

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.
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Overview of EU policy: Water and marine

Water pollution policy was one of the earliest areas of environmental policy to be developed at Community level. The first major proposals were adopted by the Council in 1973–1975, and now many Directives, Regulations or Decisions cover both freshwater and marine management and pollution control.

In line with priorities set out in the 1973 First Action Programme on the Environment, the earliest Directives sought to establish *environmental quality standards* for particular uses of water, and by 1980 four had been agreed on, covering Surface Water for Drinking (Directive [75/440/EC](#) – now repealed by Directive [2000/60/EC](#)), Bathing Water (Directive [76/160/EEC](#) – since revised), Shellfish Waters (Directive [79/923/EEC](#)) and Freshwater Fish (Directive [78/659/EEC](#)). In general, Member States were given considerable freedom to specify the geographical areas in which the quality standards were to apply, and (normally within certain minimum requirements) to establish their own limit values. For practical and political reasons this was a realistic approach, especially since there was some criticism about the appropriateness of Community intervention in such areas as standards for bathing water or freshwater fish, which could be construed as essentially local issues (noting that all of these early Directives were adopted as measures to enable the operation of the single market). However, the efficacy of some of the resulting Directives was arguably diminished as a result.

To this group of Directives a further Directive was added in 1980, establishing what might be described as *exposure standards* or product standards for Drinking Water (Directive [80/778/EEC](#) – and since revised).

Community attempts to control the discharge of dangerous substances into water (largely from industrial sources) highlighted a fundamental difference in approach between Britain on the one hand, and the Commission and other Member States on the other. The Commission's proposal sought to limit pollution by the most dangerous 'black list' substances by means of establishing *emission limit values*, whereas the United Kingdom advocated an approach based on the attainment of *quality objectives* for the receiving waters, in the light of which (varying) emission standards would be set. The compromise reached in the 'framework' Directive [76/464/EEC](#) provided for the establishment, in subsequent so-called 'daughter' Directives, of *both* limit values and quality objectives for particular substances, with Member States (in practice, only the United Kingdom) left free to adopt the quality objective approach, provided they could satisfy the Commission through an agreed monitoring procedure that the quality objectives were indeed being attained. This so-called 'parallel' approach undoubtedly weakened Community policy towards dangerous substances in water. It hindered the development of a more effective 'combined' approach based on a more discriminating use of one or both methods, and slowed down agreement to daughter Directives as Member States argued over the equivalence of particular limit values and quality objectives. The pace was somewhat accelerated following agreement in the 'general application' Directive [86/280/EEC](#) on a streamlined procedure for agreeing daughter Directives, which eventually covered some 17 substances.

Movement towards acceptance of a combined approach incorporating both emission limit values and quality objectives became more evident in the 1990s. Such an approach forms part of Directive [96/61/EC](#) (now Directive [2008/1/EC](#)) on Integrated Pollution Prevention and

Control (IPPC), which regulates emissions from particular processes with a view to minimizing harm to the environment as a whole, rather than to water alone, and the Water Framework Directive 2000/60/EC. Directive [91/271/EEC](#) on Urban Waste Water Treatment also represented a move towards the combined approach in so far as the level of sewage treatment required is, to some extent, dependent upon the sensitivity of the receiving waters.

The First Environmental Action Programme also proposed the adoption of a *source-oriented approach* towards the control of water pollution, in which proposals were to be targeted at specific industrial sectors. Fifteen priority sectors were identified and numerous studies undertaken, but proposals for only two industries (titanium dioxide (TiO₂O₂), and pulp and paper) were formally tabled by the Commission. A 1975 draft Directive sought to fix emission limit values for the pulp and paper industry but was never agreed by Member States anxious to protect the interests of their national industries. More, albeit gradual, progress was made in the case of titanium dioxide where a ‘multi-media’ approach was adopted covering, in addition to water, air pollution and the generation of waste. This issue is addressed in the chapter on [Industrial Pollution Policy](#).

