



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 28 February 2014
(OR. en)**

7133/14

**ENV 211
MARE 1**

COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 20 February 2014

To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

No. Cion doc.: COM(2014) 97 final

Subject: Report from the Commission to the Council and the European Parliament
The first phase of implementation of the Marine Strategy Framework
Directive (2008/56/EC)
The European Commission's assessment and guidance

Delegations will find attached document COM(2014) 97 final.

Encl.: COM(2014) 97 final



Brussels, 20.2.2014
COM(2014) 97 final

**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT**

**The first phase of implementation of the Marine Strategy Framework Directive
(2008/56/EC)**

The European Commission's assessment and guidance
{SWD(2014) 49 final}

REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

The first phase of implementation of the Marine Strategy Framework Directive (2008/56/EC)

The European Commission's assessment and guidance

Just over five years after the entry into force of the Marine Strategy Framework Directive (MSFD), this report marks the end of the first, ambition-setting phase of its implementation. An unprecedented data-collection and analysis exercise has been undertaken, during which Member States have provided an assessment of the state of their seas (the initial assessment), have defined what they consider to be "good environmental status" (GES) of their marine waters and have established a series of targets to bridge the gap between the current situation, and where they want to be in 2020, the date by which GES must be achieved. The exercise has provided an opportunity for a broad public debate on the protection of the marine environment, has brought together a vast amount of knowledge about our seas and oceans and triggered further regional collaboration, in particular through Regional Sea Conventions (RSCs). At the same time, the Commission's assessment of Member States' reports gives rise to concern: Member States' definition of good environmental status and the path they set out to achieve it shows overall limited ambition, often fails to take into account existing obligations and standards and lacks coherence across the Union, even between neighbouring countries within the same marine region.

By December 2013, all but a few of the Member States concerned had reported to the European Commission.¹ The present report reflects the fact that data is only partially available for some Member States, and that one Member State has not reported at all. The European Commission has launched infringement procedures whenever relevant. In parallel to legal action, it will consider how to communicate its assessment and guidance to the Member States not included in this report, after they have reported fully.

Based on this analysis, the present report presents guidance² in the form of recommendations to be implemented at the EU, regional, and national levels. Rather than advising to re-start the reporting exercise where shortcomings have been identified, the Commission outlines in this report and in the attached Staff Working Document, a pro-active, future-oriented approach. The aim is to provide concrete guidance on how to address the challenges identified, making the process of further implementation less costly and more efficient.

¹ See Commission Staff Working Document: *"First steps in the implementation of the Marine Strategy Framework Directive - Assessment in accordance with Article 12 of Directive 2008/56/EC"* for a state of play on the reporting from Member States. Member States with no coastline did not have to report under the MSFD.

² As mandated by article 12 of the Marine Strategy Framework Directive.

The Staff Working Document³ accompanying this report contains a more detailed analysis of Member States' reporting on the Directive's set of 11 qualitative descriptors of the marine environment (e.g. biodiversity, non-indigenous species, fish, health of food webs, contaminants, litter, underwater noise), together with more detailed recommendations and specific country-based assessments and recommendations. Later in 2014, the European Commission's Joint Research Centre (JRC) will develop in-depth assessments of more technical aspects of the Member States' reporting. The European Environmental Agency (EEA) will also draw conclusions on the overall state of the marine environment in Europe.

1. THE STATE OF THE EUROPEAN SEAS

Together, Europe's seas exceed its land territory, hosting a rich, fragile and unique marine life, on which a lot is still unknown. Marine ecosystems face increasing pressure from human activities both on land and at sea, as 41% of the European population live in coastal regions and economic activities depending on the marine environment are growing. Member States' reports confirm that European Seas are not in "good environmental status".

