THE EBB AND FLOW OF EC ENVIRONMENTAL INSTRUMENTS: WHY THE NEED FOR A NEW FRAMEWORK APPROACH TO COMMUNITY WATER POLICY?[1]

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Abstract

This paper examines the development of European Community (EC) water policy in three distinct phases. It suggests that EC environmental action on water entailed a period of intense activity in the years following the First Action Programme on the Environment in 1973 when the "flow" of secondary legislation was at its peak; a period of review and consolidation from 1988 and 1996 when an "ebb" in successive waves of new secondary legislation appears to have occurred; and, most recently, a period of policy innovation with the Commission's proposals for a new approach to EC water policy in 1997. This new approach has been incorporated in the Commission proposal for a Council Directive establishing a framework for Community action in the field of water policy. The Commission proposal, on which the Environment Council reached political agreement on 11th March 1999, suggests repealing much of the earlier legislation on water quality to take account of advancements in techniques for controlling pollution and managing water as an environmental resource. This paper reviews the main arguments for a new approach to EC water policy and seeks out evidence of regulatory failure and the need for re-regulation in this area of EC environmental policy.

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Introduction

European Community (EC) water policy is undergoing a process of profound re-appraisal and revision. When the European Commission published a proposal for a Council Directive establishing a framework for Community action in the field of water policy[2] in February 1997, it set out new guiding principles and structures to ensure the quality and quantity of water available throughout the EC. This paper examines the rationale for the policy review and seeks out evidence of regulatory failure and the need for re-regulation in this area of EC environmental policy. The Commission's proposal for a new framework approach takes as its starting point a review of progress made in earlier Community water law, much of it dating back to the First Community Action Programme on the Environment in 1973[3]. It suggests repealing much of the earlier legislation and replacing it with a new "framework" approach to improve the quality of water and encourage its sustainable use. The logic behind this new approach to EC water law is that much of the earlier legislation is now out of date and in need of a comprehensive review to take account of advancements in techniques for controlling pollution and managing water as an environmental resource. This paper reviews the main developments in Community water policy over the past 26 years, outlines the reasons why different policies have been adopted and highlights the perceived advantages of the Community's new "framework" approach, an approach likely to have important implications for the management of water as a sustainable resource.

Water as a challenge for EC environmental policy

For the purposes of EC environmental policy, water has been divided into various administrative categories. These include fresh water, marine water, groundwater and surface water. Separate EC legislative measures in the form of Directives relate to rivers, lakes, estuaries, coastal waters, open sea and underground aquifers. Water is also distinguished by its socio-economic uses, such as drinking water supplies, water

used by agricultural and industry, water used for leisure and tourism and water requiring a particularly high level of conservation.

But although Community policy makers have found it convenient to divide water into different categories for administrative purposes, water itself does not recognise these distinctions. In 1996, the European Commission finally acknowledged[4] that, in practice, water flows freely between the various categories and often performs a number of functions simultaneously. Despite a strategy of adopting separate policy measures to tackle water pollution in its different forms from the early 1970s onwards, by the mid-1990s the Commission had finally come to the realisation that what was actually needed was a more flexible, integrated approach to water in EC environmental policy. The Commission now appears to accept that the environmental problems associated with water cannot easily be compartmentalised into convenient administrative or legal categories.

Yet however inappropriate the early, compartmentalised, approach of EC water policy might now appear in retrospect, the emergence of administrative artificial categories created by secondary legislation are perhaps less surprising in view of the recurring problem of defining the nature of water pollution in regulatory terms. In EC environmental policy, a key issue is the distinction between "point source" and "diffuse source"[5] pollution. In terms of water law, point source pollution refers to pollutants originating from individual, usually identifiable, discharge points. Point source pollution includes discharges of industrial, domestic or municipal waste water, urban run-off, leakage from storage tanks, industrial installations, farmyards and landfill sites. The environmental damage caused will depend on the nature of the pollution, but will involve potential hazards to human health, detrimental impacts on the ecosystem or disrupting the environmental balance. This pollution may build up in the water over many years or may happen suddenly as the result of an accident that leads to the release of pollutants from a point source into the aquatic environment, for example from a site manufacturing chemicals which is located near to a water source.

Diffuse source pollution, on the other hand, describes pollution that arrives in water from a number of widely scattered sources that are difficult to identify and control. A typical example of diffuse source pollution is that which results from agricultural practices, including the use of pesticides and nitrates to increase crop yield. Excess amounts of these pesticides and nitrates are then washed from the soil by rainfall and pollute rivers and groundwater intended as drinking water supplies. While the results of diffuse source pollution may well be the same, they normally require different environmental management techniques to reduce or eradicate their effects. Diffuse source pollution may also result from acidification, namely the emission of air-borne pollutants, particularly sulphur dioxide, nitrogen oxide and ammonia from large combustion plant such as coal-fired power generating stations or industrial manufacturing sites. These air-borne pollutants can be carried for thousands of miles before being deposited in rivers and lakes through rainfall, resulting in a significantly

reduced pH.

Water may also be polluted as the result of eutrophication, particularly as a result of point source or diffuse pollution, particularly from urban waste water, namely sewerage, or farming, particularly agricultural waste and fertilisers. Eutrophication arises because high levels nutrients in water leads to an excessive growth of algae at the expense of the natural plant and animal community. This occurs because the oxygen demand of the algae disrupts the natural balance of the ecosystem. The range of environmental problems associated with water quality that EC policy has sought to address are therefore varied and complex.

In addition to environmental problems associated with the quality of water, the availability of water in sufficient quantity is a separate, but nonetheless serious, problem, particularly in southern Europe where problems of water shortages are more common. Increased demands for water may result in higher levels of abstraction for drinking water, tourism, agriculture or industrial manufacturing. Yet while the quality of water has been the focus of intense legislative activity in the Community, the dangers of over abstraction have tended to be overlooked in EC environmental policy. More recently, however, the Commission has been keen to acknowledge that, particularly for groundwater, over use may not only lower the water table, damage the aquifer but may also lead to the encroachment of salt water into coastal aquifers, causing their loss as a source of drinking or irrigation water[6]. Similarly, over abstraction from rivers can reduce flow rates that have adverse effects on ecosystems and habitats for plants and animals. Over abstraction from groundwater or surface waters can also have a range of secondary effects that are nonetheless damaging to the environment, such as the drying out of wetlands or soil erosion.