Examples of the *preventative approach* to the control of water pollution include Directive [80/68/EEC](#) (since revised), which sets a framework for preventing or limiting the pollution of groundwater by dangerous substances released from both point and diffuse sources. Directive [91/676/EEC](#) seeks to regulate the diffuse pollution of groundwater, surface freshwater, estuaries and coastal waters by nitrates used in agriculture through the designation of vulnerable zones within which farmers are required to limit the application of nitrogenous fertilizers and livestock manure to reduce nitrate leaching. Standards relating to detergents were also adopted.

As a result of the debate on the principle of subsidiarity, the Commission in December 1993 ([COM\(93\)545](#)) stated its intention of proposing new Directives to replace several existing water Directives. Proposals were put forward to replace existing Directives on Drinking Water ([COM\(94\)612](#)) and Bathing Water ([COM\(94\)36](#)), along with a proposal for a new Directive to cover the ecological quality of surface waters ([COM\(96\)680](#)). But all three proposals soon ran into difficulties. Both the Council and the European Parliament's Environment Committee felt that a more integrated approach was needed and called for a fundamental review of Community water policy. Thus a debate on the future of EU water policy was started, which culminated in the Commission putting forward a Communication setting out its initial ideas for a framework Directive on water resources ([COM\(96\)59](#)).

The resulting Water Framework Directive (2000/60/EC), adopted in 2000, transforms EU water legislation and will eventually repeal a number of existing Directives. It also, for the first time, addresses the quantitative aspects of water management, by requiring the prior authorization of water abstractions. Its main objective is to establish a framework for the management of surface water and groundwater on the basis of the river basin. Member States need to draw up river basin management plans, which are public documents and therefore open to public scrutiny. The plans need to contain information on the measures to be adopted to achieve ‘good’ water status for all surface water and groundwater. Good surface water status requires that ‘the water body has a rich, balanced and sustainable ecosystem and that the established environmental quality standards for pollutants are respected’. Good groundwater status requires that ‘abstractions and alterations to the natural rate of recharge are sustainable in the long term’. The Water Framework Directive 2000/60/EC has begun the eventual repeal of several water Directives, including on Surface Water (Directive

75/440/EC) and sampling methods, Freshwater Fish (Directive 2006/44/EC), Shellfish Waters (Directive 2006/113/EC) and Dangerous Substances (Directive 2006/11/EC). All the other existing water Directives remain intact, although some of their provisions (such as monitoring) are encompassed within the Directive 2000/60/EC.

Directive 2000/60/EC advocates the ‘combined approach’ to pollution control and seeks to ensure that environmental quality objectives and standards are established on a common basis throughout the Community. The environmental quality standards found in the ‘daughter’ Directives to the Dangerous Substances Directive 76/464/EEC are to be transferred into the Directive 2000/60/EC and its daughter Directive on Environmental Quality Standards [2008/105/EC](#). It is important to note that debate during adoption of Directive 2008/105/EC considered the suggestion for Community-wide emission limit values, but this was rejected. Therefore, the debate in the 1970s between the advocates to an emission limit or environmental quality limit approach has now moved in favour of the latter. However, it is important to note that an emission limit approach is delivered through the use of emission limit values set in other items of EC legislation, most notably the IPPC Directive 2008/1/EC.

The impetus given to water protection by implementation of the Water Framework Directive 2000/60/EC has also led to further legislative developments, including a revised version of the Bathing Water Directive ([2006/7/EC](#)), a new Groundwater Directive ([2006/118/EC](#)), a new Directive on Environmental Quality Standards (2008/105/EC) and a Directive in a new area – the Marine Strategy Framework Directive (Directive [2008/56/EC](#)). The Community also adopted a Directive on Flood Management in 2007 ([2007/60/EC](#)), which is a major departure into quantitative water management, and this area has been further elaborated through a Commission Communication on Water Scarcity and Droughts ([COM\(2007\)414](#)), although this is unlikely to result in legislative outcomes.

The management approach to waters adopted within Directive 2000/60/EC was taken forward with the adoption of the Marine Strategy Framework Directive (2008/56/EC). This sets out a similar approach by setting environmental targets and developing a management framework and programmes of measures to deliver the targets identified.

