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Subject: Amended proposal for a Directive of the European Parliament and of the
Council concerning the quality of bathing waters

Delegations will find attached a Commission proposal submitted under a covering letter from Ms Patricia BUGNOT, Director, to Mr Javier SOLANA, Secretary-General/High Representative.

Encl.: COM(2004) 245 final - COD 2002/0254



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 5.4.2004
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2002/0254 (COD)

Amended proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

concerning the quality of bathing waters

(presented by the Commission pursuant to Article 250 (2) of the EC Treaty)

Amended proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

concerning the quality of bathing waters

On 21 October 2003, the European Parliament voted in first reading on the amendments tabled on the Proposal for a Directive of the European Parliament and of the Council concerning the quality of bathing waters (COM(2002)581 final of 24 October 2002).

Article 250(2) of the EC Treaty states that as long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act.

The Commission hereafter gives its opinion on the amendments adopted by the European Parliament.

1. BACKGROUND

Transmission of the proposal to the Council and to the European Parliament (COM(2002) 581 final – 2002/0254(COD)) in accordance with Article 175(1) of the EC Treaty: 24 October 2002.

Opinion of the European Economic and Social Committee: 19 June 2003.

Opinion of the Committee of the Regions: 9 April 2003.

Opinion of the European Parliament in first reading: 21 October 2003.

2. OBJECTIVE OF THE COMMISSION PROPOSAL

Protection of bathing waters has been one of the first and most successful elements of European Water Policy. The 1976 Bathing Water Directive set binding standards for bathing waters throughout the European Union. The annual Bathing Water Report shows large public awareness and substantial progress in the quality of bathing waters.

However, the 1976 Bathing Water Directive clearly reflects the state of knowledge and experience of the early 1970s, both technically as socially. Since 1976 epidemiological knowledge has progressed and managerial methods have improved. Also the public wishes to be better informed and involved in environmental matters.

After taking account of the outcome of an intensive public and expert consultation process the Commission published a proposal for a new directive concerning the quality of bathing water in October 2002, under reference COM (2002)581.

This proposal retained the existing definition of bathing water. Even though there was considerable pressure to expand the definition in order to fully include other recreational water uses such as surfing and windsurfing, it was considered that a full inclusion of these recreational activities would have resulted in disproportionate costs for the Member States.

In contrast to the 19 parameters monitored in the 1976 Directive, the revised Bathing Water Directive imposes, besides visual inspections of the bathing site, monitoring of two indicator bacteria, which are scientifically proved to be reliable indicators for the presence of faecal pollution.

Experience with implementing the current Bathing Water Directive indicates that long-term assessment and management methods allow for a reduction of both frequency and monitoring cost and still reach a higher level of protection. Well developed management of bathing waters and extensive information given to the public replace a pure monitoring and retrospective compliance approach.

3. COMMISSION OPINION ON THE AMENDMENTS ADOPTED BY THE EUROPEAN PARLIAMENT

On 21 October 2003, the European Parliament adopted 37 amendments out of the 75 that were tabled. Two adopted amendments – numbers 19 and 65 - were subject to split votes. In amendment 19 only the concept of transitory contamination was supported by Parliamentarians, not the specific conditions nor the modalities proposed by the amendment. Amendment 65 was untouched by the split vote.

The Commission finds that a large number of the Parliament's amendments are acceptable in principle or in full, as they clarify and improve upon the Commission proposal, particularly in the field of communication with the public and in technical matters like analyses of samples.

Some of the amendments seek a stronger integration with the Water Framework Directive. In this respect, the Commission accepts the elements that lead to better information given to the public, but wants to avoid duplication of efforts in the field of chemicals and dangerous substances. The WFD sets ecological and chemical quality standards for all waters, and the BW Directive complements this with microbiological standards for bathing waters. At the same time, the single managerial frame under the WFD integrates the BW Directive as well.

The Commission is not open either to amendments which would alter and reduce the scope of the proposed directive, as amendment 5, limiting the scope for recreational activities to a 100 m zone.

The Commission's detailed position with regard to the amendments of the European Parliament is as follows:

3.1. Amendments accepted fully by the Commission

Amendments 6, 10, 11 clarify definitions and operational modalities, which will make reporting and management easier and more systematic.

