



COMMISSION OF THE EUROPEAN COMMUNITIES

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2003/0210 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

**common position of the Council on the adoption of a Directive of the European
Parliament and of the Council on the protection of groundwater against pollution**

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(Text with EEA relevance)

1- BACKGROUND

Date of transmission of the proposal to the EP and the Council 22 September 2003
(document COM(2003)550 final – 2003/0210(COD):

Date of the opinion of the European Economic and Social 31 March 2004
Committee:

Date of the opinion of the Committee of the Regions: 12 February 2004

Date of the opinion of the European Parliament, first reading: 28 April 2005

Date of transmission of the amended proposal: 22 June 2005

Date of adoption of the common position: 23 January 2006

2- OBJECTIVE OF THE COMMISSION PROPOSAL

Groundwater is an important natural resource, which is mainly used for drinking water, industry and agriculture. It has also a high environmental value as it interacts with surface waters and wetlands, and thus represents a key part of the water cycle, which should be protected.

Preventing groundwater pollution has been the subject of Community legislation since 1980 and, more recently, through the Water Framework Directive, which was adopted in 2000.

However, clear criteria regarding the definition of groundwater environmental quality objectives, and in particular good chemical status, are lacking. In addition, specific measures to prevent and control groundwater pollution are needed. This was recognised when the Water Framework Directive was agreed to the extent that Article 17 of that Directive requested the Commission to come forward with a proposal to address these needs.

Against that background, and after extensive consultation with stakeholders, the Commission published a proposal for a new directive concerning the protection of groundwater against pollution in September 2003¹. This proposal contains the following main elements:

- a compliance regime for assessing good chemical status for groundwater for a limited number of pollutants where existing Community standards prevail;
- criteria for assessing the chemical status of groundwater based on environmental quality standards, which have to be established by Member States at the appropriate level (national, river basin or groundwater body), depending on the variations in natural groundwater conditions, identified pressures and related chemical substances;
- criteria for identifying significant upward trends in pollutant concentrations in groundwater and defining starting points for reversing these trends;
- measures for preventing or limiting direct and indirect inputs of pollutants into groundwater.

The proposal provides clear specifications that will ensure that the environmental objectives of the Water Framework Directive will be achieved with respect to groundwater. Equally, the proposal achieves the right balance between issues that need to be addressed at Community level and those that are best left to Member States.

3- COMMENTS ON THE COMMON POSITION

3.1 General comments

In its amended proposal, the Commission accepted in full, in part or in principle 67 of the 89 amendments adopted by the European Parliament in its first reading. 54 amendments have now been incorporated, either verbatim or in spirit, in the common position.

The Commission accepted all the amendments which sought to clarify the scope of the proposal, in particular those regarding the compliance regime related to the groundwater good chemical status. The Commission did not accept amendments which repeated Water Framework Directive provisions and referred to groundwater ecosystems.

The Council has incorporated key Parliamentary amendments related to good groundwater chemical status compliance, identification and reversal of pollution trends as well as exemptions linked to provisions to prevent or limit pollutant inputs.

The Commission considers that the Common Position adopted by qualified majority on 8.12.2005 does not in general alter the approach or aims of the Proposal and can thus generally support it as it stands.

¹ COM(2003) 550 final, 19.9.2003

3.2 Detailed comments

3.2.1 *Parliamentary amendments accepted by the Commission and incorporated in full, in part or in principle in the common position*

Amendments 2, 5, 6, 9, 12, 13, 14, 15, 17, 19, 20, 26, 28, 29, 30, 31, 32, 33, 34, 39, 42, 47, 48, 55, 57, 58, 59, 63, 65, 88, 89 and 90 have been incorporated to varying degrees. They provide clarity regarding criteria for assessing good groundwater chemical status and on 'prevent or limit' provisions. Amendment 60 had been accepted by the Commission on the sole condition that a reference be made to the Nitrates Directive, which has been included in the Common Position; this in line with the spirit of Amendment 64. Part C of the Common Position basically covers Amendments 66, 67, 68, 69, 70 and 71, with the difference that the term 'threshold values' has been kept by the Council whereas the European Parliament recommended to use a single term 'groundwater quality standards'. Amendment 72 has also been taken into account. Finally, Amendments 73, 74, 75, 76, 77, 78, 79, 81, 82, 83 and 84 concerning technical requirements for trend assessment and reversal are integrated in part or in principle in the Common Position. The Council has decided to simplify Annex IV by incorporating general provisions regarding trend identification and reversal requirements, instead of maintaining tables with common time series which might not be applicable for all groundwater situations.

3.2.2 *Parliamentary amendments rejected by the Commission but incorporated in full, in part or in principle in the common position*

Amendment **18** was rejected by the Commission, but has been partly incorporated in the common position. This amendment made a reference to 'environmentally' significant increases of concentrations of pollutants in groundwater. The Council changed the formulation which is now clearer in the new definition 3 of Article 2. Amendment **50** was also rejected but included in the Common Position as paragraph 4 of Article 6.

