

EC water directives

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EC Water Directives

Environmental policy – EEC water law – quality objectives and emission standards

Introduction

Spectacular environmental disasters like the Sandoz-Rhine accident and the mass death of seals in the North Sea have focussed attention on the need for an international response to the growing problem of water pollution. Though a multitude of international and regional organisations are already involved in the fight against water pollution, they seldom possess the powers necessary to achieve what is required. The European Community on the other hand, has a unique institutional and legal structure which makes it one of the few, if not the only, organisations which can claim to possess the powers and know-how to set in motion a comprehensive regional environmental protection policy. It is capable of adopting legislation, in some cases by way of majority voting, which is binding upon its Member States without the need for ratification. Equally important is that, once legislation is in place, adherence to the environmental obligations is ensured by the European Commission which does not hesitate to bring a case to the European Court of Justice when it considers that a Member State is in breach of its obligations. Whilst national parliamentarians have, often unconvincingly, complained about the inaccessibility of the so-called "Brussels bureaucracy", private individuals have found little difficulty in finding their way to the Commission or the European Parliament when environmental issues were at stake (in 1989 the Commission received 465 complaints).

In short, there is every reason to endow the Community with a leading role in the fight against aquatic pollution. In order properly to appreciate the Community's activities in this sphere, it is necessary to be acquainted with its strategy in general as well as with the individual Directives which have been adopted. This article describes the

general background of EC Environmental Law followed by an examination of EC water legislation.

Environmental policy in the EEC Treaty

The question whether the European Community should be involved in environmental matters did not occupy the minds of the drafters of the Rome Treaty and one looks in vain for a reference to "the environment" in the 1957 Treaty. However, when it became apparent in the 1970s that the Member States were quickly building up a network of environmental regulations, not least in the area of water law, the Community needed to react in order to avoid distortion of the common market. Initially, it was not regarded as necessary to amend the Treaty in order to legitimise Community measures in this field since a number of specific powers could incidentally be applied for environmental purposes existed. Article 100 empowered the Council of Ministers to issue Directives "for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market". Since a wide range of national environmental provisions relating to water existed and most of these had economic implications, Article 100 in fact gave the Commission relatively broad powers to propose water Directives. Moreover, where the link with the establishment of the common market was too tenuous to justify harmonising action on the basis of Article 100, Article 235 EEC could be invoked on the basis that it was necessary to attain, "in the course of the operation of the common market, one of the objectives of the Community".

When the European Court was asked to interpret Directive 75/439 on waste oils it stated that... "the Directive must be seen in the per-

spective of environmental protection, which is one of the Community's essential objectives" (Case 240/83 [1985] ECR 531). The judgment essentially confirmed a practice that was already well established, namely that the Community was competent not only to adopt legislation which was directly compatible with the establishment of the common market, but also to adopt Directives aimed principally at environmental protection.

The enactment of the Single European Act in 1987 provided a fresh impetus for the Community's environmental activities. Even though the new environmental provisions are hardly innovative, by providing an unambiguous legal basis for the Community's environmental policy there remains little doubt that the Community is competent to legislate even when there is no "economic" need for Community action. According to Article 130R(1) EEC the objectives of the Community's environmental policy are: to preserve, protect and improve the quality of the environment; to contribute towards protecting human health; to ensure a prudent and rational utilisation of natural resources. The inclusion of environmental provisions in the Treaty cannot be said to have led to an increased importance of environmental objectives. Action in the field of the environment will continue to be weighed against trade objectives and when a conflict arises there is little in Title VII of the Treaty that will contribute to tipping the balance towards environmental considerations. On the contrary, the principles listed in Article 130R(3) which must be taken into account when action is contemplated, when rigidly adhered to, will often prove to be an insurmountable obstacle.

On the other hand, Article 100A EEC, the provision on which environmental action which coincides with the objective of the creation of

the internal market by 1992 is based, explicitly provides that the Commission in its environmental proposals will take as a base a high level of protection. Although the significance of this provision is largely political, without an equivalent elsewhere in the Treaty, it suggests that environmental objectives do occupy a special place in Community law.

