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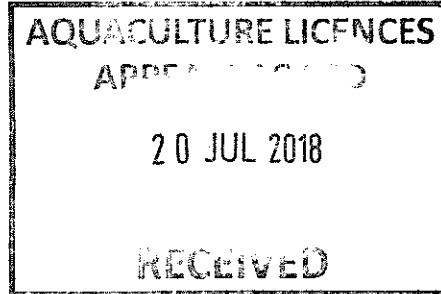
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Our Ref: AD / 2666

Your Ref:

ALAB - Aquaculture Licences Appeal Board

Mary O'Hara  
Kilminchy Court  
Dublin Road  
Portlaoise  
Co Laois R32 DTW5



18 July 2018  
By: Registered Post

**Re: ALAB Appeal re Aquaculture and Foreshore Licence to Dunmanus Bay Mussels Ltd  
AP6/1/2018**

Dear sirs,

On behalf of our clients, we make the following submissions in support of the appeal by Mr Victor Morgan and Ms Lynda Morgan.

## **1, Insufficient Flushing Rate and Proximity to Coastline**

Our clients agree with this submission which correctly notes the shallow depth of much of the area near the proposed activity, the scarcity of measurement data, the fact that data were collected at spring tides (which occur every second week and are double the flow at neap tides), the lack of data as to direction of current flow and likely deposition sites.

## **2, Damage to Local Bathing Area**

Our clients agree that the construction of the mussel farm would destroy the bathing area around Kilcromane.

It is noted that the Directive cited, Directive 76/160, has been replaced by Directive 2006/7 which is implemented by SI No 79 of 2008, the Bathing Water Quality Regulations.

The 2006 Directive does not define bathing waters, but Article 1 provides that the Directive

applies “to any element of surface water where the competent authority expects a large number of people to bathe and has not imposed a permanent bathing prohibition, or issued permanent advice against bathing (hereinafter bathing water).” It does not require the local authority to designate those waters.

This is an objective test. It may reasonably be expected that people will bathe in all sea waters around the Irish coast, save those that are inaccessible due to rocky coastlines or too dangerous due to strong currents. Relative to the population of the area, large numbers of people do bathe at Kilcomane. It is not correct for the Applicant to assert that the mere fact that they have not been designated means that these waters are not bathing waters: Cork County Council is in breach of its obligations to designate by failing to designate Kilcomane for the purposes of the Directive. In spite of that failure, there is an obligation on all organs of the State to protect waters that should have been designated as bathing waters. This obligation falls on ALAB for matters within its jurisdiction. It is not open to ALAB to grant a licence unless it is satisfied that the proposed activity will not reduce the quality of the bathing waters at Kilcomane. (See by analogy Case C -461/13 Bund.)

Our clients agree that the proposed aquaculture activity would cause pollution of the waters around Kilcomane. This would lead to an obligation on the State under Art 5(4)(a)(iii) to “take adequate measures to prevent, reduce or eliminate the causes of pollution,” and also a requirement to prohibit bathing until water conditions were improved. The same would arise under Art 4 of the Water Framework Directive, having regard to the decision in Case C-461/13 cited above.) In such circumstances the grantor of the Licence would be guilty of a sufficiently characterised breach of European Union law, which would give rise to state liability for damages suffered by our clients. In addition, it might be necessary to withdraw the licence, and this could give the Applicant a right to claim compensation for loss of the licence.

Copies of Directive 2006/7, SI No 79 of 2008 and Case C-461/13 are attached.

### **3, SAC / Habitats Directive Requirements**

Our clients agree that the requirements of the Habitats Directive have not been complied with, and have already set out their arguments in this respect.

The reported sightings of various species indicate the lack of comprehensive data on foot of which to screen out the requirement for appropriate assessment. The data before ALAB is insufficient to enable ALAB to determine beyond reasonable scientific doubt that the proposed activity would not have any significant effect on protected sites or species.


### **4, 5, Odours and Other Concerns**

Our clients share the concerns expressed by Mr and Ms Morgan, and adopt their submission.

## Alternatives

If, contrary to our clients' and the Mr and Ms Morgan's appeal submissions, ALAB should see fit to grant a licence, it is requested that a condition be included requiring removal and disposal of all equipment and infrastructure associated with the activity within a specified period of time, and requiring the applicant to furnish a bond, or make other financial provision, to the minister, before the activity commences, to cover the costs of such removal.

Yours faithfully,

  
Barry Doyle and Company

**DIRECTIVE 2006/7/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 15 February 2006**

**concerning the management of bathing water quality and repealing Directive 76/160/EEC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(3)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(4)</sup>, in the light of the joint text approved by the Conciliation Committee on 8 December 2005,

Whereas:

- (1) Building on the Commission's Communication on sustainable development, the European Council has singled out objectives as general guidance for future development in priority areas such as natural resources and public health.
- (2) Water is a scarce natural resource, the quality of which should be protected, defended, managed and treated as such. Surface waters in particular are renewable resources with a limited capacity to recover from adverse impacts from human activities.
- (3) Community policy on the environment should aim at a high level of protection, and contribute to pursuing the objectives of preserving, protecting and improving the quality of the environment and of protecting human health.

(4) In December 2000, the Commission adopted a Communication to the European Parliament and the Council on the development of a new bathing water policy and initiated a large-scale consultation of all interested and involved parties. The main outcome of this consultation was general support for the development of a new Directive based on the latest scientific evidence and paying particular attention to wider public participation.

(5) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme <sup>(5)</sup> contains a commitment to ensuring a high level of protection of bathing water, including by revising Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water <sup>(6)</sup>.

(6) Pursuant to the Treaty, in preparing policy on the environment the Community is, *inter alia*, to take account of available scientific and technical data. This Directive should use scientific evidence in implementing the most reliable indicator parameters for predicting microbiological health risk and to achieve a high level of protection. Further epidemiological studies should be undertaken urgently concerning the health risks associated with bathing, particularly in fresh water.

(7) In order to increase efficiency and wise use of resources, this Directive needs to be closely coordinated with other Community legislation on water, such as Council Directives 91/271/EEC of 21 May 1991 concerning urban waste-water treatment <sup>(7)</sup>, 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources <sup>(8)</sup> and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy <sup>(9)</sup>.

<sup>(1)</sup> OJ C 45 E, 25.2.2003, p. 127.

<sup>(2)</sup> OJ C 220, 16.9.2003, p. 39.

<sup>(3)</sup> OJ C 244, 10.10.2003, p. 31.

<sup>(4)</sup> Opinion of the European Parliament of 21 October 2003 (OJ C 82 E, 1.4.2004, p. 115). Council Common Position of 20 December 2004 (OJ C 111 E, 11.5.2005, p. 1) and Position of the European Parliament of 10 May 2005 (not yet published in the Official Journal). European Parliament Legislative Resolution of 18 January 2006 (not yet published in the Official Journal) and Council Decision of 20 December 2005.

<sup>(5)</sup> OJ L 242, 10.9.2002, p. 1.

<sup>(6)</sup> OJ L 31, 5.2.1976, p. 1. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

<sup>(7)</sup> OJ L 135, 30.5.1991, p. 40. Directive as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

<sup>(8)</sup> OJ L 375, 31.12.1991, p. 1. Directive as amended by Regulation (EC) No 1882/2003.

<sup>(9)</sup> OJ L 327, 22.12.2000, p. 1. Directive as amended by Decision No 2455/2001/EC (OJ L 331, 15.12.2001, p. 1).

- (8) Appropriate information on planned measures and progress on implementation should be disseminated to stakeholders. The public should receive appropriate and timely information on the results of the monitoring of bathing water quality and risk management measures in order to prevent health hazards, especially in the context of predictable short-term pollution or abnormal situations. New technology that allows the public to be informed in an efficient and comparable way on bathing waters across the Community should be applied.
- (9) For the purpose of monitoring, harmonised methods and practices of analysis need to be applied. Observation and quality assessment over an extended period are necessary in order to achieve a realistic bathing water classification.
- (10) Compliance should be a matter of appropriate management measures and quality assurance, not merely of measuring and calculation. A system of bathing water profiles is therefore appropriate to provide a better understanding of risks as a basis for management measures. In parallel, particular attention should be attached to adherence to quality standards and coherent transition from Directive 76/160/EEC.
- (11) On 17 February 2005 the Community ratified the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention). It is therefore appropriate for this Directive to include provisions on public access to information and to provide for public participation in its implementation to supplement Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information<sup>(1)</sup> and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment<sup>(2)</sup>.
- (12) Since the objectives of this Directive, namely the attainment by the Member States, on the basis of common standards, of a good bathing water quality and a high level of protection throughout the Community, cannot be sufficiently achieved by the Member States and can be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (13) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(3)</sup>.
- (14) The continued importance of a Community bathing water policy is evident each bathing season as it protects the public from accidental and chronic pollution discharged in or near Community bathing areas. The overall quality of bathing waters has improved considerably since Directive 76/160/EEC came into force. However, that Directive reflects the state of knowledge and experience of the early 1970. Patterns of bathing water use have since changed, as has the state of scientific and technical knowledge. Therefore, that Directive should be repealed,

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

#### Purpose and scope

1. This Directive lays down provisions for:
  - (a) the monitoring and classification of bathing water quality;
  - (b) the management of bathing water quality; and
  - (c) the provision of information to the public on bathing water quality.
2. The purpose of this Directive is to preserve, protect and improve the quality of the environment and to protect human health by complementing Directive 2000/60/EC.
3. This Directive shall apply to any element of surface water where the competent authority expects a large number of people to bathe and has not imposed a permanent bathing prohibition, or issued permanent advice against bathing (hereinafter bathing water). It shall not apply to:
  - (a) swimming pools and spa pools;
  - (b) confined waters subject to treatment or used for therapeutic purposes;

<sup>(1)</sup> OJ L 41, 14.2.2003, p. 26.

<sup>(2)</sup> OJ L 156, 25.6.2003, p. 17.

<sup>(3)</sup> OJ L 184, 17.7.1999, p. 23.

(c) artificially created confined waters separated from surface water and groundwater.

(h) taking action to prevent bathers' exposure to pollution;

#### Article 2

#### Definitions

For the purposes of this Directive, the following definitions shall apply:

1. the terms 'surface water', 'groundwater', 'inland water', 'transitional waters', 'coastal water' and 'river basin' have the same meaning as in Directive 2000/60/EC;

2. 'competent authority' means the authority or authorities that a Member State has designated to ensure compliance with the requirements of this Directive or any other authority or body to which that role has been delegated;

3. 'permanent' means, in relation to a bathing prohibition or advice against bathing, lasting for at least one whole bathing season;

4. 'large number' means, in relation to bathers, a number that the competent authority considers to be large having regard, in particular, to past trends or to any infrastructure or facilities provided, or other measures taken, to promote bathing;

5. 'pollution' means the presence of microbiological contamination or other organisms or waste affecting bathing water quality and presenting a risk to bathers' health as referred to in Articles 8 and 9 and Annex I, column A;

6. 'bathing season' means the period during which large numbers of bathers can be expected.

7. 'management measures' means the following measures undertaken with respect to bathing water:

(a) establishing and maintaining a bathing water profile;

(b) establishing a monitoring calendar;

(c) monitoring bathing water;

(d) assessing bathing water quality;

(e) classifying bathing water;

(f) identifying and assessing causes of pollution that might affect bathing waters and impair bathers' health;

(g) giving information to the public;

(i) taking action to reduce the risk of pollution;

8. 'short-term pollution' means microbiological contamination as referred to in Annex I, column A, that has clearly identifiable causes, is not normally expected to affect bathing water quality for more than approximately 72 hours after the bathing water quality is first affected and for which the competent authority has established procedures to predict and deal with as set out in Annex II;

9. 'abnormal situation' means an event or combination of events impacting on bathing water quality at the location concerned and not expected to occur on average more than once every four years;

10. 'set of bathing water quality data' means data obtained in accordance with Article 3;

11. 'bathing water quality assessment' means the process of evaluating bathing water quality, using the assessment method defined in Annex II;

12. 'cyanobacterial proliferation' means an accumulation of cyanobacteria in the form of a bloom, mat or scum;

13. the term 'public concerned' has the same meaning as in Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment <sup>(1)</sup>.

#### CHAPTER II

#### QUALITY AND MANAGEMENT OF BATHING WATER

#### Article 3

#### Monitoring

1. Member States shall annually identify all bathing waters and define the length of the bathing season. They shall do so for the first time before the start of the first bathing season after 24 March 2008.

2. Member States shall ensure that monitoring of the parameters set out in Annex I, column A, takes place in accordance with Annex IV.

<sup>(1)</sup> OJ L 175, 5.7.1985, p. 40. Directive as last amended by Directive 2003/35/EC of the European Parliament and of the Council (OJ L 156, 25.6.2003, p. 17).

3. The monitoring point shall be the location within the bathing water where:

- (a) most bathers are expected; or
- (b) the greatest risk of pollution is expected, according to the bathing water profile.

4. A monitoring calendar for each bathing water shall be established before the start of each bathing season and for the first time before the start of the third full bathing season after the entry into force of this Directive. Monitoring shall take place no later than four days after the date specified in the monitoring calendar.

