



COMMISSION OF THE EUROPEAN COMMUNITIES

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Amended proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the protection of groundwater against pollution

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

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On 28 April 2005, 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 on the protection of groundwater against pollution (COM(2003)550 final).

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(2003) 550 final – 2003/0210(COD)) in accordance with Article 175(1) of the EC Treaty: 19 September 2003

Opinion of the European Economic and Social Committee: 31 March 2004

Opinion of the Committee of the Regions: 12 February 2004.

2. OBJECTIVE OF THE COMMISSION PROPOSAL

Groundwater is an important natural resource, which is mainly used for drinking water, industry and agriculture. It has also a high environmental value as it interacts with surface waters and wetlands, and thus represents a key part of the water cycle, which should be protected.

Preventing groundwater pollution has been the subject of Community legislation since 1980 and, more recently, through the Water Framework Directive, which was adopted in 2000.

However, clear criteria regarding the definition of groundwater environmental quality objectives, and in particular good chemical status, are lacking. In addition, specific measures to prevent and control groundwater pollution are needed. This was recognised when the Water Framework Directive was agreed to the extent that Article 17 of that Directive requested the Commission to come forward with a proposal to address these needs.

Against that background, and after extensive consultation with stakeholders, the Commission published a proposal for a new directive concerning the protection of groundwater against

pollution in September 2003, under reference COM(2003)550. This proposal contains the following main elements:

- a compliance regime for assessing good chemical status for groundwater for a limited number of pollutants where existing Community standards prevail;
- criteria for assessing the chemical status of groundwater based on environmental quality standards, which have to be established by Member States at the appropriate level (national, river basin or groundwater body), depending on the variations of natural groundwater conditions, identified pressures and related chemical substances;
- criteria for identifying significant upward trends in pollutant concentrations in groundwater and defining starting points for reversing these trends;
- measures for preventing or limiting direct – and particularly indirect – inputs of pollutants into groundwater.

The proposal provides clear specifications that will ensure that the environmental objectives of the Water Framework Directive will be achieved with respect to groundwater. Equally, the proposal achieves the right balance between issues that need to be addressed at Community level and those that are best left to Member States.

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

On 28 April 2005, the European Parliament adopted 89 amendments out of the 123 that were tabled. Eight amendments – numbers 1, 15, 18, 29, 38, 58, 71 and 88 – were subject to split votes. In amendment 58, only the first part was supported by Parliamentarians. The other amendments were untouched by the split vote.

The Commission finds that a large number of the Parliament's amendments are acceptable in full, in principle or in part, as they clarify and improve upon the Commission proposal, particularly regarding the compliance regime related to the groundwater good chemical status.

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

Amendment **1** modifies the title of the proposal, clarifying that the proposal deals with chemical pollution of groundwater only. This is in line with the objectives of the Water Framework Directive 2000/60/EC (WFD).

Amendment **5** clarifies the text of Recital 3, which is acceptable as it is consistent with the no-deterioration clause of the WFD.

The new recital proposed by Amendment **9** referring to the impact of groundwater quality standards on the environmental protection level and on the functioning of the internal market is acceptable.

Amendment 13 inserts a new recital on groundwater storage and recovery which clarifies WFD provisions and is, therefore, fully acceptable. Another new recital proposed by Amendment 14 on comparability of monitoring results is also acceptable and in line with Amendment 41 and Annex V of the WFD.

The new definition on background concentration introduced by Amendment 22 is acceptable and in line with Amendment 71.

Amendment 25 suggests additions of new texts in the heading of Article 3, which is acceptable (criteria indeed concern both the assessment and classification of the groundwater chemical status).

Amendment 91 stipulates that when the natural levels of pollutants found in a groundwater body or a group of groundwater bodies are above the quality standards defined in Annexes I or II (i.e. standards established at national level) the background levels should be taken into account to establish the limit between poor and good groundwater chemical status. This is acceptable to the Commission.

Amendment 29 (linked to Amendment 28) is acceptable, as it improves the legal clarity regarding the assessment of the chemical status of groundwater.

Amendment 35 which deletes Article 4, paragraph 3, is acceptable, considering that Amendment 36 takes over this provision (see comment below).

