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Subject: Proposal for a Directive of the European Parliament and of the Council on
the quality of water intended for human consumption (recast)
– Policy debate

1. On 1 February 2018, the Commission adopted its recast proposal for a Directive of the European Parliament and of the Council on the quality of water intended for human consumption ¹, the so-called Drinking Water Directive.
2. The main elements of this proposal consist of the updating of water quality standards, the introduction of a risk-based approach to the monitoring of water, the improvement and harmonization of information on water quality and services to consumers, the harmonization of standards for products in contact with drinking water and the introduction of obligations to improve access to water.

¹ Doc. 5846/18 + ADD 1 + ADD 2 + ADD 3 + ADD 4 + ADD 5.

3. The Commission presented its legislative proposal and the accompanying impact assessment to the Working Party on the Environment (WPE) on 13 February 2018. The WPE held substantive discussions on the proposal and its impact assessment over the course of another 6 meetings. Based on these discussions and comments submitted by delegations, the Presidency prepared a first compromise text and identified the two issues of harmonisation of standards for products in contact with drinking water and of improved access to water as those requiring political guidance from the Council.
4. Regarding products in contact with water, the current Directive does not regulate individual products. It sets the rules on permitted amounts of certain substances in water, thus giving guidance for the production of safe pipes and taps. The recast proposes to develop technical standards under the Construction Products Regulation to reduce the need for multiple national testing procedures with the aim of bringing down the costs of approval procedures and improve market access for companies across the European Union. At Working Party level this proposal received little support.
5. The new provisions to improve access to water have been prompted by the European Citizens initiative "Right2Water". The Commission's recast proposal introduces two new obligations for the Member States: 1) To improve access to and promote the use of drinking water and 2) to take all necessary measures to ensure access to drinking water for vulnerable and marginalised groups. During discussions, delegations have raised concerns that this technical legislation which aims to set standards for the quality of drinking water is not the most appropriate instrument to regulate these new obligations.
6. On this basis, the Presidency has prepared a background note and questions on the two topics identified above to guide the policy debate which will be held at the Council (Environment) at its meeting on 25 June 2018.

7. The Committee of Permanent Representatives is invited to take note of the questions, as contained in the Annex to this note, and to forward them to the Council.

 8. The Presidency invites delegations to send written replies before the Council meeting, where possible.
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Presidency Background Note with questions for the (Environment) Council

I. Introduction

The Commission's recast proposal for a Directive of the European Parliament and of the Council on the quality of water intended for human consumption (DWD) contains the following main elements:

Update of quality standards:

The list of parameters on microbiological and chemical values will be updated and extended, in line with the latest scientific knowledge and based on recommendations by the World Health Organisation. This will guarantee that tap water is safe for drinking throughout the EU.

Introduction of a risk-based approach:

Applying a risk-based approach to the monitoring of water throughout the EU, will enable authorities to concentrate time and resources on potential risks and avoid analyses on non-occurring parameters. A risk based approach will add an additional layer of protection as it will increase the possibility of identifying risks to water sources at distribution level and before reaching the tap.

Increase and harmonise consumers access to information on water quality and services:

New transparency rules will enable consumers to get information online, in a user-friendly way, about the quality of water and availability of water services in their local area. The aim is to improve consumer's confidence in drinking water, possibly decrease consumption of bottled water and overcome different exiting practices at national and water suppliers levels.

Harmonise standards for products in contact with drinking water:

The lack of mutual recognition by Member States of national approval systems for products in contact with drinking water has been identified as a burden for stakeholders and an obstacle to the internal market. It is proposed that harmonisation takes place through internal market legislation with the setting of standards under the Construction Products Regulation.

Improve access to water:

Prompted by the European Citizens initiative "Right2Water", the Commission's proposal introduces two new obligations for Member States: 1) To improve access to and promote the use of drinking water and 2) To take all necessary measures to ensure access to drinking water for vulnerable and marginalised groups.

II. Identified topics requiring guidance on the way forward

During discussions at technical level, two issues were identified as requiring political guidance from the Council, notably, the question of harmonisation of standards for materials in contact with drinking water and the issue of access to water.

Harmonisation of standards for materials in contact with drinking water

The issue of "materials and products in contact with drinking water" has been identified as one of the important shortcomings in the current DWD during its evaluation. According to stakeholders, the current system constitutes an administrative burden as it is associated with national approval systems, and product approvals from one Member State may not be recognised in other Member States. This means that products have to undergo different testing procedures before they are put on the market of a given Member State. Such national testing procedures were recognised as an obstacle to the internal market with significant costs to industry.

