



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.01.2004  
COM(2003) 847 final

2003/0333 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on pollution caused by certain dangerous substances discharged into the aquatic  
environment of the Community**

**(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 decided<sup>1</sup> 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 this<sup>2</sup>, 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 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community<sup>3</sup>. The new Directive will supersede the various acts incorporated in it<sup>4</sup>; 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.
5. The codification proposal was drawn up on the basis of a preliminary consolidation, in all official languages, of Directive 76/464/EEC and the instruments amending it,

---

<sup>1</sup> COM(87) 868 PV.

<sup>2</sup> See Annex 3 to Part A of the Conclusions.

<sup>3</sup> 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.

<sup>4</sup> See Annex II, Part A of this proposal.

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.

---

↓ 76/464/EEC

2003/0333 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

---

↓ 76/464/EEC (adapted)

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>3</sup>,

Whereas:

---

↓

- (1) Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community<sup>4</sup> has been substantially amended several times<sup>5</sup>. In the interests of clarity and rationality the said Directive should be codified.

---

<sup>1</sup> OJ C

<sup>2</sup> OJ C

<sup>3</sup> OJ C

<sup>4</sup> OJ L 129, 18.5.1976, p. 23. Directive as last amended by Directive 2000/60/EC of the European Parliament and of the Council (OJ L 327, 22.12.2000, p. 1).

<sup>5</sup> See Annex II, Part A.

---

↓ 76/464/EEC Recital 1 (adapted)

- (2) There is an urgent need for general and simultaneous action by the Member States to protect the aquatic environment of the Community from pollution, particularly that caused by certain persistent, toxic and bioaccumulable substances.

---

↓ 76/464/EEC Recital 2 (adapted)

- (3) Several conventions are designed to protect international watercourses and the marine environment from pollution. It is important to ensure the coordinated implementation of these conventions.

---

↓ 76/464/EEC Recital 5 (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 Programme <sup>6</sup>, provides for a number of measures to protect fresh water and sea water from certain pollutants.

---

↓ 76/464/EEC Recital 6

- (5) In order to ensure effective protection of the aquatic environment of the Community, it is necessary to establish a first list, called List I, of certain individual substances selected mainly on the basis of their toxicity, persistence, and bioaccumulation, with the exception of those which are biologically harmless or which are rapidly converted into substances which are biologically harmless, and a second list, called List II, containing substances which have a deleterious effect on the aquatic environment, which can, however, be confined to a given area and which depend on the characteristics and location of the water into which they are discharged. Any discharge of these substances should be subject to prior authorisation which specifies emission standards.

---

↓ 76/464/EEC Recital 7 (adapted)

- (6) Pollution through the discharge of the various dangerous substances within List I must be eliminated.  Limit values were fixed by the Council Directives referred to in Annex IX to 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>7</sup>. Article 16 of Directive 2000/60/EC provides for the procedures for developing the control measures and quality standards applicable to priority substances.

---

<sup>6</sup>  OJ L 242, 10.9.2002, p. 1 .

<sup>7</sup> OJ L 327, 22.12.2000, p. 1.

---

↓ 76/464/EEC Recital 9 (adapted)

- (7) It is necessary to reduce water pollution caused by the substances within List II. To this end the Member States should establish programmes which incorporate quality objectives for water drawn up in compliance with  the  Council Directives  referred to in Annex IX to Directive 2000/60/EC  . The emission standards applicable to such substances should be calculated in terms of these quality objectives.

---

↓ 76/464/EEC Recital 11

- (8) One or more Member States may be able, individually or jointly, to take more stringent measures than those provided for under this Directive.

---

↓ 76/464/EEC Recital 12

- (9) An inventory of discharges of certain particularly dangerous substances into the aquatic environment of the Community should be drawn up in order to know where they originated.

---

↓

- (10) 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,

---

↓ 76/464/EEC

HAVE ADOPTED THIS DIRECTIVE:

---

↓ 76/464/EEC (adapted)

*Article 1*

Subject to Article  7  , this Directive shall apply to:

- (a)  inland surface water  ;
- (b)  territorial waters  ;
- (c)  internal coastal waters  .