5. Member States may introduce monitoring of the parameters set out in Annex I, column A, during the first full bathing season following the entry into force of this Directive. In that case, monitoring shall take place with the frequency specified in Annex IV. The results of such monitoring may be used to build up the sets of bathing water quality data referred to in Article 4. As soon as Member States introduce monitoring under this Directive, monitoring of the parameters set out in the Annex to Directive 76/160/EEC may cease.

6. Samples taken during short-term pollution may be disregarded. They shall be replaced by samples taken in accordance with Annex IV.

7. During abnormal situations, the monitoring calendar referred to in paragraph 4 may be suspended. It shall be resumed as soon as possible after the end of the abnormal situation. New samples shall be taken as soon as possible after the end of the abnormal situation to replace samples that are missing due to the abnormal situation.

8. Member States shall report any suspension of the monitoring calendar to the Commission, giving the reasons for the suspension. They shall provide such reports on the occasion of the next annual report provided for in Article 13 at the latest.

9. Member States shall ensure that the analysis of bathing water quality takes place in accordance with the reference methods specified in Annex I and the rules set out in Annex V. However, Member States may permit the use of other methods or rules if they can demonstrate that the results obtained are equivalent to those obtained using the methods specified in Annex I and the rules set out in Annex V. Member States that permit the use of such equivalent methods or rules shall provide the Commission with all relevant information about the methods or rules used and their equivalence.

#### Article 4

##### Bathing water quality assessment

1. Member States shall ensure that sets of bathing water quality data are compiled through the monitoring of the parameters set out in Annex I, column A.

2. Bathing water quality assessments shall be carried out:

- (a) in relation to each bathing water;
- (b) after the end of each bathing season;
- (c) on the basis of the set of bathing water quality data compiled in relation to that bathing season and the three preceding bathing seasons; and
- (d) in accordance with the procedure set out in Annex II.

However, a Member State may decide to carry out bathing water quality assessments on the basis of the set of bathing water quality data compiled in relation to the preceding three bathing seasons only. If it so decides, it shall notify the Commission beforehand. It shall also notify the Commission if it subsequently decides to revert to carrying out assessments on the basis of four bathing seasons. Member States may not change the applicable assessment period more than once every five years.

3. Sets of bathing water data used to carry out bathing water quality assessments shall always comprise at least 16 samples or, in the special circumstances referred to in Annex IV, paragraph 2, 12 samples.

4. However, provided that either:

- the requirement of paragraph 3 is satisfied, or
- the set of bathing water data used to carry out the assessment comprises at least eight samples, in the case of bathing waters with a bathing season not exceeding eight weeks,

a bathing water quality assessment may be carried out on the basis of a set of bathing water quality data relating to fewer than four bathing seasons if:

- (a) the bathing water is newly identified;
- (b) any changes have occurred that are likely to affect the classification of the bathing water in accordance with Article 5, in which case the assessment shall be carried out on the basis of a set of bathing water quality data consisting solely of the results for samples collected since the changes occurred; or
- (c) the bathing water had already been assessed in accordance with Directive 76/160/EEC, in which case equivalent data gathered under that Directive shall be used and, for this purpose, parameters 2 and 3 of the Annex to Directive 76/160/EEC shall be deemed to be equivalent to parameters 2 and 1 of column A of Annex I to this Directive.

5. Member States may subdivide or group together existing bathing waters in the light of bathing water quality assessments. They may group existing bathing waters together only if these waters:

- (a) are contiguous;
- (b) received similar assessments for the preceding four years in accordance with paragraphs 2, 3 and 4(c); and
- (c) have bathing water profiles all of which identify common risk factors or the absence thereof.

#### Article 5

### Classification and quality status of bathing waters

1. As a result of the bathing water quality assessment carried out in accordance with Article 4, Member States shall, in accordance with the criteria set out in Annex II, classify bathing water as:

- (a) 'poor';
- (b) 'sufficient';
- (c) 'good'; or
- (d) 'excellent'.

2. The first classification according to the requirements of this Directive shall be completed by the end of the 2015 bathing season.

3. Member States shall ensure that, by the end of the 2015 bathing season, all bathing waters are at least 'sufficient'. They shall take such realistic and proportionate measures as they consider appropriate with a view to increasing the number of bathing waters classified as 'excellent' or 'good'.

4. However, notwithstanding the general requirement of paragraph 3, bathing waters may temporarily be classified as 'poor' and still remain in compliance with this Directive. In such cases, Member States shall ensure that the following conditions are satisfied:

- (a) in respect of each bathing water classified as 'poor', the following measures shall be taken with effect from the bathing season that follows its classification:
  - (i) adequate management measures, including a bathing prohibition or advice against bathing, with a view to preventing bathers' exposure to pollution;
  - (ii) identification of the causes and reasons for the failure to achieve 'sufficient' quality status;

(iii) adequate measures to prevent, reduce or eliminate the causes of pollution; and

(iv) in accordance with Article 12, alerting the public by a clear and simple warning sign and informing them of the causes of the pollution and measures taken, on the basis of the bathing water profile.

- (b) If a bathing water is classified as 'poor' for five consecutive years, a permanent bathing prohibition or permanent advice against bathing shall be introduced. However, a Member State may introduce a permanent bathing prohibition or permanent advice against bathing before the end of the five-year period if it considers that the achievement of 'sufficient' quality would be infeasible or disproportionately expensive.

#### Article 6

### Bathing water profiles

1. Member States shall ensure that bathing water profiles are established in accordance with Annex III. Each bathing water profile may cover a single bathing water or more than one contiguous bathing waters. Bathing water profiles shall be established for the first time by 24 March 2011.

2. Bathing water profiles shall be reviewed and updated as provided for in Annex III.

3. When establishing, reviewing and updating bathing water profiles, adequate use shall be made of data obtained from monitoring and assessments carried out pursuant to Directive 2000/60/EC that are relevant for this Directive.

#### Article 7

### Management measures in exceptional circumstances

Member States shall ensure that timely and adequate management measures are taken when they are aware of unexpected situations that have, or could reasonably be expected to have, an adverse impact on bathing water quality and on bathers' health. Such measures shall include information to the public and, if necessary, a temporary bathing prohibition.

#### Article 8

### Cyanobacterial risks

1. When the bathing water profile indicates a potential for cyanobacterial proliferation, appropriate monitoring shall be carried out to enable timely identification of health risks.

2. When cyanobacterial proliferation occurs and a health risk has been identified or presumed, adequate management measures shall be taken immediately to prevent exposure, including information to the public.



## Article 9

**Other parameters**

1. When the bathing water profile indicates a tendency for proliferation of macro-algae and/or marine phytoplankton, investigations shall be undertaken to determine their acceptability and health risks and adequate management measures shall be taken, including information to the public.

2. Bathing waters shall be inspected visually for pollution such as tarry residues, glass, plastic, rubber or any other waste. When such pollution is found, adequate management measures shall be taken, including, if necessary, information to the public.

## Article 10

**Cooperation on transboundary waters**

Wherever a river basin gives rise to transboundary impacts on bathing water quality, the Member States involved shall cooperate as appropriate in implementing this Directive, including through the appropriate exchange of information and joint action to control those impacts.

## CHAPTER III

**EXCHANGE OF INFORMATION**

## Article 11

**Public participation**

Member States shall encourage public participation in the implementation of this Directive and shall ensure the provision of opportunities for the public concerned:

- to find out how to participate, and
- to formulate suggestions, remarks or complaints.

This shall relate, in particular, to the establishment, review and updating of lists of bathing waters in accordance with Article 3(1). Competent authorities shall take due account of any information obtained.

## Article 12

**Information to the public**

1. Member States shall ensure that the following information is actively disseminated and promptly made available during the bathing season in an easily accessible place in the near vicinity of each bathing water:

- (a) the current bathing water classification and any bathing prohibition or advice against bathing referred to in this Article by means of a clear and simple sign or symbol;
- (b) a general description of the bathing water, in non-technical language, based on the bathing water profile established in accordance with Annex III;
- (c) in the case of bathing waters subject to short-term pollution:
  - notification that the bathing water is subject to short-term pollution,
  - an indication of the number of days on which bathing was prohibited or advised against during the preceding bathing season because of such pollution, and
  - a warning whenever such pollution is predicted or present,
- (d) information on the nature and expected duration of abnormal situations during such events;
- (e) whenever bathing is prohibited or advised against, a notice advising the public and giving reasons;
- (f) whenever a permanent bathing prohibition or permanent advice against bathing is introduced, the fact that the area concerned is no longer a bathing water and the reasons for its declassification; and
- (g) an indication of sources of more complete information in accordance with paragraph 2.

2. Member States shall use appropriate media and technologies, including the Internet, to disseminate actively and promptly the information concerning bathing waters referred to in paragraph 1 and also the following information in several languages, when appropriate:

- (a) a list of bathing waters;

- (b) the classification of each bathing water over the last three years and its bathing water profile, including the results of monitoring carried out in accordance with this Directive since the last classification;
- (c) in the case of bathing waters classified as being 'poor', information on the causes of pollution and measures taken with a view to preventing bathers' exposure to pollution and to tackle its causes as referred to in Article 5(4); and
- (d) in the case of bathing waters subject to short-term pollution, general information on:
- conditions likely to lead to short-term pollution,
  - the likelihood of such pollution and its likely duration,
  - the causes of the pollution and measures taken with a view to preventing bathers' exposure to pollution and to tackle its causes.

The list referred to in point (a) shall be available each year before the start of the bathing season. The results of the monitoring referred to in point (b) shall be made available on the Internet upon completion of the analysis.

3. The information referred to in paragraphs 1 and 2 shall be disseminated as soon as it is available and with effect from the start of the fifth bathing season after 24 March 2008.

4. Member States and the Commission shall, wherever possible, provide information to the public using geo-referenced technology and present it in a clear and coherent manner, in particular through the use of signs and symbols.

#### Article 13

##### Reports

1. Member States shall provide the Commission with the results of the monitoring and with the bathing water quality assessment for each bathing water, as well as with a description of significant management measures taken. Member States shall provide this information annually by 31 December in relation to the preceding bathing season. They shall begin providing it once the first bathing water quality assessment has been carried out in accordance with Article 4.

2. Member States shall notify the Commission annually before the start of the bathing season of all waters identified as bathing waters, including the reason for any change compared to the preceding year. They shall do so for the first time before the start of the first bathing season after 24 March 2008.

3. When monitoring of bathing water has started under this Directive, annual reporting to the Commission in accordance with paragraph 1 shall continue to take place pursuant to Directive 76/160/EEC until a first assessment can be made under this Directive. During that period, parameter 1 of the Annex to Directive 76/160/EEC shall not be taken into account in the annual report, and parameters 2 and 3 of the Annex to Directive 76/160/EEC shall be assumed to be equivalent to parameters 2 and 1 of column A of Annex I to this Directive.

4. The Commission shall publish an annual summary report on bathing water quality in the Community, including bathing water classifications, conformity with this Directive and significant management measures undertaken. The Commission shall publish this report by 30 April every year, including via the Internet. When establishing the report the Commission shall, wherever possible, make best use of data collection, assessment and presentation systems under related Community legislation, in particular Directive 2000/60/EC.

#### CHAPTER IV

##### FINAL PROVISIONS

#### Article 14

##### Report and review

1. The Commission shall, by 2008, submit a report to the European Parliament and to the Council. The report shall have particular regard to:

- (a) the results of an appropriate European epidemiological study conducted by the Commission in collaboration with Member States;
- (b) other scientific, analytical and epidemiological developments relevant to the parameters for bathing water quality, including in relation to viruses; and
- (c) World Health Organisation recommendations.

2. Member States shall, by the end of 2014, submit written observations to the Commission on that report including on the need for any further research or assessments which may be required to assist the Commission in its review of this Directive under paragraph 3.

3. In the light of the report, the Member States' written observations and an extended impact assessment and bearing in mind experience gained from implementing this Directive, the Commission shall, no later than 2020, review this Directive with particular regard to the parameters for bathing water quality, including whether it would be appropriate to phase out the 'sufficient' classification or modify the applicable standards, and shall present if necessary appropriate legislative proposals in accordance with Article 251 of the Treaty.

#### Article 15

#### Technical adaptations and implementing measures

1. It shall be decided in accordance with the procedure referred to in Article 16(2):

- (a) to specify the EN/ISO standard on the equivalence of microbiological methods for the purposes of Article 3(9);
- (b) to lay down detailed rules for the implementation of Articles 8(1), 12(1)(a) and 12(4);
- (c) to adapt the methods of analysis for the parameters set out in Annex I in the light of scientific and technical progress;
- (d) to adapt Annex V in the light of scientific and technical progress;
- (e) to lay down guidelines for a common method for the assessment of single samples.

2. The Commission shall present a draft of the measures to be taken in accordance with paragraph 1(b) with respect to Article 12(1)(a) by 24 March 2010. Before doing so, it shall consult representatives of Member States, regional and local authorities, relevant tourist and consumer organisations and other interested parties. After the adoption of relevant rules, it shall publicise them via the Internet.

#### Article 16

#### Committee procedure

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

#### Article 17

#### Repeal

1. Directive 76/160/EEC is hereby repealed with effect from 31 December 2014. Subject to paragraph 2, this repeal shall be without prejudice to Member States' obligations concerning the time limits for transposition and application set out in the repealed Directive.

