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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.1.2008
COM(2007) 871 final

2006/0129 (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 adopted by the Council with a view to the adoption of a Directive of the European Parliament and of the Council on environmental quality standards in the field of water policy and amending Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and 2000/60/EC

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(Text with EEA relevance)

1- BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2006)397 final – 2006/0129 COD): 17 July 2006

Date of the opinion of the European Economic and Social Committee: 15 February 2007

Date of the opinion of the European Parliament, first reading: 22 May 2007

Date of adoption of the common position (qualified majority): 20 December 2007

2- OBJECTIVE OF THE COMMISSION PROPOSAL

The Commission proposal for a Directive on environmental quality standards in the field of water policy ("Directive on Priority Substances") is a "daughter directive" of the Water Framework Directive – WFD (2000/60/EC). It aims at:

- setting environmental quality standards for a certain number of substances (based on Article 16 (7) of the WFD),
- repealing existing legislation (as required by Article 16 (10) of the WFD) and
- reviewing the list of priority hazardous substances (based on Decision 2455/2001/EC).

The proposal does not include additional emission controls (as per Article 16 (6) and (8) of the WFD) since more than 30 Community acts, which introduce emission controls for these substances, were presented by the Commission between 2000 and 2006 (including Regulation on registration, evaluation and authorisation of chemicals – REACH (Regulation (EC) No. 1907/2006) and the Thematic Strategy on Sustainable Use of Pesticide (COM(2006) 373 final). Together with the existing legislation (including the Directive on Integrated Pollution Prevention and Control (Directive 96/61/EC)), the Member States have sufficient instruments to achieve the WFD objectives. This approach was set out in a Communication (COM(2006) 398 final) related to the Directive on Priority Substances and in the Impact Assessment

(SEC(2006) 947 final). Finally, this approach and the repeal of several directives is contributing to the "better regulation" agenda.

3 COMMENTS ON THE COMMON POSITION

3.1 General comments

The Commission accepted, in full, in part or in principle, 29 of the 71 amendments adopted by the European Parliament in its first reading. 22 amendments have now been incorporated, either verbatim, in part or in spirit, in the common position.

The Commission accepted all the amendments which sought to clarify the scope of the proposal. The Commission did not accept the amendments which introduced additional substances into the list or which changed the classification of "priority hazardous substances". The Commission believes that this is not in line with the scope of the proposal and the provisions of relevant Community law. Furthermore, the Commission rejected all amendments which duplicate obligations already provided for under the Water Framework Directive (2000/60/EC) or which affect the Commission's right of initiative.

The Council has now agreed to incorporate several of the Parliamentary amendments either verbatim, in part or in spirit because they offer clarifications or develop the Commission's proposal in more detail. However, most of the amendments have not been incorporated into the common position because the Council agrees with the Commission that they are unnecessary and/or undesirable.

The Commission considers that the Common Position adopted by qualified majority on 20 December 2007 does not alter the approach or aims of the Proposal and can thus support it as it stands.

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 1, 4, 7, 8, 14, 21, 24, 29, 30, 35, 36, 40, 52, and 73 are incorporated to varying degrees. They provide clarifications and further specification, in particular on the relationship between this Directive and the Water Framework Directive and other relevant Community legislation.

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

Amendments 20 and 66 introduced a reference to the Water Framework Directive which was inconsistent with the provisions laid down in that Directive. The Council introduced a clearer drafting into Article 1 and 3 to make such references which address the amendments in principle but ensures the necessary consistency. Thus, the common position is acceptable to the Commission.

Amendment 26 provides for flexibility for monitoring quality standards in sediment and/or biota instead of water without introducing the necessary clarity and safeguards to ensure the same level of protection. The new paragraph 2 of Article 3 in the common position overcomes these shortcomings and allows for the monitoring of sediment and/or biota in a clear and transparent way which allows the Commission to verify that the environmental protection objectives and the conditions in the internal market are comparable in all Member States. Thus, the common position is acceptable to the Commission.

Amendments 32, 33 and 45 were prejudging the appropriate course of action and infringing

on the Commission's right of initiative. In principle, these aspects are considered by the common position by introducing a new Article 7 on reviewing the need for Community-wide emission controls on a regular basis. This is consistent with the obligations set out by Article 18 of the Water Framework Directive and therefore acceptable to the Commission.

Amendment 47 required to the Commission to prepare a report on pollution caused by third countries. The common position addresses this point in principle in the new articles 6 and 7. Both articles are in principle acceptable to the Commission. However, the Commission would prefer a refined drafting, in particular of the Article 6. This is to establish legal clarity in such a way that those provisions of Directive 2000/60/EC which allow Member States to deal with transboundary pollution issues are clearly set out, thereby ensuring that Member State are not be in breach of the proposed Directive.

Amendments 50 and 51 proposed to merge the Part A and B of Annex I of the Commission proposal. This was not acceptable since the Water Framework Directive (WFD) foresees different obligations, e.g. regarding monitoring, for the substances in the different parts of the annexes of the WFD. The common position merges the two parts of the annexes but specifies in detail the different obligations for the different substances. Whilst this appears less transparent, it does not change the substance of the Commission proposal and is therefore acceptable.

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

Amendments 2, 5, 6, 9, 10, 11, 19, 27, 28, 37, 39, 41, 44, 46, 47, 49, 53, 54, 56, 57, 58, 59, 60, 61, 62, 63, 65, 67, 69, 70, 71, 72, 74, and 76 were rejected by both institutions and not incorporated. These amendments proposed to add substances to the list or to classify several "priority hazardous substances" in a different way. Furthermore, they introduced elements which were inconsistent or duplicating provisions in the Water Framework Directive or other Community law. Moreover, some amendments did not respect the right of initiative of the Commission.

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

Amendments 3, 12, 13, 16, 17, 18, 22, 23, 25, 31, 34, 38, 43, 48 and 79 were accepted in part or in principle by the Commission but not incorporated. Although the Commission shares the idea underlying these amendments, it feels that they are mainly clarifications or editorial editions to its proposal.

. The Council did not include them in the common position since it considered them unnecessary and/or undesirable.

3.2.5 Additional changes made by the Council to the Proposal

A new Article 2 clarifies that the definitions of Directive 2000/60/EC also apply for this directive.

The mandate for the Commission for the amendment of parts of the Annex is laid down in Article 3 (5). In the light of the recent changes of Decision 1999/468/EC (as amended by Council Decision 2006/512/EC), a regulatory procedure with scrutiny was introduced.

Regarding the Articles 4 (mixing zone) and 5 (inventory), the Commission proposal foresaw a mandate for the Commission to adopt methods or guidelines through Comitology. These paragraphs were deleted since it was decided that such harmonisation was not necessary. However, the Commission made a statement that it would organise an information exchange

between Member States on these issues.

Recital 25 was introduced to incorporate text on correlation tables consistent with paragraph 34 of the inter-institutional agreements on better law making.

4- CONCLUSION

The changes introduced by the Council help to clarify the proposal and specify some of the provisions in order to ensure consistency with the Water Framework Directive. The additional provisions on the monitoring of sediment and/or biota are acceptable since the Commission shares the underlying intentions and it is ensured that the Commission can verify that Member States apply the same level of protection and thereby ensure the functioning of the internal market. The Commission can therefore accept the Common Position.