



**WAREG POSITION ON THE
PROPOSAL FOR A DIRECTIVE OF
THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL ON THE QUALITY
OF WATER INTENDED FOR HUMAN
CONSUMPTION (RECAST), COM
(2017) 753 FINAL**

A WAREG REPORT

2018

This Report was produced by WAREG Task Force on Drinking Water Quality Directive and has been approved by the 16th WAREG General Assembly in Budva, Montenegro on 26th September 2018.

Disclaimer:

This work is the product of WAREG with contributions from its members. The findings, interpretations, and conclusions expressed in this paper are entirely those of the authors, and should not be attributed in any manner whatsoever to any member or observer of WAREG or to members or of their Boards of Directors/management or the countries they represent. WAREG does not guarantee the accuracy of the data included in this work.

WAREG, the authors and contributors to this report accept no liability for the quality of the information provided or for it being correct, complete or up to date. Liability claims against WAREG, the authors or contributors to this Report concerning either material or intellectual damage or other detrimental results resulting from the use or non-use of any information provided, including any information that is either incomplete or incorrect, will therefore be rejected. WAREG reserves the express right to amend, add to, or delete sections of the online content without prior notice or to discontinue all or part of the online content either permanently or temporarily.

Third-party content: WAREG does not necessarily own each component of the content contained within the work. WAREG therefore does not warrant that the use of any third-party-owned individual component or part contained in the work will not infringe on the rights of those third parties. The risk of claims resulting from such infringement rests solely with you. If you wish to re-use a component of the work, it is your responsibility to determine whether permission is needed for that re-use and to obtain permission from the copyright owner. Examples of components can include, but are not limited to, tables, figures, or images.

The material in this work is copyrighted. No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or inclusion in any information storage and retrieval system, without the prior written permission of WAREG.

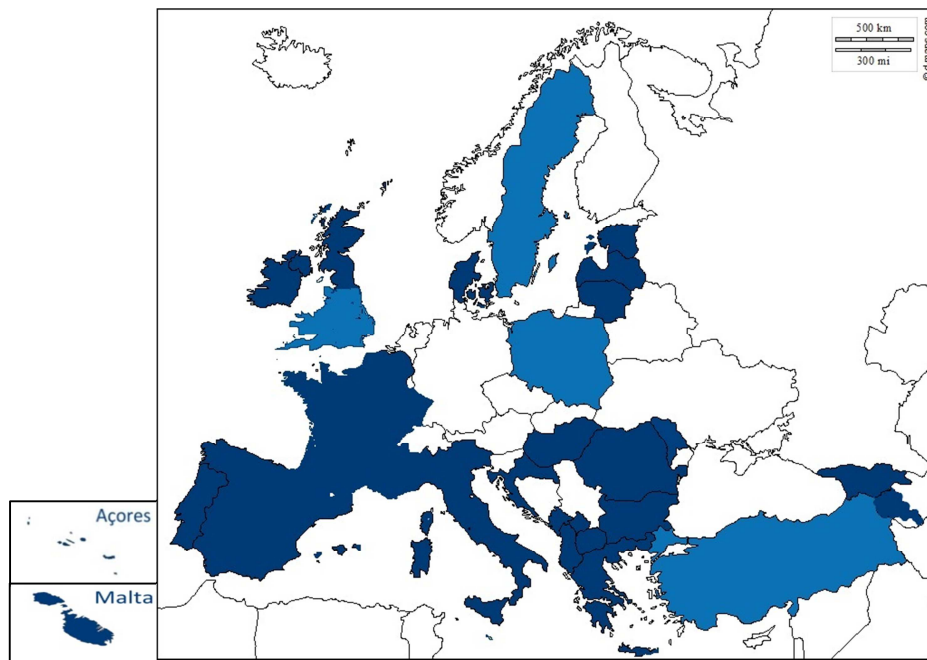
WAREG Position on the Proposal for a Directive of the European Parliament and of the Council on the Quality of Water Intended for Human Consumption (Recast) COM (2017) 753 Final

Table of Contents

1. ABOUT WAREG.....	4
2. INTRODUCTION	5
3. OBJECTIVES.....	6
4. GENERAL CONSIDERATIONS ON THE EC PROPOSAL	8
5. SPECIFIC CONSIDERATIONS ON THE ARTICLES OF THE EC PROPOSAL.....	9

1. ABOUT WAREG

WAREG is an association of public entities with responsibilities for economic regulation of water and wastewater services, at national and regional level, and operating in the wider European Region. Its primary aim is to promote closer cooperation among its Members on a voluntary basis. WAREG was established as an informal network in April 2014 under the initiative of a small group of regulatory authorities. Today WAREG consists of 26 Members and 4 Observers from 26 countries in Europe and the Caucasus¹. In December 2017, it was formally established as a non-profit organization under Italian law.