---

↓ 76/464/EEC, Art. 1(2) (adapted)
--------------------------------------

*Article 2*

For the purposes of this Directive:

- (a) “inland surface water” means all static or flowing fresh surface water situated in the territory of one or more Member States;
- (b) “internal coastal waters” means waters on the landward side of the base line from which the breadth of territorial waters is measured, extending, in the case of watercourses, up to the fresh-water limit;
- (c) “fresh-water limit” means the place in the watercourse where, at low tide and in a period of low fresh-water flow, there is an appreciable increase in salinity due to the presence of sea-water;
- (d) “discharge” means the introduction into the waters referred to in Article 1 of any substances in List I or List II of Annex I, with the exception of:
  - (i) discharges of dredgings,
  - (ii) operational discharges from ships in territorial waters,
  - (iii) dumping from ships in territorial waters;
- (e) “pollution” means the discharge by man, directly or indirectly, of substances or energy into the aquatic environment, the results of which are such as to cause hazards to human health, harm to living resources and to aquatic ecosystems, damage to amenities or interference with other legitimate uses of water.

---

↓ 76/464/EEC Art. 2 (adapted)
-------------------------------

*Article 3*

Member States shall take the appropriate steps to eliminate pollution of the waters referred to in Article 1 by the dangerous substances in the families and groups of substances in List I of Annex I and to reduce pollution of the said waters by the dangerous substances in the families and groups of substances in List II of Annex I, in accordance with this Directive, the provisions of which represent only a first step towards this goal.

*Article 4*

With regard to the substances belonging to the families and groups of substances in List I of Annex I, hereinafter called “substances within List I”:

- (a) all discharges into the waters referred to in Article 1 which are liable to contain any such substance shall require prior authorisation by the competent authority of the Member State concerned;
- (b) the authorisation shall lay down emission standards with regard to discharges of any such substance into the waters referred to in Article 1 and, where this is necessary for the implementation of this Directive, to discharges of any such substance into sewers;
- (c) in the case of existing discharges of any such substance into the waters referred to in Article 1, the dischargers must comply with the conditions laid down in the authorisation within the period stipulated therein;
- (d) authorisations may be granted for a limited period only. They may be renewed, taking into account any changes in the limit values contained in the Directives referred to in Annex IX to Directive 2000/60/EC.

*Article 5*

1. The emission standards laid down in the authorisations granted pursuant to Article 4 shall determine:
  - (a) the maximum concentration of a substance permissible in a discharge. In the case of dilution the limit value contained in the Directives referred to in Annex IX to Directive 2000/60/EC shall be divided by the dilution factor;
  - (b) the maximum quantity of a substance permissible in a discharge during one or more specified periods of time, expressed , if necessary, as a unit of weight of the pollutant per unit of the characteristic element of the polluting activity (e.g. unit of weight per unit of raw material or per product unit).
2. For each authorisation, the competent authority of the Member State concerned may, if necessary, impose more stringent emission standards than those resulting from the application of the limit values contained in the Directives referred to in Annex IX to Directive 2000/60/EC, taking into account in particular the toxicity, persistence, and bioaccumulation of the substance concerned in the environment into which it is discharged.



---

↓ 76/464/EEC

3. If the discharger states that he is unable to comply with the required emission standards, or if this situation is evident to the competent authority in the Member State concerned, authorisation shall be refused.
4. Should the emission standards not be complied with, the competent authority in the Member State concerned shall take all appropriate steps to ensure that the conditions of authorisation are fulfilled and, if necessary, that the discharge is prohibited.

---

↓ 76/464/EEC Art. 7 (adapted)

*Article 6*

1. In order to reduce pollution of the waters referred to in Article 1 by  the substances belonging to the families and groups set out in List II of Annex I, hereinafter known as “ substances within List II  ”  , Member States shall establish programmes in the implementation of which they shall apply in particular the methods referred to in paragraphs 2 and 3.