On Article 5, Amendment 37 clarifies that increases in concentrations resulting from natural, geological processes are not addressed here, which improves the text of the proposal. The proposed changes in Amendment 38 are acceptable and consistent with the acceptance of Amendment 24. Finally, the reference to specific trend assessment and reversal for point sources of pollution as suggested in Amendment 39 is also acceptable.

The change of title of Article 6 suggested by Amendment 42 is acceptable, as it is consistent with WFD provisions (Article 4.1(b)(i)).

Changing “to” to “and” in Article 8 as proposed by Amendment 55 is acceptable. Both annexes may indeed be subject to adaptations to scientific and technical progress.

Regarding Annex I, changes to the main title and to the title of Part B as proposed by Amendments 57 and 59 are acceptable.

Amendment 60 is acceptable as the reference to the provisions of Directive 96/676/EEC (Nitrates Directive) is sufficient.

The 0.5 µg/l pesticide standard proposed by Amendment 63 is derived from the Directive 91/414/EEC and can be accepted. Amendment 64 is also acceptable since it is fully in line with WFD provisions.

The distinction of synthetic substances and of indicators (instead of pollutants) as proposed by Amendment 90 is acceptable to the Commission.

Consideration of groundwater use for human consumption is acceptable in the context of Amendment 68. Deletion of the paragraph 2.3 of Part B of Annex III as proposed by

Amendment 72 is acceptable on the basis that costs should be taken into account when measures are taken rather than when establishing groundwater quality standards.

Concerning Annex IV, Amendment 73 which links Article 5 and Annex IV and that part of Amendment 74 dealing with the evaluation of measurements are acceptable. Amendment 75 regarding statistical aspects of trends in groundwater quality is also acceptable.

Amendment 81 which deals with the risks to be assessed when considering trend reversals is also acceptable. Finally, Amendments 82 and 87 improve the clarity of the text concerning trend reversals and are also acceptable.

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

Amendment 2 modifies the text of the Recital 1 and introduces a new sentence. The first part of this amendment is not acceptable because it is not consistent with the principles of groundwater protection set out in the Water Framework Directive, which foresees groundwater protection as part of the broader protection of associated aquatic and terrestrial ecosystems. The second part of this amendment is in line with WFD environmental objectives and its Article 7 and is, therefore, acceptable. The text would then read:

(1) Groundwater is a valuable natural resource which must be protected from chemical pollution. This is particularly important for groundwater dependent ecosystems and for the use of groundwater in water supply for human consumption.

The term “indicative” is included in Recital 4 by Amendment 6. However, the provisions in the WFD for groundwater protection are not indicative. Indeed they are quite extensive and detailed (definitions, level of protection, characterisation, protected areas, protection of drinking water sources, monitoring, programme of measures). The amendment should then replace “indicative” by “**general**”.

The reference introduced in a new recital by Amendment 8 to farming/forestry practices is acceptable in principle. Indeed, the cross reference to the CAP and rural development plans is understandable as farmers may have to change farming practice, leave wider buffer strips, re-instate flood plains, etc. The word “**elaboration**” is however preferred over “development”. The text should then read:

(5a) The protection of groundwater may in some areas require a change in farming/forestry practices, which could entail a loss of income. This issue should be taken into account in the elaboration of the rural development plans under the reformed CAP.

A new recital is introduced by Amendment 12, making reference to scientific knowledge concerning problematic substances such as endocrine active substances. This is a constructive remark which is accepted in principle. A suggested redrafting reads as follows:

(7a) There must be clarification as to the inputs of which pollutants must be prevented and limited, with particular regard to scientific knowledge concerning hazardous substances such as endocrine active substances.

Amendment 15 inserts criteria related to the assessment of groundwater reserves in Article 1 and a reference to Article 4 of the WFD, which are acceptable in part. In particular, item (b) related to groundwater quantitative status is not acceptable for the reasons expressed above (Amendments 7 and 80). The last sentence of Amendment 15 is acceptable with minor

changes. However, item (c) is redundant with this last sentence and should be deleted. The text should then read:

This Directive establishes specific measures as set out in Article 17(1) and (2) of Directive 2000/60/EC in order to prevent and control chemical groundwater pollution. These measures include in particular:

- a) Criteria for the assessment of good groundwater chemical status; and***
- b) Criteria for the identification and reversal of significant and sustained upward trends and for the definition of starting points for trend reversals.***

This Directive seeks to complement the provisions of Article 4(1)(b)(i) of Directive 2000/60/EC to prevent or limit inputs of pollutants into groundwater and the deterioration of the status of all bodies of groundwater.

