



COMMISSION OF THE EUROPEAN COMMUNITIES

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

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

**Common position of the Council on the adoption of a European Parliament and Council
Directive on the assessment and management of floods**

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**Common position of the Council on the adoption of a European Parliament and Council
Directive on the assessment and management of floods**

(Text with EEA relevance)

1. BACKGROUND

Date of transmission of the proposal to the EP and the Council
(document COM(2006)15 final – 2006/0005 COD): 18.1.2006

Date of the opinion of the European Economic and Social
Committee: 17.5.2006

Date of the opinion of the European Parliament, first reading: 13.6.2006

Date of adoption of the Common Position: 23.11.2006

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The objective of the proposed Directive is to reduce and manage the risks which floods pose to human health, the environment, infrastructure and property. It proposes a three-step approach with a preliminary flood risk assessment to identify areas where a significant flood risk exists, and subsequently flood mapping and the development of flood risk management plans of those river basin districts, including coastal areas. Coordination within river basins shared by several Member States and third countries, coordination with the Water Framework Directive (2000/60/EC) and public participation shall be ensured in all steps. The proposed Directive provides considerable flexibility to Member States to determine the level of protection required and the measures to be taken to achieve this level of protection, and the timetables for implementing flood risk management plans.

3. COMMENTS ON THE COMMON POSITION

3.1 General Comments

The Commission accepted totally, in part or in principle 59 (including one separate vote) of the 76 amendments proposed by the European Parliament in the first reading. 35 of these 59 amendments are incorporated in the Common Position.

The Commission accepted all amendments which led to further clarifications on the links to Directive 2000/60/EC, on the importance of climate change considerations and on the use of existing instruments.

The Commission rejected, in particular, amendments which limited the application of the Directive to floods with specific causes, which introduced too detailed requirements or which could create unclear legal situations.

3.2 Detailed Comments

3.2.1 Parliamentary Amendments accepted by the Commission and incorporated in full or in part in the Common Position

The following amendments were adequately introduced into the Common Position : number **1** (title), **2, 11, 16, 25** (recitals), **26, 28, 29, 30, 32, 33, 39, 40, 52, 66** and **86** (articles).

Whilst the principle of solidarity in shared river basins included in amendments **6, 8** and **12** is reflected in the Common Position recitals, the specific considerations added on cooperation to find compensatory areas (amendment 6) and on non-sustainable river management as a cause of increased risk (amendment 8) are not reflected in the Common Position.

Amendments **7** and **10** are introduced in principle by a brief reference to climate change in recital 2. The partly introduced amendment **38** (*Article 5*) also adds the obligatory consideration of "foreseeable land use or climate change" in the preliminary flood risk assessment, which is not reflected in the Common Position either.

The partly introduced amendment **20** also stresses the importance of public participation.

Amendments **17, 24, 31, 37, 41, 55** and **71** introduce requirements for the use of existing instruments, which are in principle incorporated in the Common Position (*Article 13*). However, the European Parliament's requirements that such existing assessments, maps and plans shall meet the requirements of the relevant articles in the Directive are more stringent than the less stringent equivalence criteria of the Common Position. The Common Position also extends the date by when these instruments shall be considered available to qualify for the exemptions possible under this Article to the deadline of 12 December 2012, whereby amendment 71 refers to the date of entry into force.

Although the parts of amendments **35** and **60** (identical wording) on costs and benefits are reflected in the Common Position (*Article 7*), these amendments also introduce cost recovery and internalisation of environmental and resource costs, which the Commission accepts, provided it is coherent with the principles and procedures for cost recovery as applied in Directive 2000/60/EC.

Amendments **46** and **48** add important details required in the flood risk maps, which could be considered covered by the Common Position (*Article 6.5.d*).

Amendment **49** is partly incorporated in the Common Position (*Article 6.5.c*) as regards focusing on specific sources of pollution and specific sensitive areas for environmental damage, rather than for estimating the potential environmental and economic damage. Not all relevant sources introduced by the amendment are however covered in the Common Position, notably diffuse sources of pollution and smaller non-IPPC (Directive 96/61/EC) installations.

The amendment also introduces the requirement to consider damage to terrestrial ecosystems, which is not covered in the Common Position.

Although flood plains and their role as flood retention areas and conveyance routes are taken in the Common Position, amendment **54** adds a more **detailed analysis of flooding processes and long term developments** to the flood risk management plan (*Article 7*). This should be seen in the context of the simplifications made by the Council to the preliminary flood risk assessment (*Article 4*).

Although parts of amendment **56** on cross border cooperation are retained in the Common Position, the specific requirement that flood risk management plans (*Chapter IV*) shall be established **involving local and regional authorities** and that **human uses of flood plains shall be adapted** to the identified risk are not included. The Commission however supports the Common Position's wording in this Article related to non-structural measures and the reduction of the likelihood of flooding.

