

OPINION ON THE REVIEW OF THE DRINKING WATER DIRECTIVE 98/83/EC (DWD)

Executive summary

- The Drinking Water Directive 98/83/EC (DWD) has been and still is a well-functioning European legal instrument contributing to the supply of wholesome and clean drinking water throughout the EU. The DWD should be kept in place and further improved.
- CEEP welcomes the elaboration of policy options for the introduction of integrated source-to-tap Risk Based Approaches in the DWD. This elaboration should include considerations of subsidiarity and flexibility at Member States' level to leave room for approaches tailored to the legal and institutional framework in Member States.
- CEEP stresses the need for better integration of the protection of drinking water resources in the administrative arrangements, Programme of Measures and River Basin Management Plans under the Water Framework Directive (WFD). The revision of the DWD should therefore include the introduction of a cross-reference to Water Framework Directive, in particular Article 7 thereof, the Groundwater Directive and the Priority Substances Directive.
- The precautionary principle should be kept as a leading principle in setting drinking water quality standards and environmental quality standards for source water.
- The revision of the DWD should include a sound legal basis (health/hygienic requirements) for the harmonised acceptance of materials and chemicals in contact with drinking water, taking full account of the work on the 4MS Common Approach.
- Objective and scope of the DWD should be kept unchanged. Issues such as benchmarking, water as a human right, costs should be addressed separately from the revision of the DWD.

Context

The objective of the DWD is to protect human health from the adverse effects of any contamination of water intended for human consumption by ensuring that it is wholesome and clean. The general obligation of the DWD is that Member States shall take all the measures necessary to ensure that water intended for human consumption is wholesome and clean and that it complies with the requirements of the Directive. The DWD is, in general, well implemented. There is a high level of compliance in Member States, although several weaknesses have been identified, which need to be further explored¹.

In its Communication on the European Citizens' Initiative "Right2Water", COM(2014)177 final, the Commission announced to undertake an EU-wide public consultation on the DWD notably in view of improving access to quality drinking water in the EU. The public consultation was launched in June 2014 and ran until September 2014. The aim of this consultation was to understand citizens' views on the need and the possible range of actions that could be undertaken in order to improve further the supply of high quality drinking water. The results of the consultation call upon the Commission to improve its drinking water policy in certain areas, such as 1) ensuring high drinking water quality in remote and rural areas, 2) providing better information to the public, 3) improving monitoring systems, 4) addressing materials in contact with drinking water, and 5) reviewing the list of parameters and values to be met.

The Commission is now going through a process which will lead to a revision of the DWD and, possibly, to other policy initiatives. In the course of 2015, an *ex post* evaluation of the DWD has been carried out² and a start was made with the development of policy options.

At this stage, CEEP would like to express its view that the revision of the DWD should focus on a number of key issues in order to stick to the objective and scope of the directive that is considered as 'fit for purpose' and to keep the momentum. Other issues raised in the ECI process, such as benchmarking³ and right to water, should be addressed, where appropriate, separately from the revision of the DWD.

¹ Synthesis Report on the Quality of Drinking Water in the EU examining the Member States' reports for the period 2008-2010 under Directive 98/83/EC. Commission Report COM(2014)363 final, June 2014

² Evaluation of the EU Drinking Water Directive. Draft Final Report. ECORYS. Rotterdam, November 2015

³ CEEP position on the Multi-stakeholder Dialogue on Benchmarking Water Quality and Services meeting on 9 September 2014/ Brussels, 24 October 2014).

Key issues

Over the years, the DWD has proved to be a robust legal framework contributing to improvement of drinking water quality in Europe. It is necessary to keep the DWD as European legislation and further improve it to better achieve the objective of the DWD.

CEEP would like to see the following 4 key issues to be further elaborated in the revision process:

1. Introduction of a systematic risk assessment and risk management approach
2. Introduction of a cross reference with the Water Framework Directive
3. Use of the precautionary principle when setting drinking water quality standards and Environmental Quality Standards for substances in drinking water resources
4. Elaboration of hygienic requirements for materials and chemicals in contact with drinking water.

As a next step related issues as drinking water quality parameters (awaiting the outcome of the EC/WHO collaborative work), monitoring and reporting should be taken up.

