

## **Manual of European Environmental Policy**

The following pages are a section from the Manual of European Environmental Policy written by the Institute for European Environmental Policy.

The Manual was published by Earthscan/Routledge from 2010 to 2012. It was designed as an on-line interactive reference work and annual printed versions were also produced.

This section is the text of the Manual as published in 2012. It is therefore important to note the following:

- The contents have not been updated since 2012 and no guarantee is given of the accuracy of the contents given potential subsequent developments.
- The sections include links to external websites (e.g. to legal texts). These links continue to work as long as those links are not broken by those websites.
- The sections also include the original links that enabled interactivity within the published on-line version of the Manual. These links no longer work.

© Copyright IEEP 2014

The Manual should be cited as follows:

Farmer, A.M. (2012) (Editor). Manual of European Environmental Policy. 1043pp. Routledge, London.

# The Shellfish Waters Directive

<b>Formal reference</b>	
<a href="#">2006/113/EC</a> (OJ L376 27.12.2006)	Directive on the quality required for <a href="#">shellfish waters</a>
Proposed 12.05.2006 – <a href="#">COM(2006)205</a>	
Originally: <a href="#">79/923/EEC</a> (OJ L 281 10.11.1979)	
Proposed 3.11.76 – COM(76)570	
Corrigendum OJ L190, 12.7.2006	
Corrigendum OJ L339, 6.12.2006	
<b>Legal base</b>	Article 294 TFEU (originally Article 251 TEC)
<b>Binding dates</b>	
Notification date	5 November 1979
Formal compliance	5 November 1981
Designation of waters	5 November 1981
Standards to be met	5 November 1987

## Note on versions

Directive 2006/113/EC is a codified version of Directive 79/23/EEC as amended (see below) by the Standardised Reporting Directive [91/692/EEC](#) (see section on implementation and enforcement of legislation). The provisions in the original Directives are unaffected by the codification.

## Purpose of the Directive

Directive 2006/113/EC seeks to ensure a suitable environment for shellfish growth. It is not intended by itself to protect the quality of shellfish for consumption, which is usually achieved by cleansing the shellfish after harvesting. A separate Directive [91/492/EEC](#) is concerned with protecting consumers of shellfish (see below).

## Summary of the Directive

The Member States are to designate coastal and brackish waters which need protection or improvement so as to support shellfish and thus ‘contribute to the high quality of shellfish products directly edible by man’. Initial designations were to be made by 5 November 1981, but additional designations can be made subsequently. Member States are to establish pollution reduction programmes so that within six years of designation the waters conform with values set by Member States. These values must be set for 12 physical, chemical or bacteriological parameters listed in an Annex. The Annex sometimes specifies *I* (imperative) values and sometimes *G* (guide) values and sometimes both. The values set by the Member States must be at least as stringent as the *I* values. The waters must be sampled at frequencies given in the Annex, but sampling frequency may be reduced when the quality of the water is known to be high.

The main specific requirements are:

- To identify coastal and brackish waters needing protection or improvement in order to support shellfish life and growth and designate these waters as shellfish waters (Article 4).
- To establish water quality standards applicable to designated waters for the parameters specified in Directive 2006/113/EC and for other parameters if required (Articles 3 and 9).
- To establish programmes to reduce pollution and to ensure that designated waters comply, as a minimum, with the binding/imperative quality standards (Article 5).
- To carry out sampling and analysis of designated waters at frequencies not less than those specified in Directive 2006/113/EC and using the methods specified in the Directive, or other methods that will achieve equivalent or comparable results (Articles 6 and 7 and the Annex).
- To establish the cause of non-compliance, where it occurs, and take appropriate measures to rectify the situation (Article 7).
- To ensure that measures taken to implement Directive 2006/113/EC do not lead to an increase in pollution (Article 8).

Member States must provide the Commission with a list of designations, and six years following designation, with a detailed report on the designated waters. The Standardised Reporting Directive 91/692/EEC introduced the requirement for Member States to report on the implementation of Directive 79/923/EEC (now Directive 2006/113/EC) every three years. National reports are to be drawn up on the basis of a questionnaire which was drafted by the Commission, assisted by a Committee of Member States' representatives and adopted in a Commission Decision [92/446/EEC](#). This was amended by Commission Decision [95/337/EEC](#), together with explanatory notes and detailed tables. The main elements to be reported on included:

- Transposition, with texts of the main provisions of national law adopted in the field covered by the Directive.
- The number and extent of designation of shellfish waters.
- The quality of designated shellfish waters.
- Any provisions relating to new parameters.
- Cases of derogation from the Directive.
- Other information relating to the application of the Directive.
- Measures, for example, pollution reduction programmes, taken to comply with the Directive.