Although the spirit of the first part of amendment **61** is mostly retained in the Common Position (*Article 7.4*), the addition of "**other measures**" that may increase the flood risk upstream or downstream is not maintained.

Although the spirit of amendment **64** is maintained in the Common Position (*Article 8*), this amendment also specifies that **international agreements** can be used for the implementation of this Directive as regards third countries.

Although amendment **68**, which emphasises all obligations under the Aarhus Convention including on public participation, is reflected in principle in the Common Position (*Article 10*), it is noted that the Common Position replaces public participation with consultation in the relevant title.

3.2.2 Parliamentary Amendments accepted by the Commission but not in the Common Position

On the **recitals**, amendments **3** and **4** add more details and considerations on risks to the environment and on the causes of increased flood risks, in particular factors influenced by humans, notably **climate change**. Amendment **5** (recital) on the importance of vertical coordination (national, regional and local authorities) is not taken up in the Common Position. Although the reference to the Charter on Fundamental Rights is maintained (*recital 19*), amendment **9** also adds a reference to the Council conclusions of 14 October 2004, in particular the increased risks of floods due to climate change, a reference which is not included in the Common Position. Amendment **13** specifies the importance of **integration** of flood risk management in other EU policies. Amendment **15** adds consideration of low flood risk areas as **potential flood mitigation areas**; however, the Common Position refers to areas for potential retention of floods (*Article 7*). Amendment **18** emphasises the importance of addressing **potential environmental pollution** associated with flood events in the plans. Amendments **19** and **21** add technical details in relation to **flood forecasting**.

Amendment **34** mainly concerns consideration of **subsidence** in the preliminary flood risk assessment. Amendment **36** suggests an assessment of **effectiveness of existing man made structures** in the preliminary flood risk assessment (*Article 4*).

Amendment **58** adds that **an assessment of rescue and recovery measures** shall also be included in the flood risk management plans, which means adding the review part of the flood risk management cycle to the focus of this Directive.

Amendment **62** adds a communication requirement regarding **changes to the implementation timetable** in river basins shared between different Member States, within the six-year-period between flood risk management plans.

The separate vote on Article 13 (*Article 9 in the Common Position*) strengthens the close **coordination and integration between this proposed directive with that of Directive 2000/60/EC**, whereby the Council's Common Position limits the requirements by removing the requirement of close coordination and by making such coordination optional (*Article 9, recital 16*).

Amendment **69** on **information to the public as part of the preparedness measures** was proposed to be included in the public participation article, but the Commission felt this could also be introduced in the flood risk management plans (*Article 7*).

Amendment **73** requires the Commission to **report on the impacts of climate change** in its regular report on implementation.

Amendment **74** introduces the requirement to **prioritise possible measures** according to the degree they aim at facilitating the implementation in relation to the objectives of Directive 2000/60/EC (which is already in force and already affects flood risk management choices).

3.2.3 Parliamentary Amendments rejected by the Commission but part of the Common Position

Amendments **44** (on mapping of areas subject to erosion), **57** (the part on non-structural measures), **59** (introduced in Common Position in the Annex as examples of other legislation for which summaries of relevant measures should be included in the flood risk management plans) and **65** (on coordination in shared river basin districts) were rejected by the Commission on grounds of subsidiarity or duplication with other obligations. However, in the context of the global package of the Common Position, the Commission can accept these amendments as introduced in the Common Position.

3.2.4 Parliamentary amendments rejected by the Commission and not incorporated in the Common Position

Amendments number **14, 23, 27, 42, 43, 47, 50, 51, 53, 63, 70, 72, 75** and **85** were rejected both by the Commission and the Council. Amendment **45** (linguistic) is redundant with the Common Position text.

In addition to acceptable editorial modifications in amendment **22** (*recital 17*), the Common Position rejects the modifications in relation to the application of Article 4(7) of Directive 2000/60/EC on overriding public interest, as does the Commission, since the provisions of that Directive are already clear.

3.2.5 Additional Changes made to the Proposal by the Council

The Common Position contains a significant number of changes compared to the Commission's original proposal. In presentational terms, the text has been streamlined with

several of the Articles in the original text being merged and recitals simplified. However, all of the essential elements in the Commission's original proposal are retained.

In terms of the substance, the most important changes in the Common Position as compared to the original proposal and that are not reflected in the Parliaments amendments, concern the streamlined preliminary flood risk assessment, strengthened international cooperation and weakened coordination with Directive 2000/60/EC.

Restriction in the definition of floods of the types of floods concerned by the Directive : The Common Position adds an inclusive list of types of floods that are to be covered by the Directive, but also includes the possibility to exclude sewerage floods from the application of the Directive (*Article 2.1, recital 9*).

