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AK Position Paper

Directive on the quality of water intended for human consumption (Drinking Water Directive)

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About us

The Austrian Federal Chamber of Labour is by law representing the interests of about 3.6 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Rudi Kaske
President

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 816.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.6 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Christoph Klein
Director

Executive Summary

On 1 February 2018 the European Commission (EC) presented its legislative proposal for a recast of the EU Drinking Water Directive (98/83/EC). This is the first time the demands of the successful European Citizens' Initiative "Right2Water" (ECI), which was signed by 1.8 million citizens across the EU, were acted on.

The Austrian Federal Chamber of Labour (BAK) supports the ECI initiative and welcomes the objective to ensure access to drinking water for all citizens. However, the right to safe and affordable drinking water should be ensured effectively in future as a right of all EU citizens and not merely called for, as is currently the case in the legislative proposal. However, further changes are required in this case.

An excellent quality and supply of drinking water is already ensured in Austria by the current legal framework. In this situation the planned mandatory, risk-based approach with a comprehensive hazard assessment for water suppliers means a significant amount of additional work and expense which is not matched by the corresponding added value. The water supply in rural areas in Austria is organised on a very small scale. A total of 5,500 water suppliers provide around 8 million people with water of excellent quality. For example, in the federal state ("Bundesland") of Salzburg there are 549 water cooperatives with around 3,750 individual supply facilities. The additional work and expense for smaller water suppliers would be considerable - in relation

to the amount of water supplied - and consumers would have to expect appreciable additional costs.

A further criticism of this proposal is that some aspects, such as precautionary measures to ensure the quality of drinking water, are lacking. Moreover, some proposals, such as harmonisation provisions for the product segment, scope of analysis and frequencies, or risk assessment for domestic installations are, in the opinion of BAK, excessive and are also associated with huge costs for households. Furthermore, these cost-intensive measures would not automatically improve quality or remove causes of pollution but would result in more costs which are treated as of no significance in the legislative proposal. For the sake of completeness it should be said that questions of subsidiarity would also arise and the potential implementation would make heavy demands on all Austrian federal states ("Bundesländer"), municipalities and associations.

No matter how positive the fact that the recast will enshrine the right to drinking water in law, nevertheless, from the point of view of BAK, the legislative proposal is excessive and disproportionate in many aspects and therefore needs to be revised urgently. Moreover, from a democratic perspective, all implementing acts in the Directive should be deleted.

General Remarks

Consistency

In the explanatory memorandum of the Directive it says that this proposal will “help maintain the competitiveness of the EU’s water sector and stimulate innovation”. As a criticism it should be noted that water supply is a service of general interest and the concept of competitiveness is opposed to the fact of a natural monopoly.

Impact assessment

In the explanatory memorandum of the Directive it states that measures would only mean a negligible rise in costs for consumers.

Total costs for the supply of drinking water in the EU were 46.5 bn euros in 2014, of which 8.3 bn euros are assigned to the current Drinking Water Directive. It is estimated that the new regulations would cost up to 7.3 bn euros more and so would cause an increase of more than 15 %, which cannot be described as negligible under any circumstances. Furthermore, it must be assumed that the comprehensive mandatory analyses (more parameters and full analysis in the first three years) would lead to crushing costs, in particular for small water suppliers.

For such an important Directive, the impact assessment for costs must consider in detail the specific aspects of Member States and present them in a differentiated manner - also with regard to the small-scale structures found in Austria. In drinking water-related issues, policies at the EU level are required to include

the principle of cost recovery, the polluter pays principle, and the possibility of considering social aspects. For this reason in particular special attention must be paid to cost trends and cost components - which differ among Member States due to their history and natural features.

In the opinion of BAK the focus should be on the quality of drinking water and bottled water and not about replacing one with another.

The AK's position in detail

Art. 1 - Objective

The "Right2Water" ECI called for mandatory recognition of the human right to water and basic sanitation and renunciation of the liberalisation of the water industry. The human right to water should be included explicitly in the declared aims of the Directive and in the recitals and should certainly be included as a separate clause.

BAK wishes to propose the following supplement: "The objective of this Directive shall to be ensure universal and affordable access to water for human consumption to all European inhabitants."

