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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2000/60/EC establishing a framework for Community action in the field of water policy, Directive 2006/118/EC on the protection of groundwater against pollution and deterioration and Directive 2008/105/EC on environmental quality standards in the field of water policy - Mandate for negotiations with the European Parliament

I. INTRODUCTION

1. On 22 of June 2022, the Commission adopted a proposal for a Directive amending Directive 2000/60/EC establishing a framework for Community action in the field of water policy, Directive 2006/118/EC on the protection of groundwater against pollution and deterioration and Directive 2008/105/EC on environmental quality standards in the field of water policy[1]. The proposal aims to update the Annexes of these directives containing the lists of pollutants and quality standards, to improve monitoring of chemical mixtures, streamline future updates according to scientific findings, improve access to, transparency and re-use of data and set new standards for a series of substances of emerging concern.

2. The Economic and Social Committee adopted its opinion on the proposal on 22 February 2023.

3. The European Parliament appointed MEP Milan Brglez (S&D) as Rapporteur. The EP's position at first reading[2] was adopted in Plenary on 24 April 2024, with 452 votes in favour, 43 votes against and 83 abstentions.

II. WORK IN THE COUNCIL

4. Within the Council, the Working Party on the Environment (WPE) is responsible for examining the proposal at technical level. The Commission presented its legislative proposal and the accompanying impact assessment to the WPE on 11 November 2022 and in the first semester of 2023, the Swedish Presidency held a further meeting of the WPE to discuss the general aspects of the proposal.

1 Doc. 14265/22 + ADD 1-3.
2 T9-0358/2024.

5. Under the Spanish Presidency, the WPE held substantive discussions on the proposal over the course of four meetings. Based on these discussions and on comments submitted by delegations, the Spanish Presidency prepared a first compromise text.[3] Building upon the progress made, the Belgium Presidency has pursued work at technical level and has put forward further compromises for discussion at five WPE meetings. The Presidency aims to reach an agreement for a Coreper mandate by the end of June 2024.

6. Progress has been achieved on a large number of technical matters, however, at the last WPE meeting on 31 May 2024, it became apparent that there are some remaining issues to be addressed in view of the overall compromise package. The Presidency has also held bilaterals with delegations, on 14 and 16 May 2024, to identify Member States most pressing concerns and red lines. Taking these into account, the Presidency prepared the compromise text set out in document 10860/24 and is submitting it to Coreper for examination, in the expectation of addressing any remaining issues, with a view to reach agreement on a mandate for negotiations with the Parliament.

III. MAIN ELEMENTS OF THE PRESIDENCY'S COMPROMISE TEXT

Article 1 of the proposal amending the Water Framework Directive:

7. The Commission's proposal updates the **definitions** of "Good surface water chemical status", "Priority substances" and "Environmental quality standards" and introduced the definitions for "priority hazardous substances" and "River basin specific pollutants" in order to widen the scope of chemical status to include also river basin pollutants and take into account the new element of trigger values. The Presidency's compromise text further clarifies these definitions and introduces the new definitions of "Effect-based trigger value" and "Deterioration of the status of a body of water".

[3] Doc. 16458/23.

8. In relation to the latter, during the examination of the proposal, several delegations highlighted the need for further flexibility when implementing the Water Framework Directive (WFD) in order to take into account projects that may have temporary short-term impacts without lasting consequences or projects that simply relocate already existing pollution. To address these concerns, the Presidency compromise text introduces a **definition of deterioration**, corresponding to existing jurisprudence, and two additional exemptions under Article 4 of the WFD, whereby **temporary deterioration** and **net-pollution displacement** are not to be considered a breach of the WFD. Certain safeguards are put in place to ensure that the objectives of the WFD are not jeopardised.

9. The Commission's proposal amends Articles 3 and 12 of the WFD to strengthen cooperation between Member States on transboundary water management in case of exceptional circumstances or on issues that cannot be solved at national level. The Presidency compromise text further clarifies these provisions and maintains the obligation for the Commission to provide comments within 6 months of receiving Member States recommendations.