¹ WAREG Members are: ANRE - National Agency for Energy Regulation (Moldova); ANRSC - Romanian Authority for Public Services (Romania); ARERA – Italian Regulatory Authority for Energy, Networks and the Environment (Italy); CRU - Commission for Regulation of Utilities (Ireland); ECA - Estonian Competition Authority (Estonia); ERC - Energy Regulatory Commission (Macedonia); ERRU - Water Regulatory Authority (Albania); ERSAR - Water and Waste Services Regulation Authority (Portugal); ERSARA - Water and Waste Services Regulation Authority of Azores (Azores/Portugal); EWRC - Energy and Water Regulatory Commission (Bulgaria); GNERC - Georgian National Energy and Water Supply Regulatory Commission (Georgia); HEA - Hungarian Energy and Public Utility Regulatory Authority (Hungary); KFST - Competition and Consumer Authority (Denmark); MEDDE - Ministry for the Ecological and Inclusive Transition (France); MITECO - Ministry for Ecological Transition (Spain); NCC - National Commission for Energy Control and Prices (Lithuania); NIAUR - Northern Ireland Utility Regulator (Northern Ireland/UK); PSRC - Public Services Regulatory Commission (Armenia); PUC - Public Utilities Commission (Latvia); REGAGEN - Energy Regulatory Agency (Montenegro); REWS - Regulator for Energy and Water Services (Malta); SSW - Special Secretariat for Water (Greece); VMM - Flanders Environment Agency (Flanders/Belgium); VVU - Council for Water Services (Croatia); WICS - Water Industry Commission for Scotland (Scotland/UK); WSRA - Water Services Regulatory Authority of Kosovo (Kosovo).

WAREG Observers are: Brugel - Regulator of Brussels Region (Brussels), Ministry of Environment of Poland, Ministry of Forestry and Water Affairs of Turkey, OWFAT (England and Wales, UK).

The objectives of WAREG Association are to promote closer cooperation among its Members, by:

- a) exchanging information and providing joint analysis and comparison of existing water sector regulatory models as well as the performance of water utilities, organising specialised training, staff exchange, technical assistance among Members;
- b) promoting best practices and stable regulation of the water and wastewater services at European level;
- c) promoting cooperation aimed at analysing the sustainability of services, proper infrastructure investment, good quality services and consumer protection;
- d) liaising with other relevant regional and international organisations and national institutions, with a particular focus on European issues in the field of water and wastewater services.

2. INTRODUCTION

A proposal for a directive on the quality of water intended for human consumption (recast) was sent by the European Commission to the European Parliament and the Council of Ministers of the European Union on 1st February 2018².

The objectives of the European Commission's proposal are set in the explanatory memorandum to the new Directive, which provides that:

*'Drinking water was the focus of the first ever European citizens' initiative 'Right2Water', which collected over 1.8 million signatures and to which the Commission responded positively. The initiative was submitted to the Commission in December 2013, and urged in particular that 'the EU institutions and Member States be obliged to ensure that all inhabitants enjoy the right to water and sanitation' and that the 'EU increases its efforts to achieve universal access to water and sanitation'. In its response, the Commission invited Member States to do everything they can to ensure everyone has access to a minimum water supply. This is fully in line with the Agenda 2030, in particular Sustainable Development Goal 6 and the associated target to '**achieve universal and equitable access to safe and affordable drinking water for all**', which were adopted in 2015. The Commission also committed to reviewing the Directive, which was included as a result in the Commission Regulatory Fitness and Performance (REFIT³). The proposal therefore directly follows up on the European citizens' initiative 'Right2 Water'.*

The revision is also part of the plan to transition to a circular economy. The revised proposal will help Member States manage drinking water in a **resource-efficient and sustainable manner**, thereby helping to **reduce energy use** and **unnecessary water loss**. It will also help reduce the number of plastic bottles we use by improving people's confidence in tap water.

