



**EUROPEAN ASSOCIATION
OF PUBLIC WATER OPERATORS**

APE Position on the European Commission's Proposal for a Recast of the Drinking Water Directive

29 March 2018

ABOUT AQUA PUBLICA EUROPEA

Aqua Publica Europea (APE) is the European Association of Public Water Operators.

It unites publicly owned water and sanitation services and other stakeholders working to promote public water management at both European and international level.

APE is an operator-led association that looks for efficient solutions that serve the public rather than corporate interests.

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March 26, 2018

Summary

Aqua Publica Europea, the European Association of Public Water Operators, welcomes the European Commission's proposal for a recast of the Drinking Water Directive as a needed step towards a more holistic approach to secure high quality tap water for all EU citizens.

The **proposal designs an innovative framework, which should ensure a more integrated, transparent, cost-effective and context-sensitive approach to water resource management** for drinking water. Since we fully align with the intention of the proposal, we highlight some inconsistencies in the proposed text that risk undermining the achievement of its objectives and propose alternatives for a seamless implementation.

A thorough application of the risk-based approach based on a robust framework

We strongly welcome the introduction of a source-to-tap risk-based approach (RBA) for improved water quality in Europe.

- **We regret the proposal focuses only on monitoring regimes and not also management of risk.** Imposing restrictions for any exceedance whatsoever of minimum parametric values (*art. 12.3*) is unreasonable, contradicts with other provisions in art. 12, may result in unnecessary alarmism and obliges to always opt for additional treatment over preventive measures, even when it is not required by health protection considerations.
- **The source-to-tap RBA requires a robust governance framework.** The realisation of a source-to-tap risk assessment will require changes to the current governance of the water management system in several Member States. Whilst the reference to stakeholder engagement is welcomed, as APE members advocate, the proposal needs to establish a clearer link between responsibilities and competences to carry out hazard assessment and preventive/remedial action especially for water bodies and domestic distribution.
- **Prioritising interventions where risks are higher.** The new classification of small/large/very large suppliers may lead to inconsistencies in applying the RBA. We propose to reintroduce the previous classification based on the size of supply zones or, alternatively, to align and extend the timeline for applying the RBA to six years for all, thus allowing for prioritising action where risks are higher.
- **Particularly rigid monitoring requirements may lead to disproportionate costs.** A transitory period between the current and the new regime until the risk-assessment is performed should be foreseen. Because threshold values for certain parameters are well

beyond WHO recommendations, the cost impact should be assessed in the light of the objectives set in art. 13.

For a comprehensive approach to access to water

We welcome the inclusion of provisions promoting the access to tap water for all (*art. 13*).

However, we believe that physical access cannot be separated from affordability, and both should be considered along with cost-recovery and water efficiency requirements.

For example, we propose a more thorough enforcement of the polluter-pays principle for emerging pollutants, also as a way to finance the measures foreseen in art. 13.

Further, art. 13 fails to clarify the allocation of responsibilities for the realisation and the financing of required actions.

Achieving transparency: broadening the scope, increasing flexibility

We fully support the objective to increase information and transparency with a view to boost consumer trust and improve water governance.

However, whilst some provisions in art. 14 and annex IV are too specific and therefore not applicable to all contexts, other important aspects of transparency (especially on financial flows) are neglected.

We therefore propose to outline comprehensive, general principles and allow Member States to take responsibility for detailed regulation.

What about climate change?

The proposal is silent on long-term climate adaptation strategies, which should be explicitly promoted.

We call for the Commission to strengthen the proposal through clarifications and increased coherence to fully produce its impacts.

INTRODUCTION

Aqua Publica Europea, the European Association of Public Water Operators, welcomes the Commission's Proposal for a recast of the Drinking Water Directive as a needed step towards a more holistic approach to ensure high quality tap water to all European citizens.

If approved, the Proposal would ***design an innovative framework, ensuring a more transparent, cost-effective and context-sensitive approach to water resource management*** for drinking water purposes. Its implementation may therefore entail some significant changes to the way actors, and above all water operators, currently operate.

As public water operators, we welcome this new approach. However, to successfully realise its measures, the implementation of the ***Directive needs to be supported by a sound institutional and regulatory framework, ensuring the coordination of all relevant stakeholders and clearly allocating responsibilities to actors as well as authority and competence*** (including financial) to realise the needed actions. Some of these regulatory conditions are sometimes not sufficiently addressed in the proposal, and that might cause legal and institutional uncertainty. Further, some inconsistencies in the text (notably regarding information and the implementation of the risk-based approach) risk undermining the proposal's objectives.

We therefore propose revisions to remove potential sources of legal or institutional uncertainty and to guarantee appropriate governance, both preconditions to the efficiency of the new Directive.

RISK-BASED APPROACH

We strongly welcome the introduction of the risk-based approach (RBA) as a means to ensure water quality, as well as the clear distinction between the main phases of the process of drinking water provision: abstraction, supply, distribution.