There are a number of different reasons for such results, in particular:

- 39% of stocks in the Northeast Atlantic and 88% in the Mediterranean and Black Seas are still overfished and the situation is improving only slowly,⁴
- Pollution in the marine environment has decreased in some places but levels of nutrients and certain hazardous substances are overall still above acceptable limits. Oxygen depletion, as a result of nutrient pollution, is particularly serious in the Baltic and Black seas.
- Marine litter, mostly plastic, is a growing issue globally and in the EU. In the North Sea, over 90% of Fulmar sea birds have plastic in their stomach and on average 712 items of litter are found on 100m stretch of beach on the Atlantic Coast. The impacts of this increasing problem are manifold and their magnitude not yet fully known.
- Climate change, though not directly assessed under the MSFD, also contributes to the further degradation of marine ecosystems.

More efforts need to be made to meet the 2020 objective of reaching good environmental status as part of a complete, adequate, consistent and coherent implementation of the MSFD.

2. KEY PRINCIPLES OF THE ASSESSMENT

The Commission has applied a set of principles to assess whether the information reported by Member States is a complete, adequate, consistent and coherent framework⁵ as required under

³ Commission Staff Working Document: *"First steps in the implementation of the Marine Strategy Framework Directive - Assessment in accordance with Article 12 of Directive 2008/56/EC"*.

⁴ Communication from the Commission to the Council concerning a consultation on Fishing Opportunities for 2014 COM(2013) 319 final.

⁵ According to Article 12 MSFD: " On the basis of all the notifications made pursuant to Articles 9(2), 10(2) and 11(3) in respect of each marine region or subregion, the Commission shall assess whether, in

article 8 (initial assessment), 9 (determination of good environmental status) and 10 (environmental targets) of the Directive. In particular, it considered whether:

- all relevant descriptors and all marine waters were covered by Member States' reports for all relevant provisions
- the determination of good environmental status (GES) was specific and quantified, making it possible to assess progress towards its realisation
- GES definitions in the same marine region or subregion were coherent with each other
- the initial assessment reflected the scientific knowledge available in the fields covered by the Directive and enabled the setting of a baseline for future reference
- targets set reflected the findings of the initial assessment and the GES definition, to enable Member States to realistically achieve GES by 2020
- Member States took into account existing EU regulations and policies relevant to the marine environment, as well as the relevant standards set in Regional Sea Conventions (RSCs) when no EU standard was available.

A series of questionnaires have detailed these principles⁶. Failing to meet one or several of them has led to an evaluation as "partially adequate", or "inadequate", as "not consistent" and/or as "low" or "medium" with regard to coherence. Meeting them all, even at minimum level, has led to an assessment as "adequate", "consistent" and "coherent".

Only if these latter criteria are met by all Member States, can it be determined whether policies in place are putting the EU as a whole on track to achieve "*ecologically diverse and dynamic oceans which are clean, healthy and productive*"⁷ by 2020. This is at present not the case. A few examples illustrate the issue:

- Member States reported on different species and habitats lists, some of them ignoring those set by the Habitats Directive, some ignoring habitats present in their waters.
- Member States identified different contaminants set out on the list of priority substances under the Water Framework Directive, focussing on some and ignoring others.
- Only a few Member States clearly stated that all fish stocks should be exploited at or below maximum sustainable yield levels.

the case of each Member State, the elements notified constitute an appropriate framework to meet the requirements of this Directive and may ask the Member State concerned to provide any additional information that is available and necessary. In drawing up those assessments, the Commission shall consider the coherence of frameworks within the different marine regions or subregions and across the Community".

⁶ See Staff Working Document, *ibid.*

⁷ MSFD, article 3.5.

The Commission's assessment should not, however, primarily be interpreted in terms of compliance with the Directive. Rather its purpose is to enable the Commission to provide guidance to Member States for the Directive's objectives to be attained and a snapshot of its implementation. Finally, while recognising that reporting is a significant undertaking for Member States, especially in view of tight deadlines, the Commission's assessment is as accurate as the information it received. There are examples of very good quality reporting, but also cases where reporting contains gaps or contradictions.

3. MAIN FINDINGS

(1) A comprehensive assessment

The assessment on the state of marine waters in the EU is holistic and integrates socio-economic considerations. It allows a better understanding of pressures and impacts from human activities on marine life, bringing together a wealth of information. In particular, biodiversity, non-indigenous species, marine litter and underwater noise have been addressed more systematically than ever before. Most Member States have reported on most articles and most descriptors, providing a very broad overview of the marine environment in Europe. However, the quality of reporting varies widely from country to country, and within individual Member States, from one descriptor to another.

