

Manual of European Environmental Policy

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Historic Legislation: Surface water for drinking

Formal reference 75/440/EEC (OJ L194 25.7.75) Proposed 15.1.74 – COM(74)11	Directive concerning the quality required for surface water intended for the abstraction of drinking water in the Member States
Legal base	Articles 115 TFEU (originally article 100 EEC Treaty) and 352 TFEU (originally article 235 EEC Treaty)
Binding dates Notification date Formal compliance Standards to be set and met Improvements to be achieved	18 June 1975 18 June 1977 No set date, therefore presumably by 18 June 1977 18 June 1985
Formal reference (OJ L271 29.10.79) Proposed 26.7.78 – COM(78)363	Directive concerning the methods of measurement and frequency of sampling and analysis of surface water intended for the abstraction of drinking water in the Member States
Legal base	Articles 115 TFEU (originally article 100 EEC Treaty) and 352 TFEU (originally article 235 EEC Treaty)
Binding dates Notification date Formal compliance	11 October 1979 11 October 1981

Note: Directives 75/440/EEC and 79/869/EEC were repealed on 22 December 2007 as the Water Framework Directive [2006/60/EC](#) was implemented. Directive 2000/60/EC includes the requirements relating to the protection of drinking water sources and, therefore, the separate requirements of Directives 75/440/EEC and 79/869/EEC are no longer necessary.

Purpose of the Directives

Directive 75/440/EEC had two purposes: to ensure that surface water abstracted for use as drinking water reached certain standards and was given adequate treatment before being put into public supply; and thereby to improve rivers or other surface waters used as sources of drinking water. Directive 79/869/EEC recommended methods of measuring the parameters for surface water quality and setting the frequencies for such measurements.

Summary of the Directives

Directive 75/440/EEC

Sources of surface water for the abstraction of drinking water (referred to as ‘surface water’) had to be classified by their existing quality into three categories: A1, A2 and A3 corresponding to the three standard methods of treatment required to transform the ‘surface water’ into drinking water. Annex I defined the three methods of treatment that had to be used for A1, A2 and A3 waters, respectively. In summary, A1 water required only simple physical treatment (filtration) and disinfection, A2 required normal physical treatment, chemical treatment and disinfection, while A3 water required intensive physical and chemical treatment and disinfection.

The physical, chemical and microbiological characteristics which defined the quality of A1, A2 and A3 water were set out in Annex II. Forty-six ‘parameters’ were listed against which numerical values were given under six columns: an *I* (or imperative) value and a *G* (or guide) value for each category A1, A2, A3. The parameters included temperature, BOD₅, nitrates, lead and faecal coliforms. For some parameters no *I* or *G* values were given, although the Directive provided for these to be added later.

The Member States were required to lay down values for sampling points where water was abstracted whenever an *I* or *G* value was given. The values set had to be no less stringent than the *I* values and the *G* values were to be respected as guidelines. Sometimes no *I* value was given in Annex II and the *G* value then provided guidance. Once values were set, Member States had to then ensure that 95 per cent of the samples of ‘surface water’ met the values laid down for the *I* values and that 90 per cent of the samples did so for the other values laid down.

Article 8 provided for waivers in the case of floods or natural disasters and in the case of certain parameters because of exceptional conditions. The Commission had to be notified of these.

Article 4 prohibited the use of ‘surface water’ worse than A3 from being used for the abstraction of drinking water. In exceptional circumstances, such water could be used provided suitable processes such as blending raised the quality, but the Commission had to be notified of the exceptions – in advance in the case of new installations.

Article 4 also required a plan of action, including a timetable, for the improvement of ‘surface water’ and especially A3 water. This timetable was to be drawn up in the light of the need to improve the surface water and of economic and technical constraints. Considerable improvements of low-quality sources had to be achieved within ten years. The Commission was to examine the plans and timetables and would, if necessary, submit appropriate proposals to the Council. There was no obligation on the Commission to publish a report comparing these plans. There was also no obligation on Member States to send a report to the Commission on the improvements achieved within the ten-year period.

Directive 79/869/EEC

The parameters listed in Directive 75/440/EEC had to be measured with the ‘precision’ and ‘accuracy’ (as defined) set out in Annex I. The ‘reference methods’ of measurement also set out in Annex I had to be used ‘as far as possible’ but were not mandatory. The frequency of sampling was to be set by Member States and was to be no less than the frequencies set out in Annex II. These frequencies increased as the quality category of ‘surface water’ decreased and as the population served increased, in other words A3 water had to be sampled more frequently than A2 water, and an A2 source for a population over 100,000 had to be sampled more frequently than for a smaller population. The Member States could reduce the frequency of sampling for certain parameters if a survey showed that the values obtained were much better than the values set. If the water was of better than A1 quality no regular analysis would be necessary. Member States could also determine the frequencies themselves for ‘surface water’ serving very small populations.

Member States were to provide the Commission, at its request, with information on the frequency and methods of analysis used. The Commission was at regular intervals to draw up a consolidated report but did not have to publish it.