EEC water law

In its first action programme on the environment (OJ 1973 C112/1) the Council of the European Community, by giving the problem of water pollution priority status, provided an early indication that the Community intended to play an important role in this area. The strategy outlined in this document still forms the backbone of the Community's water policy and basically rests on two pillars. In the first place, *quality objectives* are defined at Community level for the different uses of water. In addition, for fixed installations *emission standards* are set which, unlike quality objectives, do not relate to the quality of the receiving waters but to the quality of the emissions. Before elaborating upon the quality and emission approach below, it should be noted that these are not the only type of Directives relevant for Europe's aquatic environment. Products (*e.g.* detergents) and certain branches of industry (the titanium dioxide industry) have been separately provided for under Community rules. However, since these types of action have yet to be fully developed it suffices briefly to examine the quality and emission approach and then to give an overview of the Directives which can be brought under either strategy.

Quality objectives

A quality objective refers to a set of requirements which must be fulfilled by a given time in a given environment or particular part thereof (OJ 1973 C 112/49). Directives containing quality objectives are geared to the various uses water may perform, *i.e.* water used for the beverage industry, fishing, drinking, swimming, etc. In order to attain the quality objectives, *environmental quality standards* are fixed

which, with legally binding force, prescribe the levels of pollution not to be exceeded in the relevant environment. Apart from the fact that all the Directives concerned with water for particular purposes share the quality approach, they have a number of features in common. The most important of these are:

- Annexed to the Directives are parameters for which both G (Guide) and I (Imperative) values are fixed. Member States must set the values applicable which may not be less stringent than the I values and must endeavour to observe the stricter G values as guidelines.
- Member States designate the waters to which the Directive applies at their own discretion (but see Art. 1(2)(a) of Directive 76/160 below).
- The non-degradation principle applies, *i.e.* implementation of the Directive may not directly or indirectly lead to deterioration of the waters in question.
- In exceptional circumstances, Member States may derogate from the Directive.
- The competent authorities in the Member States are responsible for sampling, analysis and inspection in accordance with the provisions of the Directive.
- A simplified procedure for adapting the Directive to technical progress is provided for.

The merit of the quality system resides in the fact that it gives an indication of the permissible degree of pollution of a certain part of the aquatic environment. Yet, Member States' liberty to designate waters for the purpose of a Directive constitutes a possible weakness in the system. In theory they can free themselves from the obligations imposed by a quality Directive for a particular body of water by denying that it is within the relevant use.

Whereas all the water quality Directives are based simultaneously on Articles 100 and 235, and thus to some extent seek to eliminate barriers to trade, the use of quality objectives is not ideal for this purpose. Consider, for example, the case of a river crossing more than one Member State. Industry situated upstream could simply pollute the river until the

ceiling provided by the Directive is reached thereby acquiring a cost advantage over foreign competition situated downstream (though as will be seen, some quality directives contain provisions on cross frontier pollution). Neither is the quality approach necessarily suitable for the control of particularly toxic substances regarded as extremely dangerous for man and the environment as these may be best controlled at their source, which is one of the fundamental principles of EC environmental policy (Art. 130R(2) EEC).

Directive 75/440 concerning the quality of surface water intended for the abstraction of drinking water (OJ 1975 L 281/47)

The objective of the Directive is both to protect public health by laying down quality objectives for surface water used or intended for use in the abstraction of drinking water, as well as to reduce pollution of water generally. Ground water, brackish water and water intended to replenish water-bearing beds are excluded from the scope of the Directive (Art. 1(1)). All surface water intended for human consumption and supplied by distribution networks is drinking water for the purposes of the Directive.

Surface water is divided into three categories of limit values, A1, A2 and A3, according to the standard method of treatment specified in Annex I. Each group corresponds to a different quality of surface water. Member States set the values for the 46 parameters given in Annex II for all sampling points. Surface water falling short of A3 quality may, save in exceptional circumstances, not be used for the abstraction of drinking water (Art. 4(3)). In respect of water falling within category A3 Member States must draw up a systematic plan of action including a time table for improvement (Art. 4(2)). Although this commitment to an improvement of the quality of surface water is to be applauded, the division into three categories at the same time has been criticised. Practical problems may arise, for example, in respect of the grouping of surface water into the three categories when the various values fall into different categories. The Directive

takes into account the problem of cross-frontier pollution by providing that in the application of the Directive Member States must not distinguish between national waters and waters crossing their frontiers.

The Directive should be read in conjunction with *Directive 79/869 concerning the methods of measurement and frequencies of sampling and analysis of surface water intended for the abstraction of drinking water* (OJ 1979 L 271/44). By specifying the minimum frequency of sampling and analysis for the parameters of Directive 75/440 it seeks to eliminate unequal conditions of competition arising out of differences between the provisions applicable in the various Member States concerning methods and the frequency of sampling and analysis.

