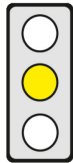


KEY ISSUES

Objective of the Directive: Human health is to be protected against contaminated drinking water.

Affected parties: All citizens, companies particularly those in the water management sector.



Pro: Introducing a “risk-based approach” allows for early recognition of any threats to the supply of drinking water.

Contra: (1) As long as there are no EU-wide standards for construction products used in connection with drinking water, these should at least be subject to minimum hygiene requirements.

(2) Rules on access to drinking water are reserved for the Member States and are therefore in breach of EU law.

The most important passages in the text are indicated by a line in the margin.

CONTENT

Title

Proposal COM(2017) 753 of 1 February 2018 for a **Directive on the quality of water intended for human consumption** (recast)

Brief Summary

► Context and objectives

- The Drinking Water Directive [98/83/EC]
 - aims to ensure that drinking water is “wholesome and clean” in order to protect human health [Art. 1];
 - establishes for this purpose EU-wide limits (“parametric values”) for certain pollutants – e.g. arsenic, lead, chrome – and microorganisms – e.g. enterococci, legionella – (“parameters”) which drinking water must meet when it emerges from the tap.
- The evaluation of the Drinking Water Directive [SWD(2016) 428] showed that (p. 2)
 - the parameters and parametric values should be adjusted to the “newest scientific findings”,
 - the risk of contamination of drinking water should be evaluated preventively (“risk-based approach”),
 - the technical requirements of the Member States applicable to construction products used in connection with drinking water (pipes, taps etc.) differ substantially and EU-wide standards should therefore be established,
 - consumers should be comprehensively informed about their drinking water supply.
- In 2013, the European Citizens' Initiative “Right2Water” collected more than 1.8 million signatures in support of its demand that all inhabitants be given the “right to drinking water and universal sanitation” (p. 1).
- The Commission wants to (p. 2)
 - replace the existing Drinking Water Directive with a new version which will take account of the evaluation results and the demands of the citizens' initiative “Right2Water”;
 - increase consumer confidence in tap water so that they buy less water in plastic bottles which generates plastic waste.

► “Parameters” and “parametric values”

- The parameter and parametric values are based on World Health Organisation (WHO) guidelines. The Commission, however, proposes stricter parametric values in some cases [p. 15 et seq.; Art. 4–6, Annex I].
- Each Member State must set additional parameters and parametric values where this is necessary for the protection of human health [Art. 5 (2)].

► Risk assessment of drinking water contaminants

- The risks of drinking water contaminants must be assessed preventively “throughout the supply chain” (p. 33) [“risk-based approach”, Art. 7–10]. This covers
 - “bodies of water” (rivers, lakes, ground water) from which drinking water is extracted,
 - the “drinking water supply” (treatment and distribution) by the supply companies,
 - “domestic distribution systems” and the construction materials used in this regard in connection with drinking water (pipes, taps etc.).

- In evaluating the risks of bodies of water, Member States must [Art. 8]
 - record all points and safeguard zones used for the abstraction of drinking water,
 - identify hazards and possible sources of pollution,
 - monitor bodies of water for parameters which they consider relevant,
 - based on the information gathered, take the “necessary measures”, in cooperation with water suppliers, to protect the body of water.
- The water suppliers must assess the risks to their drinking-water supply [Art. 9].
 - They have to monitor specific parameters at specific intervals by taking samples [Art. 9, Annex II Part B].
 - Member States can permit them to reduce the frequency of monitoring for certain parameters if they have fallen below the prescribed parametric values by 40% over three years [Art. 9, Annex II Part C].
- Member States must assess the risks to their domestic distribution systems [Art. 10].
 - They must ensure that the construction materials used in connection with drinking water do not release any substances into the drinking water that are dangerous to human health [Art. 10 (1) and (2)].
 - In premises “where the potential danger to human health is highest” – e.g. hospitals, hotels – they must regularly monitor the parametric values for lead and legionella [Art. 10 (1), Annex I Part C].
- ▶ **Internal market for construction products used in connection with drinking water**
 - Very varied requirements apply in the Member States with regard to the approval of construction products used in connection with drinking water. Manufacturers that want to sell such products in the EU thus incur high costs.
 - The Commission is seeking to include EU-wide standards for the “hygiene and safety” of construction products used in connection with drinking water in the Construction Products Regulation [(EU) No. 305/2011] [Recital 12].
- ▶ **Consumer Information**
 - At least once a year and without being asked, the water suppliers must inform their customers, on their water bill, about [Art. 14 (2)]
 - the price per cubic metre,
 - the volume of water consumed - absolutely and relative to similar households,
 - the “cost structure” of the drinking-water supply - itemised inter alia according to the costs for treatment and distribution of water and for waste water collection and treatment.
 - The water supplier must also provide up-to-date information about the drinking-water supply online in a “user-friendly” way [Art. 14 (2)]. This includes [Annex IV]
 - the results of the risk assessment of the drinking-water supply;
 - details of characteristics of the drinking-water such as colour, conductivity and iron levels;
 - advice to consumers on how to reduce water consumption.
- ▶ **Access to drinking water**
 - Member States must gather “information” [Art. 13 (1)]
 - for the purpose of “identifying people without access to water” and
 - about possibilities to improve their drinking water supply.
 - Member States must ensure that “vulnerable and marginalised groups” – e.g. Roma, refugees, homeless people (p. 23) – are given access to drinking water [Art. 13 (2)].
 - Drinking-water charges must generally be established according to the polluter pays principle and the principle of “recovery of costs”. Member States may still, however, adopt “social tariffs” which deviate from these principles for “populations at a socio-economic disadvantage”. [Recital 17, Art. 9 (1) Water Framework Directive (2000/60/EC)]
 - Member States must improve public access to drinking water. For this purpose, they can [Art. 13 (1)]
 - install drinking-water facilities – e.g. drinking fountains – in public places,
 - encourage the provision of drinking water in public buildings,
 - encourage the free provision of drinking water in restaurants and canteens.