Greater consideration has been given to instruments such as the Water Framework Directive, the Common Fisheries Policy and EU biodiversity policy in the marine field. This is an important contribution to policy coherence which has led to more cross-sectoral cooperation and dialogue across the EU.

Work on the MSFD has triggered and accompanied new developments in RSCs, demonstrating the complementarity of work at EU and regional sea level and providing mutual benefit to all parties concerned. The RSCs have worked, to varying degrees, on reports on the state of their seas in order to feed into Member States' own initial assessments. They also developed new regional-level indicators, targets and methods and agreed on the need for improved regional coordination.

Finally, public consultations were organised in Member States⁸, prompting debate with stakeholders on the level of ambition of marine policies across the EU and beyond.

Overall, the first phase of the Marine Strategy Framework Directive has therefore brought the EU one step closer to the concrete implementation of the ecosystem approach with regard to the management of human activities impacting our seas, a concept at the heart of the Directive. Valuable lessons have been learnt at the EU level, in Member States and in Regional Sea Conventions alike.

⁸ The European Commission has received information from 17 Member States on public consultation processes required by article 19 of the MSFD. See Staff Working Document for more information.

(2) Adequacy

Despite these positive aspects, the European Commission also found inadequacies in Member States' submissions, with even the best-performing Member States still having to address specific shortcomings.

The Member States' initial assessment under article 8 provides the evidence base on which the implementation of the Directive relies. Yet, the initial assessment reports often give only a fragmented overview of the state of the marine environment, not always reflecting the available knowledge in its entirety.

The presence of data gaps in Member States' reports is inevitable, as there are still significant gaps in knowledge on marine issues, and the scope of the assessment required by article 8 of the MSFD is very comprehensive. Yet, only a few Member States put forward a strategy on how to close the existing data gaps before the next reporting cycle, for instance through future plans for monitoring at national or regional level. The results of research projects specifically addressing gaps in knowledge on marine issues relevant to the 11 descriptors of the MSFD have not always been made best use of. Finally, Member States did not use the initial assessment to establish a baseline: a missed opportunity which makes it difficult, and in some cases impossible to assess the distance to target.

Furthermore, an adequate determination of GES under article 9 is particularly important in this first phase of implementation, as it sets the level of ambition which Member States commit to achieve by 2020.

Most Member States reported on GES for all descriptors and some set ambitious benchmarks through its definition. Nevertheless, a majority failed to go beyond the basic GES delineation as set out in the Directive. For instance, many did not include qualitative or explanatory elements that would illustrate the concept and provide added value, ambition and clearly defined goals. GES has also often not been set in a measurable way, making it impossible to assess in practice to what extent it is achieved. High qualitative ambitions in GES determination, when they do exist, often remain of an aspirational kind.

In addition, Member States have in some instances not systematically built on existing EU legislation and RSC standards. This could stem from the fact that the relationship between the MSFD and other relevant legislation may not be clear enough for all. Mostly, however, a "pick and choose" approach has been adopted by certain Member States, which only take partial account of existing rules, objectives and limit values. If left unchanged, attaining GES as currently defined would only lead to a modest improvement in the quality of our oceans.

The same conclusions can be drawn in relation to the targets set according to article 10 of the MSFD. Member States have set a wide variety of targets, which differ in their level of ambition and specificity. Most importantly, the environmental targets set are in some cases not sufficient to achieve good environmental status.

(3) Consistency

Another general concern is the lack of consistency in Member States' implementation. In particular the logical link between the initial assessment (the point of departure), the determination of GES (the final objective) and the targets (the effort needed to reach the

objective, starting from the point of departure) has not been recognised by all. Some Member States did not distinguish clearly between the determination of GES and the targets themselves, or did not take into account their initial assessment in developing targets, turning a comprehensive, holistic process in a series of unrelated reporting exercises.