Directive 76/160 concerning the quality of bathing water (OJ 1976 31/1)

By proposing a Directive on water quality objectives for water used for bathing, the Commission responded to the concern about the transmission of infectious diseases through polluted bathing water, while at the same time aiming at a cleaner marine environment in general. The Directive applies to all running or still fresh waters, or parts thereof, and sea water, in which bathing is explicitly authorized by the competent authorities of each Member State or where bathing is not prohibited and is traditionally practiced by a large number of bathers. (Art. 1(2)(a)). Applying this vague formula, Member States enjoy considerable discretion in the designation of the bathing areas to which the Directive applies. Not included in the definition is water intended for therapeutic purposes and water used in swimming pools.

The Annex to the Directive contains 19 micro-biological and physico-chemical parameters the most important of which are the micro-biological ones such as faecal coliforms, faecal streptococci, salmonella and enteroviruses. Member States must set the values applicable for the parameters which, as is the case with all quality Directives, must be no less stringent than the I values, and were given until 1985 to ensure that the quality of their

bathing waters conformed to the limit values which is deemed to be the case when a certain percentage of the samples conform with the parametric values (Art. 5 differentiates according to the parameter concerned). Member States must regularly submit a comprehensive report to the Commission on their bathing water (Art. 13).

Although the minimum frequency and method of sampling (Art. 6, Annex) is specified, the vagueness of the provisions is striking. For a number of important microbiological parameters for example, it is merely provided that their concentration is to be checked by the competent authority "when an inspection in the bathing area shows that the substance may be present or that the quality of the water has deteriorated". The manner in which samples must be treated before they are analysed is not specified.

In respect of sea water in the vicinity of frontiers and water crossing frontiers which affects the quality of the bathing water in another Member State, riparian Member States must collaborate in the determination of the consequences for the quality objectives so affected. (Art. 4(4)).

Although the necessity of a Directive in this field has been disputed, it is clear that, aided by the pressure exercised by local authorities dependent on tourism, the Directive is bringing about an improvement in the quality of bathing waters in many parts of the Community.

Directive 78/659 on the quality of fresh waters needing protection in order to support fish life (OJ 1978 L 291/1)

This is the first of two Directives safeguarding a minimum quality for waters capable of supporting fish life, the 1978 Directive concerns the quality of fresh waters and applies to those waters designated by the Member States as needing protection in order to support fish life with the exception of natural and artificial fish ponds used for intensive fish-farming (Arts. 1(1) and 1(2)). Waters are divided into salmonid waters (capable of supporting fish belonging to species such as salmon, trout, grayling and whitefish) and cyprinid waters

(capable of supporting cyprinids or other species such as pike, perch and eel). By July 1980 Member States should have designated these waters and the values set for the parameters listed in Annex I should have been attained by July 1985 which is deemed to be the case when 95% of the samples for certain specified parameters conform with the Directive's values (Art. 6(1)). It should be noted that Member States may revise their original designations and designate additional waters (Arts. 4(2) and (3)).

Although Annex I specifies the minimum sampling and measuring frequency for the 14 parameters listed, Article 7(2) curiously provides that where the quality of the designated waters is appreciably higher than that required by the Directive, the frequency of sampling "may be reduced". Moreover, the competent authorities may decide that no sampling is necessary "where there is no pollution or no risk of deterioration in the quality of the waters". It is questionable to what extent this provision contributes to the dual purpose of the Directive of protection of the environment and elimination of unequal conditions of competition.

Directive 79/923 on the quality of shellfish waters (OJ 1979 L 281/47)

This is the second quality Directive which aims at waters supporting fish life. It applies to those coastal and brackish waters which need protection or improvement in order to support shellfish life and growth and thus to contribute to the high quality of shellfish products directly edible by man (Art. 1). It very much follows the pattern of Directive 78/659 though the importance of the "edibility factor" is clearly reflected in the parameters of the Directive (see for example parameter 11 (substances impairing taste) which must be examined by "tasting where the presence of one of these substances is presumed".)

Article 3(3) provides that for discharges of "organohalogenated substances" and "metals" the emission standards laid down by Member States pursuant to Council Directive 76/464 must be applied at the same time as the

quality objectives and other obligations arising from the shellfish Directive. This offers a rare example of a cross-reference to an emission Directive.

Waters designated by the Member States as shellfish waters were to conform with the values by October 1987 (Art. 5).