Smaller units of management than river basin districts : The Common Position establishes that coastal areas and individual river basins may be used as units of management (*Article 3.2 and consequential amendments, recital 16*).

Streamlining of the preliminary flood risk assessment and the consideration of climate change : The Common Position streamlines and simplifies the preliminary flood risk assessment, in particular as regards the assessment of the future potential extent and consequences of floods and factors changing flood risks (*Article 4.2*). This includes the consideration of climate change, which has been weakened by making it optional until the first review of the preliminary flood risk assessment in 2018 (*Article 14, recital 14*). The European Parliament, on the other hand, maintains the Commission's level of ambition as regards climate change, and in addition proposes more detailed requirements in the preliminary flood risk assessment. The Commission can accept the common positions delay of climate change considerations only in the view of an overall compromise, but added a statement to the Council conclusions that citizens expect that the impact of climate change on flood risk is properly assessed and considered.

Timetable : The Common Position changes the date for the finalisation of the first preliminary flood risk assessment to 22 December 2012, rather than 3 year's after the entry into force of the Directive (*Article 4.3*).

Cooperation in shared river basin : This is strengthened in the common position in relation to all three stages of the Directive, in the preliminary flood risk assessment (*Article 4.2 and 5.2*), the flood maps (*Article 6.2*), as well as in relation to the flood risk management plans (*Articles 7.4 and 8*).

Maps : limited requirements to map different probability scenarios depending on the type of floods : The Common Position introduces the possibility to only map the low probability scenario (most extreme scenario) for groundwater floods (*Article 6.7*) and for coastal floods where there are appropriate protection measures in place (*Article 6.6*). Mapping of the high probability floods (less extreme scenario) has also been made optional (*Article 6.3.c*). Other changes introduced are clarifications that maps shall be made at the appropriate scale, that the flood extent shall be shown in the flood hazard maps and how to describe potential damage to economic activities and the environment in the flood risk maps.

Flood risk management plans : The Common Position introduces the possibility to produce more than one flood risk management plan in the river basin district, provided these are

coordinated at the level of the river basin district (*Articles 7 and 8*). It also lays down specific cooperation possibility requirements in international sub-basins.

It furthermore requires that "objectives of flood risk management" are established, rather than the desired "level of protection", thus accepting that it may not be possible to guarantee a specific level of protection in the light of unpredictable natural hazards like floods. It also introduces the possibility to increase risks upstream or downstream countries provided there is agreement between the parties concerned (*Article 7.4*).

The Common Position also includes a number of other clarifications of the role of the flood risk management plans (*Article 7*) (links to the maps in Chapter III, specific consideration of the protection of ports infrastructure and navigation, the specification that flood forecasting and early warning systems as part of preparedness shall be in focus, the explicit possibility to use controlled floods of certain areas to reduce overall risk) which do not change the essential components of the proposed Directive.

Implementing measures and amendments : The Common Position introduces a deadline for specifying technical formats for reporting to the Commission to two years before the respective deadline. It also limits the possible adaptation of the Directive to scientific and technical progress by Committee procedure to the Annex only (*Article 11*).

Correlation table : The Common Position moves the requirement to provide a correlation table with the transposition (*from Article 17 to recital 22*).

In the annex a requirement to describe the method for cost-benefit analysis of measures in shared river basins is included, as is a report on monitoring mechanisms for the implementation, along with certain clarification as the formats for components of the plans.

4. CONCLUSION

The Commission considers that the Common Position, adopted unanimously by the Council, represents an improvement on the flood risk management plans and on international cooperation and can therefore support it. The Commission recognises that there are outstanding concerns relating to delay of the considerations of potential future developments, including climate change, in the preliminary flood risk assessment and that there have been modifications of coordination requirements with Directive 2000/60/EC. The Commission made two statements for inclusion in the Council minutes (see Annex).

ANNEX

1. Commission statement on climate change

The Commission regrets that the political agreement did not include a text which would have ensured that the impact of climate change on flood risk was properly assessed and considered.

The Commission nevertheless hopes and expects that Member States will take into account projected impacts of climate change. Anything else would be incomprehensible to our citizens.

2. Commission statement on the correlation table (*Article 17, ex-Article 19*)

The Commission wishes to highlight its proposal, in accordance with the objectives of the inter-institutional agreement on better lawmaking, concerning the establishment by the Member States of tables that demonstrate the correlation between the Directive and the transposition measures taken by the Member States, so as to allow the Commission to verify the conformity of national measures with the provisions in Community legislation.

The Commission will not block a political agreement by the Council. The Commission however expects that this issue, which is of a horizontal nature, will be assessed jointly by the institutions.