(4) Coherence

Regional cooperation through the RSCs protecting the EU's marine waters is well-developed. Significant commitments were made by all RSCs to implement the ecosystem approach and support MSFD implementation. Unfortunately, Member States' use of the results of regional cooperation within their marine strategies varies. Sometimes, the relevant work developed under RSCs came too late, but when it was on time, it has not always been used in national reports.

This has resulted in a lack of coherence within the EU, and also within the same marine region or subregion (required by Article 3(5)b and 5(2) MSFD). While coherence varies widely across the EU and is high in some regions and for some descriptors, overall levels are moderate to low. Member States in the North East Atlantic show the highest level of coherence (nevertheless with significant room for improvement) while coherence is lowest in the Mediterranean and in particular in the Black Sea (although the latter could only be partially assessed).

Thus, there is no shared EU understanding of GES, even at a (sub-)regional level. There are over 20 different GES determinations across the EU, and therefore no common or comparable goals.

4. RECOMMENDATIONS AND NEXT STEPS

The analysis of the first phase of implementation of the MSFD clearly shows that much more progress needs to be made to avoid an insufficient, inefficient, piecemeal and unnecessarily costly approach to the protection of the marine environment.

Comparability of the reporting of Member States is low and makes coordinated action and analysis difficult. Therefore, it will be challenging not only to achieve GES by 2020, but even to know how far we are from meeting the objective. It will also deprive economic operators of a level playing field across the EU and its marine regions. It jeopardizes an important resource base, without which Blue Growth will not be sustainable in the long term.

A window of opportunity is now open to improve this situation ahead of the development of Monitoring Programmes and Programmes of Measures planned for 2014 and 2015 respectively. These will deliver better results at lower cost if they are coordinated or developed jointly across Member States.

(1) The lessons learnt so far

Anticipating the results of the present assessment, a number of lessons have already been learnt by the Commission and the Member States and translated into concrete initiatives:

- The Common Implementation Strategy for the MSFD⁹ has been adapted to new challenges and a new work programme for implementing the MSFD¹⁰ has been developed for 2014-2018, jointly with Member States, RSCs and other relevant actors. The joint programme identifies key milestones, strengthens cooperation with RSCs and foresees the development of guidance aimed at improving the joint understanding of MSFD requirements.
- Additional support for implementation has been made available to Member States, through tailor-made and hands-on projects funded under the EU's Integrated Maritime Policy. These projects are, for instance, dedicated to improving the directive's implementation in the Mediterranean and in the Black Sea.
- Steps have been taken to streamline and simplify the reporting obligations of Member States, as well as to draw on existing reporting under relevant legislation, based on the principle of "*report once, use many times*".

(2) Way forward

Beyond these lessons learnt much more needs to be done within the present implementation cycle and before the reporting exercise is repeated in 2018. This will require not only a number of specific actions and a higher ambition level, but also a different way of thinking about how to implement the MSFD, in order to remedy the identified shortcomings.

In the short term, and in accordance with article 12 of the MSFD, it is essential to ensure that the most positive aspects of implementation so far are capitalised upon, and that the weaknesses identified do not adversely affect the future implementation of the MSFD. In order to do so, Member States should give swift and serious consideration to the following recommendations including when preparing the monitoring programmes and programmes of measures. In particular Member States should:

- use the monitoring programmes to address the shortcomings and gaps identified in the initial assessment;
- systematically use standards stemming from EU legislation (such as the Common Fisheries Policies, the Water Framework Directive, the Habitats Directive, etc. and the proposed directive on Maritime Spatial Planning (MSP) and Integrated Coastal Management (ICM)¹¹ as soon as it enters into force) as minimum requirements. If such standards do not exist, Member States should use region-specific common indicators developed by the relevant RSCs in their monitoring programmes and programmes of measures;

⁹ The Directive requires from Member States detailed and coordinated input. In order to facilitate this work, Member States and the European Commission have set up an informal programme of coordination, the Common Implementation Strategy (CIS).