Art. 7 and 9 - Risk-based approach

The recast of the EU Drinking Water Directive of 2015 already required a certain risk-based approach during testing; this was implemented on a voluntary basis in Austria. Specifically this approach, based on the pollution risk, means that water suppliers are required to test water for as many potential substances as possible and demands a comprehensive risk assessment in advance as the basis. In the opinion of BAK this approach is basically good; however, this new risk-based approach should first be tested extensively in practice, evaluated, and adapted for smaller suppliers in particular, before it becomes mandatory for all water suppliers. Therefore the Member States should be given the option of changing to a risk-based approach. An approach based on the results of monitoring bodies of water, which in any case must be carried out in accordance with Art. 7 and 8 of Directive 2000/60/EC (Water Framework Directive), is also conceivable.

Art. 8 - Hazard assessment of bodies of water

In future Art. 8 is to establish a link with the Water Framework Directive. According to the Water Framework Directive Member States are required to monitor water bodies used to extract water for human use and take the necessary measures to prevent the quality of these water bodies from deteriorating. Linking the EU Drinking Water Directive with the Water Framework Directive is essentially to be welcomed. However, the proposed approach to respond to the pollution of groundwater and in future transfer more responsibility to water suppliers, who do not have the possibility of keeping water bodies pure, is not the right course. Instead, it should focus on preventive protection of groundwater and the polluter pays principle. This requires this article to be reworded to take account of these two principles. As studies show, agriculture is responsible in many cases for diffuse pollution (nitrates, pesticides). Water suppliers must not be assigned legal responsibility for failures of preventive groundwater protection. Therefore the requirement in para. 5, that measures are to be carried out by water suppliers, must be deleted. Instead measures to Member States should be stipulated to ensure preventive groundwater protection and so avoid diffuse depositions in groundwater bodies and springs.

Art. 10 - Domestic distribution risk assessment

The previous wording said that new installations must not diminish directly or indirectly the protection of human health provided for by this Directive.

The basic idea behind this new risk-based approach chosen is a good one. However, the approach that Member States should themselves set minimum standards for domestic installations and construction products is not practicable and therefore is to be rejected. Instead these minimum standards should be included in EU provisions on construction products. Since the quality of drinking water varies with the topography, the standardisation of construction products should address this. It would be useful to set thresholds for construction products for domestic installations (lead, chrome, etc.) in Regulation (EU) No 305/2011 in order to ensure a harmonised line of action.

Should this provision come into force notwithstanding, it must ensure that the proposed measures for domestic installations (Art 2 para. 2 together with Art 10) do not lead to higher costs for households, whether through higher investments or investment reserves.

In 2017 the Austrian Agency for Health and Food Security (AGES) documented 218 cases of legionnaires' disease, 10 of which were fatal (<https://www.ages.at/themen/krankheitserreger/legionellen/>). Legionellae reproduce primarily in complex water networks in large buildings such as hospitals, nursing homes and residential homes for the elderly, accommodation facilities, and public baths. In any event, regular monitoring of domestic installations in large buildings and public baths seems to be justified and necessary in view of the facts.

However, it is questionable whether the Drinking Water Directive is the right instrument, since this is a matter of public health policy.

Art. 12 - Remedial actions and restrictions in use

The proposal states that if parametric values are exceeded, Member States must immediately take the necessary remedial actions to reinstate the former status and inform consumers of a possible danger to human health, the causes, and the remedial actions taken. Basically this is a good approach and has the express support of BAK.

However, in future water suppliers must inform consumers of a potential hazard to drinking water when the indicator parameters are exceeded. Indicator parameters are parameters which are investigated in order to reveal whether pollutants may be present. Since exceeding indicator parameters does not automatically mean a potential danger to health, the obligation to provide information on indicator parameters should be considered critically. The trust of consumers in their drinking water would be weakened rather than strengthened.

Art. 13 – Access to water intended for human consumption

One of the declared aims of the recast of this Directive is to improve access to drinking water for all EU citizens. Since 1.8 million people across the EU signed the "Right2Water" ECI, the human right to drinking water should be stated explicitly in Art. 13. It is also essential to actually ensure access to water for human use for all demographic groups. At present Art. 1 only stipulates that access to water for human use is to be improved and its use in the respective national territory promoted. In order to accommodate the concerns of these 1.8 million

people, the right to safe and affordable drinking water should be codified definitively and Art. 13 must be amended to this end. However, the reference in para. 2 to the quality of drinking water when certain demographic groups do not have access should be deleted.

Art. 14 - Information to the public and Annex IV

Regulating the information provided to consumers on water quality across the EU is essentially welcome and is already the case in some areas in Austria. Recommendations for consumers to reduce their water consumption are also positive and are also already part of information campaigns.

