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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

**Common position of the Council on the adoption of a European Parliament and Council
Directive establishing a Framework for Community Action in the field of Marine
Environmental Policy (Marine Strategy Framework Directive)**

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(Text with EEA relevance)

1. BACKGROUND

Date of transmission of the proposal to the EP and the Council 24.10.2005
(document COM(2005)505 final – 2005/0211/COD):

Date of the opinion of the European Economic and Social Committee: 20.04.2006

Date of the opinion of the Committee of the Regions: 26.04.2006

Date of the opinion of the European Parliament, first reading: 14.11.2006

Date of adoption of the Common Position: 23.07.2007

2. OBJECTIVE OF THE COMMISSION PROPOSAL

Europe's marine environment is faced with increasing and severe threats. Europe's marine biodiversity is decreasing and continues to be altered. Marine habitats are being destroyed, degraded and disturbed. Additional difficulties include institutional barriers to improved protection of Europe's marine environment as well as significant information and knowledge gaps.

The current deterioration of the marine environment and the associated erosion of its ecological capital jeopardises the generation of wealth and employment opportunities derived from Europe's oceans and seas. If not addressed, this will undermine the capacity of the EU maritime cluster to make a strong contribution to the Lisbon agenda.

The objective of the proposed Marine Strategy Framework Directive is to restore the ecological health of Europe's oceans and seas by achieving and maintaining their "Good Environmental Status" by 2021. Given the diverse conditions and problems of the marine environment in the EU, the proposal establishes European Marine Regions on the basis of geographical and environmental criteria.

No specific management measures will be set down at EU level. The Directive will provide an integrated policy framework taking into account all pressures and impacts and setting clear and operational actions in order to protect the marine environment more effectively. The Directive will have to be made operational and implemented at the level of Marine Regions.

The Strategies will be based in a first phase on assessments of the state of the environment in order to develop informed policy-making supported by the best scientific knowledge available. In a second phase, each Member State, in close cooperation with other Member States and relevant third countries within a Marine Region, will develop and implement Marine Strategies for its marine waters aimed at achieving "Good Environmental Status". In developing Marine Strategies, Member States will be encouraged to work within the framework of existing regional seas conventions – OSPAR for the Northeast Atlantic, HELCOM for the Baltic Sea, Barcelona Convention for the Mediterranean Sea and Bucharest Convention for the Black Sea.

The proposed Marine Strategy Directive is included in the Sixth Environment Action Programme adopted in 2002. The Directive is also to be seen within the broader context of the development of a new EU Maritime Policy announced in the Green Paper entitled *Towards a future Maritime Policy for the Union: A European vision for the oceans and seas* adopted by the Commission on 7 June 2006¹. The proposed Marine Strategy Framework Directive will deliver the environmental pillar of the future EU Maritime Policy.

3. COMMENTS ON THE COMMON POSITION

3.1 General Comments

The Commission accepted totally, in part or in principle **52** of the **87** amendments voted by the European Parliament in the first reading. **37** of these **52** amendments are incorporated in the Common Position.

The Commission accepted amendments which led to the recognition of the importance of the ecosystem approach to managing Europe's marine environment; of joint cooperation between Member States and non-EU countries for developing and implementing marine strategies regionally; and of the need to advance environmental integration. The Commission also accepted amendments which led to clarifications of the text, in particular with regards to definitions; links with relevant Directives (e.g. Water Framework Directive, Birds Directive, Habitats Directive); geographical coverage (extension of the scope of the Directive to the Black Sea); references to relevant international agreements; and inclusion of certain descriptors of "Good Environmental Status".

