

- Executive Summary -

Statement on the European Commission's proposal of 1 February 2018 for a recast of the directive on the quality of water intended for human consumption

The following reasons and objectives of the proposal are named in the introduction of the explanatory memorandum of the proposal ([pdf p. 3 of 64](#), our highlighting):

"However, the evaluation identified four areas with room for improvement:

- **the list of parameters;**
- **the use of the risk-based approach;**
- increased **transparency** on water-related issues and giving consumers access to up-to-date **information;** and
- **materials in contact with drinking water.**"

In addition, **access to tap water** is mentioned as a follow up to the European citizens' initiative (ECI) Right2Water.

a) The list of parameters: A revision of the list of parameters in line with the WHO recommendations may be a sensible approach for individual quality parameters. However, from a scientific perspective, we firmly reject the proposed **shift away from proven indicator parameters**, from the general characterisation of water quality and from the monitoring of raw water as an irresponsible removal of essential assessment criteria. In this respect, for example, fundamental parameters for the assessment of interactions between tap water and the products/materials in contact with drinking water are lacking, i.e. for the assessment and avoidance of corrosion in the pipeline network. In addition, the proposal to focus purely on more stringent "end product controls" is inadequate.

b) The use of the risk-based approach/hazard assessment/Water Safety Plan can represent a useful addition in the catchment area to the axiom of concern and source-based approach/polluter pays principle of the German water sector, however it falls much shorter than the axiom of concern according to which water pollution is not even supposed to happen and it could even completely usurp the axiom of concern - resulting in a reduction in the generally high German standards for ensuring (raw) water quality. **Instead, we hereby propose that the axiom of concern of the German water industry be applied EU-wide and that ensuring water bodies are kept clean be seen as the primary objective. This must be consistently insisted on if sustainable protection of water, the indispensable resource and basic foodstuff, is to be achieved.** This would also ensure compliance with the EU precautionary principle, set down in primary law, for the protection of the environment and health/the EU fundamental right to physical integrity. An initial implementation should, by all

means, be performed as part of the current (REFIT) evaluation on [EU legislation on plant protection and pesticide residues](#) and on the EU **Water Framework Directive**, in which the REFIT/"Better Regulation" criteria may under no circumstances be allowed to lead to an elimination/weakening of the water protection provisions. The EU Commission's negligence in relation to **pharmaceuticals strategy** (see Dir. 2013/39/EU, Art. 8c, [pdf p. 10 of 17](#)) must under no circumstances be continued.

c) In light of the existing regulation, there is no need for the proposed **transparency and information obligations** in Germany - possible deficits in implementation aside. Instead such obligations would represent an unnecessary increase in bureaucracy and an unjustifiable financial burden on consumers. In addition, they carry a high risk of misleading and confusing consumers. Moreover, since some transparency and information obligations offer no benefit to consumers, the question arises why the EU Commission feels compelled to insist on retaining such obligations in spite of previous, well-founded broad rejection from experts. We propose that the final clarification of this question be approached with an in-depth analysis from consumer protection specialists. Furthermore, certain new regulations in the Commission's proposal would unquestionably result in a deviation from the previous objectives of the Directive and the further legal categorisation would be completely unclear. **In any case, the transparency and information obligations represent an inadmissible objective derogation and must be removed from the proposal for this reason.**

With regard to small water suppliers (in Germany alone there are estimated to be over 3,000), **the high administration and cost burdens**, which could arise from the new obligations through the introduction without exceptions of the risk-based approach as well as from transparency and information obligations, **must under no circumstances result in their existence being jeopardised.** Local water supplies must be highly valued for several reasons.

d) The removal of Art. 10 on **materials in contact with drinking water** leaves firstly a significant current loophole open with respect to hygienic requirements and thus unresolved.

Instead, the Commission proposes to transfer it to the Construction Products Regulation, i.e. into the unrelated sphere of construction products regulated by DG Growth. This would increase the preference for the free movement of goods - a fundamental freedom of the EU internal market - above applying the EU precautionary principle and protection of health/physical integrity. With such a change in direction, **a further lowering of quality standards** based on experience **is hardly avoidable.** In this area too, contrary to the current Commission proposal, the goal must be harmonisation at the highest level if public health is to be afforded top priority.

In this context, it is important to note that in the [EU-Japan Economic Partnership Agreement](#) (previously "free trade agreement"), the exemption for regulations in the area of water supply (collection, purification, distribution of water) in the section on "[Regulatory Framework](#)" (previously "domestic regulation") has been dropped in contrast to the CETA Agreement ([see Art. 12.2 \(2\) b\) ii, pdf p. 91](#)). Thus, after ratification of the agreement, "domestic" regulations on water supply, both within the EU and within the Member States (including the DVGW system of rules in Germany), would be fully subject to the regulatory provisions of this section. In addition, the proposed EU-wide harmonisation of materials in contact with drinking water in the Construction Products Regulation would be bound by this. Moreover, the EU-Japan Agreement provides for the creation of numerous

committees, which would also flesh out the Agreement. For example, in Art. 3 ([pdf p. 4 of 28](#)), in the sub-section on "*Regulatory Framework*", regulations on "*mutual recognition*" are referred to the "*Specialized Committee on Trade in Services, Investment Liberalization and E-commerce*" ([pdf p. 5 of 7](#)).

The statements show **that the further standard-setting on materials in contact with drinking water would not solely be carried out EU-wide but would also have to be agreed at least within the proposed EU-Japan economic area.** The objective would be the absolute adherence to the principle of the free movement of goods. Clarification is needed on the further consequences of such a development, preferably using the practical example of the corrosion of substances in contact with drinking water: If the principle of free movement of goods had to be strictly met for materials/products in contact with drinking water and if the nature of drinking water had to be such that no authorised substances in the entire EU and Japan can cause corrosion, **the water would have to be modified according to the materials** in contact with drinking water - **not the other way round, as up to today.** In other words, the result would be a so-called conditioning of tap water, by which foreign substances would have to be added to prevent corrosion. **Such a development is by no means conducive to consumer protection or high-water quality. Any development towards conditioning water to accommodate materials (in contact with drinking water) must therefore be arrested as early as possible as it represents a threat to general water quality.**

Furthermore, it is unlikely that the costs for the conditioning of drinking water which would then be necessary were taken into account in the **calculated increase in costs for water suppliers of 5.9 to 7.3 billion Euro** ([pdf p. 3 of 3](#)).

e) According to the ECI Right2Water, the lack of **access to tap water** does not primarily refer to water quality in the EU, but predominantly to the lack of access to locally available drinking water and **should in principle be kept out of the Directive and regulated as a human right in accordance with the existing political will of the population and of the European Parliament** in an adequate place.

f) Completely irrespective of the above, the **principles of local and regional self-government** (TEU, Art. 4, [pdf p. 20 of 412](#)), set down in primary law in the EU, and the **Union principles of subsidiarity and proportionality** (TEU, Art. 5) rule out a whole series of regulatory approaches of the existing, secondary law Commission proposal. A need for action which goes beyond mere implementation deficits (above all with regard to the precautionary and polluter pays principle) and requires regulations on the quality of drinking water may exist in individual EU Member States, but by no means throughout the EU. Precisely for this reason, **the existing Commission proposal is not acceptable, on the basis of the EU principle of subsidiarity alone. Both the Council and the European Parliament are required not to exceed EU primary law when issuing secondary law and to base any such legislation on EU law in its entirety.**

g) Finally, it should be noted that the - new - objectives stated by the EU Commission of reducing plastic litter and the carbon footprint can only be found in the Explanatory Memorandum and in the EU Commission's press release but not in the proposed articles.