

I

(Information)

COUNCIL

COMMON POSITION (EC) No 14/2005

adopted by the Council on 20 December 2004

with a view to adopting Directive 2003/.../EC of the European Parliament and of the Council of ... concerning the management of bathing water quality and repealing Directive 76/160/EEC

(2005/C 111 E/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) Building on the Commission's Communication on sustainable development, the European Council has singled out objectives as general guidance for future development in priority areas such as natural resources and public health.
- (2) Water is a scarce natural resource, the quality of which should be protected, defended, managed and treated as such. Surface waters in particular are renewable resources with a limited capacity to recover from adverse impacts from human activities.
- (3) Community policy on the environment should aim at a high level of protection, and contribute to pursuing the

objectives of preserving, protecting and improving the quality of the environment and of protecting human health.

- (4) In December 2000, the Commission adopted a Communication to the European Parliament and the Council on the development of a new bathing water policy and initiated a large-scale consultation of all interested and involved parties. The main outcome of this consultation was general support for the development of a new Directive based on the latest scientific evidence and paying particular attention to wider public participation.
- (5) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme ⁽⁴⁾ contains a commitment to ensuring a high level of protection of bathing water, including by revising Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water ⁽⁵⁾.
- (6) Pursuant to the Treaty, in preparing policy on the environment the Community is, inter alia, to take account of available scientific and technical data. This Directive should use scientific evidence in implementing the most reliable indicator parameters for predicting microbiological health risk and to achieve a high level of protection. Further epidemiological studies should be undertaken urgently concerning the health risks associated with bathing, particularly in fresh water.

⁽¹⁾ OJ C 220, 16.9.2003, p. 39.

⁽²⁾ OJ C 244, 10.10.2003, p. 31.

⁽³⁾ Opinion of the European Parliament of 21 October 2003 (OJ C 82 E, 1.4.2004, p. 115). Council Common Position of 20 December 2004 and Position of the European Parliament of ... (not yet published in the Official Journal).

⁽⁴⁾ OJ L 242, 10.9.2002, p. 1.

⁽⁵⁾ OJ L 31, 5.2.1976, p. 1. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

- (7) In order to increase efficiency and wise use of resources, this Directive needs to be closely coordinated with other Community legislation on water, such as Council Directives 91/271/EEC of 21 May 1991 concerning urban waste-water treatment ⁽¹⁾, 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources ⁽²⁾ and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ⁽³⁾.
- (8) Appropriate information on planned measures and progress on implementation should be disseminated to stakeholders. The public should receive appropriate and timely information on the results of the monitoring of bathing water quality and risk management measures in order to prevent health hazards, especially in the context of predictable short-term pollution or abnormal situations. New technology that allows the public to be informed in an efficient and comparable way on bathing waters across the Community should be applied.
- (9) For the purpose of monitoring, harmonised methods and practices of analysis need to be applied. Observation and quality assessment over an extended period are necessary in order to achieve a realistic bathing water classification.
- (10) Compliance should be a matter of appropriate management measures and quality assurance, not merely of measuring and calculation. A system of bathing water profiles is therefore appropriate to provide a better understanding of risks as a basis for management measures. In parallel, particular attention should be attached to adherence to quality standards and coherent transition from Directive 76/160/EEC.
- (11) On 25 June 1998 the Community signed the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Århus Convention). Community law should be properly aligned with that Convention with a view to its ratification by the Community. It is therefore appropriate for this Directive to include provisions on public access to information and to provide for public participation in its implementation.
- (12) Since the objectives of this Directive, namely the attainment by the Member States, on the basis of common

standards, of a good bathing water quality and a high level of protection throughout the Community, cannot be sufficiently achieved by the Member States and can be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

- (13) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁴⁾.
- (14) The continued importance of a Community bathing water policy is evident each bathing season as it protects the public from accidental and chronic pollution discharged in or near Community bathing areas. The overall quality of bathing waters has improved considerably since Directive 76/160/EEC came into force. However, that Directive reflects the state of knowledge and experience of the early 1970s. Patterns of bathing water use have since changed, as has the state of scientific and technical knowledge. Therefore, that Directive should be repealed,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose and scope

1. This Directive lays down provisions for:
 - (a) the monitoring and classification of bathing water quality;
 - (b) the management of bathing water quality; and
 - (c) the provision of information to the public on bathing water quality.
2. The purpose of this Directive is to preserve, protect and improve the quality of the environment and to protect human health by complementing Directive 2000/60/EC.

⁽¹⁾ OJ L 135, 30.5.1991, p. 40. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ OJ L 375, 31.12.1991, p. 1. Directive as amended by Regulation (EC) No 1882/2003.

⁽³⁾ OJ L 327, 22.12.2000, p. 1. Directive as amended by Decision No 2455/2001/EC (OJ L 331, 15.12.2001, p. 1).