Development of the Directives

Directive 75/440/EEC was the first proposal for a Directive concerning water following adoption of the first action programme on the environment of 1973 and was inspired by a draft French decree setting out a legally binding technical specification for ‘surface water’. Although this began before the accession of the United Kingdom to the Community, British officials nevertheless claimed responsibility for several practical provisions in the Directive. Notable among these was the provision that only 95 per cent of the samples need comply with the values set, and the vague description of ‘sampling point’, which enabled it to mean the point at which water leaves a reservoir for treatment rather than the point in the river from which it was abstracted to be stored in a reservoir. As regards Directive 79/869/EEC the proposal included mandatory analytical methods. The United Kingdom was instrumental in ensuring these were no longer mandatory, but were now merely ‘reference methods’ and that the provision for reducing the sampling frequencies could be used without having to seek the consent of the Commission.

Implementation of the Directives

The European Commission produced only one report on the implementation of the Directive 75/440/EEC resulting from the completion of questionnaires under the Standardised Reporting Directive [91/692/EEC](#) (see section on implementation and enforcement of legislation). 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 (prior to the 1995 enlargement).

Four Member States (Ireland, Luxembourg, Portugal and Spain) did not provide any information on compliance. Of the remaining Member States, key implementation issues are outlined in the table below.

Implementation issue	Member State reporting comments
Water of A3 quality	Denmark, Greece and the United Kingdom had not classified any A3 waters and Belgium provided insufficient information. Germany and the Netherlands reported one A3 water source each, but France and Italy reported many A3 sources (43 and 95, respectively). In France, colour, phenols and nitrates caused most problems, while in Italy microbiological contaminants and manganese caused most problems.
Water below A3 quality	Only Germany, Italy and France had introduced management plans for waters below A3 quality. Germany had only two such waters, but Italy and France had many.
Derogations	Five Member States reported derogations. Germany, Greece, Italy and the United Kingdom had derogations due to natural conditions causing problems. France had a derogation for elevated nitrates (although this was not allowed under the Directive).

The Commission report also provided information on the implementation of Directive 79/869/EEC on measurement methods. Only seven Member States provided information to the Commission. Only Belgium (Flanders) and Denmark provided detailed information according to the structure in the Directive, with both appearing to comply with its detailed requirements. Information from France, Germany, the Netherlands and the United Kingdom was limited, with only summary information or reporting the use of alternative methods, so that the Commission was unable to determine whether compliance had been achieved.

Enforcement and court cases

There have been a number of cases decided in the European Court of Justice concerning Directives 75/440/EEC and 79/869/EEC. A number of cases concern the failure by Member States to ensure adequate transposition of one or both Directives:

- [C-58/89](#) 17.10.1991. This was a judgement against Germany for failure to implement the Directive. This case concerned a number of implementation issues. The Commission argued that Germany had not adopted any formal act indicating the category in which water was classified for each sampling point. The Court rejected the argument, stating that while classification under Article 2 was

needed, a formal act indicating this for each sampling point was not required. The second point concerned the setting of values under Article 3 and to ensure that these were maintained, under Article 4. The Commission argued that Germany had failed to set these using binding acts. Germany argued that this was achieved through the issue of ministerial service instructions or administrative directions, notifying regional authorities of the requirements of the Directive. The Court upheld the complaint, stating that as non-compliance might endanger human health, those concerned should be able to rely upon mandatory provisions, which are indisputably binding and that the German service instructions or administrative directions did not have direct effect in relation to third parties and indeed, in one case, such communications were not even binding on the local authority. The third point was an argument by the Commission that Germany had failed to draw up an action plan for water protection. The Court found that while some plans existed for certain waters, they did not cover the whole of the country and, therefore, the complaint was upheld. Finally, the Court also upheld a complaint from the Commission that Germany had supplied inadequate information in respect of its reporting obligations.

- [C-290/89](#) 11.06.1991. This was a judgement against Belgium for failure to notify the measures adopted for the implementation of Directives 75/440/EEC and 79/869/EEC, and failure to adopt the measures required for the implementation of those Directives in the Flemish and Walloon Regions.
- [C-229/97](#) 15.10.1998. This was a judgement against Portugal for failure to transpose Directive 79/869/EEC within the required timetable.

There have also been two cases concerning the failure by Member States to adopt action plans to tackle water quality problems as required in Directive 75/440/EEC (see also Case C-58/89):

- [C-214/97](#) 17.06.1998. This was a judgement against Portugal for failure to draw up a systematic plan of action including a timetable for the improvement of surface water as required under Article 4(2) of Directive 75/440/EEC.
- [C-266/99](#) 08.03.2001. This was a judgement against France for failure to take the necessary measures to ensure that the quality of surface water intended for the abstraction of drinking water conforms to the required by Article 3 of Directive 75/440/EEC. The action was triggered by complaints on the level of nitrates in surface water in Brittany and that French Authorities were not actively trying to remediate to the situation.