By requiring water operators and other authorities to develop comprehensive knowledge of their local water systems, this approach favours cost-effective and flexible solutions that are adapted to local characteristics. Therefore, the RBA gives more responsibility to the entities composing the national and local water management systems but, at the same time, the RBA allows for a more rational and context-sensitive management of water resources.

However, the proposal seems to apply the RBA only partially, as it designs a hybrid system with the current approach. This may create uncertainty and prevent the RBA to fully produce its expected benefits.

1. The RBA should cover the management of risks, not solely their monitoring (art. 12).

- The proposed rewriting of the article on remedial actions and restrictions (new art. 12, in particular par. 2 and 3) combined with the end of the possibility for derogations (current art. 9), suggests that any exceedance of threshold values should *automatically and immediately* be treated through remedial actions *AND* restrictions (the current wording indicates it is one or the other).

- ***Such automatisms are likely to create incentives for water operators and authorities to systematically choose additional treatments over preventive measures, regardless of human health considerations, which are determined by exposure extent and the nature of the pollution. These practices will significantly increase costs without bringing additional protection.***
 - Further, treating all exceedances with restrictions may unnecessarily alarm citizens, which might jeopardise the Directive's objective to increase trust and tap water consumption in Europe.
 - To avoid alarmism and unjustified cost increases, we recommend rephrasing art. 12 to clarify that both remedial actions and the timeframe to implement them are proportionate to the actual hazard for human health.
 - The proposed flexibility in monitoring based on risk-assessment should be complemented with proportionality in risk management, in line with the spirit of the risk-based approach, as the RBA can only yield its results and guarantee robust and cost-effective health protection if it is applied thoroughly.
2. Whilst introducing flexibility in monitoring through the risk-based approach, the proposal's keeps a 'list-based approach' as regards compliance assessment. This, coupled with stricter monitoring obligations and threshold values well above WHO recommendations, will imply higher costs and could have potential distortive effects on the implementation of risk-assessment (see below). The cost impact of these new obligations, especially for small supply zones, may be disproportionate and should be assessed also in light of the objectives of new art. 13.

We therefore recommend to modify Annex I and II in line with WHO recommendations or to replace the current Annex II with a wider/longer watch-list each system can refer to for its risk management.

3. **The new classification of water supplies based on the size of operators rather than on that of the supply zone creates uncertainty.**
- The introduction of a new classification of very large/large/small *suppliers* (new art. 2), replacing the current distinction between small and large *supply zones* is inappropriate, especially in the light of the RBA, as the risk-assessment mainly applies to supply **zones** rather than operators.
 - The deletion risks creating confusion, as large suppliers can manage several small supply zones (it is frequently the case for regional or national suppliers). In this case, since the new monitoring requirements would have a proportionally higher economic impact on small supply zones (see above), an operator may choose to focus the risk-assessment on small supply zones to compress costs, in contradiction with the principle of risk-management.

- **We suggest reintroducing the distinction between small and large supply zones in art. 2 and modify art. 7 accordingly**, to establish deadlines for the implementation of risk assessment in relation to the size of the supply zone and not of the supplier.
 - Alternatively, we propose to remove the distinction between small and large supply zones for the timeframes for the implementation of risk-assessment, and extend them to six years for all supply zones. Efforts should focus on the areas where risks are higher and thus bigger investments/more complex remedial action may be needed to address them, by definition large supply zones. In short, the text should be revised in view of ensuring the promotion of an optimised approach that adequately ponders and prioritised actions where most needed.
- 4. Preventive measures should take precedence over mitigating measures (art. 8).**
- The specified obligation to perform a hazard assessment of water bodies (new art. 8) appropriately connects with the Water Framework Directive’s preventive measures. We particularly welcome the reference to the promotion of stakeholders engagement for the implementation of the measures.
 - We therefore regret that art. 8.5 attributes the same importance to preventive measures and to mitigating measures: the former should be prioritised in line with the provisions of the WFD and of the Treaties.
- 5. Control measures to manage catchment hazards should be supported by a strong national framework for clear governance.**
- In several Member States (MS), water suppliers do not have the competence to intervene upstream on water bodies, and it is even more difficult when the water bodies are very large or located in areas outside of the operator’s administrative perimeter of competence. However, it is likely that the responsibility to implement hazard assessment and put forward preventive/mitigating measures will eventually fall on water suppliers.
 - To prevent unclear governance, the proposal should require that Member States secure a solid regulatory framework **enabling water operators and local authorities to take land-use decisions for water resources protection through participatory processes**. It should also strengthen competences as regards the tackling of punctual pollution sources through a more thorough application of the polluter-pays principle. Such clarification will allow water operators to fulfil their obligations with cost-effective measures.
- 6.** Similarly, new art. 10 on domestic distribution risk assessment fails to assign responsibilities for addressing and managing the hazard and lowering the risk, once identified. We also note the problem of reliability of certain measurements, especially at tap: this may be extremely important in combination with the comment on new art. 12 (see above) and restriction measures. This regulatory framework should give greater responsibilities to owners.