⁽⁴⁾ OJ L 184, 17.7.1999, p. 23.

3. This Directive shall apply to any element of surface water where the competent authority expects a large number of people to bathe and has not imposed a permanent prohibition on, or issued permanent advice against, bathing (hereinafter bathing water). It shall not apply to:

- (a) swimming pools and spa pools;
- (b) confined waters subject to treatment or used for therapeutic purposes;
- (c) artificially created confined waters separated from surface water and groundwater.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply.

1. the terms 'surface water', 'groundwater', 'inland water', 'transitional waters', 'coastal water' and 'river basin' have the same meaning as in Directive 2000/60/EC;
2. 'competent authority' means the authority or authorities that a Member State has designated to ensure compliance with the requirements of this Directive or any other authority or body to which that role has been delegated;
3. 'permanent' means, in relation to a prohibition on, or advice against, bathing, lasting for at least one whole bathing season;
4. 'large number' means, in relation to bathers, a number that the competent authority considers to be large having regard, in particular, to past trends or to any infrastructure or facilities provided, or other measures taken, to promote bathing;
5. 'pollution' means the presence of microbiological contamination or other organisms or waste affecting bathing water quality and presenting a risk to bathers' health as referred to in Articles 8 and 9 and Annex I, column A;
6. 'bathing season' means the period during which large numbers of bathers can be expected;
7. 'management measures' means the following measures undertaken with respect to bathing water:
 - (a) establishing and maintaining a bathing water profile;
 - (b) establishing a monitoring calendar;
 - (c) monitoring bathing water;
 - (d) assessing bathing water quality;

- (e) classifying bathing water;
- (f) identifying and assessing causes of pollution that might affect bathing waters and impair bathers' health;
- (g) giving information to the public;
- (h) taking action to prevent bathers' exposure to pollution;
- (i) taking action to reduce the risk of pollution;

8. 'short-term pollution' means microbiological contamination as referred to in Annex I, column A, that has clearly identifiable causes, is not normally expected to affect bathing water quality for more than approximately 72 hours and for which the competent authority has established procedures to predict and deal with as set out in Annex II;

9. 'abnormal situation' means an event or combination of events impacting on bathing water quality at the location concerned and not expected to occur on average more than once every four years;

10. 'set of bathing water quality data' means data obtained in accordance with Article 3;

11. 'bathing water quality assessment' means the process of evaluating bathing water quality, using the assessment method defined in Annex II;

12. 'cyanobacterial proliferation' means an accumulation of cyanobacteria in the form of a bloom, mat or scum;

13. the term 'public concerned' has the same meaning as in Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment ⁽¹⁾.

CHAPTER II

QUALITY AND MANAGEMENT OF BATHING WATER

Article 3

Monitoring

1. Member States shall annually identify all bathing waters and define the length of the bathing season. They shall do so for the first time before the start of the first bathing season following the date referred to in Article 18(1).

2. Member States shall ensure that monitoring of the parameters set out in Annex I, column A, takes place in accordance with Annex IV.

⁽¹⁾ OJ L 175, 5.7.1985, p. 40. Directive as last amended by Directive 2003/35/EC of the European Parliament and of the Council (OJ L 156, 25.6.2003, p. 17).

3. The monitoring point shall be the location within the bathing water where:

- (a) most bathers are expected; or
- (b) the greatest risk of pollution is expected, according to the bathing water profile.

4. A monitoring calendar for each bathing water shall be established before the start of each bathing season and for the first time before the start of the third full bathing season after the entry into force of this Directive. Monitoring shall take place no later than four days after the date specified in the monitoring calendar.

5. Member States may introduce monitoring of the parameters set out in Annex I, column A, during the first full bathing season following the entry into force of this Directive. In that case, monitoring shall take place with the frequency specified in Annex IV. The results of such monitoring may be used to build up the sets of bathing water quality data referred to in Article 4. As soon as Member States introduce monitoring under this Directive, monitoring of the parameters set out in the Annex to Directive 76/160/EEC may cease.

6. Samples taken during short-term pollution may be disregarded. They shall be replaced by samples taken in accordance with Annex IV.

7. During abnormal situations, the monitoring calendar referred to in paragraph 4 may be suspended. It shall be resumed as soon as possible after the end of the abnormal situation. New samples shall be taken as soon as possible after the end of the abnormal situation to replace samples that are missing due to the abnormal situation.

8. Member States shall report any suspension of the monitoring calendar to the Commission, giving the reasons for the suspension. They shall provide such reports on the occasion of the next annual report provided for in Article 13 at the latest.

9. Member States shall ensure that the analysis of bathing water quality takes place in accordance with the reference methods specified in Annex I and the rules set out in Annex V. However, Member States may permit the use of other methods or rules if they can demonstrate that the results obtained are equivalent to those obtained using the methods specified in Annex I and the rules set out in Annex V. Member States that permit the use of such equivalent methods or rules shall provide the Commission with all relevant information about the methods or rules used and their equivalence.

