



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.05.2006
COM(2006) 205 final

2006/0067 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the quality required of shellfish waters

(codified version)

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if Community law is to be clear and transparent.

2. On 1 April 1987 the Commission therefore decided¹ to instruct its staff that all legislative acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that the Community rules are clear and readily understandable.

3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this², stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal Community legislative procedure.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters³. The new Directive will supersede the various acts incorporated in it⁴; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

¹ COM(87) 868 PV.

² See Annex 3 to Part A of the Conclusions.

³ Carried out pursuant to the Communication from the Commission to the European Parliament and the Council – Codification of the Acquis communautaire, COM(2001) 645 final.

⁴ See Annex II, Part A of this proposal.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Directive 79/923/EEC and the instrument amending it, carried out by the Office for Official Publications of the European Communities, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table contained in Annex III to the codified Directive.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the quality required of shellfish waters

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,

Having regard to the opinion of the European Economic and Social Committee⁵,

Having regard to the opinion of the Committee of the Regions⁶,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁷,

Whereas:



- (1) Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters⁸ has been substantially amended⁹. In the interests of clarity and rationality the said Directive should be codified.

↓ 79/923/EEC Recital 1

- (2) The protection and improvement of the environment necessitate concrete measures to protect waters, including shellfish waters, against pollution.

↓ 79/923/EEC Recital 2

- (3) It is necessary to safeguard certain shellfish populations from various harmful consequences, resulting from the discharge of pollutant substances into the sea.

⁵ OJ C [...], [...], p. [...].

⁶ OJ C [...], [...], p. [...].

⁷ OJ C [...], [...], p. [...].

⁸ OJ L 281, 10.11.1979, p. 47. Directive as amended by Directive 91/692/EEC (OJ L 377, 31.12.1991, p. 48).

⁹ See Annex II, Part A.

↓ 79/923/EEC Recital 3 (adapted)

- (4) ☒ Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme¹⁰ provides ☒ that quality objectives are to be jointly drawn up fixing the various requirements which an environment must meet, *inter alia* the definition of parameters for water, including shellfish waters.
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↓ 79/923/EEC Recital 4 (adapted)

- (5) Differences between the provisions in force in the various Member States as regards the quality required of shellfish waters may create unequal conditions of competition and thus directly affect the functioning of the ☒ internal ☒ market.
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↓ 79/923/EEC Recital 6 (adapted)

- (6) In order to attain the objectives of the Directive, the Member States ☒ must ☒ designate the waters to which it will apply and set limit values corresponding to certain parameters. The waters so designated will have to conform to these values within six years of designation.
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↓ 79/923/EEC Recital 7

- (7) For the purpose of checking the quality required of shellfish waters, a minimum number of samples should be taken and the measurements relating to parameters set out in Annex I should be carried out. Such sampling may be reduced or discontinued in the light of the results of the measurements.
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↓ 79/923/EEC Recital 8

- (8) Certain natural circumstances are beyond the control of the Member States and it is therefore necessary to provide for the possibility of derogating from this Directive in certain cases.
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↓ 79/923/EEC Recital 9

- (9) Technical and scientific progress may make necessary the rapid adaptation of some of the requirements laid down in Annex I. In order to facilitate the introduction of the measures required for this purpose, a procedure should be laid down establishing close cooperation between the Member States and the Commission. Such cooperation should take place in the Committee on Adaptation to Technical and Scientific Progress set up by Article 13(1) of Council Directive [78/659/EEC of 18 July 1978] on the quality of fresh waters needing protection or improvement in order to support fish life¹¹.
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¹⁰ OJ L 242, 10.9.2002, p. 1.

¹¹ [OJ L 222, 14.8.1978, p. 1. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36)].

↓ 79/923/EEC Recital 10

(10) This Directive cannot, by itself, ensure protection of consumers of shellfish products. Proposals to this end should therefore be submitted by the Commission as soon as possible.

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(11) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex II, Part B,

↓ 79/923/EEC

HAVE ADOPTED THIS DIRECTIVE:

Article 1

This Directive concerns the quality of shellfish waters and applies to those coastal and brackish waters designated by the Member States as needing protection or improvement in order to support shellfish (bivalve and gasteropod molluscs) life and growth and thus to contribute to the high quality of shellfish products directly edible by man.