However, the REFIT evaluation identified specific areas of improvement, including an increased **transparency on water-related issues** and access to up-to-date information for consumers.

² Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the quality of water intended for human consumption (recast), COM(2017) 753 final. http://ec.europa.eu/environment/water/water-drink/pdf/revised_drinking_water_directive.pdf

³ REFIT EVALUATION of the Drinking Water Directive 98/83/EC, SWD(2016) 428 final, 1st December 2016.

3. OBJECTIVES

At its 15th meeting held in Sofia on 8th May 2018, WAREG Assembly decided to establish a new task force focused on the current process of recasting of the EU Council Directive 98/33/EC of 3 November 1998 on the quality of water intended for human consumption (Drinking Water Directive – DWD). Following the mandate received by the General Assembly, the Secretariat contacted all Members and received confirmation from the following ones to participate in the Task Force:

- ANRSC, Romania
- ARERA, Italy
- BRUGEL, Belgium/Brussels Region
- CRU, Ireland
- ERRU, Albania
- ERSAR, Portugal
- ERSARA, Azores
- EWRC, Bulgaria
- HEA, Hungary
- MAPAMA, Spain
- NCC, Lithuania
- REGAGEN, Montenegro
- PUC, Latvia
- PSRC, Armenia
- REWS, Malta
- VMM, Belgium/Flanders
- VVU, Croatia
- WSRA, Kosovo

WAREG Task Force on the Drinking Water Directive (TF DWD) formally met for the first time on 19th June in Brussels, hosted by BRUGEL the Regulator of Brussels Region. The TF DWD agreed to elaborate a descriptive report of the provisions of the new Drinking Water Directive, starting from the text proposed by the European Commission to the European Parliament and the Council of Ministers of the European Union⁴. The TF DWD also highlighted the necessity to focus on those articles of the Directive that are of utmost importance for regulators, in particular in the following areas:

- quality of water;
- transparency of information;
- physical and economic affordability;
- harmonization of rules across Europe.

WAREG is of the opinion that a good governance of the drinking water cycle should ensure universal access to good quality water at affordable prices, taking into account the principles of transparency of information for citizens, harmonisation of the quality of services delivered to consumers and recovery of costs incurred in delivering such services.

⁴ See note 1, above.

Fig.1. Good governance in the drinking water cycle.



The main objectives of this common position are:

1. to support WAREG Members in understanding EC proposal of a new Drinking Water Directive (recast), as a whole and with reference to specific articles of interest for regulators;
2. to promote the role of economic regulation of drinking water services, within European States and among EU Institutions;
3. to share relevant information and provide a common position of WAREG on the EC proposal of Drinking Water Directive.

The following position on the proposal for a directive of the European parliament and of the Council on the quality of water intended for human consumption (recast), COM(2017) 753 final, has been agreed by members of WAREG at the 16th WAREG General Assembly in Budva, Montenegro on 26th September 2018.

4. GENERAL CONSIDERATIONS ON THE EC PROPOSAL

Without prejudice to any position taken by any Members State of any WAREG member or observer, WAREG is submitting its opinion and comments on the general considerations of the proposed EU Directive:

- 4.1 WAREG, the Association of European Water Regulators, is, in principle, in favour of the process to recast the current EU Drinking Water Directive, and is submitting its opinion and comments on the whole proposals to recast the directive and on some of its provisions.
- 4.2 WAREG recognizes the importance of economic regulation of water and wastewater services to comply with the main objectives of the EC proposal of revision of the current DWD, which are also contemplated in the European citizens' initiative "Right2Water" and in the plan for the transition to a circular economy (i.e. better tap water, less bottled water).
- 4.3 WAREG recognizes the importance of the action of economic regulators and any other authority established at national level, with specific responsibility in measuring the efficiency and the results of the strategies taken in EU Member States to achieve specific objectives, such as for instance to ensure universal access to water, economic affordability of water bills for households and harmonization of information on KPIs in all EU countries.
- 4.4 WAREG recognizes that overall the proposal of the new directive is a good step forward, since more attention is paid to quality of drinking water, transparency of its treatment processes and delivery to the customer and the provision of information to the public.
- 4.5 WAREG fully acknowledges the importance of the human rights dimension of access to safe drinking water and recognizes that this should be addressed in this Directive.
- 4.6 WAREG suggests that requirements, definitions and standards should constitute an integral part of this directive, and not be included in implementing acts that may be adopted at a later date (Refer Articles 14, 15 etc.).
- 4.7 WAREG suggests that in the case of temporary non-compliance of specific obligations, other economic measures apart from penalties may be applied but this should be left at the discretion of Member States.
- 4.8 WAREG is of the opinion that the proposed amended directive seems to apply more stringent requirements on the parametric values and on monitoring obligations compared to the existing Directive. This can increase capital and operational costs for water suppliers that would need to be recovered through tariffs or other means. The effect on final bills for customers cannot be calculated at the moment, and at the same time it is not clear whether the benefits achieved will justify an increase of bills for households. Further clarification is therefore warranted.
- 4.9 WAREG suggests that the proposed EU Directive should leave the opportunity for derogations, in order for the Member States to achieve adequate cost planning and tariff revisions.