Amendment 17 is acceptable in principle. The term “threshold values” intended to distinguish between environmental quality standards (EQS) for groundwater established at EU level as opposed to EQS established at MS level. As long as there is a clear distinction between these two types of EQS, the Commission would not insist on maintaining this term. The following definition could clarify the scope and role of groundwater quality standards:

1. ‘Groundwater quality standard’ means an environmental quality standard for groundwater established at Community level or set by Member States in accordance with Article 3, expressed as the concentration of a particular pollutant, group of pollutants or indicator of pollution in groundwater, which should not be exceeded in order to protect human health and the environment.

Amendment 19 is acceptable in principle. However, it is not compatible with amendment 20. The following definition, incorporating relevant elements from both amendments would be preferred:

3. ‘input of pollutant into groundwater’ means the direct or indirect introduction, as a result of human activity, of pollutants into groundwater.

Amendment 24 is acceptable in principle. The amendment may need to be changed by indicating *the reference year 2007* instead of “2007 and 2008”.

The modification of the introductory part of Article 3 by Amendment 26 is acceptable in principle. However, the text should be redrafted to reflect the fact that the characterisation under Article 5 of Directive 2000/60/EC has already been carried out. The reference to sections 2.4.5 and 2.5 makes an explicit link to Article 8 of the Directive 2000/60/EC, which should hence not be repeated here. The alternative text is proposed:

1. For the purposes of the assessment of the chemical status of a groundwater body, or group of bodies of groundwater pursuant to sections 2.4.5 and 2.5 of Annex V of the Directive 2000/60/EC, Member States shall use the following criteria:

Amendment 28 which clarifies arrangements in the compliance regime in the new paragraph 1b of Article 3 is acceptable in principle. However the formulation of the proposed amendment is problematic as in some technical details it is contrary to the requirements of the Water Framework Directive. Furthermore, the formulation repeats in a different manner what

is proposed under Amendment **29**. To improve the logic of the sequence, it is suggested that Article 3 provides only criteria for assessing groundwater chemical status, clarifying the links among groundwater chemical status and groundwater quality standards (including those to be established by Member States), while considering compliance aspects in Article 4. The text proposed under Amendment **28** will then be covered in a revised Article 4 (focusing on compliance aspects) and the related annex.

Amendment **30** is linked to the change of the definition suggested by Amendment **17**, which is acceptable in principle on the basis that the definition makes it clear that the standards may be established at European or national level or at the level of river basin or groundwater body. The same applies to Amendments **31** (Article 4, paragraph 1), **34** (Article 4, paragraph 2), **69**, **70** and **71** (Annex I, Part B), which are acceptable in principle. This is also linked to Amendment **32** which clarifies links among quality standards and levels of substances naturally present in water and Amendment **33** which deals with the requirement to coordinate the establishment of quality standards in international river basin districts. As suggested above, Article 3 would deal with ***Criteria for assessing groundwater chemical status*** and would cover the changes proposed under Amendments **31**, **32**, **33**, **34** and **36**, whereas Article 4 could solely focus on a ***Procedure for assessing groundwater chemical status***. This would also allow to simplify the title which is considered to be too long in Amendment **30**.

The insertion of a new paragraph on measurements methods (Amendment **41**) is acceptable in principle since it will promote consistency with regard to measurement methods; however, the drafting needs to be reviewed as it is too extensive and unbalances the text. The alternative text is suggested:

Article 5a – Measurement methods

- 1. Member States shall identify measurement methods for the substances, or group of substances, including relevant CEN or national standardised methods, for which Community-wide or national groundwater quality standards are set in accordance with Article 3, and shall report them to the Commission along with the report of the monitoring programme pursuant to Article 8 of the Directive 2000/60/EC.***
- 2. The Commission shall, in accordance with Article 8(3) and Article 21 of Directive 2000/60/EC, establish method performance and quality control criteria for each of the measurement methods reported under paragraph 1 in order to provide the basis for demonstrating the comparability of groundwater monitoring results, and shall verify that monitoring data fulfil with these criteria upon reporting pursuant to Article 13 of the Directive 2000/60/EC.***