The physical characteristics of rivers, lakes and coastal areas are often altered by human interference for a range of reasons[7] including flood protection, canals and waterways, docks and land reclamation. Other human activities do not directly seek to alter the aquatic environment, but nonetheless have an impact on it, these activities include leisure and tourism, fisheries and shipping.

Principles of Community water policy

Community environmental policy is underpinned by the legal principles set out in Article 174 (formerly Article 130r) of the EC Treaty. These principles have been operationalised by the Commission into a set of inter-related objectives for Community water policy[8]. Accordingly, the Treaty requires that a high level of protection is given to human health, that the precautionary principle be applied.

O'Riordan[9] sees the precautionary principle resting on four assumptions: prudent action in advance of scientific certainty; shifting the burden of proof onto the would-be developer to show no unreasonable harm; ensuring that environmental wellbeing is given legitimate status; and developing best practice techniques in the pursuit of management excellence". In the context of water policy this means that standards are based on recognised scientific knowledge and that a cautious approach is adopted, maintaining higher standards and using the best available techniques wherever there remains scientific uncertainty about the effects on the aquatic environment.

Preventive action that stops environmental damage from occurring is preferable to action that remedies problems once they have occurred. Certainly in the case of water conservation, once a sensitive ecosystem has been destroyed it may be impossible to repair. Preventing pollution at source is also preferable to end-of-pipe solutions so, for example, action which ensures that natural sources of water used for drinking are not contaminated is preferred to expensive treatment to make supplies suitable for human consumption. Following on from preventive action is the principle that environmental damage should be rectified once it has been identified and that the polluter should pay for the cost of measures to repair the damage and discontinue the activity that has caused it. Finally, Community water policy should take account of the principle of sustainable development, namely that environmental concerns should be balanced against socio-economic factors and the requirement for increased amounts of fresh water to meet demand[10]. The Commission also recognises that water policy requires coherent integration, both into other Community policy areas and by way of effective implementation of policy at the national and local level[11].

Article 5 (formerly Article 3b) of the EC Treaty requires that Community action should be taken in accordance with the principle of subsidiarity. This means that water policy measures that can be undertaken most effectively at Member State level should not be undertaken at Community level. Even when Community action is taken, subsidiarity also requires that the detailed implementation of water policy should be left to the Member States where this is more appropriate. Action at national or local rather than EC level may be considered appropriate because environmental conditions in the Community are likely to vary widely between Member States. Water policy that is appropriate in one Member State (for example in the UK, where water is relatively fast flowing and contaminants in water are dispersed relatively quickly) may be entirely inappropriate in another (for example in Spain, where water shortages have been a frequent problem). The Commission therefore applies the principle of flexibility to ensure that the most appropriate policy is implemented in a particular region[12]. However, it is also the case that water pollution does not observe national boundaries. It may well have impacts across a number of Member States. Where there is potential for transfrontier pollution, there is often sufficient justification for the Community to act[13].

This paper will now examine the development of EC water policy in order to seek an

explanation why, after 26 years of legislative activity, the Commission now sees the need for a major overhaul of environmental policy that will introduce a new framework approach to EC water policy. Community water policy has developed in four distinct phases, each of which is outlined below.

The flow of EC environmental instruments: EC water policy initiatives after the First Action Programme on the Environment in 1973

In 1973, the Community's First Action Programme on the Environment[14] identified water pollution as an issue where priority action was required[15] and the earliest water quality legislation was adopted by the Council in 1975. Due to the public perception that ever higher water quality standards are required to ensure public health and prevent further environmental degradation, and coupled with the absence of private corporate interests to present a contrary argument based on environmental and cost efficiency, legislative activity was rapid. There are now over 25 Community Directives or Decisions that deal directly with water policy or are closely related to it[16]. The most important of these are described below:

The 1975 Surface Water Directive[17] had the objective of ensuring clean drinking water sources by requiring Member States to identify, classify and set up action plans to ensure that quality standards where achieved by rivers, lakes and reservoirs used as drinking water sources. The standards in the Directive are now out of date and, in any case, have now been superseded by the Drinking Water Directive. The Surface Water Directive has also been criticised[18] because its value in protecting sources of drinking water remains unproven.

The 1976 Bathing Water Directive[19] seeks to safeguard the health of bathers and maintain the quality of bathing waters by requiring Member States to identify marine and fresh water bathing waters, monitor them and take "all appropriate measures" to ensure compliance with quality standards. The Commission considers the Bathing Water Directive to be very popular with European Union (EU) citizens[20]. At the time the Directive was adopted, there was little other Community legislation on water pollution. The Bathing Water Directive was the Community's first attempt to deal with pollution problems caused by the disposal of sewerage and waste water although, more recently, the Urban Waste Water Directive has dealt directly with this issue. In 1994 the Commission published a proposal to update the Bathing Water Directive[21], but this has yet to be adopted.

In an attempt to control the surface water pollution, the 1976 Dangerous Substances Directive[22] requires Member States to control emissions of dangerous substances

listed in the annex of the Directive. The main control mechanisms are permits, issued to industrial installations and by improved treatment of urban waste water. The conditions under which permits may be issued for the more dangerous substances (set out in List I of the annex) were then to be laid down in "daughter directives". Member States then have a choice between two methods for setting these conditions, either an emission "limit values" approach or on limits required to meet specified "quality objectives" in the water receiving pollution. Less dangerous (List II) substances are then subject to pollution reduction programmes in each Member State.

Although the Dangerous Substances Directive has played an important part in improving surface water quality, the Commission recognises that the procedure for producing daughter directives for List I substances has proved burdensome and slow, while few Member States have taken action to reduce pollution from List II substances at all[23]. The problem that Member States have had in implementing the Directive is that the list of potentially dangerous substances continues to grow. Also, because the daughter directives deal with each substance individually, they do not consider the potential toxicological effect of a "cocktail" of these substances mixed together in water. An attempt to answer these criticisms has been made in the recent Integrated Pollution Prevention and Control (IPPC) Directive.

The 1977 Information Exchange Decision[24] set up a network of 124 monitoring points (in 12 Member States) to measure the quality and quantity of water according to 19 criteria. This information is then exchanged between the Member States and published by the Commission. The Decision was subsequently superseded by the activities of the European Environment Agency (EEA) and by the monitoring and reporting requirements of later directives, but the Commission's view is that the Decision has proved useful in providing a long time series of data on the quality and quantity of water in the Community[25].