Directive 80/778 relating to the quality of water intended for human consumption (OJ 1980 L 229/11)

Lately, Directive 80/778 on the quality of drinking water has attracted considerable media attention. More private individuals have approached the Commission about non-compliance with the drinking water directive than any other piece of EC environmental law. In the near future, the European Court will determine a large number of cases involving this Directive including one against Britain. It is clear therefore, that the Directive occupies an important place in the network of EC water legislation.

The Directive concerns standards for water intended for human consumption which is defined as "all water used for that purpose, either in its original state or after treatment, regardless of origin" (Art. 2). Natural mineral waters and medicinal waters fall outside the scope of the Directive. The Court has recently ruled that waters which are privately owned and used for drinking purposes are not covered either (see case 42/89, not yet reported, [1990] 1 *Water Law* 56).

Member States are obliged to fix values applicable to drinking water for the parameters listed in Annex I to the Directive which are divided into Tables A-F. The values to be fixed for the 62 parameters in Tables A-E must not exceed the values shown in the Directive. As is usual with quality Directives both G and I values are provided for as well as derogations unrelated to toxic or micro-biological factors and which do not constitute a danger to public health (Art. 9(3)).

Regular monitoring must take place at the point where drinking water is made available to the user in accordance with the methods of analysis set out in Annex III (Art. 12). Water intended for human consumption should have complied

with the values by July 1985 but Member States may, in special circumstances and for geographically defined population groups, submit a special request to the Commission for a longer period for complying with Annex I (Art 20).

Emission standards

The first action programme contained a commitment to the setting of emission standards prescribing levels for pollutants not to be exceeded in emissions from fixed installations (OJ 1973 C 112/50). Unlike quality objectives, emission standards exclusively relate to the quality of the emission, not to the quality of the receiving waters.

The Commission took up the challenge and less than a year after publication of the first action programme it submitted a proposal for "a Decision by the Council on the reduction of pollution caused by certain dangerous substances into aquatic environment of the Community" (COM (74) 1706 final). This foresaw a system of "limit values", adopted at Community level, which emission standards in the national authorisations of discharges of certain particularly dangerous substances should not exceed. This approach was in line with the principles of Community law that pollution should be rectified at source and that priority should be given to preventive action. From a Community perspective, it was also the only feasible way to ensure that the various national industries would be equally burdened by the Directive.

By that time, however, the United Kingdom had acceded to the Community and it soon became clear that a system of uniform Community wide emission standards by reference of limit values was diametrically opposed to the British tradition of decentralised and pragmatic pollution control. (See Vogel, *National Styles of Regulation, Environmental Policy in Britain and the United States* (1986)). More importantly, adoption of the Directive would have meant that the fact that Britain is an island with short, fast flowing rivers would not have received special consideration and thus that its competitive advantage by virtue of its geographic location

would have been lost. Not surprisingly, the UK favoured a system of emission standards by reference to EC quality objectives, thereby linking the emission standards to the characteristics of the receiving waters.

In May 1976 framework Directive 76/464 on dangerous substances discharged into the aquatic environment was eventually adopted. However, as the Directive allows Member States to choose between the quality and the emission approach it can hardly be maintained that the Directive harmonises Member States' legislation regarding the discharge of dangerous substances into the aquatic environment (see preamble 3rd recital). Neither did this compromise prevent subsequent collisions between the UK and the rest of the Community over an appropriate strategy in respect of the various implementing Directives for the individual black-list substances.

Despite these controversies, the Directive must be regarded as the most significant piece of EC water legislation. When fully implemented it will bring under control the discharge of dangerous substances in the whole of the Community's aquatic environment. The main features of the 1976 framework Directive and the 1986 Directive on limit values and quality objectives for List I substances are outlined below with brief mention of other implementing Directives.

Directive 76/464 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ 1976 L 129/23).

The 1976 Directive on dangerous substances in water is a framework Directive establishing the mechanisms for the reduction and elimination of water pollution by certain dangerous substances. Subsequent implementing measures are needed for the actual control of individual substances. Part of the importance of the Directive resides in the fact that it applies to inland surface waters, territorial waters and internal coastal waters and hence covers virtually the whole of the Community's aquatic environment. A division is made between substances on List I (black list) of the Annex and substances on List

II (grey list). Substances on List I are selected on the basis of their toxicity, persistence and bioaccumulation. In 1982 the Commission published a Communication containing 129 black list substances which was intended to serve as a basis for future implementing Directives (OJ 1982 L 176/3).