Article 4

Bathing water quality assessment

1. Member States shall ensure that sets of bathing water quality data are compiled through the monitoring of the parameters set out in Annex I, column A.

2. Bathing water quality assessments shall be carried out:

- (a) in relation to each bathing water;
- (b) after the end of each bathing season;
- (c) on the basis of the set of bathing water quality data compiled in relation to that bathing season and the three preceding bathing seasons; and
- (d) in accordance with the procedure set out in Annex II.

However, a Member State may decide to carry out bathing water quality assessments on the basis of the set of bathing water quality data compiled in relation to the preceding three bathing seasons only. If it so decides, it shall notify the Commission beforehand. It shall also notify the Commission if it subsequently decides to revert to carrying out assessments on the basis of four bathing seasons. Member States may not change the applicable assessment period more than once every five years.

3. Sets of bathing water data used to carry out bathing water quality assessments shall always comprise at least 16 samples or, in the special circumstances referred to in Annex IV, paragraph 2, 12 samples.

4. However, provided that either:

- the requirement of paragraph 3 is satisfied, or
- the set of bathing water data used to carry out the assessment comprises at least eight samples, in the case of bathing waters with a bathing season not exceeding eight weeks,

a bathing water quality assessment may be carried out on the basis of a set of bathing water quality data relating to fewer than four bathing seasons if:

- (a) the bathing water is newly identified;
- (b) any changes have occurred that are likely to affect the classification of the bathing water in accordance with Article 5, in which case the assessment shall be carried out on the basis of a set of bathing water quality data consisting solely of the results for samples collected since the changes occurred; or

(c) the bathing water had already been assessed in accordance with Directive 76/160/EEC, in which case equivalent data gathered under that Directive shall be used and, for this purpose, parameters 2 and 3 of the Annex to Directive 76/160/EEC shall be deemed to be equivalent to parameters 2 and 1 of column A of Annex I to this Directive.

5. Member States may subdivide or group together existing bathing waters in the light of bathing water quality assessments. They may group existing bathing waters together only if these waters:

- (a) are contiguous;
- (b) received similar assessments for the preceding four years in accordance with paragraphs 2, 3 and 4(c); and
- (c) have bathing water profiles all of which identify common risk factors or the absence thereof.

Article 5

Classification and quality status of bathing waters

1. As a result of the bathing water quality assessment carried out in accordance with Article 4, Member States shall, in accordance with the criteria set out in Annex II, classify bathing water as:

- (a) 'poor';
- (b) 'sufficient';
- (c) 'good'; or
- (d) 'excellent'.

2. The first classification according to the requirements of this Directive shall be completed by the end of the 2015 bathing season.

3. Member States shall ensure that, by the end of the 2015 bathing season, all bathing waters are at least 'sufficient'. They shall take such realistic and proportionate measures as they consider appropriate with a view to increasing the number of bathing waters classified as 'excellent' or 'good'.

4. However, notwithstanding the general requirement of paragraph 3, bathing waters may temporarily be classified as 'poor' and still remain in compliance with this Directive. The reasons for the failure to achieve 'sufficient' quality status shall have been identified. In such cases, Member States shall ensure that the following conditions are satisfied:

- (a) In respect of each bathing water classified as 'poor', the following measures shall be taken with effect from the bathing season that follows its classification:

(i) adequate management measures, including a bathing prohibition or advice against bathing, with a view to preventing bathers' exposure to pollution; and

(ii) adequate management measures to prevent, reduce or eliminate the causes of pollution.

(b) If a bathing water is classified as 'poor' for five consecutive years, a permanent bathing prohibition or permanent advice against bathing shall be introduced. However, a Member State may introduce a permanent bathing prohibition or permanent advice against bathing before the end of the five-year period if it considers that the achievement of 'sufficient' quality would be infeasible or disproportionately expensive.

5. Whenever a permanent bathing prohibition or permanent advice against bathing is introduced, the public shall be informed that the area concerned is no longer a bathing water, with reasons being given for its declassification.

Article 6

Bathing water profiles

1. Member States shall ensure that bathing water profiles are established in accordance with Annex III. Each bathing water profile may cover a single bathing water or more than one contiguous bathing waters. Bathing water profiles shall be established for the first time by ... (*).

2. Bathing water profiles shall be reviewed and updated as provided for in Annex III.

3. When establishing, reviewing and updating bathing water profiles, adequate use shall be made of data obtained from monitoring and assessments carried out pursuant to Directive 2000/60/EC that are relevant for this Directive.

Article 7

Management measures in exceptional circumstances

Member States shall ensure that timely and adequate management measures are taken when they are aware of unexpected situations that have, or could reasonably have, an adverse impact on bathing water quality and on bathers' health. Such measures shall include information to the public and, if necessary, a temporary prohibition on bathing.