- 4.10 WAREG recommends the definition of reporting scheme that clearly provides all information required by Article 14 of the EC Proposal in order to assure customers and stakeholders of a transparent and effective access to information.
- 4.11 WAREG is aware of the importance of transparency and sharing of information to increase consumers' confidence in drinking water. WAREG considers that various tools can strengthen consumers' confidence in water quality and consumers' engagement and stakeholder participation in both the legislative and regulatory processes, for example through: raising awareness campaigns, customers' education and information campaigns on potable water quality.

5. SPECIFIC CONSIDERATIONS ON THE ARTICLES OF THE EC PROPOSAL.

Without prejudice to any position taken by any Members State of any WAREG member or observer, WAREG is submitting its opinion and comments on the articles of the EC Proposal:

4.1 WAREG agrees in principle with the following Articles of the EC proposal:

- (i) Article 1. Objective
- (ii) Article 3. Exemptions
- (iii) Article 9. Supply risk assessment
- (iv) Article 17. Evaluation
- (v) Article 20. Committee procedure
- (vi) Article 22. Transposition
- (vii) Article 23. Repeal
- (viii) Article 25. Addresses
- (ix) Annex III. Specifications for the analysis of parameters

4.2 With particular reference to **Article 2** of the EC proposal, WAREG recommends that definitions in the proposed directive be reviewed possibly in line with the following comments:

1. Additional clarification is warranted in for the term "supply" (points 3 to 6 of Article 2) since it appears unclear whether this refers to the specified water volume supplied at the inlet of the water system, or whether the volume of water supplied (billed) to the customers.
2. Further amendments to definitions are suggested including:
 - (i) Definitions and categories of water suppliers: Definitions should be reviewed since it appears that the flow rates and population served for determining suppliers categories do not seem to be comparable and the classification of water suppliers should be reviewed.
 - (ii) Additionally, it may be more appropriate to classify water suppliers not only by water volume but also by water systems. This is due to the fact that one supplier could

provide services to more than one relevant water system. Classification of water suppliers should also take into account the ownership status of the utility service assets.

- (iii) Replacement of the term: “domestic distribution system” with the term: “consumer’s water distribution system” such as to encompass also public premises as current term gives rise to ambiguity.
 - (iv) Definition to information for the cost structure of the tariff as referred to in Article 14.
 - (v) Definition on Annual information for very large suppliers as referred to in Annex IV.
 - (vi) Definition on independent and impartial body established by law as referred to in Article 16.
 - (vii) Definition on review procedure as referred to in Article 16.
- 4.3 With particular reference to **Article 4** of the EC proposal, WAREG suggests that further clarification is warranted regarding the definition of “wholesome and clean”.
- 4.4 With particular reference to **Article 5** of the EC proposal, WAREG considers that parametric values established under Annex I should be in line with those proposed by the WHO.
- 4.5 With particular reference to **Article 6** of the EC proposal, WAREG suggests that further clarification is warranted regarding the point of compliance.
- 4.6 WAREG welcomes the risk based approach to water safety as outlined in **Article 7** of the EC proposal since in principle it may reduce unnecessary monitoring costs whilst focusing resources on risk parameters. WAREG also suggests that clear guidelines should be established on minimum requirements, taking in account the costs in regard to the degree of risk (which may differ by region).
- 4.7 With particular reference to **Article 8** of the EC proposal, WAREG is of the opinion that:
- (i) Nitrates and other sources of pollution needs high attention, taking into account that pollution sources differ between regions and countries (e.g. medicinal pollution / endocrine disruptors etc.)
 - (ii) Specific attention should be given connections of water networks. Member States should be encouraged to plan and execute the investments needed to connect those local distribution systems currently supplied by local water sources, to central systems. However, any decision to stop the usage of local sources should be left to competent authorities in Members States.
 - (iii) Harmonization with Water Framework Directive may be warranted.

