

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.

Bathing water

Formal reference	
76/160/EEC (OJ L31 5.2.76)	Directive concerning the quality of bathing water
Proposed 3.2.75 – COM(74)2255	
Legal base	Articles 115 TFEU (originally Article 100 EEC Treaty) and 352 TFEU (originally Article 235 EEC Treaty)
Binding dates	
Notification date	10 December 1975
Formal compliance	10 December 1977
First regular report to be submitted to the Commission	10 December 1979
Derogations to be communicated to the Commission	10 December 1981
Standards to be met	10 December 1985 (unless derogations given)
Formal reference	
2006/7/EC (OJ L64 04.03.2006)	Directive concerning the management of bathing water quality and repealing Directive 76/160/EEC
Proposed 24.10.2004 – COM(2004)581	
Legal base	Article 192 TFEU (originally Article 175(1) TEC)
Binding dates	
Notification date	15 February 2006
Formal compliance	24 March 2008
First regular report to the Commission	Before start of first bathing season after 24 March 2008
Directive 76/160/EEC repealed	31 December 2014
Ensuring that bathing waters are ‘sufficient’	By the end of the 2015 bathing water season

Purpose of the Directives

The quality of bathing water is to be raised over time, or maintained, not just to protect public health but also for reasons of amenity. This is to be done largely by ensuring that sewage is not present or has been adequately diluted or destroyed.

Summary of Directive 76/160/EEC

Bathing water is defined as freshwater or sea water in which bathing is explicitly authorized, or is not prohibited and is traditionally practised by a large number of bathers.

An Annex lists 19 physical, chemical and microbiological parameters, against 13 of which are indicated *I* (imperative) and/or *G* (guide) values. The most important of these values are the coliform counts. The Member States must set values which bathing water must meet, the values being no less stringent than the *I* values, with the *G* values being observed as guidelines. The values set had to be met by December 1985, but in exceptional

circumstances, derogations from the time limit could be granted by the Member States. Derogations had to be justified by reference to a management plan and be communicated to the Commission by December 1981. Where a Member State adopts the *I* values, 95 per cent of samples must comply to conform with Directive 76/160/EEC. Other requirements apply when more stringent values are adopted.

The Annex lays down minimum sampling frequencies (for several parameters this is fortnightly during the bathing season, about 10–12 times a year) and the Directive specifies where and how samples are to be taken, but it does not specify how samples are to be handled before analysis. Some parameters, such as streptococci and salmonellae, only have to be checked when there is reason to suppose that the substance is present. Directive 76/160/EEC does not specify methods of analysis but sets out ‘reference methods’ and any other methods used must be comparable.

Waivers may be granted for certain parameters because of exceptional weather or geographical conditions or because of ‘natural enrichment’. Waivers must be notified to the Commission together with the reasons for them and the periods anticipated.

At regular intervals Member States are to submit a comprehensive report to the Commission on their bathing waters. The Commission may publish this information with the consent of the Member State concerned.

Summary of Directive 2006/7/EC

Directive 2006/7/EC leads to the eventual repeal of Directive 76/160/EEC on 31 December 2014. It requires more sophisticated monitoring and classification of bathing waters compared to Directive 76/160/EEC. It provides for extensive public information and participation as well as for comprehensive and modern management measures. Directive 2006/7/EC requires Member States to draw up a management plan for each site to minimize risks to bathers, based on an assessment of the sources of contamination that are likely to affect it. Where bathing waters have a history of poor water quality, preventive measures should be taken to close the bathing area when such conditions are forecast. If the water quality standards are not met, remedial measures must be taken. Information on bathing water quality classification, the results of water quality monitoring and the management plan is to be made available to the public, both through displays at the site and through the media and internet.

While Directive 76/160/EEC requires regular monitoring of 19 pollutants or other parameters, Directive 2006/7/EC reduces this list to just two microbiological indicators of faecal contamination, *Escherichia coli* and intestinal Enterococci. It applies to surface waters where a large number of people are expected to bathe and establishes a method for monitoring bathing water quality during the bathing season. In 2009 the Commission adopted a Decision ([2009/64/EC](#)) relating to standards for the equivalence of microbiological methods for assessment. The Directive requires that classification of water quality as bathing water is determined on the basis of a three-year trend instead of a single year's result as in Directive 76/160/EEC. The classification is at four levels: poor, sufficient, good and excellent. Where water quality is consistently good over a three-year period the frequency of sampling may be reduced.