The Fish Water Directive[26] of 1978 and the Shellfish Water Directive[27] of 1979 have the objective of protecting fresh water capable of supporting fish life, and coastal and brackish waters that support shellfish, from pollution. The Directives require Member States to designate fish and shellfish waters, establish quality standards, monitor these waters and reduce pollution levels. Since Member States have complete discretion over which waters are to be covered by the Directives, they have been implemented differently and have been criticised for having a patchy impact across the Community.

The 1980 Groundwater Directive[28], which started life as a companion to the Dangerous Substances Directive, seeks to prevent dangerous substances from polluting groundwater. However, the Commission acknowledges that, since pollution frequently comes from diffuse, not point, pollution sources (such as the use of agricultural pesticides), and because there is a separate problem of over-abstraction,

the Directive does not adequately address the environmental problems for groundwater[29].

In order to ensure that water intended for human consumption is safe, the Drinking Water Directive of 1980 [30] sets quality standards for more than 60 parameters. Compliance with these parameters are monitored by the Member States, who report to the Commission. The Directive has led to investment in water filtration plant by water supply companies in the Member States. It has improved the quality of drinking water that consumers can expect to receive from their taps, but often with a high cost reflected by increased charges in water bills[31]. In response to these criticisms, in 1995 the Commission published a proposal to revise and update the standards laid down in the Drinking Water Directive[32].

Community water legislation has tended to focus on point source pollution control simply because it is one of the easiest problems to recognise and take action against[33]. Although Member States have retained discretion over how to implement the detail of Community water legislation, in accordance with the principle of subsidiarity, the basic principle has been to require economic activities (such as industry) to be licensed by the competent national authorities and to make the granting of that licence dependent on pollution control measures being put in place. These pollution control measures are normally in terms of emission controls on the amounts of pollution that the licence holder may discharge into water.

Two approaches to emission controls are adopted by Member States: the emission limit and the quality standards approaches. The emission limit approach is based on estimates of the maximum level of reductions in pollution that could reasonably be expected given the best available techniques not involving excessive costs (BATNEEC). The meanings of "best available techniques" and "excessive costs" have often proved difficult to ascertain. On the basis of these estimates, emissions are allowed under the terms of each licence issued. This approach is widely used in the United Kingdom. In other Member States, the quality standards approach tends to be used as the basis for issuing pollution control licences. The quality standards approach seeks to establish the quality objectives that are to be achieved, then estimate the amount of pollution that water is likely to tolerate without harming the aquatic environment. Permits are then issued to potential polluters, based on the geographical areas where the quality standards apply.

The fact that Community water directives have allowed Member States to choose between their preferred approach of pollution control can be attributed to a political compromise that resulted in both the quality standards and the emission limits approaches being retained. This compromise is not considered ideal[34]. In practice, the Commission recognises that neither of the approaches offers an ideal solution

because, while emission limits can lead to unnecessary investment without significant benefit to the environment[35], the quality standards approach can be abused as a "licence to pollute" up to a defined level[36]. Most Community water directives nevertheless continue to persist with elements of both the emission limits and the quality standards approaches.

The ebb of EC environmental instruments. Revision and consolidation of EC water policy after the Frankfurt Ministerial Seminar in 1988

Despite the legislative activity that took place after 1973, the Community was adopting a rather piecemeal approach to water policy. Not all water pollutants were even covered by the legislation[37]. In 1988, when a ministerial seminar was held in Frankfurt to review progress made with Community water policy, the meeting recognised that significant improvements needed to be made to the existing body of EC water legislation. Subsequently, additional Community legislation was adopted on urban waste water treatment and nitrates.

The 1991 Urban Waste Water Treatment Directive[38] seeks to reduce pollution by setting conditions for the treatment and discharge of urban waste water (sewerage) and from waste water from industrial sectors. The Urban Waste Water Treatment Directive combines the quality objectives and the emission limit approaches to pollution control. It is in the process of being implemented by the Member States and, as with the Drinking Water Directive, is expected result in large increases in water prices for consumers.

The 1991 Nitrates Directive[39] seeks to complement the Urban Waste Water Directive, by controlling nitrate pollution from agricultural sources. It requires Member States to produce and promote Codes of Good Agricultural Practice to reduce the level of nitrate loss to surface water and groundwater from agriculture, and to monitor areas identified as being vulnerable to nitrate pollution. As with the Urban Waste Water Directive, the Nitrates Directive combines the quality objectives and emission limit approaches to pollution control.

A further ministerial meeting on water policy was held in The Hague in November 1991, resulting in a Council Resolution on the future of Community groundwater policy[40]. The Resolution called on the Commission to draw up a detailed programme for the protection and management of groundwater. A draft Groundwater Action Programme was subsequently published in 1996[41].

To complement the groundwater proposals, in 1993 the Commission proposed a further directive on the Ecological Quality of Water Directive[42] which seeks to maintain and improve the quality of surface waters by requiring Member States to monitor the ecological status, identifying potential sources of pollution, and establish targets and programmes for achieving good ecological quality water.

Also in 1993, a detailed statement on the status of EC water policy was made in the Community's Fifth Action Programme on the Environment. It reviewed progress made by Community water policy in the light of the fact that water as one of the elementary sources of life, an indicator of the general quality of the natural environment, and a prerequisite for a harmonious and sustainable development of socio-economic activities[43]. The Fifth Action Programme also acknowledged a principle not apparent in all earlier EC water policy decisions, namely that Community policy should take into account not only the quality of water available, but also ensures that it is available in sufficient quantities to achieve sustainable development without upsetting the natural equilibrium of the environment.

Accordingly, the Fifth Action Programme on the Environment[44] set out three policy aims in relation to the management of water resources in the Community: (i) preventing the pollution of fresh and marine surface waters and groundwater, with particularly emphasis on prevention at source; (ii) restoration of natural ground and surface waters to an ecologically sound condition, thus ensuring (*inter alia*) a suitable source for extraction of drinking waters; (iii) ensuring that water demand and water supply are brought *into equilibrium* on the basis of more rational use and management of water resources.

Moreover, the Fifth Action Programme recognised the importance of water as a sustainable resource for a number of economic sectors, including industry (which uses water in manufacturing processes), the energy sector (which uses water as a coolant in generating processes), the agricultural sector (which particularly uses water for crop irrigation) and tourism (which relies on the provision of clean and safe drinking and bathing waters). However the Fifth Action Programme also acknowledged that these sectors are the main contributors to water pollution and the main cause of over-abstraction.