Risk assessment and risk management approach

Since the Drinking Water Seminar, organised by the EC in October 2003, there is a growing consensus amongst drinking water regulators and water supply operators throughout the EU that implementation of the concept of risk assessment (RA) and risk management (RM) in drinking water supply, complementing the 'control at the tap' approach of the DWD, should be the way forward⁴. This concept, therefore, is key in the discussion on the revision of the Drinking Water Directive. CEEP notes that the DWD as it stands already includes, in general and indirect terms, the obligation to consider RA/RM. This has been complemented recently by the amendment of Annex II of the directive⁵.

The main question to address in this discussion is to what extent additional legal requirements at the EU level are necessary. In this respect the principle of subsidiarity is of importance. The state of art with respect to the RA/RM concept is such that one has to conclude that a revised Drinking Water Directive without explicit requirements for having RA/RM in place is not reflecting scientific and technological progress. The drinking water sector is supporting this line of argument, but would like to stress that any set of legal requirements at the EU level has to allow for enough flexibility to give room for both the various institutional and legal frameworks at Member States level and the diversity of drinking water systems throughout the EU.

Therefore, it would be worthwhile to consider under Article 4 an additional provision requiring Member States to ensure that measures under 4(1) should include source-to-tap RA/RM measures in accordance with general minimum requirements set out in a new Annex (describing the main steps in RA/RM). The elaborated proposal drafted in 2009 by a working group under the Drinking Water Committee (Article 12, DWD)⁶ shows that it is indeed possible to include the RA/RM approach in the

⁴ Working Paper "Risk based approaches: the next step in the evolution of the Drinking Water Directive" prepared for the 2003 Drinking Water Seminar

⁵ Commission Directive (EU) 2015/1787 of 6 October 2015.

⁶ A draft proposal for integrating drinking water risk management plans into a revised Drinking Water Directive. Discussion Paper Drinking Water Committee. Brussels, 2009.

current DWD structure with relatively few changes, ensuring both sufficient clarity in terms of minimum requirements and enough flexibility to allow Member States (and drinking water suppliers) to adopt an adaptation and implementation strategy which will fit into their regulatory frameworks and approaches.

Better protection of drinking water resources

To achieve the objective of the DWD, it is imperative that drinking water resources are clean and protected against pollution. However, the DWD does not include requirements as to the protection of the source water. At the EU level the legislative framework for protecting drinking water resources is incorporated in the Water Framework Directive (WFD), and its 2 complementing directives, the Groundwater Directive (GWD) and the Priority Substances Directive (PSD). The current state of implementation shows however that there is insufficient focus on the necessary protection⁷. The CIS Workshop Better Integration of drinking water resources into RBMPs (2014)⁸ addressed this issue, but did not result to a concrete follow up so far. The seminar on 21 January 2016 on drinking water protection underlined the necessity to take action.

The revision of the DWD presents an excellent opportunity to address this issue. The following points should be taken up:

- Amendment of the recitals stressing the importance of resource protection with reference to the WFD, GWD and PSD and the obligation for MS to act accordingly.
- Amendment to underline the precautionary principle in the context of setting Environmental Quality Standards (redrafting of current DWD, recital 5).
- Adding a new article in the DWD, cross referring to the WFD, requiring Member States to address, explicitly, the protection of drinking water resources in the RBMPs and the Programme of Measures, in view of complying with Article 7 of the WFD, while having in mind the need to follow the principle of precaution and prevention in the whole water cycle.

In addition, it is necessary to address the current discrepancy between the DWD and derivation of Environmental Quality Standards (EQS) under the Priority Substances Directive (PSD). EQS are based on ecotoxicological data and considerations. However, for some substances a more stringent EQS is needed in view of safeguarding the quality of drinking water produced from surface water (see also the next paragraph on the precautionary principle), as well as in view of complying with Article 7, paragraphs 2 and 3 of the Water Framework Directive (WFD)⁹. As not all surface water bodies are intended as source for drinking water production, it is more appropriate to introduce these more stringent EQS for all surface water bodies intended for the production of drinking water, as identified in accordance with Article 7, paragraph 1.¹⁰ At the same time, it has to be discussed how a certain

⁷ See *inter alia* A Blueprint to Safeguard Europe's Water Resources. COM(2012) 673 final

⁸ Background Paper of the Workshop "Better Integration of Drinking Water Resources Protection Considerations into River Basin Management Planning. Rome, 1-2 October 2014

⁹ This point has been raised before in the context of the recent revision of the Priority Substances Directive.

