EUROPEAN COMMISSION

Brussels, 01.08.2018
C(2018)5305 final

Dear President,

The Commission would like to thank the Senat for its Opinion on the proposal for a Directive of the European Parliament and of the Council on the quality of water intended for human consumption (recast) {COM(2017) 753 final}.

In proposing a revision of Directive 98/83/EC on the quality of water intended for human consumption (hereinafter the 'Drinking Water Directive'), the Commission is first of all responding to the first ever successful European citizens' initiative 'Right2Water', and secondly following up on the United Nations Agenda 2030, more particularly Sustainable Development Goal 6 and its associated targets. Finally, the proposal aims to modernise some outdated elements of the current Directive such as the list of parameters and information requirements and to adapt the legal framework to the digital age.

The Commission welcomes the Senat's broad support for the aims of the proposal. It notes however the Senat's request for clarifications concerning the costs and the proposed provisions for some parameters. The Commission is pleased to provide a number of clarifications on these questions in the attached Annex and trusts that these will allay the Senat's concerns.

The points made in this reply are based on the initial proposal presented by the Commission which is currently in the legislative process, involving both the European Parliament and the Council. The Commission is hopeful that an agreement will be reached before the end of the current parliamentary term in 2019.

The Senat's Opinion has been made available to the Commission's representatives in the ongoing negotiations and will inform these discussions.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Senat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

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ANNEX

The Commission has carefully considered the questions raised by the Senat in its Opinion and is pleased to offer the following clarifications.

1. *Financial effort for monitoring new parameters and for new increased monitoring frequency*

During the public consultation on the proposal, several stakeholders commented on the high financial burden stemming from increased monitoring frequencies as proposed by the Commission. The Commission has taken note of these comments and is currently looking into the issue and welcomes any national cost assessment to support its analysis.

2. *Questions on specific parameters*

– *On turbidity: The World Health Organisation (WHO) has recommended requirements for operational monitoring, in particular using turbidity for operational monitoring to confirm adequate performance of filtration processes. Furthermore, the WHO has recommended introducing a parametric value for turbidity at the tap. The WHO recommendations have therefore been taken into account in the proposal.*

– *On chromium: Concerning Chromium, the WHO has stated that the value for Chromium was under review due to uncertainties in the toxicological data. Ongoing discussions with many toxicologists suggest introducing a lower value for Chromium, and in particular for the more toxic Chromium VI. The Commission therefore proposed to apply to chromium the same approach taken for lead in the past, and to reduce the value by 50 % to 25µg/l after a transition period of 10 years after the entry into force of the Directive.*

– *On per- and polyfluoroalkyl substances (PFAS): For perfluorinated compounds, the Commission decided to follow the same approach as it had followed for pesticides in the past. The Commission therefore proposed to regulate the whole group of PFASs, as defined by the Organisation for Economic Co-operation and Development*[1]*, and to suggest values of 0.1 µg/l for individual PFAS and 0.5 µg/l for PFASs in total, as is done for pesticides. It was considered necessary to regulate to whole group, because there is a wide range of substances with varying chain lengths that can include perfluoroalkyl carboxylic acids (including PFOA), perfluoroalkane sulfonic acids (including PFOS), perfluoroalkane sulfinic acids, fluorotelomer alcohols and perfluoroalkane sulphonamides. PFOA and PFOS are the most common substances, but as they have been substituted by similar PFASs often with shorter chains, it is likely that PFOA and PFOS are no longer representative of this group of anthropogenic persistent chemicals.*

– *On chlorate: the Commission had proposed a lower value than recommended by the WHO. Indeed, the WHO recommended to set a value of 0.7 mg/l for both. The WHO recognised that this value may be too high, and remarked that, if it is feasible to meet*

[1] https://www.oecd.org/env/ehs/risk-management/PFC_FINAL-Web.pdf

lower values, then such lower values would be appropriate. The Joint Expert Committee on Food Additives of the Food an Agricultural Organisation/ World Health Organisation evaluated chlorate and derived a health-based value of 0.01 mg/kg of body weight as a toxicological reference value for chronic risk assessment, which would give a drinking water value of 0.24 mg/l. The Commission has set the value for chlorate accordingly at the stricter level of 0.25 mg/l.