(*) Six years after the date of entry into force of this Directive.

*Article 8***Cyanobacterial risks**

1. When the bathing water profile indicates a potential for cyanobacterial proliferation, appropriate monitoring shall be carried out to enable timely identification of health risks.
2. When cyanobacterial proliferation occurs and a health risk has been identified or presumed, adequate management measures shall be taken immediately to prevent exposure, including information to the public.

*Article 9***Other parameters**

1. When the bathing water profile indicates a tendency for proliferation of macro-algae and/or marine phytoplankton, investigations shall be undertaken to determine their acceptability and health risks and adequate management measures shall be taken, including information to the public.
2. Bathing waters shall be inspected visually for pollution such as tarry residues, glass, plastic, rubber or any other waste. When such pollution is found, adequate management measures shall be taken, including, if necessary, information to the public.

*Article 10***Cooperation on transboundary waters**

Wherever a river basin gives rise to transboundary impacts on bathing water quality, the Member States involved shall cooperate as appropriate in implementing this Directive, including through the appropriate exchange of information and joint action to control those impacts.

CHAPTER III

EXCHANGE OF INFORMATION

*Article 11***Public participation**

Member States shall encourage public participation in the implementation of this Directive by providing opportunities for the public concerned to formulate suggestions, remarks or

complaints. Competent authorities shall take due account of any information obtained.

*Article 12***Information to the public**

1. Member States shall ensure that the following information is actively disseminated and promptly made available during the bathing season in an easily accessible place in the near vicinity of each bathing water:
 - (a) the current bathing water classification;
 - (b) a general description of the bathing water, in non-technical language, based on the bathing water profile established in accordance with Annex III;
 - (c) in the case of bathing waters subject to short-term pollution:
 - notification that the bathing water is subject to short-term pollution,
 - an indication of the number of days on which bathing was prohibited or advised against during the preceding bathing season because of such pollution, and
 - a warning whenever such pollution is predicted or present;
 - (d) information on the nature and expected duration of abnormal situations during such events;
 - (e) whenever bathing is prohibited or advised against, a notice advising the public and giving reasons; and
 - (f) an indication of sources of more complete information.
2. Member States shall use appropriate media and technologies, including the Internet, to actively and promptly disseminate the information concerning bathing waters referred to in paragraph 1 and also the following information:
 - (a) a list of bathing waters;
 - (b) the classification of each bathing water over the last three years and its bathing water profile, including the results of monitoring carried out in accordance with this Directive since the last classification;
 - (c) in the case of bathing waters classified as being 'poor', information on the causes of pollution and measures taken with a view to preventing bathers' exposure to pollution and to tackle its causes as referred to in Article 5(4); and

(d) in the case of bathing waters subject to short-term pollution, general information on:

- conditions likely to lead to short-term pollution,
- the likelihood of such pollution and its likely duration,
- the causes of the pollution and measures taken with a view to preventing bathers' exposure to pollution and to tackle its causes.

The list referred to in point (a) shall be available each year before the start of the bathing season. The results of monitoring shall be made available within a week.

3. The information referred to in paragraphs 1 and 2 shall be disseminated as soon as it is available and with effect from the start of the fifth bathing season following the date referred to in Article 18(1).

4. Member States and the Commission shall, wherever possible, provide information to the public using geo-referenced technology and present it in a clear and coherent manner, in particular through the use of signs and symbols.

Article 13

Reports

1. Member States shall provide the Commission with the results of the monitoring and with the bathing water quality assessment for each bathing water, as well as with a description of significant management measures taken. Member States shall provide this information annually by 31 December in relation to the preceding bathing season. They shall begin providing it once the first bathing water quality assessment has been carried out in accordance with Article 4.

2. Member States shall notify the Commission annually before the start of the bathing season of all waters identified as bathing waters, including the reason for any change compared to the preceding year. They shall do so for the first time before the start of the first bathing season following the date referred to in Article 18(1).

3. When monitoring of bathing water has started under this Directive, annual reporting to the Commission in accordance with paragraph 1 shall continue to take place pursuant to Directive 76/160/EEC until a first assessment can be made under this Directive. During that period, parameter 1 of the Annex to Directive 76/160/EEC shall not be taken into account in the annual report, and parameters 2 and 3 of the Annex to

Directive 76/160/EEC shall be assumed to be equivalent to parameters 2 and 1 of column A of Annex I to this Directive.

4. The Commission shall publish an annual summary report on bathing water quality in the Community, including bathing water classifications, conformity with this Directive and significant management measures undertaken. The Commission shall publish this report by 30 April every year, including via the Internet. When establishing the report the Commission shall, wherever possible, make best use of data collection, assessment and presentation systems under related Community legislation, in particular Directive 2000/60/EC.