¹⁰ It should be noted here that for all groundwater bodies the groundwater quality standard for pesticides and its metabolites has been set at the level of the drinking water quality standard (GWD, Annex I)

degree of flexibility for Member States in view of small surface water bodies that support small communities can be ensured.

Precautionary principle

According to recital (13) of the DWD, parametric values (drinking water quality standards) are based on the scientific knowledge available, taking into account the precautionary principle. Those parametric values are set at a level to ensure that water intended for human consumption can be consumed safely on a life-long basis, and represent a high level of health protection.

For organic micro-pollutants in particular, the best way to ensure a high quality of drinking water is to set the parametric value on basis of the precautionary principle. The current standard for pesticides and its relevant metabolites is a good example of the effectiveness of this standard in view of a sustainable and prevention-oriented provision of drinking water. This approach should be leading when setting drinking water standards for new (emerging) substances in Annex I of the DWD. If Annex I is not reviewed in nearby time, separate lists might be developed in some Member States which might create a patchwork of national regulations. In general, it should also be noted that consumers' perception and consumer confidence are also important aspects that are addressed by the precautionary principle.

The precautionary principle also implies the necessity of a precautionary protection of water bodies used (now and/or in the future) for the abstraction of water intended for human consumption bodies in order to guarantee that the safe and sustainable provision of drinking water will remain possible for future generations, without the need for complicated technical measures and high financial costs. This key point is further elaborated in the European River Memorandum¹¹, including the listing of precautionary target values (EQS) for a range of substances based on the TTC-concept (Threshold of Toxicological Concern).

Materials in contact with drinking water

The DWD (Article 10) requires *de facto* that Member States should control the quality of all products, materials and (treatment) chemicals in contact with water from source to tap by a regulatory framework for these products. Such a regulatory framework has to incorporate health related and hygienic assessment criteria dealing with chemical substances, enhancement of microbial growth and organoleptic aspects as well as requirements to ensure a high level of attestation of conformity.

To this effect several Member States operate acceptance schemes, some of them covering in principle all products, including treatment chemicals, used between source and tap. A number of Member States refer to schemes operated in other Member States. Other Member States are still awaiting the developments at the EU level concerning a harmonised approach, before considering new regulatory measures at the national level. The existence in Member States of different systems for the approval of products in contact with drinking water may create barriers to trade and the free movement of

¹¹ Memorandum regarding the protection of European rivers and watercourses in order to protect the provision of drinking water. IAWR, RIWA, AWE, IAWD, AWWR. 2013

goods. Furthermore, the current situation lead to higher assessment and certification costs and, probably, to hampering of innovation in materials and production processes.

Since 1998, much work has been carried out in view of developing a harmonised approach under the DWD and the CPD/CPR. First in the framework of the European Approval Scheme (EAS) project¹², and later in the framework of the 4MS Common Approach¹³. The proceedings of the recent Conference on Materials and Products in contact with Drinking Water (Brussels, 19/20 May 2015) show that there is now a strong feeling of urgency to work at EU level on a harmonised framework for the assessment of the impact on drinking water quality and the approval of materials and products in contact with drinking water. It was concluded that the evaluation of the DWD is a good opportunity to include this issue in the developing of policy options for the revision of the DWD.

In view of developing options for the revision of the DWD with respect to the substance of Article 10, CEEP strongly suggests to work on basis of the working document prepared in 2007 by a sub-group under the Drinking Water Committee (DWD, Article 12)¹⁴ and documents prepared in the framework of the aforementioned Common Approach.

¹² EAS Proposal. Document RG-CPDW 186Rev. 1. Working Document European Commission

¹³ Declaration of Intent between the competent authorities of France, Germany, the Netherland and the United Kingdom concerning the approval of products in contact with drinking water (drinking water quality). <https://www.umweltbundesamt.de/en/node/13888>

¹⁴ Options for amendment of Article 10 of the Drinking Water Directive 98/83/EC. Report of the *ad hoc* Subgroup of the Standing Committee on Drinking Water. November 2007 (*as amended in March 2008*).