– *On benzene, cyanide, 1,2-dichloroethane, mercury and polycyclic aromatic hydrocarbons (PAHs): Because of their low occurrence in drinking water, usually due to pollution incidents, the WHO report recommended that five parameters be removed from the Directive: benzene, cyanide, 1,2-dichloroethane, mercury, and PAHs. The WHO justified removing these parameters by explaining that they could still be monitored where necessary by Member States on the basis of the WHO guidance value. Stakeholders, and in particular Member States' authorities, strongly advocated not to remove them for health reasons and also because of the necessity to have a binding value set at EU level. It was therefore decided to keep them in the Commission proposal. However, the risk-based approach set out in the Directive allows water suppliers to remove a parameter from the list of substances to be monitored under certain conditions; water suppliers can decide not to monitor those parameters if they are irrelevant in a supply zone.*

– *On endocrine disruptors: The proposal includes the three chemical parameters beta-estradiol, nonylphenol, and bisphenol A. They were proposed by the WHO as three representative endocrine disrupting compounds, and because they are known to be present in surface-water sources which are impacted by treated sewage effluent and other discharges. The risk-based approach proposed by the Commission allows water suppliers not to monitor a parameter if it is not present in their respective abstraction area. This means that if water suppliers confirm that such pollutants are not present in their water sources, they will not have to monitor those, thereby limiting the financial and human resources burden. In addition, since it is already known that endocrine-disrupting compounds are harmful to aquatic animals, such pollutants are already monitored in the aquatic environment. By gathering more monitoring data we will enlarge our knowledge base. Finally, the public consultation showed that stakeholders are concerned by the possible presence of endocrine-disrupting compounds in drinking water.*

– *On legionella pneumophilia: According to the text of the proposal, Member States shall ensure that a domestic distribution risk assessment is performed in particular where water is supplied to the public in priority buildings. This means that Legionella monitoring would only be carried out in a limited number of premises. The Commission proposal clearly states that "imposing a unilateral obligation to monitor all private and public premises for this pathogen would lead to unreasonably high costs" (Recital 11 of the proposal).*

– *On pesticides: the note referred to by the Senat is no longer needed as it is now proposed to implement the risk-based approach for all parameters. As explained for endocrine disruptors above, this means that water suppliers do not have to monitor a*

parameter (e.g. pesticides) if it is not present in their respective abstraction area. Monitoring should only be carried out where relevant.

3. *Mismatch between water supplier definition and monitoring frequency*

The proposal provides that monitoring obligations will depend on the size of the water supply zone, as detailed in Annex II to the proposal. The categories of water suppliers (small, large, very large) are relevant for the purposes of implementing the supply risk assessment (transition period for small water suppliers) and for the information to be published on-line.

4. *Transparency – no value for indicator parameters*

The Commission has proposed that the so-called indicator parameters be displayed on-line, as they usually contain information of interest to consumers (iron, hardness, minerals, etc.), which often influence consumers' perception of tap water. The Commission considered that these indicator parameters were not health-related parameters and that it should be left to Member States to decide whether to display the indicator parameters with a reference value and/or an explanation – to give consumers an order of reference.

5. *Link with the Water Framework Directive*

As far as the issue of hazard assessment of the water bodies used for abstraction of drinking water is concerned, it is indeed correct that rules are already in place under the Water Framework Directive. The objective of the proposal is to reinforce complementarity between the Water Framework Directive and the Drinking Water Directive, thereby ensuring coherence of the legal framework, whilst avoiding any duplication of obligations. For instance, monitoring already carried out under the Water Framework Directive should be used for the purposes of the hazard assessment under the Drinking Water Directive. Coherence of the terminology has also been ensured to the extent possible between the two Directives.

6. *Analytical methods for microplastics*

Several methods exist to analyse microplastics. However, at this stage the current level of development of sampling and analysis methods is not sufficient to generate reliable quantitative results, in particular for very small particles. In the absence of a method specified in the Directive, Member States are free to specify a method of their choice.

7. *Deletion of the current Article 10*

The current Article 10 of the Directive permits much legal flexibility to Member States to apply national approval systems for products and materials in contact with drinking water. The evaluation recognised the non-recognition and the multiple testing required for national approval as a barrier to trade. The impact assessment showed that gains of 669 million EUR could be made by removing this obstacle.

The proposal therefore replaces this Article with a new domestic distribution risk assessment, where Member States will have to assess the risk related to the domestic distribution system. It allows Member States to take all necessary measures related to products and materials in contact with drinking water. As the removal of technical barriers may only be effectively achieved by establishing harmonised standards for products in contact with drinking water, a standardisation request specifically requiring standardisation work on hygiene and safety for construction products in contact with drinking water under Regulation (EU) No 305/2011 has been issued. The harmonised standards are under development. Once they are published in the Official Journal of the European Union, they will ensure a rational decision-making for placing safe construction products in contact with drinking water on the market.

8. How to access private property for domestic distribution risk assessment

The Commission considers that the issue of the access to private properties for the purposes of the domestic distribution risk assessment is a matter of national law, and is therefore not regulated in the Drinking Water Directive.

9. 6-year review period of risk assessments and monitoring programmes

Part A of Annex II, to the proposal provides that "Member States shall ensure that monitoring programmes are reviewed on a continuous basis and updated or reconfirmed at least every 6 years". Given that monitoring programmes will be under continuous review, they may be updated much more frequently than every 6 years. The 6-year reference simply ensures that as a minimum; Member States reconfirm the validity of their monitoring programmes at least every 6 years.