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COUNCIL DIRECTIVE
of 30 October 1979
on the quality required of shellfish waters
(79/923/EEC)
(OJ L 281, 10.11.1979, p. 47)

Amended by:

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COUNCIL DIRECTIVE
of 30 October 1979
on the quality required of shellfish waters
(79/923/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 100 and 235 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas the protection and improvement of the environment necessitate concrete measures to protect waters, including shellfish waters, against pollution;

Whereas it is necessary to safeguard certain shellfish populations from various harmful consequences, resulting from the discharge of pollutant substances into the sea;

Whereas the programmes of action of the European Communities on the environment of 1973⁽⁴⁾ and 1977⁽⁵⁾ provide 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;

Whereas differences between the provisions already in force or in preparation 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 common market; whereas laws in this field should therefore be approximated as provided for by Article 100 of the Treaty;

Whereas it is necessary to couple this approximation of laws with Community action aiming to achieve, by means of wider-ranging provisions, one of the Community's objectives in the field of environmental protection and the improvement of the quality of life; whereas certain specific provisions must be laid down in this connection; whereas, since the specific powers of action required to this end have not been provided for in the Treaty, it is necessary to invoke Article 235 thereof;

Whereas, in order to attain the objectives of the Directive, the Member States will have to designate the waters to which it will apply and will have to set limit values corresponding to certain parameters; whereas the waters so designated will have to conform to these values within six years of designation;

Whereas 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 the Annex should be carried out; whereas such sampling may be reduced or discontinued in the light of the results of the measurements;

Whereas 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;

Whereas technical and scientific progress may make necessary the rapid adaptation of some of the requirements laid down in the Annexes;

⁽¹⁾ OJ No C 283, 30. 11. 1976, p. 3.

⁽²⁾ OJ No C 133, 6. 6. 1977, p. 48.

⁽³⁾ OJ No C 114, 11. 5. 1977, p. 29.

⁽⁴⁾ OJ No C 112, 20. 12. 1973, p. 3.

⁽⁵⁾ OJ No C 139, 13. 6. 1977, p. 3.

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whereas, 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; whereas such cooperation should take place in the Committee on Adaptation to Technical and Scientific Progress set up by Article 13 of the Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life⁽¹⁾;

Whereas this Directive cannot, by itself, ensure protection of consumers of shellfish products; whereas proposals to this end should therefore be submitted by the Commission as soon as possible,

HAS 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 the Annex.

Article 3

1. Member States shall, for the designated waters, set values for the parameters listed in the Annex, 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 the Annex and shall endeavour to observe the values in column G, while taking into account the principle set out in Article 8.
3. For discharges of effluents falling within parameters 'organohalogenated substances' and 'metals', the emission standards laid down by the Member States pursuant to Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community⁽²⁾ shall be applied at the 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 shall, initially within a two-year period following the notification of this Directive, designate shellfish waters.
2. Member States may subsequently make additional designations.
3. 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.

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 the Annex.

⁽¹⁾ OJ No L 222, 14. 8. 1978, p. 1.

⁽²⁾ OJ No L 129, 18. 5. 1976, p. 23.

▼B*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 the Annex, 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 the Annex, as regards:

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

If, in accordance with Article 7 (2), the sampling frequency for all the parameters in the Annex except 'organohalogenated substances' and 'metals' is lower than that indicated in the Annex, the abovementioned values and comments 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 the Annex 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 the Annex.

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 the Annex, 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 the Annex 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 the Annex. Laboratories which employ other methods shall ensure that the results obtained are equivalent or comparable to those specified in the Annex.

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.

▼B*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 the Annex shall be adopted by the Committee set up by Article 13 of Directive 78/659/EEC in accordance with the procedure laid down in Article 14 thereof.

Article 13

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

- the waters designated in accordance with Article 4 (1) and (2), in summary form,
- the revision of the designation of certain waters in accordance with Article 4 (3),
- the provisions laid down in order to establish new parameters in accordance with Article 9.

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

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***▼M1**

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 Directive 91/692/EEC⁽¹⁾. 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.

▼B*Article 15*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive

⁽¹⁾ OJ No L 377, 31. 12. 1991, p. 48.

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within two years of its notification. They shall forthwith inform the Commission thereof.

2. 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.

Article 16

This Directive is addressed to the Member States.

ANNEX

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 | | 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 | — Filtration through a 0.45 µm membrane, drying at 105 °C and weighing — Centrifuging (for at least five minutes, with mean acceleration 2 800 to 3 200 g), drying at 105 °C and weighing | Quarterly |
| 5. Salinity ‰ | 12 to 38 ‰ | — ≤ 40 ‰ — Discharge affecting shellfish waters must not cause their salinity to exceed by more than 10 % the salinity of waters not so affected | Conductimetry | Monthly |
| 6. Dissolved oxygen Saturation % | ≥ 80 % | — ≥ 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 | — Winkler's method — Electrochemical method | 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 |

| | Parameter | G | I | Reference methods of analysis | Minimum sampling and measuring frequency |
|-----|--|--|--|---|--|
| 7. | Petroleum hydrocarbons | | Hydrocarbons must not be present in the shellfish water in such quantities as to: <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. | <i>Metals</i> Silver Arsenic Cadmium Chromium Copper Mercury Nickel Lead Zinc mg/l | 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 the shellfish flesh must not exceed a level which gives rise to harmful effects on the shellfish and their larvae The synergic effects of these metals must be taken into consideration | Spectrometry of atomic absorption preceded, where appropriate, by concentration and/or extraction | Half-yearly |
| 10. | Faecal coliforms/100 ml | ≤ 300 in the shellfish flesh and intervalvular liquid (') | | 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 | Quarterly |

| | Parameter | G | I | Reference methods of analysis | Minimum sampling and measuring frequency |
|-----|---|---|---|---|--|
| 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 live shellfish directly edible by man.