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NOTE

from:	General Secretariat
to:	Delegations
Subject:	Current legislative proposals - Proposal for a Directive on environmental quality standards in the field of water policy (priority substances) = Information from the Presidency

Delegations will find in Annex an information note from the Presidency on the above-mentioned subject, which will be dealt with under "other business" at the Council (Environment) meeting on 11 June 2012.

ANNEX

Proposal for a Directive on environmental quality standards in the field of water policy (priority substances)

- Information from the Presidency -

1. On 31 January 2012 the Commission forwarded to the European Parliament and to the Council a proposal for a Directive amending Directives 2000/60/EC and 2008/105/EC as regards priority substances in the field of water policy.

2. The Presidency worked intensively on the proposal and the WPE has, over the course of six meetings, made considerable progress, not least by clarifying several technical issues raised by delegations. Compromises were elaborated on, among other things, the technical points in the annexes to the proposal, the choice of the matrix where monitoring should be performed, including different biota classes (Article 2, points 1 and 2), on the further improvement of analytical methods and guidelines by the Commission, and on the presentation of results in separate maps in the case of ubiquitous PBT substances (Article 2, point 5).

   The European Parliament's Environment Committee is expected to vote on 6 November 2012.

   The position of the European Parliament at first reading is not expected before January 2013.

3. The main outstanding issues concern:

(a) The list of Priority Substances (PS) and Priority Hazardous Substances (PHS) – Annexes I and II.

On the basis of an extensive review and prioritisation exercise launched in 2007, the Commission proposes to add 15 new PS (including six PHS) to the current list of 33 substances. Among the new PS, three substances are components of pharmaceutical products (Diclofenac, 17-beta-estradiol (E2) and 17-alpha-ethinylestradiol (EE2)). Furthermore, it is proposed that two existing substances be classified as PHS, and the EQS values for seven existing substances be revised and/or established for biota instead of water. Several delegations do not support the inclusion of the three pharmaceuticals on the list. Comments relate, among others, to:

- the scientific justification used in the prioritisation, which is considered insufficient in some cases,
- the socioeconomic impact and in particular the estimation of the costs entailed, which several delegations find insufficient,
- consistency with EU product legislation. In this respect some delegations also consider that the scope of control measures that can be taken at national level under the WFD is very limited and that the best option in certain cases would be to promote controls at source and amend EU legislation on the placing on the market of products and substances. The Presidency has introduced in the recitals and in the body of the Directive (Recital 6a and Article 2, point 3a) a compromise text to take this concern into account.

In the Commission's opinion, the technical process conducted to identify the substances was thorough, and it is clear that the proposed new PS pose EU-wide risks to or via the aquatic environment. It is noted that concrete measures to be taken across the EU are not prescribed, as the choice of the measures to be taken at river-basin and water-body level is left to the Member States. The Commission assessed the scale of the potential measures that might need to be taken by Member States as concrete examples of what costs might be incurred. Local circumstances will determine the most cost-effective measures while exemptions from the Water Framework Directive could be applied on account of disproportionate costs, technical feasibility or natural conditions.

(b) Ubiquitous PBTs - Article 2, point 5.

With regard to eight PS behaving as ubiquitous, persistent, bioaccumulative and toxic substances (u-PBTs), the Commission proposal introduces the possibility of reducing the frequency of monitoring, provided a robust monitoring baseline already exists. It would also be possible to present data on u-PBTs separately from data for other PS so that improvements in the evolution of the latter are not hidden.

Delegations generally welcome the flexibility introduced on u-PBTs and present a number of requests, among others:

- the addition of further substances to this list,
- a definition and/or criteria for u-PBTs,
- considering that most control measures have already been taken at EU or local level, many delegations propose departing from the Water Framework Directive as regards implementing further measures or by taking u-PBTs out of the assessment of chemical status.

The Commission does not consider it appropriate to extend the list without sufficient evidence and maintains its proposal which allows for a significant burden reduction as compared to the current situation. In the Commission's view, the need and possibility for further national measures to solve local problems cannot be ruled out and excluding u-PBTs from the assessment of surface-water status would compromise transparency and mislead the public by letting it believe that these substances are no longer a problem. On the contrary, the WFD approach is to assess possible exemptions case by case, on the basis, among others, of disproportionate costs. The Commission has announced its intention to prepare a document outlining the proper application of WFD provisions (including the combined approach, and the "no deterioration" principle) with regard to u-PBTs.

(c) The watch list – Article 2, point 6.

The proposed watch list has the aim of supporting the prioritisation of substances in future reviews of the Directive. It provides for the obligation to monitor a dynamic list of up to 25 substances or groups of substances at 250-300 representative sites across the EU. The list of substances would be decided by delegated acts. On this proposal:

- Many delegations ask that the Commission and its Joint Research Centre to undertake the watch list monitoring or to participate and support Member States in, among other things, the development of analytical methods and the performance of analytical work. Reservations were expressed on the use of delegated acts to decide on which substances were placed on the watch list.
- Several delegations ask for the proposal to be replaced by a voluntary provision and/or for the number of substances to be monitored to be reduced, out of concern about the costs. Others consider that the proposal does not allow sufficient time to plan for the monitoring costs in the national annual budget.
- Some delegations have a reservation on the criteria determining the number of sampling stations at national level (1 station/15 000 km²).

The Commission considers that if the watch list was voluntary it would have no added value compared to the current situation, where monitoring of many substances is very patchy across the EU.

The Presidency has modified the criteria for selecting sampling stations to take better account of densely populated areas (1 station/50 000 km² + 1 station/2.5 million inhabitants) and the proposed deadlines for monitoring and reporting. It has also replaced the procedure for establishing the watch list with implementing acts. While the criteria for selecting sampling stations need to be further examined, the change of procedure is supported by a majority of delegations, but opposed by the Commission.

4. Other issues to be further examined, concern, among others:

- the EQS values and choice of matrix: several questions are still outstanding, notably on the availability of analytical methods, either for certain substances/matrices and/or in relation to methods which have sufficient sensitivity to reach the EQS values proposed (when these are lower than the existing limit of detection). Some Member States express reservations on the proposed EQS values and on the obligation, in certain cases, to monitor in the biota matrix as prescribed. Furthermore, some Member States do not consider the bioligand model (BLM) as sufficiently mature, *inter alia* because the methodical guideline for this is still being developed; Some Member States would also like a clarification on the applicable timeframes for reaching the EQS as proposed.

- the date of entry into force: the transposition period of 12 months is considered inadequate by all delegations. The Presidency compromise now provides for an 18-month period.