The initial deadline for submission of national reports to the Commission was 30 September 1996, but this was subsequently extended by the Commission until the end of May 1997. The first responses were to cover the period 1993–1995.

## **Development of the Directive**

The Commission proposed a Directive in November 1976 and it took nearly three years for it to be adopted. The European Parliament pointed out that the proposed Directive would require an increase in the number of personnel carrying out sampling, but otherwise welcomed the proposal.

There were criticisms from some Member States concerning the purpose of the Directive. In particular, the stated objective was to encourage the protection and growth of shellfish, whereas the proposed standards for bacteria were a health protection measure. This point was obviously successfully pressed in negotiations because the faecal coliform count (an indicator of pollution by sewage) proposed initially as an *I* value appears only as a *G* value in the Directive. However it was to be regarded as an *I* value in waters in which live shellfish ‘directly edible by man’, prior to the adoption of Directive 91/492/EEC on the protection of consumers of shellfish. Directive 91/492/EEC is directly concerned with the protection of public health and it therefore, unlike Directive 79/923/EEC (now Directive 2006/113/EC) which is concerned with the health of shellfish, sets limit values based on the monitoring of shellfish flesh rather than the waters which support them (see below). In the event, substantial changes to the proposed Directive were made before it was adopted.

## Implementation

Member States have reported variably on their national legislation to implement the Directive in their national [execution measures](#) for Directive 2006/113. National legislation transposing Directive 79/923/EEC has been reported to the Commission by all coastal Member States except Finland. Non-coastal Member States (Austria, Czech Republic, Hungary, Luxembourg and Slovakia) did not require transposition. For Directive 2006/113/EC new or revised national legislation was reported by Bulgaria, Ireland, Cyprus, Hungary, the Netherlands, Poland, Romania and Slovenia. Other Member States either reported that legislation was not necessary or did not report.

It was argued during implementation of Directive 79/923/EEC (now Directive 2006/113/EC) that the literal interpretation of the text of the Directive meant that Member States were not obliged to designate shellfish waters (and hence undertake all of the requirements pertaining to such designations). Indeed by April 1982 only Denmark, Ireland and the United Kingdom had designated shellfish waters, and the Federal Republic of Germany stated that it would not be making any designations for the time being, although all Member States, with the exception of Portugal, had designated sites by 1996. This is, in part, due to the 1988 judgement ([C-322/86](#)) against Italy relating to poor designation of sites under the Freshwater Fish Directive [78/659/EEC](#) (now Directive 2006/44/EC) which clarified that an obligation for designation did rest on the Member States. This was equally applicable to Directive 79/923/EEC (now Directive 2006/113/EC).

The European Commission has produced only one report on the implementation of Directive 79/923/EEC (now Directive 2006/113/EC) resulting from the completion of questionnaires under Directive 91/692/EEC. Although this was produced in 2000, derived from information required to be submitted by Member States by May 1997, much of the reporting to the Commission was poor.

As it covered the period 1993–1995, the reporting requirements only affected 12 Member States (i.e. prior to the 1995 Community enlargement) and one of these, Luxembourg, has no coastal waters and so is not affected by the Directive. Two Member States (Ireland and Portugal) provided no information. The main implementation conclusions are presented in Table 1

The next implementation reports from Member States are due in September 2011. A platform for delivery and viewing of these reports has been provided within the [Reporting Obligations Database](#).

**Table 1. The main implementation issues in Directive 79/923/EEC (now Directive 2006/113/EC)**

<b>Implementation issue</b>	<b>Member State reporting comments</b>
Designation of shellfish waters	Eight Member States responded. Spain and the United Kingdom reporting the largest number of designations (47 and 29 respectively), others generally having less than ten. France and Italy did not report any designations over this period.
Setting limit values	Germany, Denmark, the Netherlands, Spain and the United Kingdom provided numerical information on limit values.
Monitoring	Germany, Greece, the Netherlands, Spain and the United Kingdom all reported monitoring. However, none reported monitoring for all 12 parameters at all sites each year.
Compliance	Germany reported full compliance. Greece reported compliance with limit values. The Netherlands reported that all five sites failed the dissolved oxygen limit values in 1994 and 1995. Spain reported compliance problems with three sites, including for coliforms, salinity and dissolved oxygen. The United Kingdom found non-compliance in ten different sites, most commonly due to copper and zinc.