- (iv) The new DWD should suggest research and implementation of Nature-Based Solutions, as they are already included in the EU Research and Innovation policy agenda.
- 4.8 With respect to measures to be taken into account to address the risk to human health stemming from the distribution system as provided in **Article 10** of the EC proposal, WAREG is of the opinion that:
- (i) it is not clear from paragraph 2 which entity should take charge of the costs related to the listed measures (a-f). Considering that such costs could potentially increase final bills and have a negative impact on the economic affordability for customers, it is suggested to clarify that the listed measures (a-f) may be put in place jointly or separately, on a case-by-case basis.
 - (ii) the details and cost implications of proposed measures need to be carefully determined.
- 4.9 WAREG is of the opinion that with respect to Monitoring (**Article 11** of the EC proposal):
- (i) clarification is warranted on the minimum number of samples required annually. The frequency of monitoring in relation to categories of suppliers should be clarified and determined in a manner that such frequency takes into account the increased risks from supplying larger volumes of water to larger populations.
 - (ii) It is not clear which entity would be responsible for establishing monitoring programmes in certain instances. For example a large condominium providing water to a large number of users could potentially fall under the obligation specifically provided by Article 11. Any decision on the definition of responsible entities should be left to Member States.
- 4.10 With particular reference to **Article 12** of the EC proposal, WAREG considers that:
- (i) the revised directive should recognize the need for a flexible approach to address the diverse water production situation in the EU, whilst ensuring that water intended for human consumption achieves, at least, the quality levels defined by the WHO, thus adopting the WHO approach. More stringent limits than those imposed by WHO may lead to unnecessary costs and impact on consumers.
 - (ii) The proposed revised Directive may consider establishing common principles of regulation and penalties, possibly inspired by the experience of economic regulatory authorities in the EU. Such penalties would however be left at the discretion of Member States.
- 4.11 With respect to access to water intended for human consumption (**Article 13** of the EC proposal), WAREG is of the opinion that:

- (i) in certain circumstances, where 100% of the population is already served with potable water, establishing such a mandatory requirement can have significant costs of implementation which could outweigh the benefits deriving from a reduction in health risks. Mandatory measures being proposed and which may not be necessary in all cases, could lead to unnecessary costs and increase in Non-Revenue Water. Furthermore it is noted that this option for such countries is unnecessary since in the Impact Assessment carried out on this directive this option was proposed instead of another option which entailed an obligation for 100% of population in all Member States to be connected to the public water system by 2030.
- (ii) the requirement in paragraph 1 (b) *“setting up and maintaining outdoor equipment for free access to water intended for human consumption in public spaces”* appears to be in conflict with the full cost recovery required by the Water Framework Directive. Thus, this requirement should be left to the discretion of Members States.
- (iii) the requirement in paragraph 1 (c) (iii) *“encouraging the free provision of such water in restaurants, canteens, and catering services”* should be further specified and described, as normally state and/or local governments cannot impose such duty to private businesses. Thus, this requirement should be left to the discretion of Members States.
- (iv) an analysis of cost-effectiveness of these measures may be carried out by each Member State. Independent regulatory entities following rigorous methodologies, could highly contribute to increase transparency and customer protection. Furthermore, regulatory figures provide reliable data on the share of people without access to water services in each Member State.

4.12 With particular reference to **Article 14** of the EC proposal, WAREG is of the opinion that:

- (i) information for the cost structure of the tariff, including the cost elements shown in paragraphs (i-iv) require further specification, as the cost structure of the tariff in EU is differently regulated and organized. This requirement will require serious efforts by the local governments, and therefore needs to be clarified and unified.
- (ii) Costs in paragraph 2a (ii) for treatment and distribution of water intended for human consumption basically form the tariff for water supply. Costs in paragraphs 1a (i) and (iv) taken in pursuant to articles 8(5) and 13 may not be accounted separately.
- (iii) more flexibility should be left to Member States in defining any specific requirements of such information on costs.
- (iv) Clarification is warranted with respect to which particular costs are required to be shown in the bill – the reported (actual) costs of the water supply company, or the costs that are included in the tariff. There may be differences between the two: – for example when the tariff is structured under the Cost Plus method, then it would contain the reported actual costs for the previous year, but if the tariff is structured

under a Price Cap, it would contain future costs (this method is applied for periods between 3-6 years).

