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DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council on minimum requirements for water reuse

– Draft Statement of the Council's reasons

I. INTRODUCTION

On 28 May 2018, the Commission adopted a legislative proposal for a Regulation of the European Parliament and of the Council on minimum requirements for water reuse, the so-called Regulation on Water Reuse (9498/18 + ADD 1 to ADD 6).

The European Parliament adopted its first reading position on the Commission proposal on 12 February 2019 (6427/19).

At its meeting on 26 June 2019, the Council agreed on a General approach on the Commission proposal (10278/19) providing the Presidency with the mandate to pursue negotiations with the European Parliament.

Three trilogues were held on 10 October, 12 November and 2 December 2019. In parallel to these trilogues several technical tripartite meetings took place.

On 18 December 2019, after analysis of this text with a view to agreement, the Committee of Permanent Representatives endorsed the final compromise resulting from the trilogues (14944/19 + COR1). The endorsed text with renumbered provisions was distributed that same day as ANNEX to document 15254/19 +COR 1.

On 21 January 2020, the ENVI Committee of the European Parliament gave its endorsement to the text. Subsequently, the same day the Chair of the ENVI Committee sent a letter to the Chair of the Committee of Permanent Representatives indicating that, subject to lawyer-linguist verification, he would recommend to the ENVI Committee and the Plenary to adopt the Council's position without amendments.

The Economic and Social Committee adopted its Opinion on the proposal on 12 December 2018¹. The Committee of the Regions adopted its Opinion on 6 December 2018².

II. OBJECTIVE

The purpose of this Regulation is to guarantee that reclaimed water is safe for agricultural irrigation, thereby ensuring a high level of protection of the environment and of human and animal health, promoting the circular economy, supporting adaptation to climate change, and contributing to addressing water scarcity and the resulting pressure on water resources, in a coordinated way throughout the Union, thus also contributing to the efficient functioning of the internal market.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

General observations

With a view to finding agreement on the Regulation on Water Reuse, representatives of the Council and the European Parliament conducted informal negotiations in trilogues to converge their positions. The text of the Council Position at first reading on the Regulation fully reflects the compromise reached between the two co-legislators, facilitated by the European Commission.

¹ OJ C 110, 22.3.2019, p. 94

² OJ 86, 7.3.2019, p. 353

The Council and the European Parliament share the objectives of the Regulation on Water Reuse. Against that background, in the final trilogue, the Council and the Parliament agreed on a text of the Regulation that provides a balance between their different positions. On the one hand, with a view to avoiding unnecessary administrative burden, the Council wanted to ensure clarity with regard to the scope of the Regulation and provide sufficient leeway for Member States that practise water reuse for agricultural irrigation as well as for those that do not. On the other hand, the Parliament wanted to enhance harmonisation of the rules on water reuse in the EU, including through laying down minimum requirements for water quality and monitoring.

Key issues

The agreement reached in the trilogue on 2 December 2019 represents convergence of the positions of the Council and the Parliament on several key issues.

Scope

Council and Parliament agree that the minimum requirements for water quality and monitoring set out in the Regulation concern only the use of treated urban waste water for agricultural irrigation. However, acknowledging the great potential of reuse of reclaimed water for other purposes than agricultural irrigation, Annex I of the Regulation provides that, without prejudice to the relevant Union law in the fields of environment and health, Member States may use reclaimed water for further uses, such as for industrial purposes and amenity-related and environmental purposes.

Furthermore, the Council Position at first reading includes in Article 2(2) a discretionary clause which allows Member States to take a decision that water reuse for agricultural irrigation is not appropriate in one or more of their river basin districts or parts thereof. This enables Member States that do not practise water reuse to avoid unnecessary administrative burden, such as costs associated with setting up an administrative infrastructure for permitting.

At the same time, the discretionary clause lays down the modalities for ensuring that Member States duly justify their decisions, review them as necessary, at least every 6 years, and submit them to the Commission. Moreover, Article 10(3) obliges Member States to make their decisions available to the public online or through other means. Recital (7) further explains that the purpose of the Regulation is to facilitate the uptake of reuse of water for agricultural irrigation whenever it is appropriate and cost-efficient. The recital also points out that the Regulation should be flexible enough to ensure that Member States, that do not practise water reuse for agricultural irrigation, will only need to apply its rules when they start practising water reuse at a later stage.

In addition, Council and Parliament acknowledge the importance of enabling innovation in water reuse whilst avoiding distortion of competition. For those reasons, the Council Position at first reading provides in Article 2(3) that, under certain conditions, research and pilot projects can derogate from applying the Regulation.

Finally, Article 2(4) points out that the Regulation on Water Reuse applies without prejudice to the legislative framework on food hygiene as laid down in Regulation 852/2004.

At the same time, Article 2 takes into account the multi barrier approach by specifying that the Regulation on water reuse does not preclude food business operators from obtaining the water quality required to comply with Regulation 852/2004 by applying at a subsequent stage several water treatment options alone or in combination with other non-treatment options or from using other alternative water sources for agricultural irrigation. In this context, it is to be noted that Article 5(4)(c) provides that the Water Reuse Risk Management Plan must in particular identify additional barriers in the water reuse system, and set out any additional requirements after the point of compliance, necessary to ensure the safety of the water reuse system, including conditions related to distribution, storage and use where relevant, and identify the parties responsible for meeting those requirements. A reference to barriers is also made in Annex I section 2 point 1.

Finally, the amendment proposed by the Parliament to introduce liability for the reclamation facility operator in the event of non compliance was not included in the compromise text as it was considered out of scope. Moreover, in practice, it would be very difficult to prove that the reclaimed water was responsible for contamination of the soil or the crops.

