



Commission of the European Communities

environment and quality of life

COMMUNITY WATER QUALITY POLICY FOR THE NINETIES



Report

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ABSTRACT

European Community water policy has been evolving over the last fifteen years. The most common form of legal instrument which has been employed is the directive. These can be divided into three types, quality objectives, sectorial and dangerous substances. At a Ministerial Seminar in Frankfurt, six key areas were identified for future Community action. These are the ecological quality of surface waters, wastewater treatment, dangerous substances, diffuse sources, water resources, and integration with other policies.

KEYWORDS

Water EC Directives, Dangerous Substances, Frankfurt Ministerial Seminar.

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INTRODUCTION

The European Community has had a policy on the quality of its waters since the early seventies. This policy, like many developed at this time, was borne out of the 1972 Stockholm Conference on the Environment. It therefore reflected the concerns of that period, such as the discharge of the heavy metals like mercury and cadmium. As time has progressed the focus of attention has changed. We are now at the stage where we can look forward to the nineties and attempt to evolve a policy to deal not only with the outstanding problems but also to tackle the new problems which will arise as the Community develops.

COMMUNITY ACTION

Community policy on the Environment has been outlined in the various Action Programmes which have been published periodically. The First Action Programme, adopted in 1973, spelled out the objectives and principals of environmental policy and listed a large number of remedial measures which were seen to be necessary at Community level. The Second Programme, adopted in 1977, updated and extended the First but by 1983, when the Third was adopted a preventive approach had become central to the policy. Currently the Fourth Action Programme is in force taking us up to the important date of 1992.

There are a number of different legislative means available for turning this policy into concrete measures, such as Regulations, Directives, Decisions, Recommendations and Opinions. In the past, directives have been most extensively used for implementing water policy. However, there is often confusion about how directives are produced. A directive is binding as to the results to be achieved, but leaves to Member States the choice of form and method. A proposal for a directive is prepared by the Commission based on several expert studies. After a number of consultation procedures, it is sent to the Council of Ministers, the European Parliament and the Economic and Social Committee who discuss and decide whether the proposal should be adopted as a Community measure. Thus it is the Council and not the Commission which legislates. The original proposal can be changed dramatically by the Council. For instance the definition of a 'bathing water' in the bathing water directive EEC/76/160 was changed from:

waters.... in which the competent authorities of Member States authorize or tolerate bathing, to:

waters.... in which bathing is explicitly authorized by the competent authorities of each Member State or bathing is not prohibited and is traditionally practised by a large number of bathers.

Many such changes occur during the passage of proposals through the Council. Inevitably this means that the final directive often ends up as a political compromise between Member States with conflicting opinions. The result can be a directive which is ambiguous or badly thought out. This creates complications for the Commission after the directive comes into force as the Commission is responsible for ensuring Community law is implemented.

There have been other Community actions on water pollution which have not been legislative in nature. For instance, there is a contingency programme in case of major marine pollution. This consists of a Community Information System, a training programme and an annual programme of studies and pilot projects. This action programme is designed to improve the response of Member States, and in some cases non Member States, to major marine pollution incidents.

The Commission also attends other International bodies which control water pollution such as the Paris Commission, the Rhine Commission and the Barcelona Convention. Through these bodies the Commission attempts to promote Community water policy.

EXISTING COMMUNITY DIRECTIVES

Existing Community directives which deal with water pollution problems can be divided into three basic categories. The first comprises a group of directives which lay down quality objectives or other requirements for water intended for specific uses. These include:

1. Directive 75/440/EEC on the quality required of surface water intended for the abstraction of drinking water in Member States.
2. Directive 76/160/EEC concerning the quality of bathing water.
3. Directive 78/659/EEC on the quality of fresh waters needing protection or improvement in order to support fish life.
4. Directive 79/923/EEC on the quality required for shellfish waters.
5. Directive 80/778/EEC on the quality of water intended for human consumption.

These quality objective directives formed the main part of Community action for the aquatic environment in the Seventies. They concentrated heavily on the protection of public health from the consequences of water pollution. Most of them rely on Member States designating waters which are or will be used for the various purposes laid down in the directives. Member States are then committed to bring these waters up to a minimum quality by a certain date. Some of the directives also require Member States to establish programmes in order to bring about improvements in their waters.

The second category of Community directives relate to specific industries or sectors. The only industry covered so far is the titanium dioxide industry. However, proposals were produced which covered the paper and pulp industry, although these were never agreed by the Council.

The third category deals with the discharge of dangerous substances. This category can be divided into two parts, discharges to groundwater and discharges to surfacewater. Discharges to groundwater are dealt with by directive 80/68/EEC. The directive prohibits the discharge into groundwater of List I substances (Black List) and limits discharges of List II substances (Grey List).