2. As soon as a Member State has taken all necessary legal, administrative and practical measures to comply with this Directive, this Directive will be applicable, replacing Directive 76/160/EEC.

3. References to the repealed Directive 76/160/EEC shall be construed as being made to this Directive.

#### Article 18

#### Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 24 March 2008. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the texts of the main provisions of national law that they adopt in the field covered by this Directive.

Article 19

Article 20

**Addressees**

**Entry into force**

This Directive is addressed to Member States.

Done at Strasbourg, 15 February 2006.

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*For the European Parliament*

*For the Council*

*The President*

*The President*

J. BORRELL FONTELLES

H. WINKLER

## ANNEX I

## For inland waters

	A	B	C	D	E
	Parameter	Excellent quality	Good quality	Sufficient	Reference methods of analysis
1	Intestinal enterococci (cfu/100 ml)	200 (*)	400 (*)	330 (**)	ISO 7899-1 or ISO 7899-2
2	Escherichia coli (cfu/100 ml)	500 (*)	1 000 (*)	900 (**)	ISO 9308-3 or ISO 9308-1

(\*) Based upon a 95-percentile evaluation. See Annex II.

(\*\*) Based upon a 90-percentile evaluation. See Annex II.

## For coastal waters and transitional waters

	A	B	C	D	E
	Parameter	Excellent quality	Good quality	Sufficient	Reference methods of analysis
1	Intestinal enterococci (cfu/100 ml)	100 (*)	200 (*)	185 (**)	ISO 7899-1 or ISO 7899-2
2	Escherichia coli (cfu/100 ml)	250 (*)	500 (*)	500 (**)	ISO 9308-3 or ISO 9308-1

(\*) Based upon a 95-percentile evaluation. See Annex II.

(\*\*) Based upon a 90-percentile evaluation. See Annex II.

## ANNEX II

**Bathing water assessment and classification****1. Poor quality**

Bathing waters are to be classified as 'poor' if, in the set of bathing water quality data for the last assessment period <sup>(a)</sup>, the percentile values <sup>(b)</sup> for microbiological enumerations are worse <sup>(c)</sup> than the 'sufficient' values set out in Annex I, column D.

**2. Sufficient quality**

Bathing waters are to be classified as 'sufficient':

1. if, in the set of bathing water quality data for the last assessment period, the percentile values for microbiological enumerations are equal to or better <sup>(d)</sup> than the 'sufficient' values set out in Annex I, column D; and
2. if the bathing water is subject to short-term pollution, on condition that:
  - (i) adequate management measures are being taken, including surveillance, early warning systems and monitoring, with a view to preventing bathers' exposure by means of a warning or, where necessary, a bathing prohibition;
  - (ii) adequate management measures are being taken to prevent, reduce or eliminate the causes of pollution; and
  - (iii) the number of samples disregarded in accordance with Article 3(6) because of short-term pollution during the last assessment period represented no more than 15 % of the total number of samples provided for in the monitoring calendars established for that period, or no more than one sample per bathing season, whichever is the greater.

**3. Good quality**

Bathing waters are to be classified as 'good':

1. if, in the set of bathing water quality data for the last assessment period, the percentile values for microbiological enumerations are equal to or better <sup>(e)</sup> than the 'good quality' values set out in Annex I, column C; and
2. if the bathing water is subject to short-term pollution, on condition that:
  - (i) adequate management measures are being taken, including surveillance, early warning systems and monitoring, with a view to preventing bathers' exposure, by means of a warning or, where necessary, a bathing prohibition;
  - (ii) adequate management measures are being taken to prevent, reduce or eliminate the causes of pollution; and
  - (iii) the number of samples disregarded in accordance with Article 3(6) because of short-term pollution during the last assessment period represented no more than 15 % of the total number of samples provided for in the monitoring calendars established for that period, or no more than one sample per bathing season, whichever is the greater.

#### 4. Excellent quality

Bathing waters are to be classified as 'excellent':

1. if, in the set of bathing water quality data for the last assessment period, the percentile values for microbiological enumerations are equal to or better than the 'excellent quality' values set out in Annex I, column B; and
2. if the bathing water is subject to short-term pollution, on condition that:
  - (i) adequate management measures are being taken, including surveillance, early warning systems and monitoring, with a view to preventing bathers' exposure, by means of a warning or, where necessary, a bathing prohibition;
  - (ii) adequate management measures are being taken to prevent, reduce or eliminate the causes of pollution; and
  - (iii) the number of samples disregarded in accordance with Article 3(6) because of short-term pollution during the last assessment period represented no more than 15 % of the total number of samples provided for in the monitoring calendars established for that period, or no more than one sample per bathing season, whichever is the greater.

#### NOTES

- (<sup>a</sup>) 'Last assessment period' means the last four bathing seasons or, when applicable, the period specified in Article 4(2) or (4).
- (<sup>b</sup>) Based upon percentile evaluation of the  $\log_{10}$  normal probability density function of microbiological data acquired from the particular bathing water, the percentile value is derived as follows:
- (i) Take the  $\log_{10}$  value of all bacterial enumerations in the data sequence to be evaluated. (If a zero value is obtained, take the  $\log_{10}$  value of the minimum detection limit of the analytical method used instead.)
  - (ii) Calculate the arithmetic mean of the  $\log_{10}$  values ( $\mu$ ).
  - (iii) Calculate the standard deviation of the  $\log_{10}$  values ( $\sigma$ ).
- The upper 90-percentile point of the data probability density function is derived from the following equation:  
upper 90-percentile =  $\text{antilog}(\mu + 1,282 \sigma)$ .
- The upper 95-percentile point of the data probability density function is derived from the following equation:  
upper 95-percentile =  $\text{antilog}(\mu + 1,65 \sigma)$ .
- (<sup>c</sup>) 'Worse' means with higher concentration values expressed in cfu/100 ml.
- (<sup>d</sup>) 'Better' means with lower concentration values expressed in cfu/100 ml.

## ANNEX III

**The bathing water profile**

1. The bathing water profile referred to in Article 6 is to consist of:
  - (a) a description of the physical, geographical and hydrological characteristics of the bathing water, and of other surface waters in the catchment area of the bathing water concerned, that could be a source of pollution, which are relevant to the purpose of this Directive and as provided for in Directive 2000/60/EC;
  - (b) an identification and assessment of causes of pollution that might affect bathing waters and impair bathers' health;
  - (c) an assessment of the potential for proliferation of cyanobacteria;
  - (d) an assessment of the potential for proliferation of macro-algae and/or phytoplankton;
  - (e) if the assessment under point (b) shows that there is a risk of short-term pollution, the following information:
    - the anticipated nature, frequency and duration of expected short-term pollution,
    - details of any remaining causes of pollution, including management measures taken and the time schedule for their elimination,
    - management measures taken during short-term pollution and the identity and contact details of bodies responsible for taking such action,
  - (f) the location of the monitoring point.
2. In the case of bathing waters classified as 'good', 'sufficient' or 'poor', the bathing water profile is to be reviewed regularly to assess whether any of the aspects listed in paragraph 1 have changed. If necessary, it is to be updated. The frequency and scope of reviews is to be determined on the basis of the nature and severity of the pollution. However, they are to comply with at least the provisions and to take place with at least the frequency specified in the following table.

Bathing water classification	'Good'	'Sufficient'	'Poor'
Reviews are to take place at least every	four years	three years	two years
Aspects to be reviewed (points of paragraph 1)	(a) to (f)	(a) to (f)	(a) to (f)

In the case of bathing waters previously classified as 'excellent', the bathing water profiles need be reviewed and, if necessary, updated only if the classification changes to 'good', 'sufficient' or 'poor'. The review is to cover all aspects mentioned in paragraph 1.

3. In the event of significant construction works or significant changes in the infrastructure in or in the vicinity of the bathing water, the bathing water profile is to be updated before the start of the next bathing season.
4. The information referred to in paragraph 1(a) and (b) is to be provided on a detailed map whenever practicable.
5. Other relevant information may be attached or included if the competent authority considers it appropriate.



## ANNEX IV

**Bathing water monitoring**

1. One sample is to be taken shortly before the start of each bathing season. Taking account of this extra sample and subject to paragraph 2, no fewer than four samples are to be taken and analysed per bathing season.
  2. However, only three samples need be taken and analysed per bathing season in the case of a bathing water that either:
    - (a) has a bathing season not exceeding eight weeks; or
    - (b) is situated in a region subject to special geographical constraints.
  3. Sampling dates are to be distributed throughout the bathing season, with the interval between sampling dates never exceeding one month.
  4. In the event of short-term pollution, one additional sample is to be taken to confirm that the incident has ended. This sample is not to be part of the set of bathing water quality data. If necessary to replace a disregarded sample, an additional sample is to be taken seven days after the end of the short-term pollution.
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## ANNEX V

**Rules on the handling of samples for microbiological analyses****1. Sampling point**

Where possible, samples are to be taken 30 centimetres below the water's surface and in water that is at least one metre deep.

**2. Sterilisation of sample bottles**

Sample bottles are:

- to undergo sterilisation in an autoclave for at least 15 minutes at 121 °C, or
- to undergo dry sterilisation at between 160 °C and 170 °C for at least one hour, or
- to be irradiated sample containers obtained directly from manufacturer.

**3. Sampling**

The volume of the sampling bottle/container is to depend on the quantity of water needed for each parameter to be tested. The minimum content is generally 250 ml.

Sample containers are to be of transparent and non-coloured material (glass, polyethene or polypropylene).

In order to prevent accidental contamination of the sample, the sampler is to employ an aseptic technique to maintain the sterility of the sample bottles. There is no further need for sterile equipment (such as sterile surgical gloves or tongs or sample pole) if this is done properly.

The sample is to be clearly identified in indelible ink on the sample and on the sampling form.

**4. Storage and transport of samples before analysis**

Water samples are to be protected at all stages of transport from exposure to light, in particular direct sunlight.

The sample is to be conserved at a temperature of around 4 °C, in a cool box or refrigerator (depending on climate) until arrival at the laboratory. If the transport to the laboratory is likely to take more than four hours, then transport in a refrigerator is required.

The time between sampling and analysis is to be kept as short as possible. It is recommended that samples be analysed on the same working day. If this is not possible for practical reasons, then the samples shall be processed within no more than 24 hours. In the meantime, they shall be stored in the dark and at a temperature of 4 °C ± 3 °C.



STATUTORY INSTRUMENTS

**S.I. No. 79 of 2008**

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**BATHING WATER QUALITY REGULATIONS 2008**

**(Prn. A8/0385)**

BATHING WATER QUALITY REGULATIONS 2008

Regulation

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Schedule 1

BATHING WATER PROFILE

Schedule 2

MONITORING CALENDAR AND SAMPLING

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Schedule 6

BATHING WATER ASSESSMENT AND CLASSIFICATION

## BATHING WATER QUALITY REGULATIONS 2008

WHEREAS, I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, having regard to section 3(3) of the European Communities Act 1972 (as inserted by section 2 of the European Communities Act 2007) (hereinafter referred to as the Act of 1972), consider it necessary for the purpose of giving full effect to Directive 2000/60/EC of 23 October 2000<sup>1</sup> and Directive 2006/7/EC of 15 February 2006<sup>2</sup> make provision for offences under the following Regulations to be prosecuted on indictment:

AND WHEREAS, I consider that it is necessary, having further regard to section 3(3) of the Act of 1972, and for the purpose of ensuring that penalties in respect of an offence prosecuted in that manner under the following Regulations are effective, proportionate and have a deterrent effect, having regard to the acts or omissions of which the offence consists, to make such provision in the following Regulations:

NOW THEREFORE, I, JOHN GORMLEY, Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No.27 of 1972) as amended by the European Communities Act 2007 (No. 18 of 2007) and for the purpose of giving effect to Directive 2000/60/EC of 23 October 2000 and Directive 2006/7/EC of 15 February 2006, hereby make the following Regulations:

*Citation*

1. These Regulations may be cited as the Bathing Water Quality Regulations 2008.

*Interpretation*

2. (1) Any word or expression which is used in these Regulations and is also used in the Directive has the same meaning as in the Directive except where these Regulations provide otherwise.

(2) In these Regulations, save where the context otherwise requires—

“the 1992 Regulations” means the Quality of Bathing Waters Regulations, 1992 (S.I. No. 155 of 1992);

“abnormal situation” means an event or combination of events impacting on bathing water quality at the location concerned and not expected to occur on average more than once every four years;

<sup>1</sup>OJ L 327, 22.12.2000, p. 1

<sup>2</sup>OJ L 64, 4.3.2006, p.37

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 28th March, 2008.*

“bathing water” means water identified by a local authority in accordance with Regulation 4;

“bathing season” in any year means the period from 1 June to 15 September in that year;

“the Commission” means the Commission of the European Communities;

“cyanobacterial proliferation” means an accumulation of cyanobacteria in the form of a bloom, mat or scum;

“the Directive” means Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC;

“the EPA” means the Environmental Protection Agency;

“local authority” means a city council or a county council;

“management measures” means the following measures undertaken with respect to bathing water:

- (a) establishing and maintaining a bathing water profile;
- (b) establishing a monitoring calendar;
- (c) monitoring a bathing water;
- (d) assessing bathing water quality;
- (e) classifying bathing water;
- (f) identifying and assessing causes of pollution that might affect bathing waters and impair the health of bathers;
- (g) giving information to the public;
- (h) taking action to prevent the exposure of bathers to pollution;
- (i) taking action to reduce the risk of pollution;

“the Minister” means the Minister for the Environment, Heritage and Local Government;

“permanent” means, in relation to a bathing prohibition or advice against bathing, lasting for at least one whole bathing season;

“pollution” means the presence of microbiological contamination or other organisms or waste affecting bathing water quality and presenting a risk to the health of bathers as referred to in Regulation 15, Schedule 3 and column A of Schedule 4;

“set of bathing water quality data” means data compiled in accordance with Regulations 7 and 10;

“short-term pollution” means microbiological contamination as referred to in Schedule 4, column A that has clearly identifiable causes, is not normally expected to affect bathing water quality for more than approximately 72 hours after the bathing water quality is first affected and for which the relevant local authority has established procedures to predict and deal with as set out in Schedule 6.

