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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on the adoption of a Directive of the European Parliament and of
the Council on the quality of water intended for human consumption (recast)**

(Text with EEA relevance)

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council 1 February 2018
(document COM(2017) 753 final – 2017/0332 COD):

Date of the opinion of the European Economic and Social Committee: 11 July 2018

Date of the opinion of the Committee of the Regions: 16 May 2018

Date of the position of the European Parliament, first reading: 28 March 2019

Date of adoption of the position of the Council: 23 October 2020

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The overarching objective of the proposal was to ensure a high level of protection of the environment and of human health from the adverse effects of contaminated drinking water. The revision followed also from the result of the first-ever successful European citizens' initiative 'Right2Water'. The proposal aimed to update water quality standards, to introduce a risk-based approach to drinking water management, to improve consumers' access to information on water quality and water and to improve access to water. In addition, the proposal also addressed the issue of materials in contact with drinking water.

3. COMMENTS ON THE POSITION OF THE PARLIAMENT

The European Parliament adopted its first reading position on 28 March 2019. The amendments to the Commission proposal aimed at improving access to water (including amendment to the article on 'Objectives'), introducing a new article on materials in contact with water, increasing attention to microplastics, and introducing some exemptions to the risk-based approach. The Parliament also proposed a less ambitious approach to transparency and access to information than in the Commission proposal.

Following the Council's adoption of its first reading position, the European Parliament is expected to formally endorse the agreement found in trilogues.

4. COMMENTS ON THE POSITION OF THE COUNCIL

The Council's position reflects the agreement found in trilogues. Overall, this agreement represents a balanced outcome between the positions of the co-legislators, preserves the Commission's initial objectives, and maintains a similar level of ambition as in the Commission proposal.

In particular, the Council position supports and further refines the Commission proposal by:

- maintaining the original Commission's ambitions on access to water,
- improving and including more details on the risk-based approach to drinking water management,
- setting minimum harmonised requirements for materials in contact with drinking water (this new provision is accompanied by a legislative financial statement which was endorsed by co-legislators at the final trilogue),
- introducing a new requirement on water leakages, and
- introducing a watch list concept to address pollutants of emerging concern such as endocrine-disruptors, pharmaceuticals and microplastics.

Concerning health protection aspects, the Council adopted a balanced position with some improvements compared to the existing Drinking Water Directive, albeit sometimes not as ambitious as the original Commission proposal (e.g. on lead, PFAS, Bisphenol A, Chlorate, Chlorite). While the Council also somewhat limited the obligations regarding transparency and access to information originally proposed by the Commission, the most important information for consumers was retained.

The Commission regrets however the proposed limitation of its empowerment to amend Annex II to the Directive by delegated act, as originally proposed and as currently foreseen under the existing Drinking Water Directive.

In addition, the Commission regrets the introduction of the so-called "no-opinion clause" to the article on implementing acts, which is a deviation from the rule of principle and should be properly justified, as it limits the possibility of the Commission to adopt implementing acts when no opinion is delivered by the Committee.

5. CONCLUSION

The Commission accepts the position taken by the Council whilst issuing the following two declarations:

DECLARATION BY THE COMMISSION ON DELEGATED ACTS IN THE DRINKING WATER DIRECTIVE

The Commission regrets the decision of the co-legislators to limit its empowerment to modify the annexes of the revised Drinking Water Directive to Annex III, whereas the Commission had sought an empowerment to modify Annexes I to IV in its original proposal¹.

The Commission specifically regrets that the co-legislators did not agree on an empowerment to amend Annex II, which is particularly necessary in light of the need to update the monitoring requirements set out in Annex II to scientific and technical progress.

¹ [COM\(2017\)0753](#)

DECLARATION BY THE COMMISSION ON THE PROCEDURE OF ADOPTION OF IMPLEMENTING ACTS

The Commission underlines that it is contrary to the letter and to the spirit of Regulation (EU) No 182/2011 (OJ L 55 of 28.2.2011, p. 13) to invoke point (b) of the second subparagraph of Article 5(4), without proper justification. Recourse to this provision must respond to a specific need to depart from the rule of principle, which is that the Commission *may* adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established in Article 5(4), it cannot be simply seen as a "discretionary power" of the Legislator, but must be interpreted in a restrictive manner and thus must be justified.