Discharges of dangerous substances to other waters are controlled by directive 76/464/EEC and subsequent daughter directives. This one area of EEC policy has caused considerable controversy since its conception. The aims of this directive are:

- to eliminate pollution of waters by dangerous substances belonging to the families and groups of substances included in List I in the Annex to the directive. At the time these were considered to pose the greatest threat to the aquatic environment due to their toxicity persistence and bioaccumulation capacity;
- to reduce pollution of waters by dangerous substances in the families and groups of substances included in List II of the Annex to the directive, which were considered to pose less of a threat to the aquatic environment than List I substances.

With the exception of cadmium and mercury, List I does not mention individual substances, only families or groups. It was therefore necessary to decide which individual substances in these families and groups should be the subject of daughter directives. On the basis of various studies the Commission compiled a List of 129 priority substances which might be the subject of daughter directives. In order to work more swiftly and to comply with the Council's desire for more effective and straightforward procedures, the Commission introduced a general implementation directive 86/280/EEC. Since its adoption in 1986 measures for 10 substances have been agreed which compares with only 3 substances for the previous ten years.

For List II substances, Member States are required by the directive to establish programmes for the reduction of pollution which include quality objectives and emission standards set in relation to these programmes. The Commission made a proposal for the harmonization of these programmes in relation to the List II metal Chromium. Discussions on this proposal have not been concluded within the Council.

INTERNATIONAL ACTION

During the same period work has continued in other International fora such as the Oslo, Paris, London, Barcelona and Rhine Conventions.

Some of these have concentrated on specific aspects of marine pollution such as that caused by dumping or offshore oil and gas production. A more global examination of marine pollution problems specific to one area, has been made by the two Ministerial North Sea Conferences. These require North Sea states to establish programmes for a substantial reduction of inputs of nutrients and dangerous substances to parts or the whole of the North Sea.

The Third North Sea Conference, which is scheduled for early in 1990, will review how the previous decisions have been implemented and what further action is needed.

On the other hand the Rhine Commission has specifically looked at one river catchment, from its source to the sea. They have set and adopted a number of objectives, like the return of salmon by the year 2000, and measures which include emission standards for municipal wastewater treatment works, as well as a host of other measures on other problems.

The Commission takes part in most of these international bodies either as a contracting party or observer. Many of the bodies contain countries outside the European Community, such as Norway, Sweden and Switzerland. The Commission, along with the participating Member States, have the difficult task of trying to ensure compatibility between Community water pollution measures and those being advocated by these other bodies.

PROBLEMS OF COMMUNITY ACTION

The first criticism of Community water policy is the speed at which it is transformed into effective action. This problem can be broken down into two steps. Firstly, there is the inordinate length of time it takes for proposals of the Commission to be agreed in the Council. This can be in part explained by the different priorities and environmental conditions of Member States. It has also been suggested that the proposals which the Commission submits to Council are not politically realistic. The second step involves the

implementation by Member States of Community directives. In principle major improvements could have been achieved if all directives had been applied on a wider scale. However, for whatever reason, some Member States have failed to designate appropriate waters under the quality objective directives or simply failed to transpose directives into their national laws. The outcome is that there are currently approaching one hundred legal procedures underway against Member States. This is clearly an unsatisfactory state of affairs.

The second criticism which can be levelled against existing Community legislation is that in some areas it is inappropriate. Some people argue that since directives were agreed in the seventies knowledge has progressed and that some of the limits should be changed. For the main part such agreements are applied for limits which are considered to be too stringent. For example, such opinions have been expressed about the pesticide and nitrate parameter in the drinking water directive.

THE FUTURE

The most important event to influence environmental policy for the Nineties is the passing of the European Single Act.

In this Act, which is an extension of the Treaty of Rome, the protection of the environment has been expressed explicitly as one of the objectives of EC policy. For the first time this places Environment on the same footing as other major EC policies such as Agriculture, Trade and Fisheries.

This new political importance of environmental policy is reflected in other ways. National policies throughout the Community now pay far greater attention to "green" issues. Recent Ministerial meetings have taken a more protectionist line when discussing water pollution. At the Second Ministerial North Sea Conference the "precautionary approach" was to the fore. "Ministers recognised that action needed to be taken even though there may not be any scientific evidence to prove a casual link between emissions and effects ('the principle of precautionary action')". They agreed to drastically reduce, of the order of 50%, by 1995 the inputs of particularly dangerous substances to the North Sea. They also set, for the first time, much more stringent criteria for the control of industrial waste and sewage sludge dumping. Furthermore they agreed that incineration at sea should be phased out by the end of 1994.

This spirit was carried over to an Environment Ministers seminar on Community Water Policy for the Nineties held in Frankfurt during the Summer of 1988. This was a unique event in the history of European Community Water Policy as it brought Ministers together, in an informal atmosphere, in order to discuss the priorities for the future. It offered them a

chance for a frank and open debate without the responsibility of defending their entrenched national positions. At this meeting the Ministers agreed to "expand and intensify the Community policy and legislation on the protection and management of Community water resources". They identified six main areas of work for the Commission.