CHAPTER IV

FINAL PROVISIONS

Article 14

Report and review

1. The Commission shall, by 2018, submit a report to the European Parliament and to the Council reviewing the implementation of this Directive.

2. The report shall have particular regard to:

- (a) the results of an appropriate European epidemiological study conducted by the Commission in collaboration with Member States;
- (b) other scientific, analytical and epidemiological developments relevant to the parameters for bathing water quality; and
- (c) World Health Organisation recommendations.

3. In the light of that report, and of an extended impact assessment, the Commission may, if appropriate, accompany its report with proposals for amendment of this Directive.

Article 15

Technical adaptations and implementing measures

It may be decided in accordance with the procedure referred to in Article 16(2):

- (a) to specify the EN/ISO standard on the equivalence of microbiological methods for the purposes of Article 3(9);
- (b) to lay down detailed rules for the implementation of Articles 8(1) and 12(4);

- (c) to adapt the methods of analysis for the parameters set out in Annex I in the light of scientific and technical progress;
- (d) to adapt Annex V in the light of scientific and technical progress;
- (e) to lay down guidelines for a common method for the assessment of single samples.

Article 16

Committee procedure

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

Article 17

Repeal

1. Directive 76/160/EEC is hereby repealed with effect from 31 December 2014. Subject to paragraph 2, this repeal shall be without prejudice to Member States' obligations concerning the time limits for transposition and application set out in the repealed Directive.
2. As soon as a Member State has taken all necessary legal, administrative and practical measures to comply with this Directive, this Directive will be applicable, replacing Directive 76/160/EEC.
3. References to the repealed Directive 76/160/EEC shall be construed as being made to this Directive.

Article 18

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... (*). They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the texts of the main provisions of national law that they adopt in the field covered by this Directive.

Article 19

Entry into force

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

Article 20

Addressees

This Directive is addressed to Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

(*) Three years after the date of entry into force of this Directive.

ANNEX I

FOR INLAND WATERS

	A	B	C	D	E
	Parameter	Excellent quality	Good quality	Sufficient	Reference methods of analysis
1	Intestinal enterococci (cfu/100 mL)	200 (*)	400 (*)	360 (**)	ISO 7899-1 or ISO 7899-2
2	Escherichia coli (cfu/100 mL)	500 (*)	1000 (*)	900 (**)	ISO 9308-3 or ISO 9308-1

(*) Based upon a 95-percentile evaluation. See Annex II.

(**) Based upon a 90-percentile evaluation. See Annex II.

FOR COASTAL WATERS AND TRANSITIONAL WATERS

	A	B	C	D	E
	Parameter	Excellent quality	Good quality	Sufficient	Reference methods of analysis
1	Intestinal enterococci (cfu/100 mL)	100 (*)	200 (*)	200 (**)	ISO 7899-1 or ISO 7899-2
2	Escherichia coli (cfu/100 mL)	250 (*)	500 (*)	500 (**)	ISO 9308-3 or ISO 9308-1

(*) Based upon a 95-percentile evaluation. See Annex II.

(**) Based upon a 90-percentile evaluation. See Annex II.

ANNEX II

BATHING WATER ASSESSMENT AND CLASSIFICATION**1. POOR QUALITY**

Bathing waters are to be classified as 'poor' if, in the set of bathing water quality data for the last assessment period ⁽¹⁾, the percentile values ⁽²⁾ for microbiological enumerations are worse ⁽³⁾ than the 'sufficient' values set out in Annex I, column D.

2. SUFFICIENT QUALITY

Bathing waters are to be classified as 'sufficient':

1. if, in the set of bathing water quality data for the last assessment period, the percentile values for microbiological enumerations are equal to or better ⁽⁴⁾ than the 'sufficient' values set out in Annex I, column D; and
2. if the bathing water is subject to short-term pollution, on condition that:
 - (i) adequate management measures are being taken, including surveillance, early warning systems and monitoring, with a view to preventing bathers' exposure by means of a warning or, where necessary, a bathing prohibition;
 - (ii) adequate management measures are being taken to prevent, reduce or eliminate the causes of pollution; and
 - (iii) the number of samples disregarded in accordance with Article 3(6) because of short-term pollution during the last assessment period represented no more than 15 % of the total number of samples provided for in the monitoring calendars established for that period, or no more than one sample per bathing season, whichever is the greater.

3. GOOD QUALITY

Bathing waters are to be classified as 'good':

1. if, in the set of bathing water quality data for the last assessment period, the percentile values for microbiological enumerations are equal to or better ⁽⁴⁾ than the 'good quality' values set out in Annex I, column C; and
2. if the bathing water is subject to short-term pollution, on condition that:
 - (i) adequate management measures are being taken, including surveillance, early warning systems and monitoring, with a view to preventing bathers' exposure, by means of a warning or, where necessary, a bathing prohibition;
 - (ii) adequate management measures are being taken to prevent, reduce or eliminate the causes of pollution; and
 - (iii) the number of samples disregarded in accordance with Article 3(6) because of short-term pollution during the last assessment period represented no more than 15 % of the total number of samples provided for in the monitoring calendars established for that period, or no more than one sample per bathing season, whichever is the greater.

