances in the field of water policy. 13 March 2000. Committee opinion in OJ C 268 of 19.9.2000.

<sup>(2)</sup> Article 14 of the WFD establishes a broad public information and consultation system for the preparation of river basin management plans, which may be reinforced by the Aarhus Convention, in the Proposal for a Regulation and Directive. EESC rapporteur: Ms Sánchez Miguel.

3.9 The EESC believes that follow-up to Article 5 and Annex II.2 of the WFD, governing the characteristics of the geographical area, environmental impact etc. is needed. It is also necessary to assess the impact of human activity so that all sources affecting groundwater bodies are taken into account in river basin plans. Similarly, implementation of the WFD's other annexes must be ensured, since otherwise paragraphs 4 and 5 of Article 17 are applicable, allowing the Member States to establish the criteria for reversing the groundwater quality trend.

3.10 Clarification is required on the conditions under which indirect discharges, e.g. including diffuse pollution, may be authorised through the programme of basic measures set out in Article 11(3) of the WFD. The key problem in the event of indirect discharges is the absence or limited usefulness of the authorisations; moreover, they give rise to a considerable proportion of diffuse pollution.

3.11 Environmental policy concerning the necessary research into new water technologies<sup>(1)</sup> should be tied in with the 6th Research Programme, so that academic and company research departments can be involved in enhancing systems for improving and restoring the European aquatic environment.

3.12 Lastly, regarding the cost-benefit analysis which will accompany the new provisions, it should be pointed out that such an analysis has been carried out for all waters through the assessment of the river basin monitoring and clean-up costs. Nevertheless, the proposal provides specific, clearer measures which will apply a more uniform approach in determining the state of groundwater. As a result, it will be possible to avoid funds being allocated for comparison of bodies of groundwater using different parameters, which would generate avoidable costs. The harmonised criteria will prevent such avoidable costs being incurred<sup>(2)</sup>.

#### 4. Specific comments

4.1 The Committee considers the draft directive on groundwater to be particularly significant, since uniform data on the quality of bodies of groundwater in the EU are presently lacking. Although under the WFD currently in force, all river basin plans are obliged to include an inventory of all bodies of

water, including groundwater, it should be borne in mind that some Member States have not even transposed the WFD. The system of river basin pilot projects applied by the Environment DG (some 50 of which are currently under way) could be extended to groundwater bodies, in such a way as to prompt the Member States to work more efficiently and swiftly to survey and assess such waters and take the appropriate action.

4.2 The general characterisation of groundwater bodies required by the WFD in order to assess their environmental quality should include, among other data, diffuse sources of pollution. The draft directive mentions among such sources 'indirect discharges' after percolation from the ground or subsoil, excluding all other sources of pollution which may affect good water chemical status.

4.2.1 The first point which must be highlighted is the existence of other current Community legislation using different quality standards to those contained in the present proposal, such as the drinking water directive, and the nitrates<sup>(3)</sup> and pesticides<sup>(4)</sup> directives.

4.2.1.1 In line with the quality parameters set out in other directives on water quality concerning their main use (domestic consumption or agriculture), and using the scientific and technical information derived from the planning required under the WFD (uses of water in river basins, establishment of values for determining good chemical status), it is possible to determine threshold values for a larger number of substances than the few contained in the present proposal.

4.2.1.2 The appropriate authorities also have other rigorously tested sources of information resulting from the application of other instruments, such as IPPC Directive 96/61/EEC<sup>(5)</sup> which sets threshold values for some 26 water pollutants.

4.2.2 Secondly, concerning the lists of pollutants set out in Annex I and the substances in Annex III to the proposal, it would be advisable – even given their minimum content – to extend the list to cover the content of Annex VIII of the WFD, since it is referred to in Article 6 of the proposal.

4.2.3 In the light of the above, the Commission must harmonise all the groundwater quality parameters from 2007.

<sup>(1)</sup> Committee opinion on an action plan for environmental technology, OJ C 32 of 5.2.2004.

<sup>(2)</sup> Annex III of the proposal lays down threshold values facilitating harmonisation of substances, albeit on a minimum basis. Moreover, the information to be provided by the Member States on bodies of groundwater at risk from pollution will facilitate appropriate action, thereby reducing the restoration costs.

<sup>(3)</sup> Directive 91/676/EEC (OJ L 375 of 31.12.1991).

<sup>(4)</sup> Directive 91/414/EEC (OJ L 230 of 19.8.1991).

<sup>(5)</sup> Proposal for an amendment to the IPPC Directive, COM(2003) 354 final, EESC opinion OJ C 80 of 30.3.2004.

4.3 Lastly, the permission which may be granted for indirect discharges under Article 6 of the proposal must be modelled on the provisions set out in Article 11(3)(j) of the WFD which prohibits direct discharges of pollutants into groundwater, with no room for deviation from them by the granting authorities, as stipulated in Article 6.

4.4 The EESC reiterates the importance of informing and involving the parties concerned in the application of the provisions regarding water and urges that the new provisions<sup>(1)</sup> implementing the Aarhus Convention be taken into account. The Convention facilitates information, participation and access to legal redress concerning environmental policy not only in the Member States but also in the Community institutions.

4.5 Lastly, the Commission should be reminded that cooperation and coordination between all the Community institutions, especially the Commission DGs, is essential if the environmental objectives put forward in the 6th programme are to be achieved. They must avoid any repetition, differences and, most of all, duplication in the use of public funds.

4.5.1 In this regard, the Committee considers it a priority to compile and process the all existing scientific, technical and social information which is currently scattered among numerous academic and administrative bodies, institutions etc., as this would be of enormous help to the Commission in implementing the various directives concerned with the management of the EU's water resources.

Brussels, 31 March 2004

*The President*  
*of the European Economic and Social Committee*  
Roger BRIESCH

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<sup>(1)</sup> See Commission Proposal for a Regulation of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to EC institutions and bodies (COM(2003) 622 final) and Commission Proposal for a Directive of the European Parliament and of the Council on access to justice in environmental matters (COM(2003) 624 final).