Pollution, public health: quality of bathing water (repeal. Directive 76/160/EEC)

2002/0254(COD) - 20/12/2004 - Council position

The Council believes that the common position represents a balanced package of measures that would permit a much needed updating of Community rules on bathing water quality and enhance the level of public health protection in a staged and reasonable manner without placing an undue burden on the authorities concerned. It looks forward to constructive discussions with the European Parliament with a view to the early adoption of the Directive.

More specifically, the common position incorporates the majority of the European Parliament's first-reading amendments, either verbatim, in part or in spirit. However, it does not reflect a number of amendments because of inconsistency with the wording of Article 174 of the Treaty; in the view of the Council and the Commission, they would have unnecessarily duplicated existing requirements of the water framework Directive; or the Council considered them superfluous and potentially confusing.

It also includes a number of other changes. The following sections describe the changes of substance. In addition, there are drafting changes to clarify the text or to ensure the overall coherence of the Directive.

- Purpose, scope and definitions: the Council cannot agree to extend the scope of the Directive beyond bathing to apply to other recreational activities. Consequently, the common position includes no

reference to such activities. The definition of "bathing water" now appears in Article 1(3), since this term determines the scope of the Directive. Further definitions from the water framework Directive are incorporated and are consistent with a European Parliament amendment. It also defines other key terms,

namely "competent authority", "permanent", "large number", "pollution", "short term pollution", "cyanobacterial proliferation" and "public concerned".

- Monitoring: more flexibility regarding the location of the monitoring point is included. It also contains provisions on short term pollution and provides for the use of equivalent methods and rules under certain conditions, some of which may be clarified through comitology. Annex IV provides for an increased minimum sampling requirement compared to the Commission's original proposal, to increase the reliability of the statistical methodology. However, it also makes allowances for the particularly short bathing seasons prevailing in the north of the EU and special geographical constraints

(e.g., remote islands). There is no longer any direct link between the sampling frequency and classification.

- Quality assessment: the common position adopts 4 bathing seasons as the normal assessment period, but provides Member States with the option of choosing a period of 3 seasons under certain conditions. It indicates the minimum number of samples required and the circumstances in which the subdivision or grouping together of bathing waters may take place.

- Classification and quality status: several key innovations are incorporated compared to the Commission's original proposal. In particular it would defer the mandatory application of the new classification scheme until 2015 (to be consistent with the timetable of the Water Framework Directive); introduce a new classification ("sufficient") that would at least provide the same level of health protection as the minimum requirements of the existing Directive and act as a stepping stone to "good" or "excellent" quality; and clarify the circumstances in which bathing waters could temporarily be classified as being of "poor" quality. Annex I would provide for classifications to take place on the basis of two microbiological parameters. Requirements concerning other types of pollution would remain, but would not affect classification.

- Annex I provides for evaluations based on both a 95 and 90-percentile. The limit values for the "excellent and "good" classifications would be based on a 95-percentile evaluation, while that for "sufficient" would be based on a 90-percentile evaluation to reduce the risk of statistical anomalies when using a small data set. There are distinct limit values for inland and coastal waters. The scientific evidence currently available suggests that the presence of the same level of microbiological

contamination represents a higher health risk in salt water than in fresh water.

- Annex II is consistent with the broad principle underlying a European Parliament amendment, in that it provides that short term pollution would not affect a bathing water's classification if the competent authority takes appropriate measures to protect bathers' health.

- Bathing water profile: the common position clarifies that there could be a single profile for contiguous bathing waters. It extends the deadline for the establishment of the first profiles and the

interval between reviews, in recognition of the workload involved.

- Public participation: the definition of the "public concerned" in Article 2 clearly includes interested parties at the local level. The remainder of the amendment is superfluous in view of Article 18

and Directive 2003/4/EC.

- Information to the public: the common position groups all the general requirements to inform the public together in a single Article. It is consistent with two EP amendments which require information to be available promptly on the internet.

- Report and review: the Council agrees with the European Parliament that the Commission should review the implementation and operation of the Directive. However, it specifies some key issues that the Commission's report should address, particularly: the results of the epidemiological study that the Commission is to undertake as a matter of urgency to obtain greater scientific certainty regarding health risks associated with bathing, particularly in fresh water; WHO recommendations, which would equate to the "good" classification rather than to the minimum requirements of the Directive.

- Comitology: the common position contains a single provision listing the technical decisions that

could be taken through comitology. However, the Council believes that these decisions should be optional, not mandatory. Moreover, it cannot agree to the addition of new parameters on virus detection through comitology.

In addition, the common position contains: simplified rules on response measures in exceptional circumstances, the scope of which is now the same as the remainder of the Directive; and a requirement for Member States to carry out appropriate monitoring and to take necessary management measures to protect public health from cyanobacterial risks.