Commission Decision [2011/321/EU](#) provides symbols for public information regarding closure of bathing waters, advice against bathing and on levels of bathing water quality.

Directive 2006/7/EC requires the development of profiles describing the characteristics of the bathing water and identifying sources of pollution and links management action to that under the Water Framework Directive [2000/60/EC](#).

Development of the Directives

In addition to technical difficulties relating to the parameters and to the time allowed for meeting them, the main difficulty experienced during development of Directive 76/160/EEC concerned the definition of bathing waters. This arose from the fact that only a few countries had a system for authorizing bathing and no such authorization was known to take place in some Member States. Directive 76/160/EEC as proposed accordingly defined bathing waters as those where bathing was authorized *or tolerated*. Where there was a long coastline, this could have meant monitoring at great expense, despite the fact that very little bathing takes place along much of it. This problem was overcome in Directive 76/160/EEC as agreed by omitting ‘tolerated’ and referring instead to water ‘in which bathing is not prohibited and is traditionally practiced by a large number of bathers’. Directive 76/160/EEC is therefore different from the Freshwater Fish Directive [78/659/EEC](#) and Shellfish Water Directive [79/923/EEC](#) in that bathing waters are not ‘designated’ by Member States. Waters either are, or are not, ‘bathing waters’ within the definition of Directive 76/160/EEC. Various other changes were made to the proposal before it was adopted, one being to give Member States the power to grant derogations from the ten-year time limit, a change which Britain had pressed for.

In February 1994 the European Commission announced a proposal for a new Bathing Water Directive (COM(93)721). The Commission sought to simplify and consolidate the provisions of Directive 76/160/EEC to adapt them to the subsidiarity principle while taking into account the most recent water legislation, scientific progress and experience gained in measuring techniques. The most important changes were to be made to the Annexes of Directive 76/160/EEC. Certain physical and chemical parameters that did not have mandatory or guide values (such as nitrates, heavy metals, etc.) would be removed. Some of these substances, such as nitrates, were covered by other Community Directives. Other parameters with values, salmonella and total coliforms, were removed and replaced by faecal streptococci, which was assigned a mandatory rather than a guide value. The European Parliament proposed a number of amendments to the draft Directive ([OJ C20 20.1.97](#)). The Parliament wished to extend the definition of bathing waters to include other users.

In early 1999, following the refusal of successive Council Presidencies to take forward the proposed new Directive, the Commission abandoned the proposal. However, the Commission indicated that it would bring forward a new proposal. In preparation for this it issued a Communication in December 2000 ‘Developing a New Bathing Water Policy’ ([COM\(2000\)860](#)) and it eventually published its proposal for revision on 24 October 2002 ([COM\(2002\)581](#)) and an amended proposal on 5 April 2004 ([COM\(2004\)245](#)). The Commission based the new proposal on the following considerations and principles:

- Coherence with the Sustainable Development Strategy and the Sixth Environmental Action Programme.

- Coherence with other EU water-related legislation especially the Water Framework Directive 2006/60/EC.
- Reviewing and streamlining standard setting to focus on robust microbiological indicators.
- Moving from simply monitoring to more integrated management of bathing water.
- Better and earlier information to the public.

The European Parliament plenary session of 20 October 2003 adopted a number of proposed amendments seeking:

- An extension of the scope to other recreational activities.
- A limited management system for bathing waters affected by short-term pollution problems.
- Closer integration with the Water Framework Directive 2000/60/EC.
- Increased public information requirements.

In April 2004 the Commission responded to the Parliament's proposed amendments. Of the 37 amendments adopted by the Parliament, the Commission accepted 19 fully and 5 in part, or in principle as these contributed to better public information provision, improved management of bathing waters and provided a positive contribution to analytical techniques and better public health protection.