- (v) Revision to Paragraph 2.e is warranted and the Commission should adopt requirements about the information as part of the directive, not by additional acts at a later stage.

4.13 With particular reference to **Article 15** of the EC proposal, WAREG is of the opinion that:

- (i) Clarification is warranted on how the terms in paragraphs 1a (6 years) and 1b (3 years) are determined, and the rationale for such timeframes.
- (ii) The requirement in paragraph 4 of the EC proposal should be revised and the Commission should adopt requirements about the information as part of this directive, and not by additional acts at a later stage.

4.14 With particular reference to **Article 16** of the EC proposal, WAREG is of the opinion that:

- (i) Clarification is warranted regarding the responsibilities and authority of the new independent and impartial body established by law, as required in paragraph 1; and reference to independent regulators should also be mentioned in this article, since they already exist in some EU Member States to fulfil the functions required in this article;
- (ii) the review procedure provided in paragraph 4 should be further described and defined;

4.15 With particular reference to **Articles 18 and 19** of the EC proposal, WAREG has reservations for empowering the Commission with the adoption of the delegated acts since the rationale for such delegation is unclear.

4.16 With particular reference to **Article 21** of the EC proposal, WAREG is of the opinion that economic measures in cases of temporary non-compliance other than penalties should be considered. This should be left to the discretion of Members States.

4.17 With particular reference to **Annex 1** of the EC proposal, WAREG is of the opinion that:

- (i) The parametric values established under Annex I should be in line with those proposed by the WHO.
- (ii) The revisions of the parameters and parametric values in Part A, as well as the additional parameters in Part B will require additional investments and operational activities from the water suppliers.

- (iii) The parametric values for surface waters should only be monitored when surface waters are used in the drinking water mix.
- (iv) The parametric limit for Boron should be raised in cases of water production from desalinated water. This also in view of other environmental issues – such as energy efficiency – and provided that impact on human health is not compromised.

4.18 With particular reference to **Annex II** of the EC proposal, WAREG is of the opinion that:

- (i) the increase to daily frequency of monitoring for zones >10 000 m³/day will lead to additional investments and operational activities from the water suppliers. At the same time it is not clear whether this cost increase will be justified in terms of the effect achieved.
- (ii) Annex II, Part B: the increase to daily frequency of monitoring for zones >10 000 m³/day will lead to additional investments and operational activities from the water suppliers. Monitoring programmes as specified in the Annex have increased substantially for large and very large water suppliers. This will have an impact on costs of water and hence tariffs. Further clarification is warranted since it appears unclear how the monitoring frequency in relation to categories of suppliers should be clarified were determined and the methodology adopted is warranted. WAREG considers that the monitoring frequency should be a function and take into account increased risks from supplying larger volumes of water to larger population.

4.19 With particular reference to **Annex IV** of the EC proposal, WAREG is of the opinion that:

- (i) Moving the indicator parameters from Annex I to Annex IV apparently means that these will be monitored only for information purposes, and water operators will not have the responsibility to start measures in case of exceedances. Service quality may be reduced, leading to customer discontent and possible increase of customer complaints.
- (ii) Additional clarification and description of the information required in paragraph 7 is warranted, in order to set standards for information reporting. At the same time it is unclear why requirements for some or all of this information were not proposed for smaller water suppliers.
- (iii) unified methodologies should be elaborated to calculate water leakages rates and energy consumption per cubic meter of delivered water, thereby increasing consumer confidence.
- (iv) in relation to information on cost structure of the tariff charged to customers, there exist good examples of regulatory entities who have defined advanced, reliable and rigorous procedures to analysis costs, for consumers' protection and transparency of information.

- (v) In relation to the amount of investment needed by the supplier to ensure the financial sustainability of water services provided (including maintenance of the infrastructure) and the amount of investment actually received or recouped, there exist good examples among regulatory entities on possible processes to monitor and approve infrastructure investment programs linked with tariff regulation. Their objective is to assess, from a neutral point of view, the achievement of efficiency targets on regulated operators as part of revenue/price control process for a specified period.