---

↓ 76/464/EEC

2. All discharges into the waters referred to in Article 1 which are liable to contain any of the substances within List II shall require prior authorisation by the competent authority in the Member State concerned, in which emission standards shall be laid down. Such standards shall be based on the quality objectives, which shall be fixed as provided for in paragraph 3.

---

↓ 76/464/EEC (adapted)

3. The programmes referred to in paragraph 1 shall include quality objectives for water; these shall be laid down in accordance with the Directives referred to in Annex IX to Directive 2000/60/EC.

---

↓ 76/464/EEC

4. The programmes may also include specific provisions governing the composition and use of substances or groups of substances and products and shall take into account the latest economically feasible technical developments.
5. The programmes shall set deadlines for their implementation.
6. Summaries of the programmes and the results of their implementation shall be communicated to the Commission.

---

↓ 76/464/EEC (adapted)

7. The Commission, together with the Member States, shall arrange for regular comparisons of the programmes in order to ensure sufficient coordination in their implementation. If it sees fit, it shall submit relevant proposals to the  European Parliament and to the  Council to this end.

---

↓ 76/464/EEC Art. 8

*Article 7*

Member States shall take all appropriate steps to implement measures adopted by them pursuant to this Directive in such a way as not to increase the pollution of waters to which Article 1 does not apply. They shall in addition prohibit all acts which intentionally or unintentionally circumvent the provisions of this Directive.

---

↓ 76/464/EEC Art. 9

*Article 8*

The application of the measures taken pursuant to this Directive may on no account lead, either directly or indirectly, to increased pollution of the waters referred to in Article 1.

---

↓ 76/464/EEC Art. 10

*Article 9*

Where appropriate, one or more Member States may individually or jointly take more stringent measures than those provided for under this Directive.

---

↓ 76/464/EEC Art. 11

*Article 10*

The competent authority shall draw up an inventory of the discharges into the waters referred to in Article 1 which may contain substances within List I to which emission standards are applicable.

---

↓ 76/464/EEC Art. 13

*Article 11*

---

↓ 91/692/EEC Art. 2(1) and  
Annex I point (a) (adapted)

1. At intervals of three years 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 laid down in Article 6 of  Council  Directive 91/692/EEC<sup>8</sup>. 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.

The first report shall cover the period from 1993 to 1995 inclusive.

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

---

↓ 76/464/EEC (adapted)

2. Information acquired as a result of the application of  paragraph 1  shall be used only for the purpose for which it was requested.
  3. The Commission and the competent authorities of the Member States, their officials and other servants shall not disclose information acquired by them pursuant to this Directive and of a kind covered by the obligation of professional secrecy.
  4. The provisions of paragraphs 2 and 3 shall not prevent publication of general information or surveys which do not contain information relating to particular undertakings or associations of undertakings.
- 

↓ 76/464/EEC Art. 14 (adapted)

*Article 12*

The  European Parliament and the  Council, acting on a proposal from the Commission, which shall act on its own initiative or at the request of a Member State, shall revise and, where necessary, supplement Lists I and II  of Annex I  on the basis of experience, if appropriate, by transferring certain substances from List II to List I.

---

<sup>8</sup> OJ L 377, 31.12.1991, p. 48.



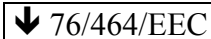
*Article 13*

Directive 76/464/EEC, as amended by the Directives 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 14*

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



*Article 15*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

**ANNEX I**

**List I of families and groups of substances**

List I contains certain individual substances which belong to the following families and groups of substances, selected mainly on the basis of their toxicity, persistence and bioaccumulation, with the exception of those which are biologically harmless or which are rapidly converted into substances which are biologically harmless:

1. organohalogen compounds and substances which may form such compounds in the aquatic environment;
2. organophosphorus compounds;
3. organotin compounds;
4. substances in respect of which it has been proved that they possess carcinogenic properties in or via the aquatic environment<sup>1</sup>;
5. mercury and its compounds;
6. cadmium and its compounds;
7. persistent mineral oils and hydrocarbons of petroleum origin;

and for the purposes of implementing Articles  3, 7, 8 and 12

8. persistent synthetic substances which may float, remain in suspension or sink and which may interfere with any use of the waters.