The Commission rejected amendments which would bring forward the timetable for implementation as this would not be realistic. The Commission also rejected amendments introducing the compulsory designation of marine protected areas in the Directive. These areas should be seen as a means to reaching "Good Environmental Status" rather than as an end in themselves and should therefore be optional. On the important issue of the introduction of descriptors of "Good Environmental Status", the Commission could accept some of the suggestions of the Parliament, but has a clear preference for descriptors focused on

¹ COM(2006)275 final.

environmental quality elements rather than on specific pressures. Taking only a pressure-based approach would inevitably lead to overlooking potential risks and threats and would not enable the EU to move away from a fragmented approach to the management of the marine environment. Finally, the Commission rejected amendments calling for *ad hoc* financial support to implementation of the proposed Marine Directive or granting certain regions a special status.

3.2 Detailed Comments

3.2.1 Parliamentary Amendments accepted by the Commission and incorporated in full or in part in the Common Position

The following amendments were adequately introduced into the Common Position: numbers **1, 3, 6, 7, 8, 12, 15, 16, 18, 22, 23** (recitals), **25, 26, 27, 28, 29, 31, 33, 36, 37, 39, 41, 42, 43, 47, 48, 49, 50, 51, 53, 56, 60, 63, 70, 75, 77** and **84** (articles).

Amendment **1** on the expansion of the geographical coverage of the Directive in particular to the Black Sea has been taken on board by the Council apart from the reference to the Arctic Ocean. Amendment **3**, highlighting demands on oceans and seas, Amendment **6**, stressing the importance of ecosystems and Amendment **7**, referring to biological and environmental targets, were retained in part.

Amendment **8** was introduced in part. The reference to integration was redrafted in such a way that it is now fully acceptable to the Commission.

Amendment **12** on the importance of cooperation with third countries was largely taken on board (e.g. 18), with the exception of the idea of launching partnerships.

Amendment **15** on cost-effectiveness and research and monitoring needs was incorporated.

Amendment **16** adding a reference to ecological functions was also largely integrated.

Amendment **18** on the importance of marine research in the 7th Framework Programme for Research was largely taken on board.

Amendment **22** underlining the need for the Common Fisheries Policy to take into account this Directive was retained.

Amendment **23**, inserting references to the ecosystem-based approach and to the precautionary approach was incorporated in recitals (5), (7) and (40).

Amendment **25**, introducing useful references to the quality of waters in applicant and associated states, is indirectly covered in Article 6, addressing cooperation between Member States and with third countries.

Amendment **84**, including a reference to Marine Protected Areas in a new recital, was fully included.

Amendment **26** relating to existing obligations, commitments and initiatives at international level is partly introduced in the definition of 'marine waters' (Article 3) in the Common Position through the reference to the UN Convention on the Law of the Sea.

Amendment 27 is introduced in Article 3 listing definitions. As in the amendment of the European Parliament, definitions cover 'Marine Waters', 'Environmental Status', 'Good Environmental Status', 'Pollution'. However, definitions sometimes differ in substance. In particular, the definition of 'Marine Waters' introduced in the Common Position is limited to waters on the seaward side of the baseline from which the extent of territorial waters is measured, limiting cross-coverage with the waters on the seaward side of the baseline to which the Water Framework Directive applies to the coverage of elements relevant for the protection of the marine environment which are outside the scope of that Directive. On the contrary, the definition in Amendment 27 includes tidal waters, thus creating a broader cross-coverage with the waters covered by Water Framework Directive. In addition, the definition of 'Good Environmental Status' provided in the Common Position is not as detailed as in Amendment 27. Finally, Amendment 27 includes a definition of 'Marine Protected Areas' which is not introduced in the Common Position; and conversely, the Common Position introduces definitions which do not appear in Amendment 27 ('Environmental target', 'Specific Area', 'Regional Cooperation' and 'Regional Seas Cooperation').

Amendment 28 is retained through the addition of the Black Sea to the list of Marine Regions (Article 4).

Amendment 29, which introduces a reference to the need for coherence with relevant international agreements, is indirectly and partly introduced in the Common Position (*i.e.* reference to coherence with the UN Convention on the Law of the Sea in Article 3).