Ecological quality of surface waters

Ministers supported the idea that there should be further Community legislation covering ecological quality of surface water. They considered there should be a general improvement in the ecological quality of Community waters. However, they recognised that improvements could not be achieved everywhere in the short term.

The Commission now has the task of putting a proposal together which can fulfil these aims. This will not be an easy task as the ecology of the Community waters varies dramatically as you go from the temperate northern countries to the drier southern countries. Also, the methods of measuring ecological quality depend very much on the type of water that is being studied. Nevertheless, the Commission will attempt to produce a measure which will provide the framework within which ecological improvements can be achieved.

Waste Water Treatment

The Community ecological quality measures will be all about setting objectives and determining whether they have been achieved. Ministers also gave consideration as to how these improvements could be brought about. It was recognised that there currently are no general requirements to treat either industrial or sewage effluents before they are discharged into the aquatic environment. Many of the worst pollution problems in the Community are linked to the lack or inadequacy of sewage treatment, both for inland waters and marine waters. This applies to both the northern as well as the southern Member States. The return of a healthy ecology is dependent on dealing with this well understood source of pollution. The provision and improvement of municipal waste treatment will have other spin-offs. It will help to reduce the input of heavy metals and nutrients to sediments and ultimately the sea and will improve the aesthetic value and beauty of coastal areas which are such a valuable resource for tourism. The Commission is currently considering various options for defining Community action in this area. Again there are many difficulties, not least the significant differences in the receiving environment of Member States, the colossal investment costs required and the different methods of treatment used by Member States. It is clear that any Community measure will need to take account of the different stages Member States have reached in the provision of municipal treatment, and therefore the achievement of a Community wide high standard of wastewater treatment will necessarily take longer than the implementation of previous directives.

Dangerous Substances

Ministers wished to see a speeding up of measures to deal with the control of discharges of dangerous substances. In the initial years progress was indeed slow. However, since the passing of Directive 86/280/EEC, a general implementation directive for List I substances, progress has been much more rapid. This is not to say more cannot be done. The Commission has already held a meeting of national experts at which it was unanimously agreed that a List of 20 substances should be priority List I substances. Many Ministers believed that the process by which daughter directives for List I substances are agreed should be changed. They believe that the identity of List I substances should be agreed at Council by unanimity and the actual limit values and quality objectives should be agreed, using Article 130 S, second indent, of the Single European Act, that is by the use of qualified majority. If such a system were applied to the List of substances agreed by national experts the Community could have measures covering discharges of an additional 20 substances in a very short time indeed.

The second major point upon which Ministers focussed was the complementary and simultaneous nature of the quality objectives and emission standard approaches to addressing dangerous substances. There certainly has been considerable discussion on this subject especially in the North Sea Conferences. There does appear scope for the simultaneous use of limit values and quality objectives particularly when controlling substances which come from diffuse sources.

Diffuse sources

Many of the dangerous substances which are detected in the Community are not directly discharged, but come from a number of diffuse sources. Ministers agreed more attention should be given to this problem and in particular the environmental problems caused by intensive agriculture.

The Commission has prepared a proposal to control diffuse sources of nitrate which cause problems for groundwater and eutrophication of Community waters.

This proposal includes measures to control the spreading of animal manure, the application of chemical fertilizer, certain other land management practices, and nitrogen emission limits for certain municipal wastewater plants.

The Commission is also considering a proposal to deal with pollution caused by phosphates and is examining a number of different measures in relation to the control of use of pesticides.

Water Resources

The problem of water resources is one which has not hitherto been dealt with at Community level. Ministers felt water resource problems could not be divorced from those of water quality and should be addressed as part of an overall policy for water. In some Member States the shortage of water dominates all other considerations. The Commission is examining this aspect of water policy to see how it can be given greater emphasis in a Community framework.

Integration

Ministers felt there was more scope for integrating water policy with other aspects of Community environmental policy. A number of directives or proposals have attempted to deal with the cross-media aspect of certain pollutants. For instance Directive 87/217/EEC on the prevention and reduction of environmental pollution by asbestos deals with all forms of asbestos emissions for particular industrial sites.

CONCLUSIONS

The Nineties provide a golden opportunity to make dramatic improvements to Community waters. At long last it would appear that all Member States are accepting that a more precautionary approach is needed instead of relying on "progress by catastrophe" as witnessed in the past. There now appears to be a real political commitment to clean up our environment, as demonstrated at the Frankfurt Seminar, the North Sea Conferences, Genoa Declaration, etc. The task that remains is to turn this commitment into effective measures which will achieve the improvements which the public at large clearly desire