

Step toe

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Drinking Water Directive (recast) The Proposal

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Steptoe & Johnson LLP in Brussels

- Washington DC based law firm, **largest dedicated environmental practice in Europe** (8 full time and 3 part time professionals in the Brussels office).
- We help clients with **regulatory and corporate-commercial questions and litigation** arising from the implementation of EU chemicals law.
- The majority of our EU Environment & Life Sciences team's work is focused principally on **REACH, CLP, agrochemicals, biocides, food and feed, food contact materials, cosmetics and medical devices**.
- Our multidisciplinary teams (lawyers, scientists, and policy advisors), collaborate closely with colleagues in the US and China (Beijing) to create efficiencies for clients through **cross-jurisdictional** work.
- We help to prevent, identify and solve regulatory problems through legal **advise** and in **Court**.
- Our practice is consistently ranked by legal directories in the top tier for Chemicals and Environment, such as Chambers & Partners Europe, which has reported that Steptoe has *“stellar environmental capabilities.”*

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Brief history of the EU drinking water policy

- Before 1980: **national legislations** and certificates → hindering free trade
- Directive 80/778/EEC (1st DWD)
 - Legal basis: Article 100 EC Treaty
 - Article 3 and **Annex I**: mandatory requirements for about 60 microbiological, organoleptic and physical-chemical parameters
 - **Article 8**: measures to ensure that no substances used in the drinking water treatment process remain in a concentration, which constitute a hazard to public health
 - After the **1998 update: Article 10**: substances and materials in contact with drinking water shall not endanger human health
- **European Acceptance Scheme** (1998-2006): standardised European approval system for products in contact with drinking water began - abandoned
- **4MS Initiative**: from 2007 onwards: common procedure and list of substances
- EU Standardization efforts: no results
- 2015: EU industry initiative

Background of the COM Proposal

- **Proposal** for a Directive of the European Parliament and of the Council on the quality of water intended for human consumption (recast) (1 **February 2018**) – **Triggers ?**
 - 20 years old directive (98/83/EC) – **outdated parametric values** in Annex I ?
 - **REFIT** evaluation (1 December 2016) – Fit for purpose? / Identified **shortcoming**
 - List of parameters not aligned with emerging risks/not relevant anymore
 - Systematic preventive safety planning and systematic risk assessment vs. end-of-pipe monitoring
 - Non-recognition of national approval systems for products in contact with drinking water between Member States
 - Information failure to consumers (Consumers' choice: bottled water over tap water)
 - **ECI 'Right2Water'**
 - 4.5% of EU population not connected to PWS systems (Romania 57%)
- All necessary Better Regulation steps (consultations, impact assessments) undertaken by COM

The Proposal

↓ 1998/83 (adapted)
2017/0332 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the quality of water intended for human consumption (recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty ~~EEU~~ on the Functioning of the European Union ~~establishing the European Community~~ and, in particular, Article ~~EEU~~ 192(1) ~~and 120(4)~~ thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Economic and Social Committee¹,
Having regard to the opinion of the Committee of the Regions²,
Acting in accordance with the ordinary legislative procedure,
Whereas:

↓ new

(1) Council Directive 98/83/EC³ has been substantially amended several times⁴. Since further amendments are to be made, that Directive should be recast in the interests of clarity.

↓ 1998/83 recital 1 (adapted)

~~Whereas it is necessary to adapt Council Directive 98/83/EC of 15 July 1998 relating to the quality of water intended for human consumption⁵ to scientific and technological progress; whereas experience gained from implementing that Directive shows that it is necessary to create an appropriately flexible and transparent legal framework for Member States to address failures to meet the standards; whereas, furthermore, that Directive should be re-examined in the light of the Treaty on European Union and in particular the principle of subsidiarity;~~

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ L 330 5.12.1998, p. 32).

⁴ See Annex V.

⁵ OJ L 330, 30.8.1998, p. 11. Directive as last amended by the 1994 Act of Accession.

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Main elements of the COM Proposal

- Legal basis: **remains** (Article 192(1) TFEU)
- Provisions on objective, definitions, exemptions and general obligations **remain unchanged**
- Article 6 – **Point of compliance**: partially remains the same
 - (a) in the case of water supplied from a distribution network, at the point, within premises or an establishment, at which it emerges from the taps that are normally used for human consumption;
 - (b) in the case of water supplied from a tanker, at the point at which it emerges from the tanker;
- Article 7 – **Overall risk based approach to water safety (new)** comprised of 3 elements:
 - **Hazard assessment of bodies of water used for the abstraction of water** – Article 8 (new)
 - **Supply risk assessment** – Article 9 (new)
 - **Domestic distribution risk assessment** – Article 10 (new)

Main elements of the COM Proposal (2)