*Application*

3. These Regulations do not apply to—

- (a) swimming pools and spa pools;
- (b) confined waters subject to treatment or used for therapeutic purposes, or
- (c) artificially created confined waters separated from surface water and groundwater.

*Identification of bathing waters*

4. (1) A local authority shall, in accordance with this Regulation, on or before 24 March in each year identify all bathing waters in relation to the bathing season in that year and shall notify the EPA, in such form and in such manner as may be specified by the EPA, of the bathing waters so identified including the reason for any change compared to the previous year.

(2) The bathing waters to be identified by a local authority shall be all elements of surface water where the authority expects a large number of people to bathe and where such water—

- (a) lies within the functional area of the authority, or
- (b) is immediately contiguous to the functional area of the local authority and does not lie within the functional area of any local authority.

(3) The bathing waters to be identified by a local authority in respect of a bathing season shall not include any waters in relation to which the authority has issued a permanent prohibition or advice against bathing, and such prohibition or advice relates to the whole bathing season.

(4) A local authority shall take appropriate measures in accordance with Regulation 17 for public participation in the identification of bathing waters.

(5) (a) A local authority, or two or more local authorities acting by agreement, may subdivide or, subject to subparagraph (b), group together existing bathing waters in the light of the bathing water quality assessments carried out in accordance with Regulation 11.

(b) Bathing waters shall not be grouped together unless those waters—



- (i) are contiguous;
- (ii) received similar assessments for the preceding four years in accordance with paragraphs (1), (2), (3) and (4)(c) of Regulation 11, and
- (iii) have bathing water profiles established in accordance with Regulation 5 all of which identify common risk factors or the absence thereof.

(6) In this Regulation “large number” means, in relation to bathers, a number that the local authority considers to be large having regard, in particular, to past trends or to any infrastructure or facilities provided, or other measures taken, to promote bathing.

(7) Bathing waters shall be first identified and notified to the EPA by a local authority in accordance this Regulation not later than 24 March 2011.

*Bathing water profile*

5. (1) A local authority shall, in relation to each bathing water identified by the authority in accordance with Regulation 4, establish a bathing water profile in accordance with this Regulation and Schedule 1 and shall send a copy of the profile to the EPA in such form and in such manner as may be specified by the EPA.

(2) A bathing water profile may cover one bathing water or two or more contiguous bathing waters.

(3) A bathing water profile shall be reviewed and updated by a local authority in accordance with Schedule 1 and, following each such review, the local authority shall send to the EPA, in such form and manner as may be specified by the EPA, a report of the review and, where applicable, the updated bathing water profile.

(4) Where it is necessary in accordance with Schedule 1 to review or update a bathing water profile in any year, a local authority shall, as far as is practicable, not later than 24 March in that year—

- (a) carry out the review and update, and
- (b) send a report of the review and, where appropriate, a copy of the updated profile to the EPA.

(5) A report of a review shall indicate the measures taken to improve water quality at a bathing water during the period since the most recent review or update of the bathing water profile, the effectiveness of those measures and the basis for any additional measures proposed.

(6) A bathing water profile shall be first established in accordance with this Regulation by a local authority, and a copy of the profile sent by the authority to the EPA, not later than 24 March 2011 in relation to each bathing water

identified by the authority on or before that day in accordance with Regulation 4.

*Monitoring calendar*

6. (1) A local authority shall, on or before 24 March in each year in relation to each bathing water identified by the authority in accordance with Regulation 4, establish a monitoring calendar in accordance with this Regulation and Schedule 2 and send a copy of the calendar to the EPA in such form and such manner as may be specified by the EPA.

(2) A monitoring calendar shall be first established in accordance with this Regulation by a local authority, and a copy of the calendar sent by the authority to the EPA, not later than 24 March 2011 in relation to each bathing water identified by the authority on or before that day in accordance with Regulation 4.

*Duty of local authority to monitor bathing water*

7. (1) A local authority shall, in relation to each bathing water identified by the authority in accordance with Regulation 4, carry out the monitoring, inspections and investigations specified in Schedule 3 and shall compile sets of bathing water quality data on the basis of such monitoring in such form and manner as may be specified by the EPA.

(2) The monitoring specified in paragraph (1) shall, subject to Regulation 8 and Schedule 2, be carried out in relation to a bathing water in accordance with the monitoring calendar established for that bathing water.

(3) The monitoring point in a bathing water shall be the location within the bathing water where—

- (a) most bathers are expected, or
- (b) the greatest risk of pollution is expected in accordance with the bathing water profile.

(4) Samples taken during short-term pollution may be disregarded and, where samples are so disregarded, they shall be replaced by samples taken in accordance with Schedule 2.

(5) A local authority shall, in addition to the monitoring specified in paragraph (1), carry out such additional monitoring in relation to bathing waters as may be specified by the EPA in accordance with Regulation 20 and shall compile sets of bathing water quality on the basis of the results of such monitoring in such form and manner as may be specified by the EPA.

(6) The monitoring of bathing waters in accordance with this Regulation shall be first carried out in relation to a bathing season not later than the bathing season in the year 2011.

*Suspension of monitoring in abnormal situation*

8. (1) A local authority may, with the approval of the EPA, suspend the monitoring calendar during abnormal situations.

(2) Where a monitoring calendar is suspended in an abnormal situation it shall be resumed as soon as possible after the end of that situation.

(3) New samples shall be taken as soon as possible after the end of an abnormal situation to replace samples that are missing due to that situation.

(4) A local authority shall ensure, in accordance with Regulation 18(1), that information in relation to the suspension and the abnormal situation is actively disseminated and promptly made available during the bathing season in an easily accessible place in the near vicinity of the bathing water.

*Analysis of water samples*

9. (1) A local authority shall, subject to paragraph (2), ensure that the analysis of bathing water quality takes place in accordance with the reference methods specified in Schedule 4 and the rules specified in Schedule 5.

(2) A local authority may, with the approval of the EPA, use reference methods or rules for the analysis of bathing water quality other than the methods specified in Schedule 4 or rules specified in Schedule 5.

(3) The EPA shall not grant approval to a local authority for the use of other methods or rules for the analysis of bathing water quality unless the EPA is satisfied that those other methods will provide results which are equivalent to those which would be obtained using the methods specified in Schedule 4 and the rules specified in Schedule 5.

*Water quality data to be reported and compiled*

10. (1) A local authority shall send to the EPA not later than 15 October in each year the results of the monitoring, investigations and inspections carried out in relation to each bathing water by the authority during that year.

(2) The information to be sent to the EPA by a local authority in accordance with paragraph (1) shall be provided in such form and manner as may be specified by the EPA.

(3) The EPA shall compile sets of bathing water quality data on the basis of the results supplied by local authorities in accordance with this Regulation.

*Assessment of water quality*

11. (1) The EPA shall, subject to this Regulation, carry out an assessment—

(a) in relation to each bathing water;

(b) after the end of each bathing season;

(c) on the basis of sets of bathing water quality data comprising at least 16 samples or, in the case of a bathing water situated in a region subject to special geographical constraints, 12 samples, and

(d) in accordance with the procedures set out in Schedule 6.

(2) Subject to paragraphs (3) and (4), a bathing water quality assessment in any year shall be carried out on the basis of the sets of bathing water quality data compiled in relation to the bathing season in that year and the three preceding bathing seasons.

(3) (a) Assessments of the quality of bathing waters may be carried out by the EPA in any year on the basis of the sets of bathing water quality data compiled in relation to the bathing season in that year and the two preceding bathing seasons provided that—

(i) the EPA has notified the Commission before the carrying out of the assessments, and

(ii) the EPA has not changed the applicable assessment period within the previous five years.

(b) Where the EPA carries out assessments of the quality of bathing waters on the basis of the data for three bathing seasons in accordance with subparagraph (a), it may revert to the assessment of bathing waters on the basis of the data for four bathing seasons in accordance with paragraph (2) provided that—

(i) the EPA has notified the Commission before the carrying out of the assessments on the basis of four bathing seasons, and

(ii) the EPA has not changed the applicable assessment period within the previous five years.

(4) A bathing water quality assessment may be carried out in relation to a bathing water on the basis of a set of bathing water quality data relating to fewer than four bathing seasons in case where—

(a) the bathing water is newly identified, or

(b) any changes have occurred that are likely to affect the classification of the bathing water in accordance with Regulation 12, in which case the assessment shall be carried out on the basis of a set of bathing water quality data consisting solely of the results for samples collected since the changes occurred, or

(c) the bathing water has already been assessed in accordance with the 1992 Regulations, in which case equivalent data gathered under those Regulations shall be used and, for this purpose, the parameters faecal coliforms and faecal streptococci shall be deemed to be equivalent, respectively, to the parameters *Escherichia coli* and intestinal enterococci.

*Classification of bathing water*

12. (1) The EPA shall, subject to paragraph (2) and on the basis of the assessment of bathing water quality carried out in accordance with Regulation 11, classify each bathing water as “poor”, “sufficient”, “good” or “excellent” in accordance with the criteria set out in Schedule 6 on or before 31 December in each year in relation to the preceding bathing season.

(2) The EPA shall first classify bathing waters in accordance with this Regulation on or before 15 September 2015.

*Bathing water quality status to be achieved*

13. (1) A local authority shall, subject to Regulations 14 and 15, ensure that the quality of all bathing waters identified by the authority in accordance with Regulation 4 shall be classified as having water quality status not less than “sufficient” by 15 September 2015.

(2) A local authority shall, subject to Regulations 14 and 15, take all such realistic and proportionate measures as they consider appropriate with a view to increasing the number of bathing waters classified as “good” or “excellent”.

*Measures to be taken regarding “poor” bathing water*

14. (1) A local authority shall not be in contravention of Regulation 13 in respect of a bathing water which is classified as “poor” in case where all the following measures are taken in relation to that bathing water with effect from the bathing season that follows the classification—

- (a) adequate management measures, including the issue of a bathing prohibition or advice against bathing, with a view to preventing the exposure of bathers to pollution;
- (b) identification of the causes and reasons for the failure to achieve at least “sufficient” quality status;
- (c) adequate measures to prevent, reduce or eliminate the causes of pollution;
- (d) in accordance with Regulation 18(2), alerting the public by a clear and simple warning sign and informing them of the causes of the pollution and measures taken, on the basis of the bathing water profile.

(2) A local authority shall not be in contravention of Regulation 13 in respect of a bathing water which is the subject of a permanent bathing prohibition or advice against bathing issued in accordance with paragraph (3) or (4).

(3) A local authority shall issue a permanent bathing prohibition or advice against bathing in relation to a bathing water that has been classified as “poor” for five consecutive years.

(4) A local authority may, with the approval of the EPA, issue a permanent bathing prohibition or advice against bathing in relation to a bathing water that has been classified as “poor” in case where the authority considers that the

achievement of the quality status "sufficient" would be infeasible or disproportionately expensive.

(5) A local authority shall notify the EPA promptly of the issue by the authority of a permanent bathing prohibition or advice against bathing in relation to any bathing water.

*Management measures in certain circumstances*

15. (1) A local authority shall ensure that timely and adequate management measures, including the provision of information to the public, are taken when they are aware of unexpected situations that have, or could reasonably be expected to have, an adverse impact on bathing water quality and on the health of bathers and such measures shall, if necessary, include a temporary bathing prohibition or advice against bathing.

(2) Where cyanobacterial proliferation occurs and a health risk has been identified or presumed, adequate management measures, including the provision of information to the public, shall be taken immediately by a local authority to prevent exposure of bathers to risk.

(3) Where a bathing water profile indicates a tendency for proliferation of macro-algae or marine phytoplankton, adequate management measures, including the provision of information to the public, shall be taken by the relevant local authority.

(4) Where pollution such as tarry residues, glass, plastic, rubber or any other waste is found in a bathing water, adequate management measures shall be taken and shall include, if necessary, information to the public.

(5) A local authority shall promptly notify the EPA and the Health Service Executive of any situation that has, or could reasonably be expected to have, an adverse impact on bathing water quality and on the health of bathers.

*Management measures to be reported*

16. (1) A local authority shall send to the EPA not later than 15 October in each year a report of the management measures taken in relation to each bathing water in accordance with Regulations 4 to 9, 13(2), 14, 15, 17, 18 and 22 and Schedule 6.