Amendment 31 is included in the Common Position if coordinated marine strategies per region are understood as a compilation of national strategies and not a single regional marine strategy. Indeed, the stronger emphasis placed on regional cooperation in the Common Position (Article 6) should contribute to the preparation of well coordinated strategies at regional and sub-regional level. Amendments 33, 37 and 47, which also suggest the preparation of regional marine strategies, are also introduced (Article 6) on the condition that regional marine strategies are again understood as a compilation of national strategies, not implying collective responsibility.

Amendment 36 is introduced (Article 5(3)) to the extent that it would recognise a fast-track implementation mechanism. The link to EU support introduced is partly taken on board – in a way which is acceptable to the Commission – in Article 5 through the reference to an invitation for supportive action from the Commission.

Amendment 39 on Marine Protected Areas is introduced in Article 13.4 in the Common Position, with the exception of the obligation to establish such areas introduced by the Parliament, which was not acceptable to the Commission.

Amendment 41 on regional cooperation is covered in Article 6 of the Common position. The same holds for Amendments 42 and 43 – apart from the reference to cooperation with third countries whose flag vessels operate in EU marine regions.

Amendment 48 suggests introducing a reference to ecosystem functions in Article 8. This is catered for in the Common Position although such a reference appears in Article 3(4) (definition of 'Environmental Status') instead.

Amendment 49 relating mainly to the need to take into consideration relevant existing assessments when producing the initial assessment foreseen in Article 8 is introduced in the

Common Position through the inclusion of a reference to "other relevant assessments such as those carried out jointly in the context of Regional Seas Conventions" in Article 8(2).

Amendment **51**, which establishes specific requirements as regards coordination and consistency of assessments, is indirectly introduced in the above mentioned addition to Article 8.2 as well as stronger language on regional cooperation in the Common Position.

Amendment **53** is partly taken on board in the Common Position. While the wording adjustments introduced by the Parliament were not included, both institutions agreed to the need to include a reference to a new Annex (Annex I) on generic qualitative descriptors. It has to be noted, however, that there are strong divergences between the Council and the European Parliament on the contents of these Annexes.

Amendment **56**, which relates mainly to the inclusion of references to the Birds and Habitats Directives (79/409/EC and 92/43/EC) in Article 11 (Monitoring Programmes) is partly covered as the Common Position introduces references to both Directives in Article 13 (Programmes of measures). The additional reference to Global Monitoring for Environment and Security (GMES) in Amendment **56** is not taken on board. While references to specific water directives (91/271/EEC, 2006/7/EC) made in Amendments **50** and **63** are not formally retained, the Common Position includes references to 'other relevant assessments' in Article 8(2) and to 'relevant measures required under Community legislation' in Article 13.2, thus implicitly covering these points.

Amendment **60** is indirectly covered, albeit partly. Indeed, a reference to the ecosystem-based approach appears in the Common Position (Article 1). A reference to the precautionary principle appears in recitals. Prevention action, the polluter pays principle or transboundary impacts are not explicitly included.

Amendment **70** requiring the Commission to produce a report four years after implementation on potential conflicts was only partly and indirectly taken on board in the Common Position (Article 20) which includes under (g) 'a summary of the contribution made by other relevant EC policies to the attainment of the objectives of this Directive'.

Amendments **75** and **77**, which bring the text in line with decision 2006/512/EC on Comitology, have been taken on board (Articles 22 and 23).

3.2.2 Parliamentary Amendments accepted by the Commission but not in the Common Position

On the **recitals**, Amendment **2** stating the fact that the EU is a peninsula was not taken on board. Amendment **9** on regional cooperation was not retained.

Amendment **46**, qualifying competent authorities ("national"), was not incorporated.

Amendments **52** and **58** on data access and availability rules have not been taken on board in the Common Position although Article 8(2) does refer to other relevant assessments carried out in the context of regional seas conventions. However, the reference to the obligation to transmit the assessments and monitoring programmes to the European Environment Agency has not been taken on board. Finally, the Commission reservation about the absence of reference to the INSPIRE Directive in the Parliament's amendments is addressed in Article 19(3) in the Common Position.