In line with The Hague Declaration of 1991, the Fifth Action Programme also set out the objectives for water quantity and quality until the year 2000[45]. For groundwater and surface water, the quantity objectives were for the sustainable use of fresh water resources which balances demand with availability. The objectives for the quality of groundwater were to maintain uncontaminated groundwater, to prevent further contamination of polluted groundwater, and the restoration of contaminated groundwater to drinking water quality. The objective for the quality of fresh surface

water was to maintain a high standard of ecological quality with a high level of biodiversity. Finally, the objective for marine water quality was the reduction of discharges of toxic substances which, due to their persistence or accumulating impact could negatively affect the environment.

At the Environment Council meeting on 20-23 June 1995, Member States called on the Commission to undertake a much more thorough review of Community water policy in the light of the objectives set out in the Fifth Action Programme. The Commission published its response on 21st February 1996 in a Communication to the Council and the European Parliament. In its Communication[46], the Commission elaborated on the objectives of sustainable water policy as being: to provide a secure supply of drinking water that is safe and available in sufficient quantity and with sufficient reliability; to provide water of sufficient quality and quantity to meet drinking and other economic requirements (i.e. for industry and agriculture and to sustain fisheries, transport and power generation activities as well as meeting recreational needs); to ensure that the quality and quantity of water is sufficient to protect and sustain the good ecological state and functioning of the aquatic environment; and to ensure that water is managed so as to prevent or reduce the adverse impact of floods and minimise the impact of droughts.

The Commission acknowledged that the four objectives of Community water policy may not always be mutually compatible. A sustainable water policy was seen as being one which achieves a balance between objectives but, overall, the protection of quality and quantity of water resources was considered the priority for Community policy. To achieve the objectives of a sustainable water policy, the Communication recommended the adoption of a framework Directive. This marked the beginning of a process of consultations between the Commission and the Council, European Parliament, Economic and Social Committee and the Committee of the Regions. The Commission also received written submissions from environmental and consumer NGOs, water supply companies and national environment agencies and, on 28-29 May 1996, held a conference on the future of Community water policy at which interested parties were invited to participate.

A new approach to Community water policy since 1997

The outcome of the Commission's consultations on the future of Community water policy was the publication, on 26th February 1997, of a proposal for a Directive establishing a framework for Community action in the field of water policy[47]. The Commission later made some technical amendments to the proposal in November 1997[48] and February 1998[49]. The legal base of the proposed framework Directive is Article 175 (formerly Article 130s) of the EC Treaty.

The justification for a new approach to EC water policy is that much of the existing body of EC water legislation, dating back to 1975, is now out of date. The existing body of legislation has been criticised by the European Parliament[50] as being, in many respects, contradictory since earlier legislation has since been superseded by subsequent measures without actually being repealed. It is also needs to take into account the objectives of a sustainable water policy set out by the Commission in 1996[51]. Certainly, Community policy over the past 25 years cannot be judged to have been a total success. Despite a quarter of a century of Community legislative activity designed to ensure good quality water, in 1994 the European Environment Agency reported that only 10 per cent of water in the European Community's rivers and lakes met the EEA's criteria for good quality[52]. This reconfirmed the findings of the European Environment Agency's Dobris Report[53] which had found that there was still much to be achieved to protect the aquatic environment of Europe.

The proposed framework Directive on water policy seeks to rationalise much of the earlier water legislation and respond to a number of issues not previously dealt with by Community legislation, particularly over-abstraction and water shortages. Once it has come fully into force, much of the existing EC water legislation will be repealed and set out an overall framework in which the remaining directives, including the Bathing Water, Drinking Water, Urban Waste Water Treatment, Nitrates Directives fit. The intention is that the Community will repeal the Surface Water Directive, the Information Exchange Decision, the Fish Water Directive, the Shellfish Water Directive and the Groundwater Directive, while the Commission's proposal for a Directive on the Ecological Quality of Water will be withdrawn and, in effect, extended to a broader concept of integrated water policy[54]. The proposed framework Directive also constitutes a new approach for EC water policy because, in contrast to earlier water directives, it provides for an integrated framework to protect surface water, groundwater, estuaries and coastal waters together. It is based on the principle that Community policy should recognise the fact that water is not static. It flows from rivers into groundwater, lakes and the sea.

The proposed framework Directive relies on the creation of a structure within which the Community, national, regional and local authorities are expected to co-operate, creating an integrated approach towards water policy. The success of the new system hinges on co-operation between different Member States in identifying policy areas where further action is required, leading to more effective action on water policy. This type of transnational co-operation is particularly important where river basins cross national frontiers, such as the Rhine and the Danube[55].

The proposed framework Directive itself has four main objectives: (i) the provision of drinking water; (ii) the provision of water for other economic activities; (iii) the protection of the environment; and (iv) the alleviation of the impact of floods and

droughts. The Commission has already stated that protection of the environment is the proposed Directive's main objective, while it has also acknowledged that the prevention and alleviation of floods and droughts will not be achieved by the proposed framework Directive alone, but will to become an objective of Community water policy[56] more generally.

River basin management plans

The primary administrative tool for co-ordinating implementation of the proposed framework Directive will be a new system of river basin management plans. Under Article 3 of the proposed framework Directive, a network of river basin districts will be established in each Member State. Each district will include more than one river basin and provide the primary administrative unit for co-ordinating implementation of the Directive. Groundwaters and coastal waters will be assigned to the "nearest or most appropriate" river basin. Designated competent authorities[57] will then be required to prepare a review of each river basin, including the analysis of the characteristics[58] and impacts of river basins, economic analysis of water use[59], environmental assessments and the impacts of human activities on water resources[60].

The competent authorities will then be responsible for consulting with interested parties and the public prior to implementing the river basin management plans. The management plans will specify programmes to achieve environmental objectives for each basin, including summaries of reviews and analyses undertaken, monitoring data and measures to be taken to meet environmental objectives within a specified timetable, with the purpose of ensuring that all waters in the river basin achieve "good" status. Public consultation will include publication of each plan one year before the period to which it relates, with a six-month period for the interested parties to comment. Additional background information will have to be provided to the public on request.

River basin management plans are due to be put in place ten years after the Directive comes into force and be fully operational six years later. Each management plans must then be updated every six years after that. This timetable is much more generous than the one originally proposed by the Commission when the Directive was conceived. The old timetable required river basin management plans to come into force by the end of 2004 and be fully operational by the end of 2007. The new one reflects the desire of the Council to leave longer transitional periods during which national procedures and administrative practices can be adapted. Once the management plans are operational, each Member State will send copies to the Commission and the European Environment Agency. This will mean that, for the first time, the Community will have information on Europe's aquatic environment in a standardised format which can be easily analysed and compared.