(2) A report sent to the EPA in accordance with paragraph (1) shall be provided in such form and manner as may be specified by the EPA.

*Public participation*

17. (1) A local authority shall encourage public participation in the implementation of these Regulations and shall ensure the provision of opportunities for the public concerned—

(a) to find out how to participate, and

(b) to formulate suggestions, remarks or complaints.

(2) Without prejudice to the generality of paragraph (1), a local authority shall encourage public participation in relation to the establishment, review and updating of lists of bathing waters in accordance with Regulation 4.

(3) A local authority shall take due account of any information obtained in the context of public participation.

*Information to the public*

18. (1) A local authority shall ensure that the following information is actively disseminated and promptly made available during the bathing season in an easily accessible place in the near vicinity of the bathing water:

- (a) the current bathing water classification and any prohibition or advice against bathing referred to in this Regulation by means of a clear and simple sign or symbol;
- (b) a general description of the bathing water, in non-technical language, based on the bathing water profile established in accordance with Regulation 5;
- (c) in the case of bathing water subject to short-term pollution—
  - (i) notification that the bathing water is subject to short-term pollution;
  - (ii) an indication of the number of days on which bathing was prohibited or advised against during the preceding bathing season because of such pollution, and
  - (iii) a warning whenever such pollution is present or predicted;
- (d) information on the nature and expected duration of abnormal situations during such events;
- (e) whenever bathing is prohibited or advised against, a notice advising the public and giving reasons;
- (f) whenever a permanent bathing prohibition or advice against bathing is introduced, the fact that the area concerned is no longer a bathing water and the reasons for its declassification;
- (g) an indication of sources of more complete information in accordance with paragraph (2).

(2) A local authority shall use appropriate media and technologies, including the Internet, to disseminate actively and promptly the information concerning bathing waters specified in paragraph (1) and also the following information in several languages where appropriate—

- (a) a list of bathing waters;

- (b) the classification of each bathing water over the last three years and its bathing water profile, including the results of monitoring carried out in accordance with these Regulations since the most recent classification;
- (c) in the case of bathing waters classified as being at water quality status “poor”, information on the causes of pollution and measures taken with a view to preventing the exposure of bathers to pollution and to tackle its causes as specified in Regulation 14;
- (d) in the case of bathing waters subject to short-term pollution, general information on—
  - (i) conditions likely to lead to short-term pollution;
  - (ii) the likelihood of such pollution and its likely duration, and
  - (iii) the causes of the pollution and measures taken with a view to preventing the exposure of bathers to pollution and to tackle its causes.

(3) The list of bathing waters specified in paragraph (2)(a) shall be made available before the start of the bathing season.

(4) The results of monitoring specified in paragraph (2)(b) shall be made available on the Internet upon completion of the analysis of the relevant water samples.

(5) A local authority shall, wherever possible, provide information to the public using georeferenced technology and present it in a clear and coherent manner, in particular through the use of signs and symbols.

(6) The information to be disseminated by a local authority in accordance with paragraph (2) may be disseminated by the authority or, with the consent of the authority, by the EPA on behalf of the authority.

(7) The information specified in paragraphs (1) and (2) shall, with effect from 1 June 2012, be disseminated as soon as it becomes available.

#### *Reports to the Commission*

19. (1) The EPA shall notify the Commission before 1 June each year of all waters identified as bathing waters for that year including the reason for any change compared to the previous year.

(2) The EPA shall, in relation to each bathing water, provide the Commission before 31 December each year with—

- (a) the results of the monitoring for the preceding bathing season;
- (b) the bathing water quality assessment;
- (c) a description of the significant management measures taken;



- (d) notice of any suspension of a monitoring calendar approved by the EPA in accordance with Regulation 8 and the reasons for each such suspension, and
  - (e) all relevant information about methods or rules approved by the EPA in accordance with Regulation 9(2) for the analysis of bathing water quality other than the methods and rules specified in Regulation 9(1) and their equivalence.
- (3) The first report to be sent to the Commission—
- (a) in accordance with paragraph (1) shall be sent not later than 1 June 2008, and
  - (b) in accordance with paragraph (2) shall be sent as soon as may be after an assessment has been carried out in accordance with Regulation 11 in relation to the bathing water.

*Advice, recommendations and directions by EPA*

20. (1) The EPA may give such advice, recommendations and directions to a local authority as it considers necessary for the purposes of promoting the consistent and effective implementation of these Regulations or the proper monitoring and management of bathing waters.

(2) A local authority shall have regard to any advice or recommendations, and shall comply with any directions, given by the EPA in accordance with paragraph (1).

*General policy directions by Minister*

21. (1) The Minister may give general directions in writing to the EPA or to a local authority in relation to the performance by the EPA or the authority of its functions under these Regulations and, in performing those functions, the EPA or authority, as the case may be, shall have regard to those directions.

(2) Paragraph (1) shall not be construed as enabling the Minister to exercise any power or control in relation to the performance in particular circumstances by the EPA or a local authority of a function conferred on it by these Regulations.

*Private operators*

22. (1) A local authority may serve notice on a private operator directing that operator to take such measures as may be specified in the notice in relation to the relevant bathing water and the period within which such measures are to be taken.

(2) It shall be the duty of a private operator to comply with the terms of a notice issued in accordance with paragraph (1).

(3) The measures specified in a notice issued to a private operator in accordance with paragraph (1) may include any measures required by these Regulations to be taken by a local authority in relation to a bathing water.

(4) A private operator shall, to such extent as may be requested by the authority or the EPA, pay to a local authority or the EPA the amount of any expenditure reasonably incurred by the local authority or the EPA, as the case may be, under these Regulations in relation to the relevant bathing water and, in default of such payment, the amount may be recovered from the private operator by the authority or the EPA, as the case may be, as a simple contract debt in any court of competent jurisdiction.

(5) In this Regulation—

- (a) “private operator”, in relation to a bathing water, means a person other than a local authority who has control of the land which is—
- (i) normally used to access the bathing water from the landward side, and
  - (ii) immediately adjacent to the bathing water or, in the case of bathing water which is tidal, immediately above the high water mark;
- (b) “relevant bathing water”, in relation to a private operator, means the bathing water to which access is normally gained by use of land controlled by that private operator.

*Offences and applications to court*

23. (1) Where a local authority or a private operator (within the meaning of Regulation 22) contravenes or fails to comply with a requirement of these Regulations, the authority or the private operator, as the case may be, shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding €5,000, and
- (b) on conviction on indictment, to a fine not exceeding €500,000.

(2) A summary prosecution for an offence under these Regulations may be taken by the EPA or by a local authority.

- (3) (a) Where on application by motion by any person to the District Court, Circuit Court or the High Court, the court hearing the application is satisfied that a person has failed or is failing to comply with a provision of these Regulations, the court may by order—
- (i) direct the person to comply with the provision,
  - (ii) make such other provision, including provision in relation to the payment of costs, as the court considers appropriate, and
  - (iii) make such interim or interlocutory order as it considers appropriate.
- (b) An application for an order under this Regulation may be made whether or not there has been a prosecution for an offence under

these Regulations in relation to the relevant failure of compliance and shall not prejudice the initiation of a prosecution for an offence under these Regulations in relation to the failure of compliance.

*Co-operation on transboundary waters*

24. Wherever a river basin gives rise to transboundary impacts on water quality, the Minister, the EPA and the relevant local authorities shall co-operate as appropriate in the implementation of the Directive, including through the appropriate exchange of information and joint action to control those impacts.

*Application of other enactments*

25. (1) The powers, duties and functions assigned to a local authority or the EPA by these Regulations are additional to, and not in substitution for, the powers, duties and functions assigned by the Local Government (Water Pollution) Acts 1977 and 1990, the Environmental Protection Agency Acts 1992 and 2003 or any other statute.

(2) Sections 28 and 30 of the Local Government (Water Pollution) Act, 1977 (No. 1 of 1977) and sections 23, 26 and 28 of the Local Government (Water Pollution)(Amendment) Act, 1990 (No. 21 of 1990) shall apply in relation to these Regulations and for this purpose these Regulations shall be deemed to have been made under those Acts.

*Public safety measures*

26. The provision by a local authority of lifeguard services, life-saving equipment or other services or facilities to protect public safety or public health shall not be regarded as measures to promote bathing.

*Transitional provisions*

27. (1) The waters at a bathing area specified in the First Schedule to the 1992 Regulations shall, in the period prior to the first identification of bathing waters by a local authority in accordance with Regulation 4, be deemed to be bathing waters identified for the purposes of these Regulations by the local authority specified in that Schedule as the responsible authority for the relevant area.

(2) In the period prior to the first establishment of a monitoring calendar in relation to a bathing water in accordance with Regulation 6, monitoring shall commence each year with the taking of samples in mid-May and shall continue to the end of August with samples being taken at frequencies which comply with Article 4(5) of the 1992 Regulations.

(3) When monitoring of bathing waters has started under these Regulations, annual reporting to the Commission in accordance with Regulation 19(2) shall continue to take place pursuant to Directive 76/160/EEC<sup>1</sup> until a first assessment can be made in accordance with Regulation 11 and during this period—

(a) the parameter total coliforms shall not be taken into account, and

<sup>1</sup>OJ L 031, 05.02.1976, p. 1-7

18 [79]

(b) the parameters faecal coliforms and faecal streptococci shall be deemed to be equivalent, respectively, to the parameters *Escherichia coli* and intestinal enterococci.

*Revocations*

28. The 1992 Regulations are revoked with effect from 31 December 2014.

## SCHEDULE 1

Regulation 5.

## BATHING WATER PROFILE

1. The bathing water profile referred to in Regulation 5 is to consist of:
  - (a) a description of the physical, geographical and hydrological characteristics of the bathing water, and of other surface waters in the catchment area of the bathing water concerned, that could be a source of pollution, which are relevant to the purpose of this Directive and as provided for in Directive 2000/60/EC;
  - (b) an identification and assessment of causes of pollution that might affect bathing waters and impair bathers' health;
  - (c) an assessment of the potential for proliferation of cyanobacteria;
  - (d) an assessment of the potential for proliferation of macro-algae or phytoplankton;
  - (e) if the assessment under point (b) shows that there is a risk of short-term pollution, the following information:
    - the anticipated nature, frequency and duration of expected short-term pollution;
    - details of any remaining causes of pollution, including management measures taken and the time schedule for their elimination;
    - management measures taken during short-term pollution and the identity and contact details of bodies responsible for taking such action;
  - (f) the location of the monitoring point.

2. In the case of bathing waters classified as "good", "sufficient" or "poor", the bathing water profile is to be reviewed regularly to assess whether any of the aspects listed in paragraph 1 have changed. If necessary, it is to be updated. The frequency and scope of reviews is to be determined on the basis of the nature and severity of the pollution. However, they are to comply with at least the provisions and to take place with at least the frequency specified in the following table:

Bathing water classification	Good	Sufficient	Poor
Reviews are to take place at least every	four years	three years	two years
Aspects to be reviewed (points of paragraph 1)	(a) to (f)	(a) to (f)	(a) to (f)

In the case of bathing waters previously classified as “excellent”, the bathing water profiles need be reviewed and, if necessary, updated only if the classification changes to “good”, “sufficient” or “poor”. The review is to cover all aspects mentioned in paragraph 1.

3. In the event of significant construction works or significant changes in the infrastructure in or in the vicinity of the bathing water, the bathing water profile is to be updated before the start of the next bathing season.

4. The information referred to in paragraph 1(a) and (b) is to be provided on a detailed map whenever practicable.

5. Other relevant information may be attached or included if the local authority considers it appropriate.

6. When establishing, reviewing or updating a bathing water profile, adequate use shall be made of data obtained from monitoring and assessments carried out in accordance with the European Communities (Water Policy) Regulations, 2003 (S.I. No. 722 of 2003) or otherwise pursuant to Directive 2000/60/EC.

7. A bathing water profile shall contain such other information as the relevant local authority considers appropriate.

SCHEDULE 2

*Regulation 6.*

MONITORING CALENDAR AND SAMPLING

1. One sample is to be taken shortly before the start of each bathing season. Taking account of this extra sample and subject to paragraph 2, no fewer than four samples are to be taken and analysed per bathing season.
2. Only three samples need be taken and analysed per bathing season in the case of a bathing water that is situated in a region which, in the opinion of the EPA, is subject to special geographical constraints.
3. Sampling dates are to be distributed throughout the bathing season, with the interval between sampling dates never exceeding one month.
4. Monitoring shall take place no later than four days after the date specified in the monitoring calendar.
5. In the event of short-term pollution, one additional sample is to be taken to confirm that the incident has ended. This sample is not to be part of the set of bathing water quality data. If necessary to replace a disregarded sample, an additional sample is to be taken seven days after the end of the short-term pollution.

SCHEDULE 3

MONITORING, INSPECTIONS AND INVESTIGATIONS TO BE  
CARRIED OUT

1. Bathing waters shall be monitored in respect of the parameters intestinal enterococci and escherichia coli.
2. Bathing waters shall be inspected visually for pollution such as tarry residues, glass, plastic, rubber or any other waste.
3. Where the bathing water profile established in relation to a bathing water indicates a potential for cyanobacterial proliferation, a local authority shall carry out appropriate monitoring to enable timely identification of health risks.
4. Where the bathing water profile established in relation to a bathing water indicates a tendency for proliferation of macro-algae or marine phytoplankton, a local authority shall undertake investigations to determine their acceptability and health risks.