Negotiations in the Environment Council Working Party started in January 2003, and there was a public debate at the Environment Council in March 2003. The Council gave a qualified welcome to the plans to revise the Directive but was sceptical about the evidence used to justify the tighter bathing water standards and the quality of the Commission's cost-benefit analysis. There was strong opposition from most Member States to extending the scope of the Directive to include other recreational waters that were not used for bathing. Ministers further discussed the proposal at the Environment Council in December 2003 but did not reach political agreement. In January 2004, the Irish Presidency undertook a series of bilateral discussions to examine divergent opinions in the Member States. This resulted in a revised text being circulated in May 2004. The main changes were:

- An additional bathing water classification of 'satisfactory' (now called 'sufficient') alongside 'excellent', 'good' and 'poor'.
- An implementation deadline that corresponds with the Water Framework Directive 2000/60/EC (2015).
- The production of a report reviewing implementation of the Directive in 2020.

At the Environment Council meeting in June 2004, unanimous agreement was reached on the compromise text. The text set standards of 500 *E. coli* and 200 intestinal Enterococci based on a 90-percentile evaluation for coastal waters. The equivalent limits for inland waters were 900 *E. coli* and 360 intestinal Enterococci. A formal common position ([2002/0254\(COD\)](#)) was adopted at the Environment Council meeting in December 2004.

The European Parliament, in its second reading in May 2005, adopted 26 amendments to the common position text, including:

- Tightening of the 'sufficient' standard, and applying a time limit that would cause it to be discontinued after eight years.

- More detailed requirements on emergency planning and response.
- Bringing forward the date of required compliance earlier than 2015.
- More detailed requirements on public information and signage.

The Parliament rejected proposals to extend the scope of the Directive to include aquatic recreational waters other than bathing waters and proposals to remove the distinction between inland and coastal waters.

The Council did not accept some of the European Parliament's amendments, particularly those concerning minimum water quality standards and the deadlines for implementation of the revised Directive. The overall package of amendments was therefore rejected by the Council on 6 September 2005.

This resulted in a conciliation procedure. The Conciliation Committee met on 12 October 2005 and resolved all the remaining differences between the Council and the Parliament over the final text.

Implementation of the Directives

Information concerning national transposition measures for Directive 76/160/EEC can be found in the national [execution measures](#) communicated by the Member States.

Information concerning national transposition measures for Directive 2006/7/EC can be found in the national [execution measures](#) communicated by the Member States for this Directive.

The latest details of compliance for bathing waters throughout the EU are available from the European Commission website¹. Member State reports are also available on the Reporting Obligations Database for Directive 76/160/EC [[link](#)] and for [identification of bathing areas](#) and [monitoring and classification](#) under Directive 2006/7/EC.

Member States have, fundamentally, two main tasks under the Directives – to designate bathing waters and to meet the required standards. Both tasks have proved a challenge in implementation and have been the subject of a number of cases before the European Court of Justice (see below), resulting in a progressive increase in designation and compliance with standards.

Each year a report on the quality of bathing waters is published. Initially this was done by the European Commission, but is now undertaken by the European Environment Agency. The latest report (for the 2009 bathing water season) is summarized here, with trend information². By 2010 most Member States were monitoring bathing waters according to Directive 2006/7/EC, with six Member States and Flanders monitoring according to Directive 76/160/EEC.

Member States reported on 6,165 coastal and 1,374 inland bathing waters in 1990. By 2010 the 27 EU Member States reported on 21,063 bathing waters, 70 per cent of which were coastal. These rises reflect both an increase in the number of bathing waters in older Member States and rises due to EU enlargement. For 2010 three Member States (Cyprus, Malta and Romania) reported data only for coastal areas, five Member States (Austria, the Czech

Republic, Hungary, Luxembourg and Slovakia) only have inland bathing waters. In 2010 the other 19 Member States reported data for both coastal and inland bathing waters. The Member States with the highest number of coastal bathing waters in 2009 were Italy (4,895), France (2,012), Spain (1,930), Greece (2,149), Denmark (1,054) and the United Kingdom (596). The highest numbers of inland bathing waters were Germany (1,915), France (1,314), Italy (597) and the Netherlands (579). In 2010 most coastal bathing waters were located in the Mediterranean region (around 9,900), with around 2,200 in the North Sea Region, around 2,400 in the Atlantic Region, around 660 in the Baltic Sea region and around 140 in the Black Sea Region. Most inland bathing waters were located in the North Sea Region.

Since 1990 the quality of the coastal bathing waters has improved significantly. Compliance with mandatory values improved from 80 per cent in 1990 to 92.1 per cent in 2010. Compliance with guide values rose from 68 to 79.5 per cent.