The Commission (and others) recognized not only the large amount of complex data that will arise from implementation of Directive 2000/60/EC but also the wide range of additional information reported from other Directives. Additionally, data are collected by the European Environment Agency ([EEA](#)) and generated by research projects funded under the Research Framework Programmes. As a result, the Water Information System for Europe¹, or WISE, was created. It allows for the compilation of data and information collected at EU level by various institutions and bodies. It is a partnership between the European Commission (DG Environment, Joint Research Centre and Eurostat) and the EEA. It includes the ‘WISE viewer’, which has geographically mapped information for the whole of Europe, including data on water quality and information on implementation of EU water legislation. The policy pages provide users with detailed information on water-related policies and EU legislation. WISE-RTD provides information on water research projects that have been carried out.

To support data collection, the Commission and the EEA have also developed the Shared Environmental Information System (SEIS)². This allows environmentally related data and information to be stored in electronic databases throughout the EU. In other words, compatible databases can be used in each Member State to record and report implementation

information and data, so that transmission to the Commission itself is no longer needed. SEIS will apply to some water Directives, but is applicable to other EU environmental law as well.

Consideration has also been given to the transposition and implementation of selected Directives by the Court of Auditors (Special Report No 3/98, [OJ 98/C 191/02](#)), which examined the Urban Waste Water Treatment Directive [91/271/EEC](#), the Nitrates Directive [91/676/EEC](#) and the Sludge Directive [86/278/EEC](#). The report is critical of the poor transposition of these Directives in some Member States. Practical implementation is also poor, as highlighted by the Commission's own reports.

In 2012 the European Commission is to publish a 'fitness check' of EU water law. The aim of the new 'fitness checks' (part of the EU's better/smart regulation agenda) is to identify excessive burdens, overlaps, gaps, inconsistencies and/or obsolete measures which may have appeared over time. The fitness check for water law covers the Water Framework, Groundwater, Quality Standards for Water, Urban Waste Water Treatment, Nitrates and Floods Directives, the Communication on water scarcity and droughts and the Adaptation White Paper (see section on Adapting to Climate Change). A study³ to support the fitness check was published in July 2011. It concluded that the policy laid out in the Water Framework Directive is robust and largely coherent with other EU environmental laws. However, implementation remains challenging and makes the achievements of the 2015 targets under that Directive uncertain. It argued that the EU should step up action on policy integration, particularly with regard to using water in agriculture and buildings more efficiently. Furthermore, Member States have made only slow progress with introducing economic instruments such as water pricing, while the principle of cost-recovery remains controversial. How far the better/smart regulation agenda has influenced the adoption of EU water law has been questioned⁴ and the scope of the fitness check (such as not including interactions between freshwater legislation and the Marine Strategy Framework Directive) may lead to a failure to identify smart regulation outcomes with regard to coherence of EU water law.

The conclusions of the fitness check will feed into the 'Blueprint to Safeguard Europe's Waters', to be published by the Commission in late 2012. The Commission has already announced that this Blueprint will include a review on progress on the Communication on water scarcity and droughts and a report on the implementation of the Water Framework Directive. Thus the Blueprint is due to address the broad scope of core EU water policy, making recommendations for improvements, which might include legislative changes.

In order to foster more strategic and collaborative research on the challenges facing water, on 27 October 2011 the Commission adopted a Recommendation on the research joint programming initiative 'water challenges for a changing world' ([2011/C 317/01](#)).

The Europe 2020 Flagship Initiative for an Innovation Union proposed the concept of European Innovation Partnerships (EIPs). The Commission, through a [consultation document](#), is proposing an EIP on Water to position Europe as a world leader in water technology and services and to contribute to achieving the sustainable and efficient use of water.

References

1 CEC, *The water information system for Europe*, Commission webpage, <http://water.europa.eu/en/welcome>

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3 Deloitte and IEEP, 2011. *Support to Fitness Check Water Policy*. http://ec.europa.eu/environment/water/blueprint/pdf/safeguard_fitness_freshwater.pdf

4 Farmer, A.M. and Hjerp, P. 2011. From better to smart regulation - implications for EU water law. *Journal of Water Law*, In Press.