4. EXCELLENT QUALITY

Bathing waters are to be classified as 'excellent':

1. if, in the set of bathing water quality data for the last assessment period, the percentile values for microbiological enumerations are equal to or better than the 'excellent quality' values set out in Annex I, column B; and

⁽¹⁾ 'Last assessment period' means the last four bathing seasons or, when applicable, the period specified in Article 4(2) or (4).

⁽²⁾ Based upon percentile evaluation of the \log_{10} normal probability density function of microbiological data acquired from the particular bathing water, the percentile value is derived as follows:

(i) take the \log_{10} value of all bacterial enumerations in the data sequence to be evaluated. (If a zero value is obtained, take the \log_{10} value of the minimum detection limit of the analytical method used instead);

(ii) calculate the arithmetic mean of the \log_{10} values (μ);

(iii) calculate the standard deviation of the \log_{10} values (σ).

The upper 90-percentile point of the data probability density function is derived from the following equation: upper 90-percentile = antilog ($\mu + 1,282 \sigma$).

The upper 95-percentile point of the data probability density function is derived from the following equation: upper 95-percentile = antilog ($\mu + 1,65 \sigma$).

⁽³⁾ 'Worse' means with higher concentration values expressed in cfu/100 ml.

⁽⁴⁾ 'Better' means with lower concentration values expressed in cfu/100 ml.

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2. if the bathing water is subject to short-term pollution, on condition that:
- (i) adequate management measures are being taken, including surveillance, early warning systems and monitoring, with a view to preventing bathers' exposure, by means of a warning or, where necessary, a bathing prohibition;
 - (ii) adequate management measures are being taken to prevent, reduce or eliminate the causes of pollution; and
 - (iii) the number of samples disregarded in accordance with Article 3(6) because of short-term pollution during the last assessment period represented no more than 15 % of the total number of samples provided for in the monitoring calendars established for that period, or no more than one sample per bathing season, whichever is the greater.

ANNEX III

THE BATHING WATER PROFILE

1. The bathing water profile referred to in Article 6 is to consist of:
 - (a) a description of the physical, geographical and hydrological characteristics of the bathing water, and of other surface waters in the catchment area of the bathing water concerned, that could be a source of pollution, which are relevant to the purpose of this Directive and as provided for in Directive 2000/60/EC;
 - (b) an identification and assessment of causes of pollution that might affect bathing waters and impair bathers' health;
 - (c) an assessment of the potential for proliferation of cyanobacteria;
 - (d) an assessment of the potential for proliferation of macro-algae and/or phytoplankton;
 - (e) if the assessment under point (b) shows that there is a risk of short-term pollution, the following information:
 - the anticipated nature, frequency and duration of expected short-term pollution,
 - details of any remaining causes of pollution, including management measures taken and the time schedule for their elimination,
 - management measures taken during short-term pollution and the identity and contact details of bodies responsible for taking such action;
 - (f) the location of the monitoring point.
2. In the case of bathing waters classified as 'good', 'sufficient' or 'poor', the bathing water profile is to be reviewed regularly to assess whether any of the aspects listed in paragraph 1 have changed. If necessary, it is to be updated. The frequency and scope of reviews is to be determined on the basis of the nature and severity of the pollution. However, they are to comply with at least the provisions and to take place with at least the frequency specified in the following table.

Bathing water classification	'Good'	'Sufficient'	'Poor'
Reviews are to take place at least every	Four years	Three years	Two years
Aspects to be reviewed (points of paragraph 1)	(a) to (f)	(a) to (f)	(a) to (f)

In the case of bathing waters previously classified as 'excellent', the bathing water profiles need be reviewed and, if necessary, updated only if the classification changes to 'good', 'sufficient' or 'poor'. The review is to cover all aspects mentioned in paragraph 1.

3. In the event of significant construction works or significant changes in the infrastructure in or in the vicinity of the bathing water, the bathing water profile is to be updated before the start of the next bathing season.
4. When appropriate, the information referred to in paragraph 1(a) and (b) is to be provided on a detailed map.
5. Other relevant information may be attached or included if the competent authority considers it appropriate.

