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STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the quality of water intended for human consumption (recast)

- Statement of the Council's reasons
- Adopted by the Council on 23 October 2020

I. INTRODUCTION

1. On 1 February 2018, the Commission submitted its recast proposal for a Directive of the European Parliament and of the Council on the quality of water intended for human consumption ¹, the so-called Drinking Water Directive (DWD).
2. At its meeting on 5 March 2019, the Council agreed on a General approach ² providing the Presidency with a mandate to pursue negotiations with the European Parliament.
3. The European Parliament adopted its first reading position on 28 March 2019 ³. The report contained 160 amendments to the Commission's proposal.
4. Five trilogues took place on 7 October, 22 October, 19 November, 3 December and 18 December 2019. The Presidency proposed revised mandates to Coreper at its meetings on 15 November, 27 November and 18 December 2019. In addition to the political trilogues, multiple technical tripartite meetings were also held.
5. On 5 February 2020, the Committee of Permanent Representatives conducted an analysis of the text with a view to agreement and endorsed the final compromise resulting from the trilogues ⁴. The endorsed text with renumbered provisions was distributed as an Annex to document 6060/1/20 REV 1.

¹ 5846/18 + ADD 1 to ADD 5.

² 6876/1/19 REV 1.

³ 7750/19.

⁴ 5813/20.

6. On 18 February 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 Permanent Representatives Committee indicating that, subject to lawyer-linguist verification, he would recommend to the ENVI Committee and the Plenary to adopt Council's position without amendments.
7. The Council confirmed the political agreement on 5 March 2020 ⁵.
8. In carrying out its work, the Council took account of the opinion of the Economic and Social Committee, adopted on 11 July 2018 ⁶, and of the Opinion of the Committee of the Regions, adopted on 16 May 2018 ⁷.

II. OBJECTIVE

9. The overarching objective of the recast proposal is to ensure a high level of protection of the environment and of human health from the adverse effects of contaminated drinking water. The current revision also aims to address the first-ever successful European citizens' initiative, entitled 'Right2Water'⁸.
10. Following a Union-wide public consultation and a Regulatory Fitness and Performance (REFIT) Evaluation of Directive 98/83/EC ⁹, it became apparent that four areas of the Drinking Water Directive offered scope for improvement. In order to address identified shortcomings, the recast proposal updates water quality standards, introduces a risk-based approach to the monitoring of water, improves water quality information that is provided to consumers and improves access to water. In addition, the proposal also sets out minimum hygiene requirements for materials in contact with drinking water.

⁵ 6060/1/20 REV 1.

⁶ NAT/733-EESC-2018-01285.

⁷ CDR 924/2018.

⁸ COM(2014) 177 final.

⁹ SWD(2016) 428 final.

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

A) General

11. On the basis of the Commission proposal, the Parliament and the Council have conducted negotiations with a view to concluding an agreement at the stage of the Council's position at first reading. The text of the draft Council position fully reflects the compromise reached between the two co-legislators.

B) Key policy issues

12. The agreement reached at the trilogue on 18 December 2019, reflected in the Council position at first reading, contains the following key policy elements:

Access to water

13. The Commission included provisions on access to water in its recast proposal in response to the European citizens' initiative 'Right2Water'. Access to water is an issue of utmost importance to both co-legislators. The agreement reached adds an objective to the Drinking water Directive. Article 1 now states that the Directive has two main objectives: (1) to protect human health from the adverse effects of contaminated water intended for human consumption and (2) to improve access to such water.

14. In addition, Article 16, paragraph 1, establishes that Member States are required to take necessary measures for maintaining or improving access to water for all, in particular, for vulnerable and marginalised groups, as defined by the Member States. Paragraph 2, foresees a number of measures to promote the use of tap water, however, only the setting up of indoors or outdoors equipment in public spaces is mandatory and conditioned to where technically feasible, in a manner that is proportionate and taking into account specific local conditions, such as climate and geography. The other measures are optional. Member States will also have to encourage the provision of tap water in administrations and public buildings. Finally, Article 16, paragraph 3, states that assistance to local communities is to be facilitated but the nature of such assistance is left for Member States to decide.