10. In Article 8 of the WFD on Monitoring, the Commission's proposal aligns the comitology procedure to the Lisbon Treaty and adds a new obligation for Member States to make available to the European Environment Agency (EEA) monitoring data on a yearly basis, in line with other obligations under EU legislation (Inspire Directive). The Commission is to set further details on the monitoring data by implementing acts. During the examination of the proposal, three main concerns were expressed by delegations, as follows:

    - Good status is achieved when **all indicators** for ecological and chemical status are in accordance with the standards set in the water legislation. This **"one-out-all-out" principle** makes it very challenging for Member States to show overall progress within the current reporting mechanism, although the status of individual quality elements has improved since the adoption of the WFD. The one-out-all-out principle is not suited to for this purpose;

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- The Commission's proposal sets a **higher frequency** for making available monitoring data, even though the overall assessment of the status of water bodies occurs every six-years through the river basin management plans;

- Monitoring of an **increased number of substances** or group of substances will increase financial and administrative burdens for Member States, therefore, it was suggested that the Commission could set up a European monitoring facility for managing the monitoring requirements when so requested by the Member States, on a voluntary basis.

The Presidency compromise text for Article 8 takes these concerns into account by adding an additional empowerment to the Commission to adopt an implementing act setting **indicators at EU level showing measure of progress,** by adding an **intermediate reporting** of monitoring results every three years but keeping the reporting on the status in its six-year cycle, and by requesting the Commission to provide a report on options for the establishment, financing and operation of a **joint monitoring facility**.

11. Articles 16 and 17 of the WFD required the Commission to put foward legislative proposals for listing Environment Quality Standards (EQS) for surface water and groundwater. These proposals have since then become the Environment Quality Standards Directive and the Groundwater Directive. Consequently, the Commission proposes to delete these two articles and replace them with the Commission's empowerment to review and update the Annexes of both surface water and groundwater directives by delegated acts.

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12. Several Member States, however, demonstrated a preference for keeping Articles 16 and 17, so as to maintain the obligation for the Commission to put forward proposals for controls to achieve the reduction of emission of priority substances and the cessation of emissions of priority hazardous substances but also to preserve the process of updating the relevant annexes for surface water and groundwater directives by o**rdinary legislative procedure**. The Presidency compromise text, therefore, reintroduces these articles with some necessary adaptations. This approach of replacing the Commission's proposal to use delegated acts by legislative proposals is also reflected in the Presidency's compromise text for Articles 2 and 3 of this Directive.

13. Finally, the Commission's proposal modifies Annex V of the WFD as follows:

- river basin specific pollutants are taken from the definitions of ecological status and are included in the definition of chemical status, with a view to ensure that the monitoring of both priority substances and river basin specific pollutants is carried out not only where these pollutants are discharged into water, but also where they are deposited through air;

- the Commission is empowered to adopt the results of the intercalibration exercise by delegated acts;

- Member States are to make use of new monitoring techniques, including earth observation and remote sensing.

The Presidency compromise text clarifies that if the assessment of a water body changes from high ecological status to good chemical status because of the shift of river basin specific pollutants into chemical status, this shall not be regarded as deterioration. The Presidency compromise text also foresees an implementing act for the intercalibration exercise results. In order to provide for a clearer presentation of progress made, Member States have the option to prepare maps that represent the chemical status in relation to certain substances.

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14. Other necessary adaptations are also made to the final dispositions of the WFD, notably in relation to technical adaptation (Article 20), exercise of delegation (Article 20a) and committee procedure (Article 21).

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Article 2 of the proposal amending the Groundwater Directive and Article 3 of the proposal amending the Environmental Quality Standards Directive:

15. The Groundwater Directive lays down Union-wide QS for nitrates and for active substances in pesticides and criteria for establishing national threshold values for other groundwater pollutants. Currently, other relevant pollutants not listed Annex I of the Groundwater Directive are subject to national QS and Member States set their own threshold values. This flexibility, however, has made comparison of water status between Member States quite challenging. Consequently, the Commission's proposal modifies Article 2 and 3 of the Groundwater Directive to allow for QS and threshold values to be set at Union level for the substances identified as being of national concern. Revised and new QS and threshold values are to be applicable by 2033.

16. The Presidency's compromise text limits the harmonisation of threshold values at Union level to synthetic substances. In addition, the Presidency's compromise text extends the implementation deadline for achieving good groundwater chemical status in relation to the newly introduced substances QS and threshold values until 2039, which can be extended in certain circumstances for two further updates of the River Management Plans, in accordance with Article 4, paragraphs 4 to 9 of the WFD. In relation to the deadlines, the Presidency followed the same approach for Article 3, paragraph 1a, setting revised EQS for achieving surface water good chemical status. To be noted that this approach was also followed in 2013 when the list of Priority Substances was updated for the first time.