ANNEX IV

BATHING WATER MONITORING

1. One sample is to be taken shortly before the start of each bathing season. Taking account of this extra sample and subject to paragraph 2, no fewer than four samples are to be taken and analysed per bathing season.
 2. However, only three samples need be taken and analysed per bathing season in the case of a bathing water that either:
 - (a) has a bathing season not exceeding eight weeks; or
 - (b) is situated in a region subject to special geographical constraints.
 3. Sampling dates are to be distributed throughout the bathing season, with the interval between sampling dates never exceeding one month.
 4. In the event of short-term pollution, one additional sample is to be taken to confirm that the incident has ended. This sample is not to be part of the set of bathing water quality data.
If necessary to replace a disregarded sample, an additional sample is to be taken seven days after the end of the short-term pollution.
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ANNEX V

RULES ON THE HANDLING OF SAMPLES FOR MICROBIOLOGICAL ANALYSES

1. SAMPLING POINT

Where possible, samples are to be taken 30 centimetres below the water's surface and in water that is at least one metre deep.

2. STERILISATION OF SAMPLE BOTTLES

Sample bottles are:

- to undergo sterilisation in an autoclave for at least 15 minutes at 121 °C, or
- to undergo dry sterilisation at between 160 °C and 170 °C for at least one hour; or
- to be irradiated sample containers obtained directly from manufacturer.

3. SAMPLING

The volume of the sampling bottle/container is to depend on the quantity of water needed for each parameter to be tested. The minimum content is generally 250 ml.

Sample containers are to be of transparent and non-coloured material (glass, polyethene or polypropylene).

In order to prevent accidental contamination of the sample, the sampler is to employ an aseptic technique to maintain the sterility of the sample bottles. There is no further need for sterile equipment (such as sterile surgical gloves or tongs or sample pole) if this is done properly.

The sample is to be clearly identified in indelible ink on the sample and on the sampling form.

4. STORAGE AND TRANSPORT OF SAMPLES BEFORE ANALYSIS

Water samples are to be protected at all stages of transport from exposure to light, in particular direct sunlight.

The sample is to be conserved at a temperature of around 4 °C, in a cool box or refrigerator (depending on climate) until arrival at the laboratory. If the transport to the laboratory is likely to take more than four hours, then transport in a refrigerator is required.

The time between sampling and analysis is to be kept as short as possible. It is recommended that samples be analysed on the same working day. If this is not possible for practical reasons, then the samples are to be processed within no more than 24 hours. In the meantime, they are to be stored in the dark and at a temperature of 4 °C ± 3 °C.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

The Commission adopted its proposal ⁽¹⁾ for a new Directive on bathing water quality in October 2002 and its amended proposal in April 2004.

The European Parliament adopted its first-reading opinion in October 2003. ⁽²⁾

The Economic and Social Committee adopted its opinion in June 2003. ⁽³⁾

The Committee of the Regions adopted its opinion in April 2003. ⁽⁴⁾

The Council adopted its common position on 20 December 2004.

II. OBJECTIVE

The new Directive would repeal and replace Directive 76/160/EEC. Its aim is to enhance public health protection by strengthening the standards for bathing water quality and modernising the legal framework for its management. It would in particular:

- complement Directive 2000/60/EC (the water framework Directive),
- reduce the parameters to be monitored for the purposes of bathing water quality classifications and introduce a new classification methodology,
- take account of pro-active management measures, not just statistical results,
- enhance the information on bathing waters available to the public, including through bathing water profiles.

III. ANALYSIS OF THE COMMON POSITION

1. General

The common position incorporates the majority of the European Parliament's first-reading amendments, either verbatim, in part or in spirit. However, it does not reflect a number of amendments because:

- of inconsistency with the wording of Article 174 of the Treaty (amendment 1);
- in the view of the Council and the Commission, they would have unnecessarily duplicated existing requirements of the water framework Directive (amendments 2 and 58, 4, 16 and 33);
or
- the Council considered them superfluous and potentially confusing (amendments 6, 8 and 12).

It also includes a number of other changes. The following sections describe the changes of substance. In addition, there are drafting changes to clarify the text or to ensure the overall coherence of the Directive.

2. Purpose, scope and definitions (Articles 1 and 2)

Article 1(1) is partly consistent with European Parliament amendment 65. However, the Council cannot agree to extend the scope of the Directive beyond bathing to apply to *other recreational activities*. Consequently, the common position includes no reference to such activities and does not incorporate amendments 5, 7 or 22.

The definition of 'bathing water' now appears in Article 1(3), since this term determines the scope of the Directive.

⁽¹⁾ OJ C 45 E, 25.2.2003, p. 127.

⁽²⁾ OJ C 82 E, 1.4.2004, p. 115.

⁽³⁾ OJ C 220, 16.9.2003, p. 39.

⁽⁴⁾ OJ C 244, 10.10.2003, p. 31.

Article 2 incorporates further definitions from the water framework Directive and is consistent with European Parliament amendment 10. It also defines other key terms, namely 'competent authority', 'permanent', 'large number', 'pollution', 'short term pollution', 'cyanobacterial proliferation' and 'public concerned'.

3. **Monitoring** (Article 3 and Annexes IV and V)

Article 3 is broadly consistent with European Parliament amendments 11, 52 and 54, but provides more flexibility regarding the location of the monitoring point. It also contains provisions on short term pollution and provides for the use of equivalent methods and rules under certain conditions, some of which may be clarified through comitology.