Risk based approach

15. One of the main objectives of the recast proposal is the set up of a risk based approach to the management of water. However, the co-legislators found that the element of risk management was rather weakly expressed in the Commission's proposal. The numerous modifications to Articles 7, 8 and 9 and corresponding recitals and definitions advanced in the Council's Position at first reading, have the aim to strengthen the risk based approach and clearly identify and define all its elements based on the Water Safety Plan approach of the World Health Organisation.
16. A risk based approach should consist not only of an identification of risks but also of the management of such risks, notably, by implementing measures to prevent or mitigate them. Monitoring is not an objective in itself but it should be part of a management system and an instrument to check compliance. Overall, the changes put forward by the co-legislators to these articles, seek the development of an integrated quality management system for the whole drinking water-supply chain, that is, from the catchment area, abstraction, treatment, storage and distribution to the point of compliance, i.e. from source to tap.

17. Attention was also given to reinforce the relationship between the Drinking Water and the Water Framework Directives and align the language used in both legislations. It is important that the provisions of these two directives complement each other without overlapping.

Materials in contact with water

18. Article 10 of the current Drinking Water Directive, requires Member States to protect human health in regards to substances and materials that come into contact with water intended for human consumption, but leaves the implementation of this requirement to their discretion. The lack of mutual recognition of Member States' national approval systems for products in contact with drinking water was identified as one of the important shortcomings in the current Directive during its evaluation. Under the current system, products have to undergo testing procedures that differ from Member State to Member State before they are put on the market. Such national testing procedures were recognised as an administrative burden and an obstacle to the internal market, with significant costs to industry.
19. The Commission's recast proposed to harmonise test methods for products in contact with drinking water through standardization under the Construction Products Regulation (CPR). A standardisation mandate, to be issued under the CPR, would define technical specifications and methods to test products in contact with drinking water for compliance with hygiene and safety requirements.
20. The co-legislators were of the view that the CPR is designed for the harmonisation of testing and declaration of performance, but is not suitable for safeguarding health related issues. In addition, the CPR approach does not cover all products from source to tap. Therefore, the Council's Position at first reading inserts new provisions within this Directive, Articles 11 and 12, to set hygienic requirements. The overall framework will be established through implementing and delegated acts laying down:
- European positive lists of starting substances or compositions authorized to be used for manufacturing of materials,
 - Common methodologies for testing and accepting such substances or compositions,

- Procedures and methods for testing and accepting materials in their final form,
- The procedure for applications to include or remove starting substances and compositions from the European positive lists,
- Conformity assessment procedures,
- A marking for products in contact with drinking water indicating conformity with this Directive.

21. The European Chemicals Agency (ECHA) will propose the first compiled European positive list to the Commission. ECHA will also review and deliver an opinion on all the substances, compositions and constituents contained in the European positive lists by 15 years after its adoption. Within 9 years of the entry into force of this Directive, the Commission will review the functioning of the system and present a report to the Parliament and the Council.

Derogations

22. Although the current Drinking Water Directive foresaw the possibility for Member States to apply for derogations under certain conditions, the Commission's recast proposal did not include derogations, since this legislation has been in force for over 20 years and only a very small number of derogations are still ongoing. The co-legislators, however, decided to reintroduce derogations but to limit them to new catchment areas, new sources of pollution and new parameters. In addition, a provision was introduced to allow Member States to grant a derogation in case of an unforeseen and exceptional situation in an existing catchment area that may lead to a temporary exceedance of parametric values. This last type of derogation may not be renewed.

Leakages

23. Also absent from the Commission's recast proposal was the issue of leakages. However, during the trilogue negotiations it became apparent that this problem should also be addressed by the Drinking Water Directive. Consequently, the Council's position at first reading introduces a new provision under Article 4, which requires Member States to perform an assessment of the level of water leakages in their territory within three years and to communicate these results to the Commission. The assessment of the level of leakages is to be done by using the infrastructural leakage index (ILI) or other appropriate method.
24. Based on Member States' assessments, the Commission will have 5 years to establish, by a delegated act, an average threshold value for leakages and, within 2 years of adoption of the this delegated act, Member States with a leakage rate above the determined average threshold will be required to develop an action plan for reducing their leakage rate.

Parameters, parametric values and watch list

25. The co-legislators agreed to up-date quality standards based on recommendations by the World Health Organisation, that is, following existing scientific knowledge and the precautionary principle.
26. For certain parameters the Drinking Water Directive will apply an even stricter approach. This is the case of Lead, where the WHO recommended retaining the current parametric value of 10 µg/l, however, the Council's Position at first reading sets the parametric value for lead at 5 µg/l but member States will have a transition period of 15 years to reach such value. In addition, the value of 5 µg/l will remain aspirational in relation to domestic distribution systems, since Member States do not always have the necessary authority to impose the replacement of lead pipes in private houses and buildings. Nevertheless, for all new materials that come into contact with drinking water the value of 5 µg/l will apply from the date of entry into force of this directive.