However, BAK wishes to point out that this information must be accessible to all and must not exclude any demographic groups. Therefore this information should not be published online only, as planned in the legislative proposal. Other forms of information (e.g. in water bills, public notices at the town hall, publication in local papers, etc.) must be possible so that all consumers have access to this information. Furthermore it must be pointed out that the expense for small water suppliers - which do not generally have a website - to provide information online as a mandatory requirement is disproportionate and consumers would have to bear the cost.

Regarding information from water suppliers, this includes important and essential questions for consumers, such as terms of delivery and variable and fixed charges for connection, consumption and meters. We consider the more extensive obligations for water suppliers to provide information as required in the proposal - in particular on the cost structure and intended investments, as well as historic data - to be excessive

and therefore they should also be deleted. Firstly, it is questionable whether this information actually represents added value for households and consumers in Austria; secondly, it must be feared that the pressure to privatise and the appetite of private capital to have a stake in natural monopolies will be awakened. The supply of drinking water is a public service and should remain in public ownership in the future.

Art. 16 - Access to Justice

The aim of Art. 16 is to implement the Aarhus Convention with regard to access to justice. Both the 5th Conference of the Parties to the Aarhus Convention in Maastricht (2014), as well as the EC (reminder letter 2015), reproved Austria for not having implemented the Aarhus Convention satisfactorily regarding public involvement in environmental affairs. The inclusion of "access to justice", as decided in Aarhus, is positive for the interests of consumers. The objective of the EU Drinking Water Directive is to protect health.

Annex I Part B - New parameters

Chlorate and chlorite

There are two ways in which the substances chlorate and chlorite can occur in drinking water: Either they solubilise from rocks or are added during water treatment. The EC's proposal to include these two substances as mandatory for all water suppliers in Annex I Part B is disproportionate in the view of the BAK. We therefore propose that these two parameters be investigated only in the case of water treatment plants and certain sources where it is known that these substances occur.

PFAFs

BAK is in favour of these substances now being included in the list of parameters. The approach taken of using other threshold values than those proposed by the WHO should be reconsidered.

Substances with endocrine disruptors

In future the endocrine disruptors Beta-Estradiol, Bisphenol A and Nonylphenol are to be included in the list for testing contained in Annex I B. BAK welcomes an approach based on the precautionary principle. However, a factual basis for the inclusion of new substances in Annex I B is also important. Austria carried out a comprehensive investigation of endocrine disruptors in surface waters in 2003. These substances were found in surface waters, but only to a degree that is harmless for human health. BAK suggests collecting data on these active substances in groundwater, spring water and surface waters as a first step, and then to introduce the necessary steps according to the load factor. In view of the fact that even the WHO does not currently have any evidence for a risk to health in relation to drinking water, BAK suggests removing these substances from Annex I B and instead include a comprehensive action to collective data on these substances in the Directive.

Uranium

We welcome the fact that this value is now included; however, the values for Austria of 15 µg/l should be retained.

Annex II, Parts B, C

The monitoring frequency for water suppliers from 10 m³ and more per day has been increased from previously once a year to ten times a year. Every time a full analysis is to be carried out by the water suppliers. A reduction in the scope of the analysis can be applied for if all val-

ues are 30% below the parameters for three years in succession. The costs for analysis in these three years - for water suppliers - are estimated at 17,000 euros or, for a small water supplier, around 1.55 euro/m³ of water supplied. The average price per m³ of water in Austria is currently 1.73 euro/m³. This would increase costs without any apparent improvements for households. The proposed increase in frequency of analysis is not justified, in the opinion of the BAK, and is therefore rejected.

Groundwater and spring water is protected in Austria by conservation areas. Many years of analyses have shown that the chemical composition of water in particular has not changed, apart from a few negligible variations. It is the opinion of the BAK that the previous frequency of analysis is sufficient to detect changes in a body of water. The use of surface waters, which would justify the proposed increase in the frequency of analysis, is unknown in Austria. Furthermore, it should also be possible to modify the frequency of analysis for key parameters.

Should you have any further questions
please do not hesitate to contact

Iris Strutzmann

T: +43 (0) 1 501 651 2167
iris.strutzmann@akwien.at

and

Peter Hilpold

(in our Brussels Office)
T +32 (0) 2 230 62 54
peter.hilpold@akeuropa.eu

Bundesarbeitskammer Österreich

Prinz-Eugen-Straße 20-22
1040 Vienna, Austria
T +43 (0) 1 501 65-0

AK EUROPA

Permanent Representation of Austria to the EU
Avenue de Cortenbergh 30
1040 Brussels, Belgium
T +32 (0) 2 230 62 54
F +32 (0) 2 230 29 73