## **Enforcement and court cases**

Few cases specifically concerning Directive 79/923/EEC (now Directive 2006/113/EC) have been decided by the European Court of Justice (ECJ). These include:

- [C-298/95](#) 12.12.1996. This was a judgement against Germany for failure to transpose Directive 79/923/EEC. This is an important case in clarifying the scope of the Directive and covered also Directive 78/659/EEC (now Directive 2006/44/EC). The Court emphasized the purpose of Directive 79/923/EEC includes the protection of public health. This meant that the use of selective designation was highly questionable. The Court went on to conclude that Germany had failed to demonstrate that non-implementation would not present any danger for human health. It also stated that pollution reduction programmes required under the Directive must be targeted at specific waters, that is that general water quality programmes are insufficient.
- [C-225/96](#) 04.12.1997. This was a judgement against Italy which was found inadequately to have designated shellfish waters, established limit values and established pollution reduction programmes. The Commission argued that the use of a Ministerial Decree to transpose Directive 79/923/EEC was inadequate.
- [C-67/02](#) 11.09.2003. This was a judgement against Ireland for not adopting pollution reduction programmes for designated waters under Article 5. Draft programmes had been produced, but these were, at the time, also viewed as inadequate by the Commission.

- [C-26/04](#) 15.12.2005. This was a judgement against Spain that by failing to adopt a pollution reduction programme for the shellfish waters of the Ría de Vigo, Spain had failed to fulfil its obligations under Article 5 of Directive 79/923/EEC. The judgement stated that ‘it is apparent from the wording of Article 1 of Directive 79/923/EEC on the quality required of shellfish waters, and from the 3rd, 7th and 10th recitals in the preamble thereto, that that Directive applies to all shellfish waters, whether the shellfish living in them are intended for direct human consumption or for consumption after treatment’.
- [C-148/05](#) 14.06.2007. This was a judgement against Ireland for incomplete transposition of Articles 3, 4 and 5 of Directive 79/923/EEC, that is failure to designate certain shellfish waters, to establish pollution-reduction programmes and to set control parameters.

The infringement proceedings, in effect, continued the debate that began as Directive 79/923/EEC was proposed, that is whether the Directive was aimed at protection of shellfish or consumers. The conclusion in the Court has been that consumer protection is also a stated objective. Thus, the extent of designations in the Member States was inadequate.

## Further developments

Directive 2006/113/EC will be repealed on 22 December 2013 as the Water Framework Directive 2000/60/EC is implemented. Directive 2000/60/EC requires a comprehensive approach to surface water protection based on biological and chemical parameters, which go well beyond those in Directive 2006/113/EC.

## Related legislation

There are a number of other EU Directives which has a strong interaction with Directive 2006/113/EC. These include:

- Shellfish Health Directive 91/442/EEC (see below).
- Water Framework Directive [2000/60/EC](#).
- Dangerous Substances Directive [2006/11/EC](#) and its daughter Directives.
- Urban Waste Water Treatment Directive [91/271/EEC](#).
- Integrated Pollution Prevention and Control (IPPC) Directive [2008/1/EC](#).
- Directive on Access to Environmental Information [90/313/EEC](#).

The issues of relevance to these Directives are covered in the chapters which deal with them. However, most obvious are the need to establish water quality objectives under the Dangerous Substances Directive 2006/11/EC and the use of provisions in the Urban Waste Water Treatment Directive 91/271/EEC and IPPC Directive 2008/1/EC to control pollutants which affect shellfish waters.

## **Protecting consumers – Directive 91/492/EEC (amended by Directive 97/61/EC)**

The preamble to Directive 79/923/EEC acknowledged that it could not, by itself, ensure the protection of consumers of shellfish. This was because Member States were not obliged to designate all (or, indeed, any) shellfish waters, and because it did not apply to all forms of contamination – including the presence of viruses, whose ingestion by shellfish in sewage-contaminated waters can subsequently cause Hepatitis A or severe gastroenteritis in some consumers. Directive 91/492/EEC (amended by Directive [97/61/EC](#)) was therefore specifically designed to protect the consumers of shellfish. It lays down bacteriological and chemical standards for live bivalves. Member States are required to designate bivalve production areas and categorize them according to the treatment required by shellfish before they can be sold for human consumption. There are three categories: ‘class A’ is reserved for shellfish which comply with the requirements of Directive 91/492/EEC without purification. Shellfish from ‘class B’ areas are required to be purified in clean sea water or by heat treatment before they can be placed on the market. ‘Class C’ is reserved for shellfish requiring intense purification or heat treatment. Directive 91/492/EEC prohibits the production of shellfish from non-categorized areas. Detailed rules for implementing the Directive have been set out in Commission Decision [2002/225/EC](#) and Commission Decision [2002/226/EC](#).