27. In order to address growing public concern about the effects of emerging compounds, such as endocrine-disruptors, pharmaceuticals and microplastics, the co-legislators agreed to add a watch list mechanism to the Drinking Water Directive. Article 13, sets up a watch list mechanism that will allow Member States to respond to these growing concerns in a dynamic and flexible way.
28. In relation to endocrine disruptors, two representative compounds, Nonylphenol and Beta-estradiol, will be included in the watch list. An additional endocrine-disruptor, Bisphenol - A, will be placed in Annex I, Part B, with a health based value of 2,5 µg/l and the Commission is empowered to amend its parametric value by delegated act. Also by delegated act, within a deadline of three years, the Commission will adopt a methodology to measure micro plastics with a view to include them on the watch list.
29. Member States will also be required to monitor per- and polyfluoroalkyl substances (PFAS). The Council's Position at first reading requests the Commission to develop technical guidelines for the monitoring of such substances within 3 years. Once the Commission has developed the technical guidelines, Member States will be able to choose between two methods of measuring PFAS: PFAS Total with a parametric value of 0.50µg/l and the sum of PFAS with the parametric value of 0.10 µg/l, referring to the 20 substances listed in Part B to Annex III.
30. Finally, in relation to monitoring, the co-legislators also agreed to reintroduce Indicator Parameters in the monitoring to be performed by Member States. These are present in the current Drinking Water Directive but had been deleted by the Commission in its recast proposal.

Other important issues

31. The Council Position at first reading also addresses other important issues on which the representatives of the Council and of the European Parliament found agreement during trilogue negotiations.

Transparency and Access to Information

32. In order to increase the use of tap water and thereby contributing to reduced plastic litter and greenhouse gas emissions, the public should have up-to-date information on the quality of the water that they consume. The co-legislators agreed that such information should be accessible to consumers on-line, in a user-friendly and customised way. Citizens will have access to the results of the monitoring programmes, information on types of water treatment and disinfection applied, information on exceedance of the parametric values relevant for human health, relevant information on risk assessment and risk management of the supply system, advice on how to reduce water consumption and avoid health risks due to stagnant water, but also additional information that the public may find useful, such as information on indicators like iron, hardness and, minerals, etc., which often influence consumers' perceptions of tap water. In addition, as a response to consumers interests in water issues, they should be given access, upon request, to available historical data on monitoring results and exceedances.

Access to justice

33. The Council Position at first reading refers to access to justice in a new recital (47) as is the case in other recent EU legislation on environmental matters. 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, also known as the Aarhus Convention. Given that all EU Member States have well-functioning national systems in place to ensure access to justice in environmental matters, the co-legislators agreed that it was not necessary to lay down specific obligations on access to justice in the operational part of the Drinking Water Directive.

34. Recital (47) on access to justice also recalls that the Commission, in its Communication of 11 December 2019 on the European Green Deal, states that it will consider revising the Aarhus Regulation to improve access to administrative and judicial review at EU level for citizens and NGOs who have concerns about the legality of decisions with effects on the environment. The co-legislators further acknowledge that it is important that the Commission takes action to improve access to justice by citizens and NGOs before national courts in all Member States.

Evaluation and review

35. Article 19, Paragraphs 1 and 2, provide that the Commission must carry out an evaluation of the Drinking Water Directive within 12 years after the end-date of its transposition and further specify the elements on which this evaluation can be based. In addition, paragraph 3, establishes that within 6 years the Commission must submit a report to the European Parliament and to the Council on the potential threat to sources of water intended for human consumption that can be caused by microplastics, pharmaceuticals and other newly-occurring contaminants of emerging concern.
36. Article 20 foresees that, at least every five years, the Commission will review Annexes I and II in the light of scientific and technical progress as well as in view of the Member States' risk-based approach to water safety.

IV. CONCLUSION

37. The Council Position at first reading on the Drinking Water Directive reflects the compromise reached in the negotiations between the Council and the European Parliament, facilitated by the Commission. Once adopted, the proposed modifications to the current Drinking Water Directive will address all the shortcomings identified in its REFIT Evaluation and considerably increase the level of protection of the environment and of human health from the adverse effects of contaminated drinking water.