Minimum requirements for water quality and monitoring

The Regulation on Water Reuse aims to protect human and animal health and the environment by setting minimum requirements for both the quality of reclaimed water and for monitoring compliance in combination with harmonisation of key elements of risk management.

These minimum requirements are laid down in respectively Annex I and Annex II of the Regulation. These annexes are the result of thorough work by experts, including from the Joint Research Centre (JRC). Considering that the technical work must prevail over political considerations, Council and Parliament agreed in the trilogues to make only few changes to these annexes which subsequently were confirmed by the JRC. Furthermore for reasons of clarity, a footnote was added to Table 1 in Annex I which reads: "If the same type of irrigated crop falls under multiple categories of Table 1 the requirements of the most stringent category shall apply". Council and Parliament further agreed on a provision on validation monitoring. This provision sets out that validation monitoring has to be performed in all cases where equipment is upgraded, and when new equipment or processes are added. Moreover, validation monitoring must only be performed for the most stringent reclaimed water quality class.

Furthermore, the power given to the Commission to adopt delegated acts for adapting to technical and scientific progress the key elements of risk management (Article 5(5) first subparagraph), as well as the delegated acts supplementing the Regulation in order to lay down technical specifications of risk management (Article 5(5) second subparagraph), ensures that the Regulation remains up to date. Moreover, Article 11(5) provides that the Commission must, in consultation with Member States, establish guidelines to support application of the Regulation in practice. The Commission must submit these guidelines within two years after the date of entry into force of the Regulation. Harmonisation also results from Article 6(5) which provides that competent authorities must communicate to the applicant for a permit the expected date of a decision on the application within 12 months. Finally, on the basis of Article 15, Member States that practise water reuse for agricultural purposes must lay down the rules on penalties applicable to infringements of the Regulation and take all measures necessary to ensure that they are implemented. Member States must, by 4 years after entry into force, notify the Commission of those rules and of those measures, as well as of any subsequent amendment affecting them.

The Council Position at first reading does not lay down minimum requirements for micro pollutants and micro plastics. However, it specifies in Annex II point B(6)(e) that micro pollutants and micro plastics are substances of emerging concern in relation to water quality that need particular consideration in a risk assessment. Moreover, Article 12(2)(d) mentions substances of emerging concern as an aspect that the Commission must pay particular regard to in the evaluation. Against that background, the Commission expressed its willingness to make a statement that, considering that micro pollutants and micro plastics represent a general issue, not limited to reclaimed water only, it would pursue its efforts to further address this important issue.

Possibility to take into account the differences between water reuse systems in the EU

In line with the fit for purpose approach, the compromise set out in the Council Position at first reading provides flexibility for Member States that practise water reuse for agricultural irrigation as regards the organisation of their water reuse systems. At the same time, the compromise ensures sufficient protection of human and animal health and the environment. Article 5 (Risk management) and Article 6 (Obligations regarding reclaimed water permit), in conjunction with the definitions on the competent authority, end user and responsible party in Article 3, leave Member States flexibility as regards the responsibilities of the different actors in the water reuse system.

Furthermore, in order to provide the necessary possibility to adapt to local circumstances, Article 3(11) defines the point of compliance as the point where a reclamation facility operator delivers the reclaimed water to the next actor in the chain whilst Article 6(3)(f) sets out that the exact point of compliance can be determined in the permit.

Finally, Article 7(3) provides flexibility as it specifies that it is the responsibility of the competent authority in the Member State to determine that compliance of water reuse is restored following procedures defined in the Water Reuse Risk Management Plan.

Taking into account the flexibility that the Council Position at first reading leaves to Member States and other actors in the field of water reuse, in the trilogue the co-legislators set the date of application at three years after the entry into force of the Regulation (Article 16).

Other important issues

The Council Position at first reading lays down several other important issues on which representatives of the Council and the European Parliament found agreement in the trilogues.

Information and transparency

With a view to promoting water reuse, Member States where reclaimed water is used for agricultural irrigation must organise general information and awareness raising campaigns on savings of water resources as a result of water reuse for agricultural irrigation. To avoid disproportionate burden, Article 9 provides that Member States may adapt such campaigns to the scale of their water reuse. Furthermore, for reasons of transparency, Article 10 lists the information on reuse of water that Member States where reclaimed water is used must make available to the public on line or by other means. This information must be adequate and must be updated every two years. Finally, Article 11 provides for setting up a system on information on monitoring of the implementation of the Regulation.

Access to justice

The Council Position at first reading refers to access to justice in a new recital (39) as is the case in the Single Use Plastics Directive. This reflects the situation that all Member States are parties to the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, usually known as the Aarhus Convention. Laying down specific obligations on access to justice in the Regulation on Water Reuse is not needed given that all EU Member States have well-functioning national systems in place to ensure access to justice in environmental matters.

Evaluation and review

Article 12(1) provides that the Commission must carry out an evaluation and review of the application of the Regulation within 8 years after entry into force. This Article specifies the elements on which this evaluation must be based. As part of the evaluation, the Commission must assess the feasibility of extending the scope of the Regulation to reclaimed water for further specific uses, including reuse for industrial purposes. The Commission must also assess the feasibility of expanding the requirements of the Regulation to cover the indirect use of treated waste water.

IV. CONCLUSION

The Council Position at first reading on the Regulation on Water Reuse fully reflects the compromise reached in informal negotiations between representatives of the Council and the European Parliament, facilitated by the Commission. Against that background, the Permanent Representatives Committee is invited to suggest to the Council:

- to endorse this Statement of the Council's Reasons on its Position at first reading, and
- to send this Statement of the Council's Reasons to the European Parliament.

After adoption by the European Parliament of its Position at second reading, approving the Council's Position without amendment, the Regulation on Water Reuse will enter into force on the 20th day following that of its publication in the Official Journal of the EU.