Article 2

The parameters applicable to the waters designated by the Member States are listed in Annex I.

Article 3

1. Member States shall, for the designated waters, set values for the parameters listed in Annex I, in so far as values are given in column G or in column I. They shall comply with the comments contained in both columns.

2. Member States shall not set values less stringent than those given in column I of Annex I and shall endeavour to observe the values in column G, while taking into account the principle set out in Article 8.

↓ 79/923/EEC (adapted)

3. For discharges of effluents falling within parameters ‘organohalogenated substances’ and ‘metals’, the emission standards laid down by the Member States pursuant to Directive [2006/11/EC](#) of the European Parliament and of the Council [12](#) shall be applied at the

¹² OJ L [64](#), 4.3.2006, p. 52 [1](#).

same time as the quality objectives and the other obligations arising from this Directive, in particular those relating to sampling.

Article 4

1. Member States that have initially designated shellfish waters may make additional designations.
2. Member States may revise the designation of certain waters owing in particular to factors unforeseen at the time of designation, taking into account the principle set out in Article 8.

↓ 79/923/EEC

Article 5

Member States shall establish programmes in order to reduce pollution and to ensure that designated waters conform, within six years following designation in accordance with Article 4, to both the values set by the Member States in accordance with Article 3 and the comments contained in columns G and I of Annex I.

Article 6

1. For the purposes of implementing Article 5, the designated waters shall be deemed to conform to the provisions of this Directive if samples of such waters, taken at the minimum frequency specified in Annex I, at the same sampling point and over a period of 12 months, show that they conform to both the values set by the Member States in accordance with Article 3 and the comments contained in columns G and I of Annex I, as regards:

- (a) 100% of the samples for the parameters 'organohalogenated substances' and 'metals';
- (b) 95% of the samples for the parameters 'salinity' and 'dissolved oxygen';
- (c) 75% of the samples for the other parameters listed in Annex I.

If, in accordance with Article 7(2), the sampling frequency for all the parameters in Annex I except 'organohalogenated substances' and 'metals' is lower than that indicated in Annex I, the values and comments referred to in the first subparagraph of this paragraph shall be complied with in the case of all the samples.

2. Instances in which the values set by Member States in accordance with Article 3 or the comments contained in columns G and I of Annex I are not respected shall not be taken into consideration in the calculation of the percentages provided for in paragraph 1 when it is the result of a disaster.

Article 7

1. The competent authorities in the Member States shall carry out sampling operations, the minimum frequency of which is laid down in Annex I.
2. Where the competent authority records that the quality of designated waters is appreciably higher than that which would result from the application of the values set in accordance with Article 3 and the comments contained in columns G and I of Annex I, the frequency of the sampling may be reduced. Where there is no pollution and no risk of deterioration in the quality of the waters, the competent authority concerned may decide that no sampling is necessary.
3. If sampling shows that a value set in accordance with Article 3 or a comment contained in columns G or I of Annex I is not respected, the competent authority shall establish whether this is the result of chance, a natural phenomenon or pollution and shall adopt appropriate measures.
4. The exact sampling point, the distance from this point to the nearest point where pollutants are discharged and the depth at which the samples are to be taken shall be fixed by the competent authority of each Member State on the basis of local environmental conditions in particular.
5. The reference methods of analysis to be used for calculating the value of the parameters concerned are set out in Annex I. Laboratories which employ other methods shall ensure that the results obtained are equivalent or comparable to those specified in Annex I.

Article 8

Implementation of the measures taken pursuant to this Directive may on no account lead, either directly or indirectly, to increased pollution of coastal and brackish waters.

Article 9

Member States may at any time set more stringent values for designated waters than those laid down in this Directive. They may also lay down provisions relating to other parameters than those provided for in this Directive.

Article 10

Where a Member State considers designating shellfish waters in the immediate vicinity of a frontier with another Member State, these States shall consult each other in order to determine the stretches of such waters to which this Directive might apply and the consequences to be drawn from the common quality objectives; these consequences shall be determined, after formal consultations, by each State concerned. The Commission may participate in these deliberations.