Under Article 13 of the framework Directive, programmes of action under river basin management plans will include "basic measures" and, where necessary, "supplementary measures". "Basic measures" will be compulsory and include instruments to achieve Community and national environmental quality standards, the implementation of other relevant legislation and the introduction of water charges. The "supplementary measures" will include other instruments necessary to meet the objectives of the Directive, notably in relation to sustainable water consumption. Article 14 of the Directive will additionally require Member States to take interim measures, such as intensive monitoring, investigation of pollution sources and a review of authorisations and discharge permits, as soon as possible where the chemical status of water has fallen below "good" status.

The introduction of river basin management plans are widely welcomed because they introduce an integrated approach to water pollution control and demand management that builds upon the principles proposed in the earlier draft Groundwater Action Programme[61]. However, indications that the Commission is proposing between 30 and 40 river basin management plans across the whole of the European Union[62] were less warmly received. Such a small number of management plans have been criticised as being inappropriate given that the UK system alone currently consists of some 130 Local Environment Agency Plans[63] that are of comparable standing. Although a streamlined approach to Community water planning is preferable in terms of administrative efficiency at a Community level, it does seem more appropriate for the number of river basin management plans to be higher than 40. Certainly, the diversity of geographical, climatic and environmental conditions across 15 Member States appear to justify a larger number of plans.

Defining water of "good" status

The main environmental objective of the proposed framework Directive is that, by the end of the transitional period, Member States will ensure that surface water and groundwaters in each river basin district are of "good" status. The inclusion of a deadline by which Member States must meet this objective overcomes many of the criticisms about the earlier Commission proposal for a Directive on the Ecological Quality of Water, which leave Member States free to determine for themselves the surface waters to be improved. Member States will, however, be allowed additional time if natural conditions do not allow for rapid improvements in water quality. It is possible that, in some Member States, the Directive will not be fully operational until 34 years after the legislation was adopted. Furthermore, where river basins have been severely impacted by earlier human activities and improvements in status prove to be impossible or prohibitively expensive to achieve, the Directive allows for longer time scales still.

Derogations from the Directive will be allowed for "natural conditions" that do not allow for rapid improvements in the quality of water in river basins. In such cases, lower environmental objectives could be temporarily specified. Where river basins have been "severely impacted" by earlier human activities and improvements in status are proven to be "impossible or prohibitively expensive", longer time scales for implementing the Directive could be agreed on. Key terms such as "prohibitively expensive" are not defined in the framework Directive and raise concerns that Member States could widely interpret water quality improvements as being "prohibitively expensive".

Similarly, definitions of "good" surface waters and groundwaters are given only broad definition in the text. Understanding the definitions requires cross-referring between Article 2, Article 4 and two Annexes to the proposal, although the Commission's amended proposal of November 1997[64] does make some progress in providing guidelines on how their precise meaning will be elaborated.

In part, the lack of clear definitions arises because the proposal retains the "combined approach" of the Dangerous Substances Directive by attempting to reconcile the "quality objective" approach used in the UK with the "emission limits" approach followed in other Member States. Standards set by the daughter Directives adopted under the framework of the Dangerous Substances Directive (existing "black list" dangerous substances") are set out in an Annex to the proposal and environmental quality standards for these substances will be incorporated into the framework Directive on water policy to ascertain "good" chemical status. Since environmental quality standards have been set for relatively few "black list" substances under the daughter Directives, one concern which this approach raises is that many generic groups of dangerous substances are not be covered in the Annex. The quality standards approach remains under-developed for the majority of substances likely to be found in water.

Under Article 2 of the proposed Directive, "good" surface waters will be defined by reference to chemical and ecological status, while groundwaters will be assessed in relation to their chemical and quantitative status. The overall status of surface waters and groundwaters will be determined by using the least well achieved of the two respective measures. It seems somewhat surprising, however, that if the Directive is to be based on a sustainable water policy, quantity of water is not used as a criteria for defining "good" status surface water, as with groundwater. The Drinking Water Directive will also be taken into account to the extent that quality standards will be designed to ensure that abstracted water meets the requirements of that legislation.

Particular problems are likely to arise in defining "good" ecological status. Ecological standards-setting is still developing as an area of scientific expertise. In spite of the November 1997 amendments to the Directive, which suggest that "good ecological status shall entail the achievement of any physico-chemical, physical an biological standards established to ensure that good ecological status is obtained"[65], the absence of readily available technical information is likely to hamper the task of elaborating definitions for each status. Overall, the pace of change in scientific expertise is rapid and, if the development of toxicological knowledge keeps apace with the previous ten years[66], flexibility will be required to ensure that definitions agreed on do not become out of date quickly.

Flexibility

The proposed Directive proposes that the definition for each status will be fully elaborated by a Management Committee[67], comprising experts drawn from the Member States and chaired by a Commission representative, which will begin its deliberations only once the Directive has been adopted.

It is undoubtedly the case that Community water policy requires a flexible approach to ensure that standards reflect state-of-the-art toxicological and ecological knowledge. It is this necessity which lies at the heart of the Commission's proposal for a Management Committee structure. It may well be best placed to undertake this on-going task.

A criticism of Community water policy in the past, certainly made elsewhere by this author[68], has been the extent to which Community legislation has appeared ill-equipped to accommodate subsequent advancements in scientific expertise into amendments to outmoded EC law. In the sense that the present proposal will improve the responsiveness of Community water policy, allowing for the updating of legislation as new scientific evidence comes to light, it should be roundly welcomed.

The emphasis on *comparable* rather than *uniform* standards in the proposal also appears well founded and reflects the subsidiarity principle. It allows flexibility by permitting Member States to take account of different climatic and geographically diverse conditions across the Community.

In that the proposal leaves crucial aspects of Community legislation to a Management Committee convened only after Member States have agreed to abide by its decisions, the Directive contains a ground-breaking plan to cede much of the detail of future EC

environmental policy to a new committee structure. While, in practical terms, the logic of the Management Committee makes profound sense, on political grounds it can be readily seen that Member States might consider this an inappropriate application of the principle of "comitology" and an erosion of national sovereignty. Indeed, the UK Government has already made known its reservations about whether the Management Committee provides an appropriate means by which to define quality standards[69].