## SCHEDULE 4

Regulation 9.

## PARAMETERS AND REFERENCE METHODS

## For inland waters

	A	B	C	D	E
	Parameter	Excellent quality	Good quality	Sufficient quality	Reference methods of analysis
1	Intestinal enterococci (cfu/100 ml)	200 (*)	400 (*)	330 (**)	ISO 7899-1 or ISO 7899-2
2	Escherichia coli (cfu/100ml)	500(*)	1,000(*)	900 (**)	ISO 9308-3 or ISO 9308-1

(\*) Based upon a 95-percentile evaluation. See Schedule 6.

(\*\*) Based upon a 90-percentile evaluation. See Schedule 6.

## For coastal waters and transitional waters

	A	B	C	D	E
	Parameter	Excellent quality	Good quality	Sufficient quality	Reference methods of analysis
1	Intestinal enterococci (cfu/100 ml)	100 (*)	200 (*)	185 (**)	ISO 7899-1 or ISO 7899-2
2	Escherichia coli (cfu/100ml)	250(*)	500 (*)	500 (**)	ISO 9308-3 or ISO 9308-1

(\*) Based upon a 95-percentile evaluation. See Schedule 6.

(\*\*) Based upon a 90-percentile evaluation. See Schedule 6.

## SCHEDULE 5

## RULES ON THE HANDLING OF SAMPLES FOR MICROBIOLOGICAL ANALYSES

**1. Sampling point**

Where possible, samples are to be taken 30 centimetres below the water's surface and in water that is at least one metre deep.

**2. Sterilisation of sample bottles**

Sample bottles are:

- to undergo sterilisation in an autoclave for at least 15 minutes at 121 °C, or
- to undergo dry sterilisation at between 160 °C and 170 °C for at least one hour, or
- to be irradiated sample containers obtained directly from manufacturer.

**3. Sampling**

The volume of the sampling bottle/container is to depend on the quantity of water needed for each parameter to be tested. The minimum content is generally to be 250 ml.

Sample containers are to be of transparent and non-coloured material (glass, polyethene or polypropylene).

In order to prevent accidental contamination of the sample, the sampler is to employ an aseptic technique to maintain the sterility of the sample bottles. There is no further need for sterile equipment (such as sterile surgical gloves or tongs or sample pole) if this is done properly.

The sample is to be clearly identified in indelible ink on the sample container and on the sampling form.

**4. Storage and transport of samples before analysis**

Water samples are to be protected at all stages of transport from exposure to light, in particular direct sunlight.

The sample is to be conserved at a temperature of around 4 °C, in a cool box or refrigerator (depending on climate) until arrival at the laboratory. If the transport to the laboratory is likely to take more than four hours, then transport in a refrigerator is required.

The time between sampling and analysis is to be kept as short as possible. Samples are to be analysed on the same working day where possible. If this is not possible for practical reasons, then the samples shall be processed within no more than 24 hours. In the meantime, they shall be stored in the dark and at a temperature of 4 °C ± 3 °C.

## SCHEDULE 6

*Regulation 11.*

## BATHING WATER ASSESSMENT AND CLASSIFICATION

**1. Poor quality**

Bathing waters are to be classified as “poor” if, in the set of bathing water quality data for the last assessment period <sup>(a)</sup>, the percentile values <sup>(b)</sup> for microbiological enumerations are worse <sup>(c)</sup> than the “sufficient quality” values set out in Schedule 4, column D.

**2. Sufficient quality**

Bathing waters are to be classified as “sufficient”:

1. if, in the set of bathing water quality data for the last assessment period, the percentile values for microbiological enumerations are equal to or better <sup>(d)</sup> than the “sufficient” values set out in Schedule 4, column D; and
2. if the bathing water is subject to short-term pollution, on condition that:
  - (i) adequate management measures are being taken, including surveillance, early warning systems and monitoring, with a view to preventing bathers’ exposure by means of a warning or, where necessary, a bathing prohibition;
  - (ii) adequate management measures are being taken to prevent, reduce or eliminate the causes of pollution; and
  - (iii) the number of samples disregarded in accordance with Regulation 7(4) because of short-term pollution during the last assessment period represented no more than 15% of the total number of samples provided for in the monitoring calendars established for that period, or no more than one sample per bathing season, whichever is the greater.

**3. Good quality**

Bathing waters are to be classified as “good”:

1. if, in the set of bathing water quality data for the last assessment period, the percentile values for microbiological enumerations are equal to or better <sup>(d)</sup> than the “good quality” values set out in Schedule 4, column C; and
2. if the bathing water is subject to short-term pollution, on condition that:
  - (i) adequate management measures are being taken, including surveillance, early warning systems and monitoring, with a view to preventing bathers’ exposure, by means of a warning or, where necessary, a bathing prohibition;

- (ii) adequate management measures are being taken to prevent, reduce or eliminate the causes of pollution; and
- (iii) the number of samples disregarded in accordance with Regulation 7(4) because of short-term pollution during the last assessment period represented no more than 15% of the total number of samples provided for in the monitoring calendars established for that period, or no more than one sample per bathing season, whichever is the greater.

#### 4. Excellent quality

Bathing waters are to be classified as "excellent":

1. if, in the set of bathing water quality data for the last assessment period, the percentile values for microbiological enumerations are equal to or better than the "excellent quality" values set out in Schedule 4, column B; and
2. if the bathing water is subject to short-term pollution, on condition that:
  - (i) adequate management measures are being taken, including surveillance, early warning systems monitoring, with a view to preventing bathers' exposure, by means of warning or, where necessary, a bathing prohibition;
  - (ii) adequate management measures are being taken to prevent, reduce or eliminate the causes of pollution; and
  - (iii) the number of samples disregarded in accordance with Regulation 7(4) because of short-term pollution during the last assessment period represented no more than 15% of the total number of samples provided for in the monitoring calendars established for that period, or no more than one sample per bathing season, whichever is the greater.

#### NOTES

- (<sup>a</sup>) 'Last assessment period' means the last four bathing seasons or, when applicable, the period specified in Regulation 11(3) or (4).
- (<sup>b</sup>) Based upon percentile evaluation of the  $\log_{10}$  normal probability density function of microbiological data acquired from the particular bathing water, the percentile value is derived as follows:
  - (i) take the  $\log_{10}$  value of all bacterial enumerations in the data sequence to be evaluated. (If a zero value is obtained, take the  $\log_{10}$  value of the minimum detection limit of the analytical method used instead.)
  - (ii) calculate the arithmetic mean of the  $\log_{10}$  values ( $\mu$ )
  - (iii) calculate the standard deviation of the  $\log_{10}$  values ( $\sigma$ )

The upper 90-percentile point of the data probability density function is derived from the following equation: upper 90-percentile = antilog ( $\mu + 1,282 \sigma$ ).

The upper 95-percentile point of the data probability density function is derived from the following equation: upper 95-percentile = antilog ( $\mu + 1,65 \sigma$ ).

- (<sup>c</sup>) 'Worse' means with higher concentration values expressed in cfu/100 ml.
- (<sup>d</sup>) 'Better' means with lower concentration values expressed in cfu/100 ml.



GIVEN under the Official Seal of the Minister for the Environment,  
Heritage and Local Government  
20 March 2008

JOHN GORMLEY  
Minister for the Environment, Heritage and Local  
Government

## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

These Regulations provide for transposition of the EU Bathing Water Directive 2006 (Directive 2006/7/EC of 15 February 2006) which aims—

- to improve health protection for bathers
- to establish a more pro-active approach to management of bathing waters, and
- to promote increased public involvement and dissemination of information to the public.

The Regulations establish a new classification system for bathing water quality based on four classifications “poor”, “sufficient”, “good” and “excellent” and generally require that a classification of at least “sufficient” be achieved by 2015 for all bathing waters. Local authorities must take appropriate measures with a view to improving waters which are classified as “poor” and increasing the number of bathing waters classified as “good” or “excellent”. A permanent advice against bathing must be issued in a case where a bathing water is classified as “poor” for five consecutive years. Local authorities are required annually to identify bathing waters, establish a monitoring calendar, carry out the specified monitoring, report the results to the EPA, carry out appropriate management measures where necessary and provide information to the public. There must be public participation in the identification of waters and the general implementation of the Regulations. The EPA is required by the Regulations to classify bathing waters, generally on the basis of the monitoring results for the four preceding bathing seasons, and to publish an annual report in relation to bathing water quality. Monitoring by local authorities is to commence not later than 2011 with a view to ensuring that a classification is assigned to bathing waters not later than 2015. Private controllers of access lands may be required to contribute towards the costs incurred by a local authority or the EPA.

The Regulations will repeal and replace the Quality of Bathing Waters Regulations, 1992 (S.I. No. 155 of 1992) with effect from 31 December 2014.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,  
nó tríd an bpost ó  
FOILSEACHÁN RIALTAIS, AN RANNÓG POST-TRÁCHTA,  
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## Reports of Cases

### JUDGMENT OF THE COURT (Grand Chamber)

1 July 2015\*

(Reference for a preliminary ruling — Environment — EU action in the field of water policy — Directive 2000/60/EC — Article 4(1) — Environmental objectives relating to surface waters — Deterioration of the status of a body of surface water — Project for the development of a navigable waterway — Obligation of the Member States not to authorise a project that may cause a deterioration of the status of a body of surface water — Decisive criteria for determining whether there is a deterioration of the status of a body of water)

In Case C-461/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Germany), made by decision of 11 July 2013, received at the Court on 22 August 2013, in the proceedings

**Bund für Umwelt und Naturschutz Deutschland eV**

v

**Bundesrepublik Deutschland,**

joined party:

**Freie Hansestadt Bremen,**

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, R. Silva de Lapuerta, M. Ilešič, A. Ó Caoimh, C. Vajda and S. Rodin, Presidents of Chambers, A. Borg Barthet, J. Malenovský, E. Levits, M. Berger (Rapporteur), C.G. Fernlund, J.L. da Cruz Vilaça and F. Biltgen, Judges,

Advocate General: N. Jääskinen,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 8 July 2014,

after considering the observations submitted on behalf of:

- Bund für Umwelt und Naturschutz Deutschland eV, by R. Nebelsieck, Rechtsanwalt,
- Bundesrepublik Deutschland, by W. Ewer, Rechtsanwalt,

\* Language of the case: German.



- Freie Hansestadt Bremen, by P. Schütte, Rechtsanwalt,
- the Czech Government, by M. Smolek, acting as Agent,
- the French Government, by S. Menez, acting as Agent,
- the Netherlands Government, by M. Bulterman, B. Koopman and J. Langer, acting as Agents,
- the Polish Government, by B. Majczyna, acting as Agent,
- the United Kingdom Government, by J. Beeko, acting as Agent, and G. Facenna, Barrister,
- the European Commission, by E. Manhaeve and G. Wilms, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 October 2014,

gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 4(1)(a)(i) to (iii) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1).
- 2 The request has been made in proceedings between Bund für Umwelt und Naturschutz Deutschland eV (German federation for the environment and the conservation of nature) and Bundesrepublik Deutschland (the Federal Republic of Germany) concerning a scheme to deepen various parts of the river Weser in the north of Germany, intended to enable larger container vessels to call at the German ports of Bremerhaven, Brake and Bremen.

### Legal context

#### *EU law*

- 3 Recitals 16, 25 and 32 in the preamble to Directive 2000/60 state:
  - '(16) Further integration of protection and sustainable management of water into other Community policy areas such as energy, transport, agriculture, fisheries, regional policy and tourism is necessary. ...
  - ...
  - (25) Common definitions of the status of water in terms of quality and, where relevant for the purpose of the environmental protection, quantity should be established. Environmental objectives should be set to ensure that good status of surface water and groundwater is achieved throughout the Community and that deterioration in the status of waters is prevented at Community level.
  - ...

(32) There may be grounds for exemptions from the requirement to prevent further deterioration or to achieve good status under specific conditions, if the failure is the result of unforeseen or exceptional circumstances, in particular floods and droughts, or, for reasons of overriding public interest, of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, provided that all practicable steps are taken to mitigate the adverse impact on the status of the body of water.'

4 Article 1 of Directive 2000/60, headed 'Purpose', provides:

'The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

(a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;

...'

5 Article 2 of Directive 2000/60, headed 'Definitions', states in paragraphs 9, 17 and 21 to 23:

'For the purposes of this Directive the following definitions shall apply:

...

9. "Heavily modified water body" means a body of surface water which as a result of physical alterations by human activity is substantially changed in character, as designated by the Member State in accordance with the provisions of Annex II.

...

17. "Surface water status" is the general expression of the status of a body of surface water, determined by the poorer of its ecological status and its chemical status.

...

21. "Ecological status" is an expression of the quality of the structure and functioning of aquatic ecosystems associated with surface waters, classified in accordance with Annex V.

22. "Good ecological status" is the status of a body of surface water, so classified in accordance with Annex V.

23. "Good ecological potential" is the status of a heavily modified or an artificial body of water, so classified in accordance with the relevant provisions of Annex V.