Following Article 6, the idea suggested in Amendment **46** of including monitoring requirements associated with measures concerning discharges is acceptable in principle, since these requirements are not covered by the WFD. It would, however, be better to simply indicate that ***Measures pursuant to paragraph 2 shall be monitored in accordance with the provisions laid down in Article 11(5) of the Directive 2000/60/EC.***

Amendment **47** referring to best environmental practice and best available technology is also acceptable in principle, but the precise drafting will need to be reviewed since this reference would restrict activities to those defined under the IPPC Directive. An alternative text could be: ***The measures required by this Article shall take account of established best practices,***

including Best Environmental Practice and Best Available Techniques specified in relevant Community legislation.

Amendment **48** is also acceptable in principle but would require redrafting. An alternative text could be: *Where inputs of pollutants are permitted under the conditions specified in paragraph (b) of this paragraph, diffuse sources of pollution having an impact on the groundwater chemical status shall be taken into account whenever technically possible.*

The introduction of a margin of flexibility into the compliance regime as proposed by Amendment **58** is also acceptable in principle. This text, however, repeats provisions already covered in a different wording by Amendment **29**. The only missing element concerns the sentence “*the relevant tests shall be carried out in the upper aquifer*”, which is a useful suggestion which should however be included in another Article or Annex linked to compliance.

With respect to Annex II, the principle of a common procedure for the establishment of groundwater quality standards suggested by Amendment **65** is accepted in principle although the proposed methodology warrants further elaboration, which was the intention of the original Commission proposal. Furthermore, the text repeats provisions proposed under Amendment **29**. It is, therefore, suggested to redraft this part (becoming Part A of Annex II) using the title “*Guidelines for the establishment of groundwater quality standards by Member States in accordance with Article 3*”, including the text proposed under Amendment **71** which should be made in line with Amendment **22** (“background concentration”) and changing the mention of “best professional estimate” into a sentence which is less prone to possible different interpretations.

On Part A of Annex III, Amendment **89** proposes a rearrangement of the original table concerning substances which may occur both naturally and as a result of pollution. This is acceptable in principle. However, in order to keep the sequence proposed for Articles 3 and 4, it is suggested to move this table under a part B of Annex II (thus following the above guidelines), and to cover all aspects related to compliance in a revised Annex III. Furthermore, the column “comment” could simply be integrated in the title of Part A.1 as follows (including the footnote):

PART A.1: MINIMUM LIST OF SUBSTANCES OR IONS OCCURRING NATURALLY AND AS A RESULT OF HUMAN ACTIVITIES, FOR WHICH MEMBER STATES ARE REQUIRED TO ESTABLISH GROUNDWATER QUALITY STANDARDS IN ACCORDANCE WITH ARTICLE 3¹

<i>Substance or ion</i>
<i>Ammonium</i>
<i>Arsenic</i>
<i>Cadmium</i>

¹ This list should be complemented by Member States for all pollutants which have been identified to characterise bodies of groundwater at being at risk following the analysis carried out under Article 5 of Directive 2000/60/EC.

Lead

Mercury

Trichloroethylene

Tetrachloroethylene

Regarding Part B of Annex III, Amendment **66** is acceptable in principle as it is in line with other related amendments concerning the establishment of groundwater quality standards by Member States. In line with the above comments, however, it is suggested that the information to be provided by Member States originally under this Annex is now moved to Annex II, Part C, to improve the sequence “criteria for the establishment of groundwater quality standards” (now covered by Article 3 and Annex II) followed by “assessment of groundwater chemical status” (now covered by Article 4 and Annex III).

Amendment **67** is also acceptable in principle. For consistency, the added text should be complemented by “***river basin or groundwater body level***” and moved to Annex II, Part C, as suggested above.

Amendments **76**, **77**, **78**, **83**, **84** and **85** concerning time periods for trend assessment and reversal are acceptable in principle. However, the time lengths proposed in the original annex were based on the outcome of discussions with groundwater technical experts from the Member States, which resulted in a Technical Report developed under the Common Implementation Strategy of the Water Framework Directive. Changing arbitrarily these time periods might be technically problematic. It is therefore suggested to simplify this annex by providing general binding rules but without including numerical values, taking into account the suggestion made by Amendment **79** concerning starting points for the assessment of trends in groundwater quality.