The UK Government view is that the additional clarity of knowing how quality standards will be defined is necessary before the Directive is adopted in order to allow Member States to properly assess the benefits which may accrue from higher standards as well as the additional efforts and costs that will be required[70]. The UK has also expressed the view that the proposed role of the Management Committee takes it into areas of policy, which are properly for Member States to determine[71]. Rather than delegate this obligation to the Management Committee, the UK Government has suggested that, in parallel to the Council Working Group[72], there should be a group of experts, drawn from each Member State, bringing forward the agreement on the "good" status of water so that definitions could be clearly established before the Directive is adopted[73]. The alternate view, however, is that relieving the Council of its obligation to agree to much of the detail of technical and scientific standards used to determine EC water policy objectives will overcome the impasse caused by the overly detailed and prescriptive Commission proposals that have bedevilled EC environmental policy for over 25 years. This latter view has much to commend it.

Transparency

In terms of improving public access to information, emphasising the overall transparency of EC water policy and encouraging participation in its implementation, the proposed Directive contains several welcome provisions. All river basin management plans will be subject to public consultation when they are in draft form. In addition, Member States' reporting requirements will be simplified. Whereas the current obligation is that national authorities report on compliance with each separate piece of EC water legislation, under the proposed Directive only copies of management plans, with a summary of all actions and measures, will be sent to the Commission and the European Environment Agency.

Where transparency appears to be lacking in the proposed framework Directive is in the 'comitology' measure, namely the delegation of decision making and implementation to a Management Committee. This will undoubtedly be the subject of much debate.

Economic instruments

Article 12 of the proposed Directive provides for economic instruments to be used as a regulatory mechanism for meeting Community water policy objectives. This is the first use of economic instruments for EC environmental policy outside the field of energy taxation. The overall aim is to ensure that water remains a sustainable resource, preventing over-abstraction by using charging mechanisms to recover the full costs of providing water services. "Where appropriate", these charges will also reflect environmental and resource costs in order to encourage more efficient use of water and ensure that the environmental costs of water use are reflected in the costs borne by those who use it. This will have a particularly significant impact on commercial users, who do not pay for the environmental costs of water supply at present.

By the end of the transitional period, full cost recovery will have been introduced for the abstraction, consumption and discharge of water for domestic, industrial and agricultural use, although no deadline has been set for the recovery "where appropriate" of environmental and resource costs. Much concern is likely to surround proposals that these charging mechanisms take account of the need to allow "a basic level of water use for domestic purposes at affordable prices"[74]. This amounts to a proviso that Member States may permit a lower level of cost recovery to ensure that basic household use remains affordable. The proposal defines "basic level of use" as "the amount of water used by the individual person for basic needs" to be calculated "taking into consideration the minimum amount required for human health and hygiene", calculated on the basis of "best available techniques". The detail of this derogation is not made clear.

Although the use of economic instruments to achieve environmental objectives is sound in principle, the uncertainty that remains over who will be expected to carry the cost burden and how Community competence will be balanced in relation to the Member States[75] is unfortunate. Lack of clarity in the drafting of Article 12 is likely to lead to intense scrutiny of the proposal, particularly given Member States' sensitivity over the political implications of increased water prices.

On the face of it, the full cost recovery for water use that is envisaged in Article 12 appears consistent with the polluter pays principle under Article 174 (formerly Article 130r) of the EC Treaty. The appropriate application of the precautionary principle under Article 174 is less clear. According to the precautionary principle, potential pollution should be eliminated at source. The most appropriate stage at which control of diffuse pollution sources could be taken into account in the framework for water

policy is undoubtedly through the co-operation of polluters themselves, whether in the agricultural community, industry or the public sector, in the design and implementation of River Basin Management Plans. The Directive does not, however, place strong emphasis on preventive action in this way. The reduction of pollution from diffuse sources, for instance, depends to some extent on the willingness of pesticide users to accept a duty of care[76]. The proposal places no specific obligation on polluters to behave in such an environmentally responsible manner.

Subsidiarity

In that the approach adopted by the framework Directive takes account of the diversity of environmental conditions in the regions of the Community and reflects a balance of responsibilities between Community, national and regional authorities, it does appear to accord with the subsidiarity principle, as defined by Article 5 (formerly Article 3b) of the EC Treaty[77]. While recognising the need to control the transnational impacts of water pollution through environmental policy co-ordinated at the Community level, the Directive seeks to set common principles and an overall framework for action at EC level while leaving Member States free to determine how best to meet their commitments.

Nevertheless, some ambiguity hangs over how Article 12 of the proposed Directive will be elaborated in accordance with the principle of subsidiarity. Subsidiarity needs to be taken into account in determining how full cost recovery under the proposed Directive may affect Member States' abilities to provide water services. The proposed Directive is imprecise about the likely distributional impact of such changes.

Proportionality

In its Communication on Community water policy that preceded the proposed framework Directive, the Commission stressed that there should be proportionality between the measures and their impact on the environment. However, without precise definitions of how the "good" status of water will be assessed, it is difficult to determine with any degree of accuracy whether the framework Directive has retained this emphasis on proportionality.

An improvement on earlier Community water law?

The proposed framework Directive will undoubtedly streamline the plethora of Community water legislation that has been adopted in a rather piecemeal fashion since the early 1970s. The Directive does, however, provide continuity with previous legislation in that it retains the combined approach to the complementary use of emission limit values and quality standards that was first adopted as a compromise approach in the Dangerous Substances Directive. By retaining the quality standards approach favoured in the UK alongside the emission limits approach used in other Member States, the proposed framework Directive avoids the controversy that would have followed if the Commission had suggested a uniform approach to meeting water policy objectives. However, by keeping to an imperfect compromise, the proposed Directive falls short of an entirely new approach for Community water policy. The European Parliament has been particularly critical of the failure to resolve the uneasy relationship between the quality standards and emission limit approaches, or even to provide guidance on the correct balance between the two systems[78]. Whether the framework Directive will amount to a fully integrated approach for Community water policy therefore remains to be seen.

The proposed framework Directive seeks to complement, rather than conflict with, earlier legislation such as the Urban Waste Water Treatment Directive, the Bathing Water Directive and the Drinking Water Directive. This legislation will remain free standing as separate Community measures. There are some concerns that the proposed framework Directive will therefore not fully integrate all aspects of EC water policy within a common structure in this respect either.

There also remains scope for conflict between EC water policy and other areas of Community competence. The tension between water policy and agricultural policy, for example, is not new to this proposal[79] and good agricultural practices are needed in order to tackle diffuse pollution at source in line with the "polluter pays" principle outlined above.