Substances on List II are characterised by the fact that their deleterious effects on the aquatic environment are confined to a given area and dependent on the characteristics and location of the waters into which they are discharged. Black list substances for which no limit values or quality objectives have yet been fixed are treated as List II substances. The Directive eventually seeks to *eliminate* water pollution by List I substances and to *reduce* pollution by List II substances. (Art. 2, note the eccentric definition of pollution in Art. 1(e)).

The crux of the Directive is a system of prior authorisation of discharges of List I and II substances. In respect of black list substances, authorisations must contain emission standards not exceeding the limit values laid down by the Council on the basis of "best technical means available". (Art. 3(2), on decision making, see [1990] 1 *Water Law* 9). The emission standards determine the maximum permissible concentration of the substance and the maximum quantity during one or more specified periods of time. The discharge must be prohibited when it is evident that the discharger is unable to comply with the emission standards (Art. 5(4)).

Alternatively, Member States may opt to comply with the quality objectives laid down by the Council if they can prove that these are being met and continuously maintained throughout the area affected by the discharge. In fact only the UK has made use of this possibility, all other Member States have chosen to adhere to the limit values.

The control of List II substances is based on the quality approach. Member States must establish programmes containing quality objectives in order to reduce pollution from List II substances. Hence, the emission standards in the authorisations of discharges of List II sub-

stances are based on national, or where they exist, EC quality objectives, and not on limit values. (The Commission has proposed for the first time a Directive on quality objectives for a List II substance in 1986 (chromium)). This may be inconsistent with the Commission's preference for emission standards in respect of List I substances (Haigh, *EEC Environmental Policy & Britain*, (1984) p. 100). However, unlike List I substances, the effect of List II substances on the environment depends on the characteristics and the location of the waters in which they are discharged. It therefore seems only sensible to relate the emission standards to the receiving waters.

The List II regime and the compromise embodied in respect of List I substances should not detract from the fact that the Directive is based on the emission principle. The Commission and the vast majority of the Member States consider that in respect of toxic, persistent, bioaccumable substances it is necessary to control the emission of these substances rather than the quality of the waters into which they are discharged. The emission approach is also better suited to prevent cross-frontier pollution which is another fundamental principle of Community environmental law. In contrast to quality objectives, the fixing and administration of which is relatively complicated, emission standards have the advantage of administrative simplicity. It has already been noted that the improperly branded "parallel approach" is not consistent with the objective to create fair conditions of competition. The standard argument that the UK is as entitled to benefit from the "assimilative capacity" of the sea as other European countries are from the navigation of the Rhine, reflects a controversial view of the objectives of the Community's environmental policy in general and that of Directive 76/464 in particular.

A serious problem with the emission approach is that it is unsuitable to deal with pollution from multiple and diffuse sources. It is possible that a particular body of water may be heavily polluted from

a number of different installations, each one of which complies with the limit values of the Directive. Where quality objectives are in place, such a situation cannot occur. It should be noted however, that Directive 86/280 (see below) contains an important provision on pollution by black list substances from multiple and diffuse sources.

Implementing Directives

Within the framework of Directive 76/464, implementing Directives laying down limit values and quality objectives have been adopted for the following substances: mercury (Directive 82/176, OJ 1982 L 81/29 and Directive 84/156, OJ 1984 L 74/49), cadmium (Directive 83/513, OJ 1983 L 291/1) and hexachlorocyclohexane. (Directive 84/491, OJ 1984 L 274/11).

The Directives contain limit values with time limits for compliance, the monitoring procedures to be applied and the reference method of analysis.

Quality objectives are also laid down (e.g. in respect of mercury: the concentration of mercury in a representative sample of fish flesh, the total concentration in inland surface waters, the concentration in solution in estuary waters and in territorial seas and internal coastal waters). The national authorities must determine the area affected and select from among the quality objectives the ones deemed appropriate, having regard to the use of the area affected, and taking account of the fact that the purpose of the Directive is to eliminate all pollution. In accordance with Article 6(3) of Directive 76/464, a monitoring procedure for ensuring compliance with the quality objectives is annexed to the Directives.

In line with Article 4 of Directive 76/464, in December 1979 a separate Directive covering groundwater was adopted. (Directive 80/68, OJ 1980 L 20/43) It is not an emission Directive in the true sense of the word. Like the parent Directive, the groundwater Directive contains two lists of substances. In brief, Member States must "prevent" the introduction into groundwater of substances in List I and "limit" the introduction of substances in List II (Art. 3). Discharges into the groundwater of List I substances

without percolation through the ground or subsoil (direct discharges) are prohibited, while such discharges of List II substances must be made subject to prior investigation by the national authorities. All indirect discharges (both of List I and II substances) are subject to prior investigation before an authorisation can be granted.