Article 11

The Member States may derogate from this Directive in the event of exceptional weather or geographical conditions.

Article 12

Such amendments as are necessary for adapting to technical and scientific progress the G values for the parameters and the methods of analysis contained in Annex I shall be adopted by the Committee set up by Article 13(1) of Directive [78/659/EEC] in accordance with the procedure referred to in Article 13(2) thereof.

Article 13

1. For the purpose of applying this Directive, Member States shall provide the Commission with information concerning:

- (a) the waters designated in accordance with Article 4(1) , in summary form;
- (b) the revision of the designation of certain waters in accordance with Article 4(2);
- (c) the provisions laid down in order to establish new parameters in accordance with Article 9.

2. Where a Member State applies the provisions of Article 11, it shall forthwith notify the Commission thereof, stating its reasons and the periods anticipated.

3. More generally, Member States shall provide the Commission, on a reasoned request from the latter, with any information necessary for the application of this Directive.

Article 14

↓ 91/692/EEC Art. 2(1) and
Annex I, pt. (e) (adapted)

At intervals of three years , and for the first time for the period from 1993 to 1995 inclusive, the Member States shall send information to the Commission on the implementation of this Directive, in the form of a sectoral report which shall also cover other pertinent Community Directives. This report shall be drawn up on the basis of a questionnaire or outline drafted by the Commission in accordance with the procedure referred to in Article 6(2) of Council Directive 91/692/EEC¹³. The questionnaire or outline shall be sent to the Member States six months before the start of the period covered by the report. The report shall be sent to the Commission within nine months of the end of the three-year period covered by it.

¹³ OJ L 377, 31.12.1991, p. 48.

The Commission shall publish a Community report on the implementation of the Directive within nine months of receiving the reports from the Member States.

↓ 79/923/EEC (adapted)

Article 15

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

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Article 16

Directive 79/923/EEC, as amended by the Directive listed in Annex II, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex II, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex III.

Article 17

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

↓ 79/923/EEC

Article 18

This Directive is addressed to the Member States.

Done at Brussels, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]

↓ 79/923/EEC

ANNEX I

QUALITY OF SHELLFISH WATERS

	Parameter	G	I	Reference methods of analysis	Minimum sampling and measuring frequency
1.	pH pH unit		7 — 9	– Electrometry Measured <i>in situ</i> at the time of sampling	Quarterly
2.	Temperature °C	A discharge affecting shellfish waters must not cause the temperature of the waters to exceed by more than 2 °C the temperature of waters not so affected		– Thermometry Measured <i>in situ</i> at the time of sampling	Quarterly
3.	Coloration (after filtration) mg Pt/l		A discharge affecting shellfish waters must not cause the colour of the waters after filtration to deviate by more than 10 mg Pt/l from the colour of waters not so affected	– Filter through a 0.45 µm membrane Photometric method, using the platinum/cobalt scale	Quarterly

4.	Suspended solids mg/l		<p>A discharge affecting shellfish waters must not cause the suspended solid content of the waters to exceed by more than 30 % the content of waters not so affected</p>	<p>– Filtration through a 0.45 µm membrane, drying at 105 °C and weighing</p> <p>– Centrifuging (for at least five minutes, with mean acceleration 2 800 to 3 200 g), drying at 105 °C and weighing</p>	Quarterly
5.	Salinity ‰	12 to 38 ‰	<p>– ≤ 40 ‰</p> <p>– Discharge affecting shellfish waters must not cause their salinity to exceed by more than 10 % the salinity of waters not so affected</p>	Conductimetry	Monthly

6.	Dissolved oxygen Saturation %	≥ 80 %	<ul style="list-style-type: none"> – ≥ 70 % (average value) – Should an individual measurement indicate a value lower than 70 %, measurements shall be repeated – An individual measurement may not indicate a value of less than 60 % unless there are no harmful consequences for the development of shellfish colonies 	<ul style="list-style-type: none"> – Winkler's method – Electrochemical method 	<p>Monthly, with a minimum of one sample representative of low oxygen conditions on the day of sampling. However, where major daily variations are suspected, a minimum of two samples in one day shall be taken</p>
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7.	Petroleum hydrocarbons		<p>Hydrocarbons must not be present in the shellfish water in such quantities as to:</p> <ul style="list-style-type: none"> – produce a visible film on the surface of the water and/or a deposit on the shellfish, – have harmful effects on the shellfish 	Visual examination	Quarterly
8.	Organohalogenated substances	The concentration of each substance in shellfish flesh must be so limited that it contributes, in accordance with Article 1, to the high quality of shellfish products	The concentration of each substance in the shellfish water or in shellfish flesh must not reach or exceed a level which has harmful effects on the shellfish and larvae	Gas chromatography after extraction with suitable solvents and purification	Half-yearly