ACCESS TO WATER

The introduction of an obligation for Member States to “*take all necessary measures to improve access to water for all*” (new art. 13) responds to the recognition of water’s essential value for life, as also expressed in the first successful European Citizen Initiative on the right to water. The right to water is among the founding principles of our association, and APE has ***long been advocating for new approaches and measures reconciling cost recovery, environmental efficiency and access to water.***

1. Water accessibility, financial sustainability, and water efficiency should be addressed together.

- The issues of (physical) access to water for vulnerable people (addressed in the DWD) and affordability of water services (despite the statement that the WFD addresses this issue, it is, in fact, not the case) cannot be separated, as a person can have physical access but remain unable to pay for the service. We therefore question the distinction made in the proposal’s recitals.
- At the same time, accessibility and affordability cannot be addressed without considering the sustainable financing of the water services, and the role of tariffing in promoting water efficiency. Legislation should therefore address these principles together, as realising one principle may indeed have effects on the others, and this interplay needs to be considered holistically.
- In general, we believe that accessibility should be addressed through general redistributive mechanisms (welfare), whilst reconciling cost-recovery and water efficiency depends on the tariffing and financing systems of water services.
- Whilst waiting for a clearer, more comprehensive legislation, we observe that some Member States do not adequately address the problem of accessibility through their welfare systems. In these cases, APE members strive to adopt all necessary measures (including water solidarity funds, water bill discounts) to ensure both access to water for all and cost-recovery.

2. Uncertainty about who should implement provisions of art. 13.

- Even if we disregard what mentioned in the previous paragraph, art. 13 as it stands now is unclear as regards the responsibilities for the realisation and financing of several of the required actions (notably those affecting the implementation of art. 9 of the WFD). Once again, a clearer connection between responsibilities and competences is needed to achieve the objective of this article.

3. The Directive should ensure robust legal protection for the promotion of drinking water. We strongly welcome the proposal’s emphasis on the promotion of tap water as drinking water. Several APE members have successfully been promoting tap water consumption through communications campaigns for years. However, several operators have been sued by mineral water companies specifically because of these campaigns. It is therefore necessary to accompany the proposal with legal protection in particular with regards to competition legislation.

INFORMATION AND TRANSPARENCY

We welcome the proposal's focus on information and transparency (new art. 14 and Annex IV) as essential conditions for consumers' trust in tap water and, more generally, for the promotion of good governance in the water sector. Many of our members already provide full information on quality, finance and governance and actively promote participatory governance processes.

However:

1. **In certain cases, the provisions of art. 14 and Annex IV are too detailed and, consequently, too rigid and sometimes limited in scope.**
 - The list of tools to provide information (invoice, smart applications) is too narrow, and may exclude customers who do not have a contract with their supplier (collective metering, tenants) as well as those without internet access.
 - Sometimes, the specification of the information to be provided is too detailed. For example:
 - On performance, Annex IV mentions indicators, such as energy consumption per cubic meter, that are strictly related to the geographical and geological conditions of the water production and that say nothing on the performance of the operator;
 - Similarly, the reference to "leakage" as such is no longer used by anyone as performance indicator as, again, too much dependant on contextual conditions.
 - The reference to "investment needs" is ambiguous: how to determine these needs? It would be more appropriate to require information on how investment decisions are taken: how an investment has been prioritised over another and why certain have not (could not) been financed.
 - Lists that are too detailed imply that some other important aspects of transparency are neglected.
 - For example, nothing is required about the information on the contractual conditions that link the water service provider to the responsible water authority, and there are no requirements for information on financial flows either (such as profit distribution, payment of dividends, management fees).
 - We therefore suggest a rewriting of art. 14 and Annex IV to include all relevant aspects of water resource management (quality, quantity, governance, economic and financial conditions, performance) whilst leaving to Member States the responsibility of defining the most appropriate indicators. This suggestion is based on the subsidiarity principle and allows to take into account the geographical, regulatory and administrative context of each country or region.

2. **Some of the information needed to ensure transparency of the water sector is not always available to, or under the responsibility of, water operators.** This is particularly the case for the provisions related to the information on the access to water and those related to measures to protect catchment areas. Obligations concerning information availability and access on water resources management should then be primarily addressed to the public authorities (national or local) responsible for



water resources management; such authorities will have then the power to require or collect the needed information from water operators, whenever appropriate.

CLIMATE CHANGE

Whilst we appreciate the proposal's overall approach, we regret the lack of reference to climate change and in particular, to the necessity to take climate change into account in the long-term planning of water resources protection. Further, hazard assessment of water bodies should include the effect of climate change.

Because a range of instruments crucial to accurately assess the impact of climate change are neither water operators' nor local authorities' prerogatives (meteorological or geological data, for example), we advocate for an ***introduction of provisions requiring meteorological agencies in each Member States to develop, in cooperation with water authorities and operators, and make available specific indicators related to the impact of climate change on water resources*** to streamline the process and guarantee accuracy. These indicators should serve data collection of large enough scale to allow long-term forecast for the main catchment areas.