Main Changes to the Status Quo

- ▶ New: the requirement to evaluate the risks of drinking-water contamination preventively across the whole supply chain (“risk-based approach”).
- ▶ New: consumers are provided with certain information - such as consumption and cost of drinking water - at least once a year and have the possibility of accessing further information online.
- ▶ New: Member States must ensure that vulnerable groups have access to drinking water.

Statement on Subsidiarity by the Commission

Since water-extraction areas in the EU are predominantly cross-border, the Commission believes that EU action is necessary to protect bodies of water from which drinking water is extracted. EU rules help “greatly” in harmonising the quality of drinking water EU wide. Thus the Directive only lays down minimum requirements and allows the Member States significant discretion in selecting the specific measures by which to comply with it. [p. 5 et seq.; Impact Assessment SWD(2017) 449, p. 12]

Policy Context

The Drinking Water Directive, first adopted in 1975 and revised on many occasions, is an essential part of EU water legislation which consists of numerous individual acts – In addition to the Drinking Water Directive, inter alia the Communal Waste Water Directive (91/271/EEC), the Nitrate Directive (91/676/EEC) and the Ground Water Directive (2006/118/EC) – which, since 2000, have been “coordinated” by the overarching Water Framework Directive (2000/60/EG) [Recital 18 Water Framework Directive; Communication COM(2012) 673; see [cepPolicyBrief 2013-08](#)]. The Water Framework Directive aims to protect the environment and human health by achieving a “good water status” for rivers, lakes and ground water. For this purpose, within the context of – predominantly cross-border – “river basin districts”, which are defined according to the ecological characteristics of water extraction areas, Member States have to develop a programme of measures that is specific to the river basin. These must include measures to protect water quality in order to reduce the “level of purification treatment required” in the production of drinking water for compliance with the Drinking Water Directive [Art. 7 (3) and Art. 11 (3) Water Framework Directive]. The Directive also wants to bring down the amount of water that is put into plastic bottles in order to reduce plastic waste. In this regard, in January 2018, the Commission submitted a Strategy on Plastics in the Circular Economy [COM(2018) 28, see [cepPolicyBrief 2018-10](#)].

Legislative Procedure

1 February 2018	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorates General:	DG Environment (leading)
Committees of the European Parliament:	Environment, Public Health and Food Safety (leading), Rapporteur: Michel Dantin (EVP Group, F)
Federal Ministries:	Environment (leading)
Committees of the German Bundestag:	Environment, Nature Conservancy, Construction and Reactor Safety (leading); Food and Agriculture; European Union Affairs; Health, Economy and Energy.
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

Formalities:

Competence:	Art. 192 TFEU (Environment, Health); Art. 114 TFEU (Internal Market)
Form of legislative competence:	Shared competence [Art. 4 (2) AEUV]
Procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

By introducing the “risk-based approach”, which not only covers the “end product”, i.e. drinking water, but also the whole upstream supply chain from the extraction of drinking water from bodies of water right through to the tap, possible **threats to the drinking-water supply can be recognised early** and removed. Measures based on this approach for the protection of bodies of water from which drinking water is extracted, may significantly reduce the expense and cost incurred by the water supply companies in the treatment of drinking water. The risk-based approach must however concentrate on risks that are actually relevant in order to limit the costs of risk assessment to a level that is reasonable for the consumer, who will be the one paying for them in his water bill.