The overall quality of inland bathing areas has also improved significantly since 1990. In 1990, 52 per cent of inland bathing areas complied with mandatory values, with 97.2 per cent in 2010. Compliance with guide values increased from 36.4 per cent in 1990 to 60.5 per cent in 2010.

Enforcement and court cases

A significant number of cases have been brought before the European Court of Justice regarding failure to implement Directive 76/160/EEC. These have, variously, concerned the failure to meet limit values, failure to undertake the necessary monitoring and sampling and failure regarding bathing water identification. However, with regard to the latter the Court has not always ruled in agreement with the Commission on its views on the obligations on the Member States. Also interestingly, one case resulted in the imposition of a monetary fine on the Member State. Cases are as follows:

- [C-56/90](#) 14.07.1994. This judgement against the United Kingdom concerned its failure to comply with certain limit values at two specified bathing waters, Blackpool and Southport. The case centred on three main points. Firstly, the UK's initial classification method that had failed to identify Blackpool as a 'bathing water'. The UK government argued that the definition of bathing water within the Directive was too imprecise which had forced it to adopt a method which was based on specific numerical thresholds. The Court considered that there were a number of other factors that should have been considered in the identification process such as bathing huts and toilet facilities. Secondly, with regard to the UK's initial identification of 27 bathing waters, later extended to include 362 more in the 1980s, the UK government argued that the Commission had failed to respond to the initial list of 27 which had implied the Commission's approval. The Court ruled, however, that the Commission was under no obligation to express its view on the list and the Commission was at liberty to form its objections at any time. Thirdly, the United Kingdom argued that its duty under the Directive was merely to take all practicable steps to comply with the prescribed standards. The Court ruled that the United Kingdom was under an obligation to take all the necessary steps to ensure the attainment of the prescribed standards and that the Member States could not justify failure to comply on particular circumstances.
- [C-92/96](#) 12.02.1998. This was a judgement against Spain for failing to take all necessary measures to ensure that the quality of inshore bathing waters in Spain

conforms to the limit values set in accordance with Article 3 of Directive 76/160/EEC. Spain argued that drought conditions were abnormal weather conditions in the sense of the Directive. However, the Court did not consider that the conditions were sufficiently abnormal and, therefore, limit values had to be complied with.

- [C-198/97](#) 08.06.1999. This was a judgement against Germany for failing to take, in the old Länder, the steps necessary to ensure that the quality of bathing water conforms to the limit values set under Article 3 of Directive 76/160/EEC and by not adhering to the minimum sampling frequency. Germany argued that the action was not admissible because the principle of collegiality had not been respected in taking the Decision to bring the proceedings before the Court. The principle of collegiality governs the functioning of the Commission and is based on the equal participation of the Commissioners in the adoption of Decisions. Accordingly, both the Commission's Decision to issue a reasoned opinion and its Decision to bring an action for a declaration of failure to fulfil obligations must be the subject of collective deliberation by the college of Commissioners and the information on which those Decisions are based must therefore be available to the members of the college. This argument was not accepted by the Court.
- [C-307/98](#) 25.05.2000. This was a judgement against Belgium for excluding, without proper justification, from the scope of Directive 76/160/EEC 'numerous inland bathing areas' and by not adopting, within 10 years following notification of the Directive, the measures needed to ensure that the quality of bathing water conforms to the limit values fixed in accordance with Article 3. The Walloon Region argued that those areas excluded had no facilities for bathers and that the areas were used very little or not at all. The Court ruled that the number of bathers was not a factor to be taken into account in identifying bathing waters. If bathing no longer occurs, it is incumbent on the Member State to prove that this is not due to failure to meet the limit values in the Directive.
- [C-147/00](#) 15.03.2001. This was a judgement against France that all of its bathing waters did not meet the mandatory standards in Directive 76/160/EEC and that its monitoring and sampling were not compliant. In particular, France had abandoned monitoring of coliforms as set out in the Directive. France had replaced this by a different *E. coli* monitoring technique, arguing this was more efficient. This method only became approved later, so was not compliant at the time.
- [C-368/00](#) 14.06.2001. This was a judgement against Sweden for failure to meet the mandatory limit values and meet the minimum sampling frequencies set out in Directive 76/160/EEC. The Commission's concern arose due to reports sent by Sweden that were lacking in information.
- [C-427/00](#) 13.11.2001. The Court ruled against the United Kingdom for failing to meet bathing water standards at over 10 per cent of designated waters during the 1996 and 1997 seasons. The United Kingdom acknowledged the breach and did not contest the case. In mitigation the United Kingdom highlighted better compliance with the Directive 76/160/EEC from 1998 onwards.
- [C-268/00](#) 19.03.2002. This was a judgement against the Netherlands for failing to fulfil its obligations as regards the quality of bathing water and the frequency of sampling required by Directive 76/160/EEC. The Commission argued that too little water was sampled and monitored, and 8 per cent of the bathing water would not comply with the standards. The Netherlands did not contest the argument.
- [C-226/01](#) 30.01.2003. This was a judgement against Denmark for failing, from 1995 to 1998, to take all necessary measures to ensure that the quality of its bathing water