- Article 8 – **Hazard assessment of bodies of water used for the abstraction of water (new)**
 - Link to Water Framework Directive 2000/60/EC – abstraction points
 - **Monitoring obligation of parameters** identified (parts A and B of Annex I) but also groundwater pollutants, priority substances included in Directive 2008/105/EC and **other relevant pollutants**, like microplastics
 - Measures to be undertaken by MS: exemption from additional treatment/monitoring, prevention, mitigation measures to address pollution source (research on microplastics?)
- Article 9 - **Supply risk assessment (technically new)** by water suppliers
 - Some flexibility on monitoring
- Article 10 - **Domestic Distribution Risk Assessment (new)**
 - Risks linked to products and materials in contact with drinking water
 - Monitor of parameters: lead and Legionella (new)
 - Measures to be taken: training of plumbers, information to consumers, treatment if migration, etc.
 - Consistency with Regulation 305/2011 on construction products (essential characteristics) → mandate by COM to EU Committee on Standards

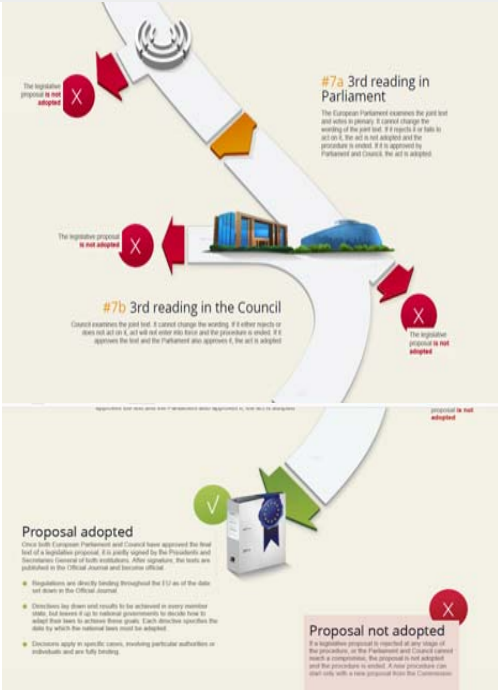
Main elements of the COM Proposal (3)

- Article 11 – Monitoring: aligned to new RBA
- Article 12 – Remedial actions and restrictions in use (mainly clarifications because of ongoing infringement procedures)
 - (3) Exceedance of values set out in Annexes automatically considered potential danger to human health
 - (4) Obligations related to consumer information
- Article 13 – Access to water intended for human consumption (new)
 - (2) Emphasis on vulnerable and marginalised groups (defined in Article 2)
- Article 14 – Information to the public (new)
 - Increased and detailed transparency to increase consumer confidence
- Article 15 – Simplified monitoring obligations
- Article 16 – Access to justice (new)
 - Implementation of the Aarhus Convention

Main elements of the COM Proposal (4)

- Articles 18 and 19 – review of Annexes: alignment to **delegated acts** procedure
- **Annex I** – Removal, addition of new and amendment of current parametric values
 - (Mostly) in line with **WHO Guidelines for drinking water**
 - Part A - Microbiological parameters were added
 - Part B – **Chemical parameters**
 - WHO Recommendations: removal of benzene, mercury and PAHs, but maintained in Annex
 - Increase of certain values: antimony, boron, selenium
 - Inclusion of certain chemicals: chlorate and chlorite, ED compounds (BPA)
- Annex II – Monitoring
- Annex IV: Mandatory information available on the website

Procedure for adoption: ordinary legislative procedure



Procedure for adoption: ordinary legislative procedure

- COM Proposal
 - legal basis Article 192(1) TFEU – remains
 - responsible unit: “Clean Water” Unit in DG ENVI (C1)
- 2017/0332 (COD) in the EP
 - Rapporteur MEP: DANTIN Michel (EPP)
 - ENVI vote: 1 October 2018: Report by Michel Dantin adopted
 - Status: Parliament 1st reading (22-23 October)
 - Procedure file:
[http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2017/0332\(COD\)&l=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2017/0332(COD)&l=en)
- 2017/0332 (COD) in the Council (25 June 2018)
 - harmonisation of standards for materials in contact with water: harmonising standards under the construction products regulation is insufficient → minimum hygiene requirements need in the Proposal
- File closed by May 2019?

EP's amendments – 1st reading

- Report by M. Dantin – 17 October 2018
- 14 proposed amendments to the Dantin Report
- October 23 Strasbourg Plenary Vote: 300 votes to 98 with a massive 274 abstentions
- Overall, the report is approved by the Plenary (some amendments rejected)
- Mr. Dantin asked the Plenary (a) to open interinstitutional negotiations (trilogies) and (b) to return the report back to the ENVI committee for further improvements
- Main amendments
 - Recital 4b (new): ECI Right2Water and Recital 6a (new): Watchlist + Precautionary principle → ED substances
 - Article 3(1a)(new): water used in food businesses for manufacture, processing , preservation or marketing – de facto exception from the DWD requirements
 - One significant change to Article 10 – new Article 10a: minimum hygiene requirements for products, substances and materials in contact with drinking water → delegated acts for hygiene requirements and list of substances with SMLs
 - parametric values in Annex I, e.g. BPA, microplastics, hygiene rules and list of substances (new Annex 2a)

Important provisions to follow

- Domestic Distribution Risk Assessment (Article 10)
 - harmonisation of standards for materials in contact with water: full harmonization under internal market legislation or discretion left for MSs to set stricter requirements?
- Updating drinking water quality parameters (Annex I)
- Transparency and information to consumers

Thank you!



Source: Umweltbundesamt
Elena Elisseeva / Thinkstock

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