Since there are no uniform EU standards for construction products used in connection with drinking water, very strict product requirements apply in some Member States whilst others do not impose any at all. In view of these major differences, the development of a workable system of reciprocal recognition between Member States is unlikely in the foreseeable future [see also Impact Assessment SWD(2017) 449, p. 15]. This is also detrimental to free trade in the

internal market because it increases expenditure and costs for companies when selling construction products used in connection with drinking water EU wide. Uniform EU standards would increase competition among manufacturers which would result in lower prices for construction products used in connection with drinking water. The Commission's proposal to introduce EU-wide standards for these construction products is therefore appropriate.

However, **as long as there are no EU-wide standards for construction products used in connection with drinking water** contained in the Construction Products Regulation [(EU) No. 305/2011] **they should at least be subject to minimum hygiene requirements** in the new Drinking Water Directive.

Simple and useful **information on the water bill** may help consumers to optimise their water consumption. The information **should** however **be limited to data that is relevant for the consumer such as water consumption and price**. Additional details, on the other hand, may tend to confuse consumers or lead to errors in evaluation. Thus, information about water consumption by comparison to other households is often misleading because the supplier lacks knowledge of essential details that are relevant to consumption such as how many people use the water connection and how often they are at home. The added value to the consumer of receiving unsolicited information from the water supplier about the "cost structure" of the drinking-water supply, is also unclear.

Information about the quality of drinking water and potential sources of risk should, as proposed, have to be provided in a simple and comprehensible form on the internet.

According to the polluter pays principle and the "principle of recovery of costs" [Art. 9 Water Framework Directive], the costs of treating drinking water should be calculated on the basis of the actual amount consumed and using a standard price applicable to all consumers in order to create incentives for the careful use of water resources. Thus Member States should not – as proposed by the Commission – be able to grant special social tariffs to poor households, but should instead bring the level of social benefits into line with the price of drinking water.

The obligation to set up drinking water facilities in public buildings and public spaces, may give rise to disproportionately high costs for cities and local councils with only a small benefit to their inhabitants. Cities and local councils should therefore be allowed to decide for themselves whether or not to set up such facilities in the individual case.

The Commission also fails to provide reasons why Member States should promote the free consumption of tap water in restaurants and canteens. The obligation e.g. for restaurateurs to offer water free of charge would be a substantial encroachment upon their freedom to conduct a business. They should basically continue to be able to decide on their range of food a drink and the prices they charge.

Legal Assessment

Legislative Competency

The EU is empowered to adopt measures on the "protection of the environment and of health in order to safeguard the quality of drinking water [Art. 192 (1) TFEU]. In addition, it is also permitted to adopt EU-wide standards for construction products used in connection with drinking water in order to ensure the functioning of the internal market [Art. 114 TFEU].

The EU may not, however, impose obligations upon the Member States to grant a "right to drinking water" or to improve public access to drinking water because, as indicated in the EU Charter of Fundamental Rights [Art. 36], such **rules on access to "services of general economic interest" – like the supply of drinking water itself – are reserved for the Member States and therefore in breach of EU law.**

Subsidiarity.

Since water extraction areas in the EU are predominantly cross-border, minimum EU requirements for the protection of bodies of water from which water is extracted, and to protect drinking-water quality, are in line with the principle of subsidiarity.

In addition, obstacles to the EU-wide trade in construction products used in connection with drinking water can only be removed by way of EU-wide standards.

Impact on German Law

In Germany, the Drinking Water Regulation would have to be brought into line with the new EU rules.

Conclusion

Introducing a "risk-based approach" allows for early recognition of any threats to the supply of drinking water. As long as there are no EU-wide standards for construction products used in connection with drinking water, they should at least be subject to minimum hygiene requirements. Information on the bill should however be limited to data that is relevant for the consumer such as water consumption and price. The obligation to set up drinking-water facilities in public spaces, may give rise to high costs for cities and local councils with only a small benefit. Rules on access to drinking water are reserved for the Member States and are therefore in breach of EU law.