...'

6 Article 3 of Directive 2000/60, headed 'Coordination of administrative arrangements within river basin districts', provides in paragraph 1:

'Member States shall identify the individual river basins lying within their national territory and, for the purposes of this Directive, shall assign them to individual river basin districts. Small river basins may be combined with larger river basins or joined with neighbouring small basins to form individual river

basin districts where appropriate. Where groundwaters do not fully follow a particular river basin, they shall be identified and assigned to the nearest or most appropriate river basin district. Coastal waters shall be identified and assigned to the nearest or most appropriate river basin district or districts.'

7 Article 4 of Directive 2000/60, headed 'Environmental objectives', states in paragraphs 1(a), 2 and 6:

'1. In making operational the programmes of measures specified in the river basin management plans:

(a) for surface waters

- (i) Member States shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8;
- (ii) Member States shall protect, enhance and restore all bodies of surface water, subject to the application of subparagraph (iii) for artificial and heavily modified bodies of water, with the aim of achieving good surface water status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8;
- (iii) Member States shall protect and enhance all artificial and heavily modified bodies of water, with the aim of achieving good ecological potential and good surface water chemical status at the latest 15 years from the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8;

...

2. Where more than one of the objectives under paragraph 1 relates to a given body of water, the most stringent shall apply.

...

6. Temporary deterioration in the status of bodies of water shall not be in breach of the requirements of this Directive if this is the result of circumstances of natural cause or *force majeure* which are exceptional or could not reasonably have been foreseen, in particular extreme floods and prolonged droughts, or the result of circumstances due to accidents which could not reasonably have been foreseen, when all of the following conditions have been met:

- (a) all practicable steps are taken to prevent further deterioration in status and in order not to compromise the achievement of the objectives of this Directive in other bodies of water not affected by those circumstances;
- (b) the conditions under which circumstances that are exceptional or that could not reasonably have been foreseen may be declared, including the adoption of the appropriate indicators, are stated in the river basin management plan;
- (c) the measures to be taken under such exceptional circumstances are included in the programme of measures and will not compromise the recovery of the quality of the body of water once the circumstances are over;

- (d) the effects of the circumstances that are exceptional or that could not reasonably have been foreseen are reviewed annually and, subject to the reasons set out in paragraph 4(a), all practicable measures are taken with the aim of restoring the body of water to its status prior to the effects of those circumstances as soon as reasonably practicable, and
- (e) a summary of the effects of the circumstances and of such measures taken or to be taken in accordance with paragraphs (a) and (d) are included in the next update of the river basin management plan.

8 Article 4(7) of Directive 2000/60 provides:

'Member States will not be in breach of this Directive when:

- failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or
- failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities

and all the following conditions are met:

- (a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;
- (b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;
- (c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and
- (d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.'

9 Article 11 of Directive 2000/60, headed 'Programme of measures', states in paragraph 1:

'Each Member State shall ensure the establishment for each river basin district, or for the part of an international river basin district within its territory, of a programme of measures, taking account of the results of the analyses required under Article 5, in order to achieve the objectives established under Article 4. Such programmes of measures may make reference to measures following from legislation adopted at national level and covering the whole of the territory of a Member State. Where appropriate, a Member State may adopt measures applicable to all river basin districts and/or the portions of international river basin districts falling within its territory.'

10 Article 13 of Directive 2000/60, headed 'River basin management plans', provides in paragraph 1:

'Member States shall ensure that a river basin management plan is produced for each river basin district lying entirely within their territory.'

11 Article 14 of Directive 2000/60, headed 'Public information and consultation', states in paragraph 1:

'Member States shall encourage the active involvement of all interested parties in the implementation of this Directive, in particular in the production, review and updating of the river basin management plans. ...'

*German law*

12 Paragraph 27 of the federal Law on the management of water resources (Wasserhaushaltsgesetz) of 31 July 2009 (BGBl. 2009 I, p. 2585) in the version applicable at the material time ('the WHG'), which is headed 'Management objectives for surface waters', provides:

'(1) In so far as they are not classified as artificial or heavily modified in accordance with Paragraph 28, surface waters shall be managed in such a way as:

1. to prevent deterioration of their ecological status and their chemical status and
2. to preserve or achieve good ecological status and good chemical status.

(2) Surface waters which are classified as artificial or heavily modified in accordance with Paragraph 28 shall be managed in such a way as:

1. to prevent deterioration of their ecological potential and their chemical status and
2. to preserve or achieve good ecological potential and good chemical status.'

13 The first sentence of Paragraph 31(2) of the WHG states:

'If good ecological status of surface water is not achieved or if its status deteriorates, that shall not be contrary to the management objectives under Paragraphs 27 and 30 provided that:

1. it is the result of a new modification to the physical characteristics of the water or to the groundwater level;
2. the reasons for the modification are of overriding public interest or the benefits of the new modification for human health or safety or for sustainable development outweigh the benefits for the environment and the community of achieving the management objectives;
3. the objectives pursued by the modification to the water cannot be achieved using other appropriate measures which have a significantly less adverse impact on the environment, which are technically achievable and the cost of which is not disproportionately high; and
4. all measures appropriate in practice are taken to reduce the adverse impact on water status.

...'

14 The third sentence of Paragraph 12(7) of the Law on federal waterways (Bundeswasserstraßengesetz) of 2 April 1968 (BGBl. 1968 II, p. 173), in the version applicable at the material time, states:

'Development measures must take account of the management objectives applicable under Paragraphs 27 to 31 of the [WHG].'

15 The second sentence of Paragraph 14(1) of that law provides:

‘In the context of planning approval, the public and private interests affected by the project must be taken into consideration, including the impact of the project on the environment.’

**The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 16 By planning decision of 15 July 2011 (‘the planning approval’), the Waterways and Navigation Directorate for the North-West Region (Wasser- und Schifffahrtsdirektion Nordwest), a federal administrative authority, granted consent for three projects concerning the development of the river Weser, which is a federal waterway. The developer for each of those projects, which can be carried out independently of each other, is the Federal Waterways and Navigation Authority (Wasser- und Schifffahrtsverwaltung des Bundes).
- 17 The first project seeks to develop the outer Weser from the high sea to Bremerhaven. The depth of its navigable channel is to be increased by up to 1.16 metres (m) so that large container vessels with a loaded draught of up to 13.5 m can reach the port of Bremerhaven irrespective of the tide. The project is connected with a deepening of the vessel turning area in the port of Bremerhaven, the developer for which is Freie Hansestadt Bremen, the joined party in the main proceedings.
- 18 The second project concerns the development of the lower Weser from Bremerhaven upstream to Brake; the depth of the navigable channel is to be increased by up to 1 m so that vessels with a maximum loaded draught of 12.8 m can reach that port, depending on the tide.
- 19 The third project seeks to develop the lower Weser from Brake upstream to Bremen. In this section of the river, the depth of the navigable channel is to be increased so that vessels with a loaded draught of up to 11.1 m can, depending on the tide, reach the port of Bremen. At present, the port of Bremen can, depending on the tide, be reached by vessels with a loaded draught of up to 10.7 m.
- 20 Implementation of the projects at issue involves dredging the river bed in the channels. After the initial excavation to the depth planned in the development, regular dredging for maintenance purposes will be necessary. Most of the dredged material arising from the development and from maintenance of the river is proposed to be discharged into the outer and the lower Weser at locations that have already been used for that purpose.
- 21 In addition to the direct effects of dredging and of discharging the dredged material, the projects at issue have, according to the referring court, other hydrological and morphological consequences for the sections of river concerned. In particular, current speeds will increase on a rising tide and on an ebb tide, tidal high water levels will rise, tidal low water levels will fall, salinity will increase in parts of the lower Weser, the brackish water limit in the lower Weser will move upstream and, finally, silting-up of the river bed will increase outside the navigable channel.
- 22 Of the bodies of water concerned, the Weser transitional waters and the tidal area above Brake are classified as heavily modified within the meaning of Article 2(9) of Directive 2000/60. The outer Weser area is classified as a natural body of water in so far as it forms part of the coastal waters. Also, a number of bodies of water falling within tributaries are concerned, some of which are classified as natural and some as heavily modified.
- 23 On that basis, the Waterways and Navigation Directorate for the North-West Region examined in the planning approval whether the projects at issue were compatible with the objective laid down by Directive 2000/60 of preventing deterioration of the status of the bodies of water. It concluded that deterioration within the meaning of the directive was not to be expected so far as concerns the coastal waters.

- 24 On the other hand, it considered that the present status of certain bodies of water of the Weser would tend to be adversely modified by the effects of the development projects at issue, without that resulting in a change in the status class in accordance with Annex V to Directive 2000/60. According to the Waterways and Navigation Directorate for the North-West Region, such deterioration within a status class is not to be regarded as a deterioration of the ecological potential or the status of the body of water concerned.
- 25 By way of alternative, that authority examined whether the conditions, laid down in Paragraph 31(2) of the WHG and Article 4(7) of Directive 2000/60, for a derogation from the prohibition of deterioration in the status of bodies of water were met and concluded that that was the case.
- 26 Bund für Umwelt und Naturschutz Deutschland eV challenges the planning approval, pleading in particular — in addition to infringements of the legislation relating to planning consent, of the Law on environmental impact assessment (*Gesetz über die Umweltverträglichkeitsprüfung*) and of environmental protection legislation, especially legislation relating to fauna, flora, habitats and the protection of birds — a failure to comply with provisions for the protection of water which have their origin in Directive 2000/60.
- 27 The referring court considers that the outcome of the main proceedings depends on the interpretation of several provisions of Directive 2000/60.
- 28 In those circumstances, the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
1. Is Article 4(1)(a)(i) of Directive 2000/60 ... to be interpreted as meaning that the Member States must — unless a derogation is granted — refuse to authorise a project if it may cause a deterioration in the status of a body of surface water, or is that provision merely a statement of an objective for management planning?
  2. Is the term “deterioration of the status” in Article 4(1)(a)(i) of Directive 2000/60 to be interpreted as covering only detrimental changes which lead to classification in a lower class in accordance with Annex V to the directive?
  3. If the second question is to be answered in the negative: under what circumstances does “deterioration of the status” within the meaning of Article 4(1)(a)(i) of Directive 2000/60 arise?
  4. Are the provisions of Article 4(1)(a)(ii) and (iii) of Directive 2000/60 to be interpreted as meaning that the Member States must — unless a derogation is granted — refuse to authorise a project if it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive, or are those provisions merely a statement of an objective for management planning?

### Consideration of the questions referred

#### *Questions 1 and 4*

- 29 By its first and fourth questions, which it is appropriate to deal with together, the referring court asks, in essence, whether Article 4(1)(a)(i) to (iii) of Directive 2000/60 must be interpreted as meaning that the Member States are required — unless a derogation is granted — to refuse authorisation for a project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive.

- 30 In accordance with settled case-law of the Court, the scope of those provisions must be determined by taking into account both the terms in which they are couched and their context, as well as the objectives pursued by the legislation of which they form part (see, in particular, judgments in *Lundberg*, C-317/12, EU:C:2013:631, paragraph 19; *SFIR and Others*, C-187/12 to C-189/12, EU:C:2013:737, paragraph 24; and *Bouman*, C-114/13, EU:C:2015:81, paragraph 31) and, in the circumstances of this case, the history of that legislation.
- 31 It should be noted, that, contrary to the submissions of Bundesrepublik Deutschland and the Netherlands Government, the wording of Article 4(1)(a)(i) of Directive 2000/60, which provides that ‘Member States shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water’, attests to the binding force of that provision. The words ‘shall implement’ involve an obligation on the Member States to act to that effect.
- 32 It is necessary, as the referring court has done, to construe authorisation of an individual project as such implementation.
- 33 Furthermore, as provided in Article 4(1)(a) of Directive 2000/60, it is ‘[i]n making operational the programmes of measures specified in the ... management plans’ that the Member States adopt the measures necessary in order to achieve the objectives of preventing deterioration of the status of bodies of surface water and protecting and enhancing their status. The use of the words ‘[i]n making operational’ supports an interpretation of that provision to the effect that it entails obligations which must be complied with by the competent authorities when approving individual projects in the context of the legal regime governing the protection of waters.
- 34 It should also be pointed out that Directive 2000/60 is a framework directive adopted on the basis of Article 175(1) EC (now Article 192(1) TFEU). It establishes common principles and an overall framework for action in relation to water protection and coordinates, integrates and, in a longer perspective, develops the overall principles and the structures for protection and sustainable use of water in the European Union. The common principles and overall framework for action which it lays down are to be developed subsequently by the Member States by means of the adoption of individual measures in accordance with the timescales laid down in the directive. However, the directive does not seek to achieve complete harmonisation of the rules of the Member States concerning water (judgments in *Commission v Luxembourg*, C-32/05, EU:C:2006:749, paragraph 41, and *Commission v Germany*, C-525/12, EU:C:2014:2202, paragraph 50).
- 35 Recital 25 in the preamble to Directive 2000/60 confirms that the environmental objectives should be set to ensure that good status of surface water and groundwater is achieved throughout the European Union and that deterioration in the status of waters is prevented at EU level.
- 36 According to Article 1(a) of Directive 2000/60, the purpose of the directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which prevents further deterioration and protects and enhances the status of aquatic ecosystems and terrestrial ecosystems directly depending on the aquatic ecosystems.
- 37 Accordingly, the ultimate objective of Directive 2000/60 is to achieve, by coordinated action, ‘good status’ of all EU surface waters by 2015.
- 38 The environmental objectives that the Member States are required to achieve are specified in Article 4(1) of Directive 2000/60.
- 39 That provision imposes two objectives that are separate, although intrinsically linked. First, in accordance with Article 4(1)(a)(i) of Directive 2000/60, the Member States are to implement the necessary measures to prevent deterioration of the status of all bodies of surface water (obligation to



prevent deterioration). Second, pursuant to Article 4(1)(a)(ii) and (iii), the Member States are to protect, enhance and restore all bodies of surface water with the aim of achieving good status by the end of 2015 at the latest (obligation to enhance).