Annex IV provides for an increased minimum sampling requirement compared to the Commission's original proposal, to increase the reliability of the statistical methodology. However, it also makes allowances for the particularly short bathing seasons prevailing in the north of the EU and special geographical constraints (e.g., remote islands). There is no longer any direct link between the sampling frequency and classification.

Annex V is consistent with European Parliament amendment 35 and, in part, with amendment 75.

4. **Quality assessment** (Article 4)

The common position adopts four bathing seasons as the normal assessment period, but provides Member States with the option of choosing a period of three seasons under certain conditions. It indicates the minimum number of samples required and the circumstances in which the subdivision or grouping together of bathing waters may take place.

5. **Classification and quality status** (Article 5 and Annexes I and II)

Article 5 incorporates several *key innovations* compared to the Commission's original proposal. In particular it would:

- defer the mandatory application of the new classification scheme until 2015 (to be consistent with the timetable of the Water Framework Directive);
- introduce a new classification ('sufficient') that would at least provide the same level of health protection as the minimum requirements of the existing Directive and act as a stepping stone to 'good' or 'excellent' quality; and
- clarify the circumstances in which bathing waters could temporarily be classified as being of 'poor' quality (including through wording consistent with the aim of European Parliament amendment 17).

Annex I would provide for classifications to take place on the basis of two *microbiological parameters*. Requirements concerning other types of pollution would remain (Article 9), but would not affect classification. Therefore the common position does not incorporate European Parliament amendment 31.

Annex I provides for evaluations based on both a 95 and 90-percentile. The limit values for the 'excellent' and 'good' classifications would be based on a 95-percentile evaluation, while that for 'sufficient' would be based on a 90-percentile evaluation to reduce the risk of statistical anomalies when using a small data set.

There are distinct limit values for inland and coastal waters. The scientific evidence currently available suggests that the presence of the same level of microbiological contamination represents a higher health risk in salt water than in fresh water.

The heading of column E is consistent with European Parliament amendment 57.

Annex II is consistent with the broad principle underlying European Parliament amendment 19, in that it provides that *short term pollution* would not affect a bathing water's classification if the competent authority takes appropriate measures to protect bathers' health.

6. **Bathing water profile** (Article 6 and Annex III)

The common position clarifies that there could be a single profile for contiguous bathing waters. It extends the deadline for the establishment of the first profiles and the interval between reviews, in recognition of the workload involved.

Annex III is consistent with European Parliament amendments 32 and 34.

7. **Public participation** (Article 11)

The common position is consistent with part of European Parliament amendment 20. The definition of the 'public concerned' in Article 2 clearly includes interested parties at the local level. The remainder of the amendment is superfluous in view of Article 18 and Directive 2003/4/EC.

8. **Information to the public** (Article 12)

The common position groups all the general requirements to inform the public together in a single Article. These requirements are consistent with the aims of European Parliament amendments 15 and 18.

By encouraging the use of signs and signals and providing for the adoption of harmonized rules in this area through comitology (Articles 12(4) and 15(1)(b)), the common position is partly consistent with the objectives of amendments 21, 23 and 27 (and, reading these provisions together with Article 7, amendment 24).

It is also consistent with amendment 26 and part of amendment 25 in that it requires information to be available promptly on the internet.

9. **Report and review** (Article 14)

The Council agrees with the European Parliament that the Commission should review the implementation and operation of the Directive. The common position is therefore consistent with the aim of amendment 28. However, it specifies some key issues that the Commission's report should address, particularly:

- the results of the epidemiological study that the Commission is to undertake as a matter of urgency to obtain greater scientific certainty regarding health risks associated with bathing, particularly in fresh water;
- WHO recommendations, which would equate to the 'good' classification rather than to the minimum requirements of the Directive.

10. **Comitology** (Articles 15 and 16)

The common position contains a single provision listing the technical decisions that could be taken through comitology (Article 15).

However, the Council believes that these decisions should be optional, not mandatory. Moreover, it cannot agree to the addition of new parameters on virus detection through comitology. Consequently, the common position does not incorporate European Parliament amendments 29 and 30.

11. Other

In addition the common position contains:

- simplified rules on response measures in exceptional circumstances, the scope of which is now the same as the remainder of the Directive (Article 7); and
- a requirement for Member States to carry out appropriate monitoring and to take necessary management measures to protect public health from cyanobacterial risks (Article 8).

IV. CONCLUSION

The Council believes that the common position represents a balanced package of measures that would permit a much needed updating of Community rules on bathing water quality and enhance the level of public health protection in a staged and reasonable manner without placing an undue burden on the authorities concerned. It looks forward to constructive discussions with the European Parliament with a view to the early adoption of the Directive.