17. The Commission's proposal adds a new Article 6a to introduce a mandatory "**Watch List** Mechanism" for groundwater similar to the already existing Watch List Mechanism for surface water. The Presidency's compromise text clarifies that micro-plastics and anti-microbial resistance genes will be included in the watch list only once harmonised and reliable monitoring methods and evaluation standards, which do not entail excessive costs, and scientifically agreed criteria for assessing the monitoring results are available. The Presidency's compromise text also clarifies that updated watch lists must contain a maximum of five substances or group of substances, as it is required for the first watch list to be established. Finally, the deadline to start monitoring the substances or group of substances in the watch list is increased from six to nine months and the role of the working groups established under the Common Implementation Strategy (CIS) of the WFD in the selection of the substances is recognised. The Presidency followed the same approach for Article 8b which modifies the conditions for updating the watch list for surface water.

18. The Commission's proposal amends the Annexes of the ground water and surface water directives in order to insert new pollutants and related quality standards for some per- and poly-fluorinated alkyl substances (PFAs), pharmaceuticals and non-relevant metabolites of pesticides. During the examination of the proposal, Member States views varied largely as to the insertion of these new pollutants and their respective QS values. The Presidency's compromise text attempts to bridge the different concerns expressed, and contains the following main elements:

- On **PFAS**: The Commission's proposal for PFAs in surface waters, which sets a EQS for the sum of 24 PFAS, is kept. However, as groundwater is the main source for drinking water in many Member States, the Presidency's compromise text aligns the PFAs requirement for groundwater with the Drinking Water Directive (DWD), which sets a QS for the sum of 20 PFAS. The alignment with the DWD is dynamic and any updates done for drinking water will automatically apply to groundwater. In addition, to take into account new scientific knowledge and better understanding of the harmfulness of these substances, the Presidency's compromise text for groundwater also includes a sum QS for 4 PFAS for the substances recognised has having a significant risk for health and the environment.

- On **pharmaceuticals**: the Commission's proposal for listing individual pharmaceutical products and their QS values is kept, albeit with lower values. The Presidency's compromise text deletes the QS set for the sum of pharmaceuticals and instead a value for 'Individual pharmaceuticals" has been added to Part D of Annex II of the Groundwater Directive, with a QS of 2.5 μg/l to be applied to any pharmaceutical active substance identified as posing a risk at national level, unless a stricter standard or threshold value has been set specifically for that substance at Union or national level. A footnote clarifies that when a reliable methodology is available, Member States should assess the presence of groundwater ecosystems and, if necessary, set stricter threshold values for these substances. For surface water, the Commission's proposal for individual pharmaceuticals products EQS are kept.

- On **pesticides**: The Commission's proposal to add QS for non-relevant metabolites of pesticides is kept but has been simplified; instead of having three different levels of standards depending on the level of knowledge on their toxicity, only one QS is applied for the sum and one for the individual non-relevant metabolites. In addition, the Presidency's compromise adds an obligation for the Commission to establish by implementing act a list of known pesticides, indicating if they are relevant or not. This list should be adopted within 6 moths of the entry into force of this directive and should be updated every 6 years. Metabolites that have not been assessed yet, are to be considered as relevant, unless it has been previously determined to be of no concern. The Presidency's compromise proposal also deletes the total pesticides EQS for surface waters proposed by the Commission.

19 Finally, on **other issues** related to the Environment Quality Standards Directive, the Presidency's compromise proposal moves several Priority Substances (Annex I) into Annex II, thereby classifying them as River Basin Specific Pollutants and the Presidency has also taken on board some corrections to Annex I proposed by the Commission after the publication of its proposal. Article 5 on Reporting of emissions, discharges and losses of substances in surface water is further aligned with the Industrial Emissions Portal.

20. In relation to the final provisions, in Article 4, the Presidency's compromise text extends the transposition period of this directive from 18 to 24 months.

IV. CONCLUSION

21. In view of the above, the Permanent Representatives Committee is invited to examine the Presidency compromise text set out in document 10860/24 with a view to reach an agreement on a mandate for negotiations with the European Parliament.

22. In accordance with the approach to legislative transparency endorsed by Coreper on 14 July 20203[4], and in full consistency with Regulation (EC) 1049/2001 and the Council's Rules of Procedure, the text of the mandate once agreed will be made public unless the Permanent Representatives Committee objects.

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[4] Doc. 9493/20.

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