Amendment **55** was not taken on board. Neither the reference to the need to take into account elements of transboundary importance when establishing environmental objectives, which was acceptable to the Commission, nor the rest of the amendment relating to the implementation timetable, which the Commission did not support, was included.

Amendment **57**, relating to the introduction of a requirement for cooperation among Member States to ensure that monitoring methods are coherent, was not taken on board in the Common Position.

Amendment **66** was essentially not taken on board, although both institutions agreed to rename Article 14 'Exceptions'. The Common Position does not include a reference to climate change which the Commission could support. Moreover, the elements of the Parliament's amendments which were not acceptable to the Commission because of their geographical focus were not taken on board. However, the Parliament's introduction of an obligation to the Commission to respond to Member States when the power to adopt measures rests with the Community is largely taken on board in the Common Position, but in a different article (Article 15).

Amendments **67** and **68**, concerning the establishment of stakeholder consultation processes, were not taken on board.

Amendment **73**, clarifying the objectives of the review of the directive, was not included in the Common Position.

Amendments **80**, **81**, **82**, **91** and **92** concerning descriptors of Good Environmental Status constitute a much more extensive list of descriptors than the equivalent list established in the Common Position (21 elements against 11). The principal difference lies in the inclusion by the Parliament of some nine descriptors which require the description of good environmental status in terms of pressures from specific human activities (such as offshore industry (elements l, n), shipping (elements m and o), other human activities (elements p to t)). The Common Position does reflect, albeit in a more synoptic manner, a number of the other 'state' or 'impact'-based descriptors.

3.2.3 Parliamentary Amendments rejected by the Commission but part of the Common Position

Amendment **38** granting the Baltic Sea pilot status was not explicitly taken on board but the possibility of the designation of 'pilot projects' as part of the implementation of the directive was recognised in the Common Position (Article 5(3)).

Amendments **62** and **64** introducing an obligation to designate Marine Protected Areas (MPAs) were not incorporated in the Common Position to the full extent. However, they were partly reflected in the addition of two sub-paragraphs on the inclusion of MPAs as part of programmes of measures to be developed (Article 13(4)). It is to be noted that the wording of the Common Position does not introduce an obligation to establish MPAs.

3.2.4 Parliamentary amendments rejected by the Commission and not incorporated in the Common Position

On recitals, Amendment **4** singling out the Baltic Sea was rejected. Amendment **5** on quantitative and qualitative objectives was not retained. Amendment **10** calling for

coordination between Member States and third countries as regards flag states operating fishing vessels in EU marine waters was rejected. Amendment **11** on the rationality of the Natura 2000 network was also rejected. Amendments **13** and **17**, giving research priority to certain areas, were not retained.

Amendments **14** and **88**, requiring the setting up of ad hoc structures at Member State level to organise cross-sectoral cooperation, were rejected.

Amendments **19** and **74**, relating to Community financial support to implementation, were also rejected.

Amendments **20**, **34**, **35**, **69**, **79** and **85**, bringing all implementation deadlines forward, were not taken on board.

Amendment **21**, which contradicts the Treaty as regards treatment of fisheries management, was not retained.

Amendment **30**, adding Croatia to the list of Member States in the Adriatic Sea (Article 4), was not retained. Indeed, the Council opted for a complete deletion of any references to Member States in that Article.

Amendment **32**, strengthening the obligation to achieve 'Good Environmental Status', was rejected. The Common Position softened the initial Commission text on this important issue.

Amendment **40**, modifying the title of Article 6, was not retained.

Amendment **44**, introducing a specific regulatory framework focused on infrastructure projects in the marine environment, was rejected.

Amendment **45**, concerning the Common Agricultural Policy, was not retained.

Amendment **54**, deleting all references to comitology for the further development of descriptors of 'Good Environmental Status', was not retained.