Water as a sustainable resource

One valuable innovation arising from the proposed framework Directive is the recognition, previously absent from EC water legislation, that water *quantity* is of equal importance to water *quality* for the maintenance of aquatic ecosystems. The proposed Directive includes the objective that each river basin district should ensure a balance between abstraction and replacement with new stocks of groundwater. One criticism of the sustainable approach to water management taken in the proposed

framework Directive is, however, its failure to acknowledge that climate change will have an important impact on the quantity and quality of water (whether through drought or flooding).

Monitoring and enforcement

In terms of ensuring the effectiveness of EC law, the intention of proposed framework Directive to rationalise environmental reporting requirements is generally welcome. By simplifying the information that national authorities are required to submit to the Commission and the European Environment Agency, the proposed framework Directive has the potential to contribute to more effective monitoring and enforcement of EC water policy[80]. However, the European Parliament has already expressed its doubts about the ability of the Commission to efficiently monitor compliance with the general objectives that will be introduced by the framework Directive[81].

Assessment

Overall, the basic approach of the framework Directive, with a structure within which environmental plans can be developed and policy instruments introduced, should be roundly welcomed. Its major achievement is in terms of the simplification of existing EC water Directives, replacing detailed prescriptive measures with a single set of broad environmental objectives. Where the framework Directive appears to fall short of expectations, however, is that outside the sphere of environmental policy it does not appear to adequately integrate other EC policy areas, such as the impact of agricultural policies on water pollution, into its framework. Furthermore, the retention of several earlier water Directives, such as the Bathing Water, Urban Wastewater and Drinking Water Directives, could result in continued contradictions. In the Drinking Water Directive, for instance, the retention of maximum permissible concentrations for pesticides at a fixed level of 0.1 microgramme per litre is likely to run counter to the framework Directive's objectives of flexibility and state-of-the-art standards and, as a result, could hinder the development a coherent approach to water pollution control.

There are also a number of definition problems in the Directive which create uncertainty. Until clarification is given, the impact of the Directive cannot be fully assessed. Amongst the most glaring of the definition problems is the question of what constitutes "good" status surface water and groundwater. There is also uncertainty over how Member States will interpret "prohibitively expensive" improvements to water management programmes, given that competent authorities that will be able to postpone measures until after the end of the transitional period if adequate

justification is given. Lack of clarity in the framework Directive therefore increases uncertainty and raises the potential for Member States to avoid water quality improvements on entirely justifiable grounds.

Lack of clarity also prevents an accurate assessment of the likely cost implications of the framework Directive. The Commission's Explanatory Memorandum does not shed significant light on compliance costs. This is unfortunate since the framework Directive is potentially one of the most expensive that the Community has ever produced. It can only be hoped that the Commission has learnt lessons from the Urban Wastewater Directive, for which the implementation costs have far exceeded expectations. The provision for "full cost recovery" to meet the environmental costs of water abstraction is likely to be the key provision that determines cost. However, once again, it is unclear from the Directive how "full cost recovery", or the implications of environmental harm, will be calculated, although it appears that considerable discretion will be left to national authorities in this respect. Nor is it clear what will be done with the income generated by "full cost recovery" charges, although there seems to be an assumption, implicit in the text, that competent authorities may use income to make environmental improvements. When the extent of these uncertainties is considered, the possibility of uneven implementation and a distortion of compliance costs, with the burden of paying for improvements paid for by particular groups of consumers or commercial interests, becomes a very real possibility.

In the proposal's favour is the fact that it does appear that the proposed framework Directive will endeavour to take account of best available techniques and best environmental practices. This will be a marked improvement on earlier EC water Directives. By making provision for subsequent updating of environmental standards via the Management Committee structure, the framework Directive appears to be giving full recognition to the need for a flexible approach to environmental standards-setting. By providing a mechanism through which progress in scientific and technical expertise can be taken into account, the framework Directive sets out a means by which appropriate and up-to-date EC environmental legislation could be ensured. This should be a significant improvement on existing arrangements.

Concluding remarks

Political agreement on the framework Directive was reached at the Environment Council on 11th March 1999. The framework Directive amounts to a fundamental change in EC water policy. It should be seen as an innovative, positive contribution to the debate over how best to address environmental concerns at a Community level and has been broadly welcomed by all parties concerned. In some respects, however, it raises as many questions as it answers about how EC environmental policy will be

applied in the future. Foremost amongst these is the question of how the principle of subsidiarity should be applied. Given that much of the detailed of implementation will be left to national and regional competent authorities, the implications for the future of Community and Member State competence in environmental policy are likely to be far-reaching, but as yet await further elaboration.

Endnotes

[1] This article builds on earlier work by the author in Matthews, D. "The Framework Directive on Community Water Policy: A New Approach for EC Environmental Law", *Yearbook of European Law*, 1997; and chapter 6 of Grant, W., Matthews, D. and Newell, P. *The Effectiveness of EC Environmental Policy*, Basingstoke: Macmillan Press, forthcoming.
[2] COM(97) 49 final. OJ 1997 C184.
[3] OJ 1973 C 112/1.
[4] Communication from the Commission to the Council and the European Parliament: European Community Water Policy [1996] COM(96) 59 final/1c.
[5] ibid., 3.
[6] ibid. 4.
[7] See, for instance, ibid., 5
[8] ibid., 5.
[9] O'Riordan, T. (1992) The Precautionary Principle in Environmental Management, University of East Anglia, Norwich: CSERGE GEC Working Paper 92-03, 2.
[10] Communication from the Commission to the Council and the European Parliament: European Community Water Policy [1996] COM(96) 59 final/8.
[11] ibid., 6.
[12] ibid., 7.
[13] ibid, 8.
[14] First Community Action Programme on the Environment [1973] OJ C112/1.
[15] Bell, S. Ball and Bell on Environmental Law (London: Blackstone Press, 1997), 439.
[16] Haigh, N. Manual of Environmental Policy: the EC and Britain (London: Longman, 1995), 4.2-1.
[17] Council Directive (EEC) 75/440 on the Quality of Surface Water [1975] OJ L194/26.
[18] See, for example, Communication from the Commission to the Council and the European Parliament: European Community Water Policy [1996] COM(96) 59 final/20.
[19] Council Directive (EEC) 76/160 on the Quality of Bathing Water [1979] OJ L271/44.
[20] Communication from the Commission to the Council and the European Parliament: European Community Water Policy [1996] COM(96) 59 final/21.
[21] Commission proposal to amend Bathing Water Directive (EEC) 76/160 [1994] OJ C112.
[22] Council Directive (EEC) 76/464 on the Control of Dangerous Substances [1976] OJ L129/23.
[23] Communication from the Commission to the Council and the European Parliament: European Community Water Policy [1996] COM(96) 59 final, 22.
[24] Council Decision (EEC) 77/795 on the Exchange of Environmental Information [1977] OJ L334/29.
[25] Communication from the Commission to the Council and the European Parliament: European Community Water Policy [1996] COM(96) 59 final/22.
[26] Council Directive (EEC) 78/659 on the Quality of Water for Fish [1978] OJ L222/1.
[27] Council Directive (EEC) 79/923 on the Quality of Water for Shellfish [1979] OJ L281/47.
[28] Council Directive (EEC) 80/68 on Protection of Groundwater [1980] OJ L268/43.
[29] Communication from the Commission to the Council and the European Parliament: European Community Water Policy [1996] COM(96) 59 final/24.
[30] Council Directive (EEC) 80/778 on the Quality of Water for Human Consumption [1980] OJ L229/11.
[31] Matthews, D. and Pickering, J., 'Directive 80/778 on Drinking Water Quality: An Analysis of the Development of European Environmental Rules' [1997] International Journal of Biosciences and the Law 265.
[32] Commission proposal to revise Council Directive (EEC) 80/778 on the Quality of Water for Human Consumption [1995] OJ C131/5.
[33] Communication from the Commission to the Council and the European Parliament: European Community Water Policy [1996] COM(96) 59 final/9.
[34] See, for instance, Bell, S. Ball and Bell on Environmental Law (London: Blackstone Press, 1997), 440; Haigh, N. Manual of Environmental Policy: the EC and Britain (London: Longman, 1995), 4.2-1.
[35] Matthews, D. and Pickering, J., supra n31.
[36] Communication from the Commission to the Council and the European Parliament: European