conformed to the limit values laid down in Directive 76/160/EEC and by failing, during the same years, to adhere to the minimum sampling frequencies.

- [C-278/01](#) 25.11.2003. This was a judgement against Spain for failure to meet the limit values set out in Article 3 of Directive 76/160/EEC and not taken all the measures necessary to comply with the Court's judgement of 12 February 1998 in Case C-92/96. It therefore ordered to the Commission a penalty payment of €624,150 per year and per 1 per cent of bathing areas in Spanish inshore waters which have been found not to conform to the limit values laid down under Directive 76/160/EEC for the year. Spain claimed that to apply the measures time was necessary, to identify the problems and engage in work to fix them. The Court, however, noted that three bathing seasons had passed between the judgement and the Commission's action. Even though some progress had been made on the quality of bathing water, it was still not in conformity with mandatory values. Concerning the penalty judgement, the Court said that a penalty payment imposed pursuant to the third subparagraph of Article 228(2) must be such as to ensure that the Member State concerned complies with its obligations and must therefore take account of the features of the infringement established. With regard to Directive 76/160/EEC the Court considered that the penalty payment should not be set at a fixed amount, but should gradually decrease in line with the progress made by the Member State. Note that this was not the first time that the Commission sought a fine from a Member State for failure to comply with the Directive. Case C-85/01 was brought against the United Kingdom for its repeated failure to meet bathing water standards around the Fylde Coast. The Commission made an application to the Court for a fine against the United Kingdom of €106,800 per day. However, bathing water quality improved markedly in 2001 and the case was withdrawn.
- [C-272/01](#) 15.07.2004. The Commission raised three complaints against Portugal. It argued that it had failed to comply with the quality standards laid down in Directive 76/160/EEC that it had failed to identify all bathing areas (specifically inland river beaches) and failed to collect samples at the minimum frequency for those beaches. The Court ruled that Portugal was non-compliant with regard to meeting the mandatory standards. However, it did not consider that 'river beaches frequented by a smaller number of bathers' required designation and, therefore, collection of samples for these sites was not required.
- [C-26/04](#) 15.12.2005. This Case was brought against Spain. The Commission argued that it had failed to designate three beaches on the Galician coast as bathing waters. However, the Court concluded that Directive 76/160/EEC does not expressly impose the obligation on Member States to officially designate beaches or other places as bathing areas. The Court stated that Article 1(2)(a) 'defines bathing waters as being those in which bathing is either explicitly authorised by the competent authorities of each Member State or is not prohibited and is traditionally practised by a large number of bathers. It follows from the second part of that definition that it is permissible for Member States to allow bathing in certain waters without necessarily designating them as bathing areas'. Therefore the Case was dismissed.

One case has been concluded concerning Directive 2006/7/EC. Case [C-481/09](#), 30/09/2010, was a judgment against the Czech Republic for transposition failure.

Related Legislation

The following other EU Directives and policies which have a strong interaction with the Bathing Water Directive:

- The Water Framework Directive [2000/60/EC](#).
- Urban Waste Water Treatment Directive [91/271/EEC](#).

References

1 CEC, European Commission webpage, Bathing water quality, http://ec.europa.eu/environment/water/water-bathing/index_en.html

2 European Environment Agency (2011) Quality of Bathing Water - 2010 Bathing Season. EEA Report No 1/2011. [[link](#)]