**List II of families and groups of substances**

List II contains:

- substances belonging to the families and groups of substances in List I for which the limit values  $\tilde{O}$  contained in the Directives referred to in Annex IX to Directive 2000/60/EC  $\tilde{O}$  have not been determined  $\tilde{O}$  by those Directives $\tilde{O}$ ,

- certain individual substances and categories of substances belonging to the families and groups of substances listed below,

---

<sup>1</sup> Where certain substances in List II are carcinogenic, they are included in category 4 of this list.

and which have a deleterious effect on the aquatic environment, which can, however, be confined to a given area and which depend on the characteristics and location of the water into which they are discharged.

### **Families and groups of substances referred to in the second indent**

1. The following metalloids and metals and their compounds:

1. zinc	6. selenium	11. tin	16. vanadium
2. copper	7. arsenic	12. barium	17. cobalt
3. nickel	8. antimony	13. beryllium	18. thalium
4. chromium	9. molybdenum	14. boron	19. tellurium
5. lead	10. titanium	15. uranium	20. silver
2. Biocides and their derivatives not appearing in List I.
3. Substances which have a deleterious effect on the taste and/or smell of the products for human consumption derived from the aquatic environment.  
  
and compounds liable to give rise to such substances in water.
4. Toxic or persistent organic compounds of silicon, and substances which may give rise to such compounds in water, excluding those which are biologically harmless or are rapidly converted in water into harmless substances.
5. Inorganic compounds of phosphorus and elemental phosphorus.
6. Non persistent mineral oils and hydrocarbons of petroleum origin.
7. Cyanides, fluorides.
8. Substances which have an adverse effect on the oxygen balance, particularly:  
  
ammonia, nitrites.

---

↓ 76/464/EEC (adapted)
------------------------

**Statement on Article ☒ 7 ☒**

With regard to the discharge of waste water into the open sea by means of pipelines, Member States undertake to lay down requirements which shall be not less stringent than those imposed by this Directive.

---



**ANNEX II**

**Part A**

**Repealed Directive with its successive amendments**  
(referred to in Article 13)

Council Directive 76/464/EEC (OJ L 129,  
18.5.1976, p. 23)

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

Directive 2000/60/EC (OJ L 327, 22.12.2000,  
p. 1)

Annex I, point (a) only

only as regards the reference in Article  
22(2), fourth indent, to Article 6 of  
Directive 76/464/EEC

**Part B**

**List of time-limits for transposition into national law**  
(referred to in Article 13)

Directive	Time-limit for transposition
76/464/EEC	_____
91/692/EEC	1 January 1993
2000/60/EC	22 December 2003



### ANNEX III

#### CORRELATION TABLE

Directive 76/464/EEC	This Directive
Article 1(1), introductory wording	Article 1, introductory wording
Article 1(1), first indent	Article 1(a)
Article 1(1), second indent	Article 1(b)
Article 1(1), third indent	Article 1(c)
Article 1(1), fourth indent	—
Article 1(2), introductory wording	Article 2, introductory wording
Article 1(2)(a),(b) and (c)	Article 2(a), (b) and (c)
Article 1(2)(d), first indent	Article 2(d)(i)
Article 1(2)(d), second indent	Article 2(d)(ii)
Article 1(2)(d), third indent	Article 2(d)(iii)
Article 1(2)(e)	Article 2(e)
Article 2	Article 3
Article 3, introductory wording	Article 4, introductory wording
Article 3, point (1)	Article 4(a)
Article 3, point (2)	Article 4(b)
Article 3, point (3)	Article 4(c)
Article 3, point (4)	Article 4(d)
Article 4	—
Article 5	Article 5
Article 7	Article 6
Article 8	Article 7
Article 9	Article 8
Article 10	Article 9
Article 11	Article 10

Article 12

Article 13

Article 14

\_\_\_\_\_

\_\_\_\_\_

Article 15

Annex

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Article 11

Article 12

Article 13

Article 14

Article 15

Annex I

Annex II

Annex III

\_\_\_\_\_