- 40 The origin of those two objectives is apparent from the drafting history of Directive 2000/60. So far as concerns in particular the obligation to prevent deterioration of the status of surface waters, the provisions at issue, in their initial version, could be interpreted as allowing bodies of water classified above 'good status' to deteriorate to that class once Directive 2000/60 was adopted. It is for that reason that the European Parliament proposed an amendment enabling a distinction to be drawn between the obligation to achieve 'good status' and that of preventing any deterioration by the insertion in Article 4(1) of the directive of a new indent laying down the latter obligation separately.
- 41 Both the obligation to enhance and the obligation to prevent deterioration of the status of bodies of water are designed to attain the qualitative objectives pursued by the EU legislature, namely the preservation or restoration of good status, good ecological potential and good chemical status of surface waters.
- 42 In order to ensure that the Member States attain the environmental objectives referred to above, Directive 2000/60 lays down a series of provisions, in particular Articles 3, 5, 8, 11 and 13 and Annex V, establishing, as the Advocate General has noted in points 43 to 52 of his Opinion, a complex process involving a number of extensively regulated stages, for the purpose of enabling the Member States to implement the necessary measures, on the basis of the specific features and the characteristics of the bodies of water identified in their territories.
- 43 These matters confirm the interpretation that Article 4(1)(a) of Directive 2000/60 does not simply set out, in programmatic terms, mere management-planning objectives, but has binding effects, once the ecological status of the body of water concerned has been determined, at each stage of the procedure prescribed by that directive.
- 44 The derogation regime provided for in Article 4(7) of Directive 2000/60, the conditions for the application of which have been examined by the defendant in the main proceedings but are not the subject of the referring court's questions, likewise constitutes a matter which confirms the interpretation that prevention of deterioration of the status of the bodies of water is binding in nature.
- 45 That regime includes several categories. In particular, under Article 4(7) 'Member States will not be in breach of this Directive when failure ... to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater'.
- 46 That derogation is, however, applicable only on condition that all practicable steps have been taken to mitigate the adverse impact on the status of the body of water concerned and that the programmes of measures and management plans have been adapted accordingly.
- 47 The structure of the categories of derogation which are laid down in Article 4(7) of Directive 2000/60 permits the inference that Article 4 of the directive does not contain solely basic obligations, but that it also concerns individual projects. As the Advocate General has observed in point 78 of his Opinion, the grounds for derogation apply in particular where failure to comply with the objectives follows new modifications to the physical properties of the body of surface water, resulting in adverse effects. That may occur following new authorisations for projects. Indeed, it is impossible to consider a project and the implementation of management plans separately.
- 48 Consequently, those projects are covered by the obligation, laid down in Article 4 of Directive 2000/60, to prevent deterioration of the status of bodies of water. However, the projects may be authorised pursuant to the system of derogations provided for in Article 4.

- 49 The European Commission submits in its written observations that the prohibition of deterioration of the status of bodies of water is an objective of the duty to enhance their status. In that regard, it must be held that the obligation to prevent deterioration of the status of bodies of water was granted autonomous ranking by the EU legislature and is not merely an instrument placed at the service of the obligation to enhance the status of bodies of water.
- 50 It follows that, unless a derogation is granted, any deterioration of the status of a body of water must be prevented, irrespective of the longer term planning provided for by management plans and programmes of measures. The obligation to prevent deterioration of the status of bodies of surface water remains binding at each stage of implementation of Directive 2000/60 and is applicable to every surface water body type and status for which a management plan has or should have been adopted. The Member State concerned is consequently required to refuse authorisation for a project where it is such as to result in deterioration of the status of the body of water concerned or to jeopardise the attainment of good surface water status, unless the view is taken that the project is covered by a derogation under Article 4(7) of the directive.
- 51 In the light of all the foregoing considerations, the answer to the first and fourth questions is that Article 4(1)(a)(i) to (iii) of Directive 2000/60 must be interpreted as meaning that the Member States are required — unless a derogation is granted — to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive.

#### *Questions 2 and 3*

- 52 By its second and third questions, which it is appropriate to deal with together, the referring court asks, in essence, whether the concept of ‘deterioration of the status’ of a body of surface water in Article 4(1)(a)(i) of Directive 2000/60 must be interpreted as covering only detrimental changes which result in classification of that body of water in a lower class in accordance with Annex V to the directive (the status classes theory). If the answer is in the negative, that is to say, if that concept covers any detrimental change to the body of water at issue (the status quo theory), the referring court wishes to ascertain the criteria for concluding that there is a deterioration of the status of a body of surface water.
- 53 The concept of ‘deterioration of the status’ of a body of surface water is not defined in Directive 2000/60.
- 54 In the absence of such a definition in EU law, the meaning and scope of that concept must, in accordance with settled case-law of the Court, be determined by taking into account both the terms in which the provision of EU law concerned is couched and its context (see, in particular, judgments in *Lundberg*, C-317/12, EU:C:2013:631, paragraph 19; *SFIR and Others*, C-187/12 to C-189/12, EU:C:2013:737, paragraph 24; and *Bouman*, C-114/13, EU:C:2015:81, paragraph 31).
- 55 The wording of Article 4(1)(a)(i) of Directive 2000/60 supports an interpretation according to which the concept of ‘deterioration of the status’ of a body of surface water also covers deterioration which does not result in classification of that body of water in a lower class. That provision expressly states that deterioration of the status of all bodies of surface water should be prevented. According to the definition in Article 2(17) of the directive, surface water status is the general expression of the status of a body of surface water, determined by the poorer of its ecological status and its chemical status. Thus, Article 4(1)(a)(i) of Directive 2000/60 imposes in a general manner the obligation to prevent deterioration of the status of bodies of surface water and does not mention any change of class; only Article 4(1)(a)(ii) and (iii) of the directive refers to Annex V thereto, in respect of the obligation to enhance the status of bodies of surface water.

- 56 Before establishing whether that literal interpretation is borne out by the context within which the concept of 'deterioration of the status' of a body of surface water falls and by the objectives of Directive 2000/60, it should be noted, as the Advocate General has stated in points 91 to 97 of his Opinion, that the assessment of surface water status is based on analysis of the ecological status, which covers five classes.
- 57 It is at the stage of drawing up ecological quality ratios that the Member States divide the ecological quality ratios for each surface water category into five classes, by means of a limit value for the biological quality elements which shows the boundary between those different classes, namely high, good, moderate, poor and bad. The limit values are to be established following an intercalibration exercise, which involves comparing the classification results of the national monitoring systems for each biological element and for each common surface water body type among Member States in the same geographical intercalibration group, and assessing the consistency of the results with the normative definitions set out in Section 1.2 of Annex V to Directive 2000/60.
- 58 However, as is apparent from point 1.4.1(iii) of Annex V to Directive 2000/60, the intercalibration exercise serves only to define the limits of the classes for 'high', 'good' and 'moderate' status. The Member States' limit values are set out in Commission Decision 2013/480/EU of 20 September 2013 establishing, pursuant to Directive 2000/60/EC of the European Parliament and of the Council, the values of the Member State monitoring system classifications as a result of the intercalibration exercise and repealing Decision 2008/915/EC (OJ 2013 L 266, p. 1).
- 59 Finally, in accordance with point 1.4.2(i) of Annex V to Directive 2000/60, for surface water categories, a body of water is to be classified in the class immediately below as soon as the ratio of one of the quality elements falls below the level for the current class. This 'one out all out' rule is linked to the definition of 'surface water status' in Article 2(17) of the directive, which must be determined by the poorer of the ecological status and the chemical status of the body of surface water.
- 60 By virtue of Article 2(21) of Directive 2000/60, ecological status is an expression of the quality of the structure and functioning of aquatic ecosystems associated with surface waters, classified in accordance with Annex V thereto, which refers to those classifications of ecological status as 'normative definitions'.
- 61 However, as the Advocate General has observed in point 99 of his Opinion, determination of the limit values between the classes results in the adoption of wide ranges. The classes are thus merely an instrument which limits the discretion of the Member States when determining the quality elements which reflect the actual status of a specific body of water. It is in particular for that reason that Article 4(1)(a)(i) of Directive 2000/60 does not refer to Annex V thereto, as the concept of 'deterioration of the status' of a body of surface water is a concept of general scope.
- 62 A different interpretation of that concept would, on the other hand, deter the Member States from preventing deterioration of the status of a body of surface water within a status class. Since classification of a body of surface water depends on the poorest value of the applicable parameters, all the other values could be reduced without that having legal consequences.
- 63 Application of the 'one out all out' rule in conjunction with the status classes theory would also result in waters in the lowest class being excluded from the scope of the obligation to prevent deterioration of their status. After classification of a body of water in that status class, further deterioration of its status would legally no longer be possible. However, given the purpose of Directive 2000/60, that type of body of water calls for particular attention in the context of water management.
- 64 That interpretation is borne out by Article 4(5)(c) of Directive 2000/60, which expressly lays down a prohibition of all further deterioration as regards heavily modified bodies of surface water for which the Member States may aim to achieve less stringent environmental objectives.

- 65 Furthermore, application of the status classes theory would result in a weakening of the protection of waters falling within the highest classes. Given that the classification of waters is determined by the poorest value of the applicable parameters, clear deterioration of other elements would not change the classification of the body of water concerned at all as long as it did not result in classification in a lower class.
- 66 By contrast, as the Advocate General has observed in point 105 of his Opinion, if the concept of 'deterioration' is interpreted by reference to a quality element or a substance, the obligation to prevent deterioration of the status of a body of water retains all its practical effect, since it encompasses all changes liable to undermine achievement of the principal objective of Directive 2000/60.
- 67 As regards the criteria for concluding that there is a deterioration of the status of a body of water, it is clear from the scheme of Article 4 of Directive 2000/60, in particular Article 4(6) and (7), that a deterioration of the status of a body of water, even if transitory, is authorised only subject to strict conditions. It follows that the threshold beyond which breach of the obligation to prevent deterioration of the status of a body of water is found must be low.
- 68 Contrary to the submissions of Bundesrepublik Deutschland, an interpretation that only 'serious impairment' constitutes a deterioration of the status of a body of water, an interpretation which is founded, in essence, upon the weighing up of, on the one hand, the adverse effects on waters and, on the other, water-related economic interests, cannot be inferred from the wording of Article 4(1)(a)(i) of Directive 2000/60. Furthermore, as the applicant in the main proceedings observes, such an interpretation does not respect the difference established by the directive between the obligation to prevent deterioration of the status of a body of water and the grounds of derogation laid down in Article 4(7) of the directive, since only the latter involve some weighing up of interests.
- 69 That said; the view should be taken, as the Commission has done, that there is 'deterioration of the status' of a body of surface water, within the meaning of Article 4(1)(a)(i) of Directive 2000/60, as soon as the status of at least one of the quality elements, within the meaning of Annex V to the directive, falls by one class, even if that fall does not result in a fall in classification of the body of surface water as a whole. However, if the quality element concerned, within the meaning of that annex, is already in the lowest class, any deterioration of that element constitutes a 'deterioration of the status' of a body of surface water, within the meaning of Article 4(1)(a)(i).
- 70 In the light of all the foregoing considerations, the answer to the second and third questions submitted is that the concept of 'deterioration of the status' of a body of surface water in Article 4(1)(a)(i) of Directive 2000/60 must be interpreted as meaning that there is deterioration as soon as the status of at least one of the quality elements, within the meaning of Annex V to the directive, falls by one class, even if that fall does not result in a fall in classification of the body of surface water as a whole. However, if the quality element concerned, within the meaning of that annex, is already in the lowest class, any deterioration of that element constitutes a 'deterioration of the status' of a body of surface water, within the meaning of Article 4(1)(a)(i).

### Costs

- 71 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. Article 4(1)(a)(i) to (iii) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy must be interpreted as meaning that the Member States are required — unless a derogation is granted — to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive.
2. The concept of ‘deterioration of the status’ of a body of surface water in Article 4(1)(a)(i) of Directive 2000/60 must be interpreted as meaning that there is deterioration as soon as the status of at least one of the quality elements, within the meaning of Annex V to the directive, falls by one class, even if that fall does not result in a fall in classification of the body of surface water as a whole. However, if the quality element concerned, within the meaning of that annex, is already in the lowest class, any deterioration of that element constitutes a ‘deterioration of the status’ of a body of surface water, within the meaning of Article 4(1)(a)(i).

[Signatures]