The current Article 10 of the DWD requires Member States to protect human health concerning substances or materials used in contact with drinking water, but leaves the implementation of this requirement to their discretion. The Commission considers that deleting Article 10 will ensure greater consistency with internal market legislation and, in particular, with the Construction Products Regulation (CPR).

The recast proposal aims to replace the existing Article 10 and to clarify that harmonisation of test methods for construction products in contact with drinking water are to be addressed through standardization under the CPR: A standardisation mandate is issued under the CPR, to set requirements applicable to construction materials and products in contact with drinking water. The mandate will define technical specifications and methods to test products in contact with drinking water for compliance with hygiene and safety requirements. When harmonised standards become applicable (through publication in the Official Journal), they will facilitate the placing of construction products on the market based on defined test methods and, thus, avoid unnecessary multiple testing presently demanded from manufacturers.

The Commission argues that the CPR approach also allows for setting minimum thresholds, classes of performance or the possibility to have products classified without testing. These three categories are however not set in the standardisation process but are to be set by delegated acts adopted under the CPR.

During the negotiations held so far, a number of Member States did not support the approach suggested by the Commission and proposed instead that hygienic requirements for materials in contact with drinking water are set in this Directive, as well as, a list of appropriate substances is either included in an Annex (positive list) or determined via delegated acts. The idea is to set minimum hygiene standards for materials in contact with water at European level. During the discussions, doubts were also expressed about the Commission's proposal to introduce a reference to the CPR, as this Regulation does not cover all materials and products in contact with water, in particular those used in the production and distribution of water outside buildings (such as pumps, valves, water meters), and does not cover all stages of the water chain (production, supply, distribution). Regarding the standardization mandate, two major limitations were put forward – the time schedule and the nature of the mandate, which would not allow for minimum hygiene requirements to be established at Union level.

In reaction to this approach proposed by some Member States, the Commission argued that the DWD might not be the most appropriate instrument to set rules for materials and products in contact with water as it has an environment legal basis, meaning that Member States can set stricter requirements than what is in the Directive. In addition, a positive list might restrict competition and constitute a barrier to innovation.

Article 13 — Access to water intended for human consumption

This is a new Article that addresses the European citizens' initiative 'Right2Water' and the Commission's reply to the initiative. It foresees 2 main obligations:

- First, an obligation for Member States to improve access to and promote use of drinking water. A number of measures are included in the Article (assessing the share of people without access to drinking water, informing them about connection possibilities, encouraging the use of tap water in public buildings and restaurants, ensuring that equipment to freely access tap water is available in most cities, etc.),
- Second, an obligation for Member States to take all measures necessary to ensure access to drinking water for vulnerable and marginalised groups.

Such provision should also contribute to the commitment taken under UN Sustainable Development Goal 6 and the associated target to ‘achieve universal and equitable access to safe and affordable drinking water for all’.

Discussions at Working Party level raised concerns over the suitability of having the obligation to assure access to water regulated in a rather technical legislative instrument that is meant to oversee the quality standards for drinking water.

In addition, it was suggested that such principle could be better achieved through ratification and full implementation of the 1999 UNECE Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, which already foresees a process for analysing national situations, streamlining and harmonizing responsibilities and commitments in water and health.

III. Questions

Against this background and to seek political guidance on the way forward, the Presidency invites the Council (Environment) to address the following questions:

1. On Harmonisation of Materials:

- a) Do you agree that harmonisation of materials and products in contact with drinking water should be conducted under internal market legislation, including the full harmonization of hygienic requirements, or should the Member States retain discretion to set stricter requirements under environment legislation?
- b) If the harmonization of materials and products in contact with drinking water were to be addressed under the Construction Products Regulation, do you see any shortcomings with this approach and, if so, how should they be addressed? If you propose an alternative, could you explain how it will work with regard to feasibility and legal certainty?

2. On Access to Water

- a) Is the Drinking Water Directive the most adequate instrument to regulate the obligation to assure access to water, having also in mind the European citizens' initiative 'Right2Water'?

 - b) If there were to be a provision on access to water, should it list measures to implement access to water or should Member States be granted further flexibility to choose the most appropriate measures adapted to their cultural and geographic circumstances?
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