9.	<p><i>Metals</i></p> <p>Silver Ag Arsenic As Cadmium Cd Chromium Cr Copper Cu Mercury Hg Nickel Ni Lead Pb Zinc Zn</p> <p>mg/l</p>	<p>The concentration of each substance in shellfish flesh must be so limited that it contributes in accordance with Article 1, to the high quality of shellfish products</p>	<p>The concentration of each substance in the shellfish water or in the shellfish flesh must not exceed a level which gives rise to harmful effects on the shellfish and their larvae</p> <p>The synergic effects of these metals must be taken into consideration</p>	<p>Spectrometry of atomic absorption preceded, where appropriate, by concentration and/or extraction</p>	<p>Half-yearly</p>
10.	<p>Faecal coliforms/100 ml</p>	<p>≤ 300 in the shellfish flesh and intervalvular liquid⁽¹⁾</p>		<p>Method of dilution with fermentation in liquid substrates in at least three tubes in three dilutions. Subculturing of the positive tubes on a confirmation medium. Count according to MPN (most probable number). Incubation temperature 44 °C ± 0.5 °C</p>	<p>Quarterly</p>

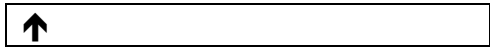
11.	Substances affecting the taste of the shellfish		Concentration lower than that liable to impair the taste of the shellfish	Examination of the shellfish by tasting where the presence of one of these substances is presumed	
12.	Saxitoxin (produced by dinoflagellates)				

Abbreviations:

G = guide

I = mandatory

(¹) However, pending the adoption of a Directive on the protection of consumers of shellfish products, it is essential that this value be observed in waters in which shellfish directly edible by man live.



ANNEX II

Part A

Repealed Directive with its amendment
(referred to in Article 16)

Council Directive 79/923/EEC
(OJ L 281, 10.11.1979, p. 47)

Council Directive 91/692/EEC
(OJ L 377, 31.12.1991, p. 48)

Only Annex I, pt. (e)

Part B

List of time-limits for transposition into national law
(referred to in Article 16)

Directive	Time-limit for transposition
79/923/EEC	6 November 1981
91/692/EEC	1 January 1993

ANNEX III

CORRELATION TABLE

Directive 79/923/EEC	This Directive
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4(1) and (2)	Article 4(1)
Article 4(3)	Article 4(2)
Article 5	Article 5
Article 6(1), first subparagraph, introductory sentence	Article 6(1), first subparagraph, introductory sentence
Article 6(1), first subparagraph, first indent	Article 6(1), first subparagraph, point (a)
Article 6(1), first subparagraph, second indent	Article 6(1), first subparagraph, point (b)
Article 6(1), first subparagraph, third indent	Article 6(1), first subparagraph, point (c)
Article 6(1), second subparagraph	Article 6(1), second subparagraph
Article 6(2)	Article 6(2)
Article 7	Article 7
Article 8	Article 8
Article 9	Article 9
Article 10	Article 10
Article 11	Article 11
Article 12	Article 12
Article 13, first paragraph, introductory sentence	Article 13(1), introductory sentence
Article 13, first paragraph, first indent	Article 13(1), point (a)
Article 13, first paragraph, second indent	Article 13(1), point (b)
Article 13, first paragraph, third indent	Article 13(1), point (c)

Article 13, second paragraph

Article 13, third paragraph

Article 14

Article 15(1)

Article 15(2)

Article 16

Annex

Article 13(2)

Article 13(3)

Article 14

Article 15

Article 16

Article 17

Article 18

Annex I

Annex II

Annex III