Amendments **59** and **61**, including language on the adoption of measures and programmes on traceability and tracking of marine pollution, were rejected.

Amendment **65**, requiring the Commission to produce criteria for good oceans governance, was not retained.

Amendment **71**, introducing obligations for the protection of the Arctic Ocean, was rejected.

Amendment **72**, which deals with Marine Protected Areas and requires the production of progress reports on their establishment, was not retained.

Amendment **76**, requiring the new scrutiny regulatory procedure on comitology for the adoption of methodological standards, was rejected.

Amendment **78**, which would introduce obligations for Member States in waters beyond EU jurisdiction or sovereignty, was not retained.

Amendment 90, which would result in the deletion of radio-nuclides from the list of substances to be assessed, was not taken on board.

3.2.5 Additional Changes made to the Proposal by the Council

The Common Position contains a number of important changes compared to the Commission's original proposal. These changes regrettably weaken the proposal.

The most important changes relate to:

- The lower level of ambition of the Directive resulting from the modification of Article 1.** While the original Commission proposal required the development of Marine Strategies 'designed to achieve Good Environmental Status', the Common Position softened this obligation by referring to 'with the aim of achieving Good Environmental Status'.

However, and more positively, Member States will still be required to demonstrate an overall positive trend towards Good Environmental Status by 2021. Based on the Common Position, it would not be enough to produce Marine Strategies by 2021 if those Strategies did not lead to enhanced protection of the marine environment.

In addition, the ultimate objective of the Directive does remain the full achievement of Good Environmental Status as other references to this concept in the Directive have not been modified (e.g. in Article 13).

- Introduction of a new provision exonerating Member States from taking certain implementation steps where there is no significant risk to the marine environment or where costs would be disproportionate:** The introduction of this new provision is an addition to already existing safeguards on implementation costs in the draft proposal (in particular Article 13(3)). The need to demonstrate the absence of significant risks or the occurrence of disproportionate costs is not made sufficiently explicit in the Common Position.

Other important changes are as follows:

- Geographical articulation between the Marine Strategy and the Water Framework Directive:** The definition of marine waters in Article 3 was modified to indicate that marine waters shall be extended to marine waters covered by the Water Framework Directive as far as important marine ecosystem elements not covered by the Water Framework Directive are concerned. An extension of the scope of the Marine Directive to marine waters covered by the Water Framework Directive is necessary in order to ensure coherent implementation of both Directives as marine ecosystems do not respect artificial administrative boundaries. A more comprehensive geographical interaction between the two directives, covering also coastal and even transitional waters (*i.e.* bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters) would have been preferable.
- Commission control of implementation (Articles 12 and 16):** The Common Position loosens Commission control of implementation, now limited to advice based on Member States' notifications.

- **New provision on a fast-track implementation scheme for pilot projects (Article 5(3)):** The Common Position inserts a new provision on the possibility to speed up implementation in so-called pilot project regions to be identified by Member States concerned.
- **Deletion of references to Member States in Article 4:** The Common Position simply lists Marine Regions and suggested Sub-Regions, without specifying which Member States border these Regions and Sub-Regions.

4. CONCLUSION

The Commission considers that the Common Position, adopted by all but one Member States (Italy abstained), is an important step towards the adoption of the Marine Strategy Framework Directive.

However, the Commission notes that the Common Position is not as ambitious as the Commission's initial proposal in particular as regards its overall ambition, the binding nature of the good environmental status objective, and implementation costs. On this last point, the Commission wishes to recall that good policy depends on high-quality information and current assessment and monitoring programmes at EU level are neither integrated nor complete.

More positively, the Commission is pleased that the Common Position fully recognises the strong need for a European integrated approach to protect our oceans and seas more effectively. References to the importance of co-operation and co-ordination between Member States and non-EU countries for developing and implementing marine strategies regionally are also positive. Finally, the addition of elements of definition of "Good Environmental Status" is also useful although the Commission would prefer definitions which are focused on environmental quality elements rather than specific pressures.