Progress in the adoption of implementing Directives has been disappointing. This has been due to the requirement of unanimity contained in Article 12 of the 1976 Directive as well as to a re-surfacing of the dispute over the appropriateness of quality objectives for List I substances in respect of new plants each time an implementing directive was proposed. The French and the Italians in particular felt that in respect of new plants the UK should adhere to limit values. A heated debate followed which eventually resulted in a formula under which, whatever method a Member State adopts, authorisations for new plants may be granted only if these contain a reference to the "best technical means available" for preventing discharges of the substance concerned.

Directive 86/280 on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464/EEC (OJ 1986 L 181/16).

Directive 86/280 has removed one of the obstacles for a speedy implementation of the 1976 framework Directive by codifying the general provisions in respect of, *inter alia*, limit values, quality objectives, reference methods of measurement and procedures for monitoring compliance with quality objectives. The regime in respect of new plants has likewise been codified in accordance with previous practice, *i.e.* that of "best technical means available" (Art. 3(4)). Future black list substances can now simply be added to Annex II of the Directive without the danger that old controversies slow down progress.

At the same time, new provisions have done something to take account of the problem of pollution from diffuse sources. Thus, Article

5 provides that Member States must draw up programmes to avoid or eliminate pollution from significant sources of the black list substances listed in Annex II, including multiple and diffuse sources, other than sources of discharges subject to Community limit values or national emission standards. Noteworthy also is Article 3(6) providing that Member States shall seek to ensure that the measures taken pursuant the Directive do not result in an increase in the pollution of other media, notably soil and air.

Finally, discharges of three new substances: carbon tetrachloride, DDT and pentachlorophenol are brought under control by way of inclusion of these substances in Annex II.

On 16 June 1988 the Council adopted a Directive amending Annex II to Directive 86/280 so as to include aldrin, dieldrin, endrin, isodrin, hexachlorobenzene, hexachlorobutadiene and chloroform (Directive 88/347, OJ 1988 L 158/135). The council has recently agreed that 1,2 dichloroethane, trichloroethylene (TRI), perchloroethylene (PER) and trichlorobenzene (TCB) will be added to Annex II of Directive 86/280 (Directive 90/415, OJ 1990 L 219/48) (COM (88) 432 final, see also [1990] 1 *Water Law* 60).

Concluding remarks

Considering the fact that the Community has been involved in establishing a water policy for less than 20 years, credit is deserved for what has been achieved. Minimum quality requirements are in place for a large number of waters and virtually the whole of the aquatic environment is protected against pollution from discharges of a number of particularly dangerous substances.

Despite this, it would be wrong to ignore the shortcomings of the Community's water protection policy, and attention may be drawn to two current problems. The first concerns the implementation of Directive 76/464 on dangerous substances. Despite the adoption of Directive 86/280, progress in adopting limit values and quality objectives for black list substances

has been embarrassingly slow, whilst the control of List II substances has progressed even less. The Commission recently proposed introducing qualified majority voting for the fixing of limit values and quality objectives for black list substances (COM(90) 9 final). In the same proposal, it forwarded 16 substances to which it proposes Article 130S(2) EEC should apply, thus making it possible to add these substances to Annex II of Directive 86/280 without the need for unanimous approval of the Member States. Even if this proposal were to be adopted, which is by no means certain, any future selection of the substances to be added to Annex II would continue to require the unanimous approval of the Council. Unless this obstacle is also removed, the extent to which adoption of the proposal will contribute to a speedy implementation of Directive 76/464 remains a matter of speculation.

Finally, the present Community strategy of quality objectives for waters performing certain uses in combination with emission standards for discharges of dangerous substances leaves a large proportion of Community waters unprotected. Waters which have not been designated for any of the purposes of the quality Directives are not subject to Community rules requiring a minimum quality of those waters. Hence, what is needed is a Community Directive requiring a minimum ecological quality for *all* Community waters irrespective of their use. Only then could the Community claim to preside over a comprehensive water protection policy. Such a Directive could at the same time compensate for the environmental disadvantages of the use of limit values in respect of dangerous substances (see above). Although no reliable details are available, it is thought the Commission is working on a proposal along these lines.

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