Amendments 15, 17, 18, 22, 23, 24, 26, 34 improve the information given to the public and lead to better management of risks. In particular, amendment 20 leads to better participation of the public in the management of bathing waters and is fully compliant to the second pillar of the Århus convention.

Amendment 52 is acceptable as it contributes to sound management of bathing waters.

Amendments 29, 30, 31, 35, 57 and 75 make a positive contribution regarding analytical techniques and contribute to better health protection.

3.2. Amendments accepted in part or in principle by the Commission

Amendment 28 is welcomed by the Commission, but it would prefer to add a reference to scientific and technical progress. The text should then read:

The Commission shall review this Directive at the latest 15 years after its entry into force, with particular regard to the parameters for bathing water quality. It will present a report to the European Parliament and Council with particular attention on scientific and technical progress. The report shall, as appropriate, be accompanied by suggestions for revision of the relevant provisions of the directive.

Amendment 21 is in its first part acceptable for the Commission, as it gives more information and makes available a better description of the bathing water to the public. However, the Commission is aware of the fact that this information will often be superfluous as in some circumstances, the status according to the WFD is not relevant for bathers (e.g. in the case of a harbour dock).

The Commission is in favour of standardised symbols for indicating the quality of bathing waters, but the Commission prefers to leave the choice of these symbols to subsidiarity. In order to address this issue, the Commission will seek support from Member States in an implementation strategy similar to the one successfully developed for the Water Framework Directive.

The amendment (21) should thus be limited to:

(a) a non-technical summary of the bathing water profile and the bathing water classification over the last 3 years, ***including the status of the ~~bathing~~ water according to Directive 2000/60/EC.***

The Commission would welcome amendment 8, but believes it would not contribute to the directive. In the light of article 16 §1a, amendment 8 can be considered redundant. It would lead to lengthy discussions on what is “factual”. Also defining “factual” would lead to over-regulation.

Amendment 25 leads to better information practises, stating the Internet as one of the media and technologies used for information, but the Commission wants to leave the use of languages to subsidiarity and therefore would not accept the reference to French and English.

Amendment 32 on Annex III (a) aims at a more complete profile, which the Commission welcomes. Still, the Water Framework Directive focuses on wide-scale (macro) characteristics, like estuaries. The Bathing Water Directive acts on much smaller topographic entities, like bathing sites. Unnecessary burden should be avoided. Only elements which are relevant for the understanding and management of bathing waters should be included in the profile. The amendment should read:

aa) a description of the physical, geographical and hydrological characteristics of the bathing water in relation to the Water Framework Directive 2000/60/EC to the extent that these elements are relevant for the bathing water;

3.3. Amendments not accepted by the Commission

Amendments 1, 12 cannot be accepted for formal reasons. For amendment 1, the text in the original proposal comes from the Treaty and should be retained. Amendment 12 makes reference to a provision in the 76/160 directive which does not exist.

Amendment 5, which reduces the scope of the directive, is not acceptable. Covering water sports within a limit of 100 meters is an impractical provision. The limit of 100 m will be difficult to establish and the provision will be impossible to control.

Amendment 7 is not acceptable because it opens the scope for waters with recreational activities subject to pollution, and excludes waters which show little risk to pollution.

Amendment 19 cannot be accepted as it stands. After the split vote it is not operational anymore. Nevertheless, the Commission is open to the concept of transitory contamination.

Concerning amendments 2, 4, 16, 65, the Commission cannot accept the duplication of chemical standards, dealt with in the Water Framework Directive, into the Bathing Water Directive. Only the by amendment 65 proposed insertion **‘in order to protect’** is welcomed.

Amendment 27 cannot be accepted because the Commission is of the opinion to leave the design of symbols depicting water quality to subsidiarity.

Amendment 33 can, in its present form not be accepted, for reasons of scale. The Water Framework Directive focuses on wide-scale (macro) characteristics, whereas the Bathing Water Directive acts on much smaller topographic entities.

Amendment 54 is not acceptable because a four days sampling window is far too large and would create opportunities to influence the outcome of the statistics.

Amendment 58, referring to recital 7, cannot be accepted. This idea is in contradiction with the spirit of the proposed directive, which goes for a high level of protection.

3.4. Amended proposal

Having regard to Article 250(2) of the EC Treaty, the Commission modifies its proposal as indicated above.