3.3. Amendments not accepted by the Commission

The new recital introduced by Amendment **3** is not acceptable because not all groundwater bodies are used for the production of drinking water and to require all groundwater bodies to respect quality standards which assume that they will be used for drinking water is unrealistic.

Amendment **95** concerns research and use of research outputs. The promotion of new research should be achieved through the 6th and 7th Research Framework Programmes not in the groundwater directive. Therefore, this amendment is not acceptable. For the same reason, Amendment **100** which introduces a provision in Article 6 (new paragraph (c)) on research and dissemination is also not acceptable.

Amendment **4** inserts a new recital which is not acceptable since the Water Framework Directive provides for different levels of protection for groundwater and surface waters. While groundwater chemical status is indeed defined in relation to its impact on associated surface waters, this amendment is therefore not in line with the WFD.

Amendment **7** introduces a new recital related to groundwater quantitative status. This is not acceptable since the provisions concerning quantitative assessments are already covered by

the WFD where there is an obligation to ensure a balance between abstraction and renewal of groundwater bodies and associated requirements for monitoring and assessment. The amendment is therefore redundant. The same reasoning applies to Amendment **80** concerning a new provision in Annex IV.

The change to Recital 6 proposed by Amendment **10** on the identification of significant downward trends is not acceptable. This amendment concerns groundwater quantitative status which is already adequately covered by WFD and it is therefore redundant.

Amendment **11** inserts a new sentence at the end of Recital 7, specifying that relevant provisions of the Directive 80/68/EEC should be incorporated into this directive, which is not acceptable. The text proposed by the Commission is indeed fully compatible with the directive 80/68/EEC, but it achieves the objectives in a different manner. The incorporation of provisions of the 1980s directive into a text drafted in 2004 is not the best way to draft legislation and is inappropriate.

The insertion of a new paragraph 2a in Article 1 by Amendment **16** duplicates WFD provisions and is therefore redundant. The characterisation of groundwater bodies is to be carried out by Member States under Article 5 of the WFD.

The Commission cannot accept Amendments **18**, **21**, and **23**. The introduction of the term “environmentally” significant (Amendment **18**) would leave open the possibility of Member States interpreting what is significant in very different ways. Further, the definition of deterioration (Amendment **21**) is already included in the Water Framework Directive (Article 4). Finally, Amendment **23** introduces a definition of historically contaminated sites. While the Commission recognises that such sites are problematic, their consideration in the present Proposal is outside the scope of the mandate provided for by Article 17 of the WFD. This is also why the Commission cannot accept Amendment **93** introducing a provision concerning rehabilitation of sites suffering long-standing pollution (Article 3, new paragraphs (c) and (d)) and Amendment **49** referring to direct and indirect discharges from historical contaminated sites (Article 6, new paragraph 2d).

The new paragraph 1a introduced by Amendment **27** is not consistent with the definition of the groundwater good chemical status as set out in table 2.3.2 of Annex V of the WFD. Groundwater chemical status is related to its impact on associated surface water. It is therefore inconsistent to have groundwater environmental quality standards based on human and eco-toxicological criteria of pollutants.

The way the programme of measures will be operated is left to the Member States’ decision, and it is not appropriate to indicate a preference to the nature of the measures to be taken as suggested by Amendment **40**. Thus the amendment is not acceptable.

Amendment **88** is not acceptable. In particular, item (c) is redundant with the provisions of Article 11(3)(f) of the Water Framework Directive and is already covered by Amendment **13**.

Amendment **50** repeats the requirement of item 7.6 of Annex VII.A of the WFD. This is also the case of Amendment **51** which repeats what is already stated by the existing Article. The “Polluter pays principle” principle is already covered by Article 9 of the WFD, which makes Amendment **52** redundant. Finally, while it is recognised that recommendations should be issued regarding protected areas, it would not be reasonable to consider all possible cases in

the present directive as suggested by Amendment 54 concerning spas and medicinal water sources. Thus the amendment is not acceptable.

The new paragraph introduced by Amendment 56 is not acceptable, considering that the collection of data under this directive is already regulated by the WFD.

Amendment 62 is not acceptable as the provisions of Directive 91/414/EEC (Plant Protection Products Directive) remain in force.

3.4. Amended proposal

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