3.2.3 *Parliamentary amendments rejected by the Commission and the Council and not incorporated in the common position*

Amendments **3**, **4**, **7**, **10**, **11**, **16**, **21**, **23**, **27**, **40**, **49**, **93**, **51**, **52**, **54**, **56**, **62** and **80** were rejected by both institutions and not incorporated. These amendments repeated WFD provisions, e.g. concerning groundwater used as drinking water (**3**, **4**, **62**), groundwater quantitative issues (**7**, **10** and **80**), references to human or eco-toxicological criteria (**27**), or they added new provisions on the management of historically contaminated sites (**23**, **93** and **49**). A part of Amendment **88** (on domestic effluent) was rejected. Prevention measures (**51**) and a provision on 'polluter pays principle' (**52**) were not retained, nor were specific provisions on spas and medicinal water sources (**54**). Amendment **56**, which referred to INSPIRE², was also not incorporated. Finally, research recommendations were considered to be misplaced in the directive and the amendments **95** and **100** were hence not retained.

3.2.4 *Parliamentary amendments accepted in full, in part or in principle by the Commission but not incorporated in the common position*

Amendments **1**, **8**, **15**, **22**, **24**, **25**, **36**, **37**, **38**, **41**, **46** and **91** were accepted in part or in

² COM(2004) 516 final

principle by the Commission but not incorporated. Some of these amendments concerned editorial changes such as the addition of the term ‘chemical’ to pollution throughout the text (1) and ‘resulting from the impact of human activity’ in Article 5 (37); others were more substantial, e.g. incorporation of a new recital on farming/forestry practices (8), new definitions on ‘background concentration’ (22) and ‘baseline concentration’ (24, 38) or reference to natural geogenically determined levels of pollutants (91), which would be useful and in line with the Common Position. The possible proposal for a directive amending Annex I of the proposal was also not retained (36). A new article on measurement methods (as proposed by amendment 41) was not incorporated, but would be consistent with a related Common Position provision in Annex IV, paragraphs 1.2 (b) and (c) of the proposal. Finally, a reference to measures and groundwater monitoring (46) has not been included in the Common Position.

3.2.5 *Additional changes made by the Council to the Proposal*

In Article 1, the last paragraph has been extended to include a reference to the ‘prevent or limit’ provision of the WFD, and incorporated as a separate paragraph 2.

A new definition of ‘groundwater quality standard’ has been included in Article 2(1), the ‘threshold value’ now being linked to this definition (Article 2(2)). Former definitions 2 and 3 (now 3 and 4) have been slightly modified by including a cross-reference to ‘environmental risk’ (definition 3) and changing ‘indirect discharges’ to ‘input’ (which covers both direct and indirect introduction of pollutant into groundwater).

In the original proposal, Article 3 concerned compliance criteria for good groundwater chemical status, which was followed by requirements concerning the establishment of threshold values. This has now been changed by consolidating criteria for assessing groundwater chemical status in Article 3, namely ‘groundwater quality standards’ and ‘threshold values’, and including requirements on the establishment of the latter with additional provisions on trans-boundary groundwater bodies. The date at which threshold values should be reported has also been changed to 2008 from 2006 as proposed by the Commission.

Restructuring Article 3 had the logical consequence that all elements related to compliance are now incorporated in Article 4, including provisions that were originally included in Annex I (footnote 22 in particular), and providing flexibility to the ‘one out all out principle’ (one point exceeding the standard classifying the groundwater body as being in poor chemical status) with a risk-based approach.

The spirit of Article 5 remains the same as in the original proposal, but it now includes provisions that were imported from the former Annex IV, thus making it more extensive. A new provision has been included concerning the reasons for the definition of starting points for trend reversal.

Article 6 has also been substantially extended, covering provisions to ‘prevent or limit’ inputs of pollutants (instead of indirect discharges as in the original proposal). The pollutants whose input is to be prevented or limited and the related measures are clarified in Article 6(1). A new provision on diffuse sources is included in Article 6(2). Finally, a series of exemptions, either recalling WFD provisions, imported from the 80/68/EEC Directive, or highlighting allowable water management practices, have been incorporated in Article 6(3).

Article 7 has been slightly modified in that it now refers to ‘any new authorisation procedure’ instead of ‘prior investigation and authorisations’.

Article 8 remains basically unchanged.

The core of the text of Article 9 is also unchanged, but the implementation date has been modified to 24 months instead of 18 months.

The clarity of Annex I has been improved by changing the footnotes into separate paragraphs which clarify the scope and applicability of the groundwater quality standards. The comment in the right column of the table concerning nitrates has been extended to all activities falling within the scope of the Directive 91/676/EEC instead of only referring to nitrate-vulnerable zones. Finally, the value of 0.5 µg/l for ‘total pesticides’ has been included in the table.

The sequence of Annexes II and III has been modified. Annex II, part A, now concerns guidelines for the establishment of threshold values (new text, which is in line with Amendment 65 of the European Parliament). Minimum lists of substances or ions related to threshold values are included in part B, splitting the tables (originally in Annex III) in three different categories, and specifying that threshold values linked to saline concentrations due to anthropogenic activities may be established either for sulphate or chloride or for electrical conductivity. Part C of the annex now includes the former Part B of Annex III with additional details which improve the text.

Annex III now concerns the assessment of groundwater chemical status and extends the original text of the former Annex II with details and cross-references to Article 4.

Finally, Annex IV has been simplified in order to provide general requirements rather than specifications, in particular time series, which might not be applicable to all groundwater situations in Europe. In this respect, the tables of the original paragraphs 1.2(c) and 2.3 have been deleted, and new requirements have been added regarding monitoring frequencies and locations.

4- CONCLUSION

The changes introduced by the Council help to clarify the proposal and to bring its implementation into line with Water Framework Directive related provisions. The Commission therefore supports the Common Position.