Community Water Policy [1996] COM(96) 59 final/10.
[37] Bell, S. "Ball and Bell on Environmental Law" (London: Blackstone Press, 1997), 439.
[38] Council Directive (EEC) 91/271 on Urban Waste Water Treatment [1991] OJ L375/1.
[39] Council Directive (EEC) 91/676 on Nitrates [1991] OJ L375/1.
[40] Council Resolution on the Future of Community Groundwater Policy [1992] OJ C59/2.
[41] Commission Proposal for a Groundwater Action Programme [1996] OJ C355/1.
[42] Commission proposal for a Council Directive on the Ecological Quality of Water COM(93) 68 final [1994] OJ C222/6.
[43] A European Community Programme of Policy and Action in Relation to the Environment and Sustainable Development: Towards Sustainability [1993] OJ C138/50.
[44] ibid. 51.
[45] ibid. 53-54.
[46] Communication from the Commission to the Council and the European Parliament: European Community Water Policy [1996] COM(96) 59 final/2.
[47] Commission proposal for a Council Directive Establishing a Framework for Community Action in the Field of Water Policy [1997] COM(97) 49 final.
[48] Amended Commission proposal for a Council Directive Establishing a Framework for Community Action in the Field of Water Policy (COM(97) 49 final) [1997] COM(97) 614 final.
[49] Amended Commission proposal for a Council Directive Establishing a Framework for Community Action in the Field of Water Policy (COM97) 49 final) [1998] COM(98) 76 final.
[50] European Parliament Report from the Committee on the Environment, Public Health and Consumer Protection on. the Commission Communication to the Council and the European Parliament on European Community Water Policy (COM(96) 59 final [1996] OJ C347/52.
[51] Communication from the Commission to the Council and the European Parliament: European Community Water Policy [1996] COM(96) 59 final.
[52] European Environment Agency "European Rivers and Lakes: Assessment of their Environmental State" (Copenhagen: European Environment Agency, 1994).
[53] European Environment Agency "Dobris Report on Europe's Environment" (Copenhagen: European Environment Agency, 1992).
[54] Communication from the Commission to the Council and the European Parliament: European Community Water Policy [1996] COM(96) 59 final/14.
[55] ibid. 16.
[56] Commission proposal for a Council Directive Establishing a Framework for Community Action in the Field of Water Policy [1997] COM(97) 49 final/5.
[57] Designated competent authorities are not necessarily a single body, but arrangements must be made to ensure that river basin management is properly co-ordinated where more than one competent authority is responsible.
[58] Geographic, geological, hydrographic and demographic characteristics.
[59] Economic analysis of water use forms the basis of water charging calculations. Economic analysis will include environmental and resource costs of water abstraction and distribution, and wastewater collection and treatment, disaggregated at least by household, industrial and agricultural use. This economic analysis should reflect trends over the previous six years and a projection of price and investment scenarios over the forthcoming 12 years.
[60] Environmental assessments will be used to identify point and diffuse sources of pollution, quantify water abstractions by industrial and agricultural sectors and estimate the efficiency of use.
[61] OJ 1996 C355/1, supra n23.
[62] House of Lords Select Committee on the European Communities Session 1997-98, 8th Session. Community Water Policy. Minutes of Evidence QQ105-11, 45-6.
[63] ibid., Part 2: Witnesses' Views 25/9.
[64] COM(97) 614 final, OJ 1998 C 16/14.
[65] OJ 1998 C 16/15.
[66] Matthews, D. and Pickering, J., supra 31.
[67] Article 25, COM(97) 49 final, as amended by COM(97) 614 final.
[68] D. Matthews and J. Pickering, supra n31.
[69] 7531/97: Explanatory Memorandum by the Department of the Environment on the Proposal for a Council Directive establishing a framework for Community action in the field of water policy (COM(97) 49 final).

[70] op cit, para 17.
[71] House of Lords, supra n39, Minutes of Evidence, answers to questions 41-45.
[72] A group of officials from Member State governments which prepares the ground for the Council of Ministers by discussing a proposal and attempting to resolve points of detail before it is considered by Council.
[73] House of Lords, supra n39, Minutes of Evidence, QQ 41-45.
[74] The Commission has already identified the UK as one of the Member States that already meets the cost recovery principle in its domestic water charging framework.
[75] For example, Article 12 of the framework Directive appears to anticipate a more dominant role for the Commission than is envisaged in the Commission's Explanatory Memorandum, which implies greater discretion for Member States in determining the extent to which it is practicable to seek full cost recovery.
[76] Matthews and Pickering, supra n31, 270.
[77] EC environment policy was the first competence under the EC Treaty to be subject to the principle of subsidiarity under the old Article 130r(4).
[78] supra n3.
[79] Matthews and Pickering, supra n31, 270.
[80] House of Lords, supra n39, Minutes of Evidence Q149.
[81] European Parliament, supra n3.