¹⁰ Work Programme agreed as part of the CIS:
http://ec.europa.eu/environment/marine/eu-coast-and-marine-policy/implementation/index_en.htm

¹¹ Proposal for a Directive establishing a Framework for Maritime Spatial Planning and Integrated Coastal Management, COM (2013)133 final.

- review and, where possible, update their GES and targets in preparation for the monitoring and measures programmes to allow for a consistent approach *within and among regions and* between the different provisions;

In addition, where the Commission has found shortcomings, Member States should, as soon as possible and by 2018 at the latest, significantly improve the quality and coherence of their determinations of GES, their initial assessments and their environmental targets, to ensure that the second round of implementation yields greater benefits. In particular, the following actions should be taken:

- revise, strengthen and improve the current GES Decision 2010/477/EU by 2015, aiming at a clearer, simpler, more concise, more coherent and comparable set of GES criteria and methodological standards; this review could also factor in the impacts of climate change on the GES assessment¹²;
 - review Annex III of the MSFD, and if necessary revise, and develop specific guidance to ensure a more coherent and consistent approach for assessments in the next implementation cycle;
- implement a modern and effective data and information sharing system between the EU (EEA) and RSCs (“WISE-Marine”), taking full advantage of the ongoing developments to improve accessibility and interoperability of marine data through the "Marine Knowledge 2020" initiative;
- systematically use assessments carried out for other relevant EU legislation or under RSCs by Member States, with preparatory work starting immediately;
 - develop action plans, coordinated at (sub-)regional level to rectify the shortcomings identified at the latest by 2018¹³.

Last but not least, regional cooperation must be at the very heart of MSFD implementation, and influence national implementation processes, rather than the other way around. At the regional level, the Commission and the Member States should cooperate with other Contracting Parties in the context of the RSCs, to stimulate further coordination at regional or sub-regional level, bearing in mind that each RSC has its specificities. Member States should then use the results systematically in national implementation processes. The Commission and the Member States should continue discussion on how best to foster regional cooperation and further strengthen cooperation with the RSCs, in particular to further align work programmes.

These recommendations aim at providing a clear framework for a gradually improving the cooperative approach to MSFD implementation, with gradual steps and objectives to be met at all relevant levels. This way forward, if implemented fully and rapidly by all, well before 2018, will help achieve the required urgent policy step-change, and will improve the way we jointly address the protection of our oceans and seas in the little time left before 2020.

¹² As outlined in SWD (2013) 133 final (as part of the Commission's "EU Strategy on adaptation to climate change").

¹³ These action plans could be inspired by the Structured Implementation and Information Framework approach and defining the various steps to be undertaken by a Member States to improve implementation (see COM(2012) 95).

The European Commission intends to reassess in 2016, as part of its report on the programmes of measures¹⁴, whether the collaborative approach described above has been implemented and has delivered results, or whether additional action is needed in order to ensure the proper implementation of the MSFD. The revision of the GES decision in 2015 and the strengthening of regional cooperation are key elements of this approach. In parallel, the European Commission may avail itself of the possibility to launch further infringement procedures to ensure the proper implementation of the MSFD, whenever necessary.

5. CONCLUSION

The very fragile marine ecosystems of the EU are facing increasing pressures from human activities. Implementing the MSFD and translating the ecosystem approach into a scientifically sound reality in the marine environment, while working jointly with the EU's neighbours, is a very challenging, but crucial task. In the first phase of the MSFD, important milestones have been established at the European, regional and national levels, representing an important effort. Nevertheless, the EU is still very far from enjoying healthy oceans and seas. Meeting this objective by 2020, in less than seven years, implies renewed and intensified efforts and rapid and important change in the way Member States, the European Commission, RSCs and other relevant organisations work together, focusing on joint action and planning, as well as policy coherence across sectors. Greater coordination of monitoring programmes and programmes of measures, more ambitious regional cooperation and a clearer understanding of the roles, responsibilities and obligations of all parties will facilitate less costly and more effective protection of the marine environment as will the full implementation of the EU's legislative framework dealing with land-based sources of pollution as well as more systematic efforts to achieve Integrated Coastal Zone Management. These actions represent the minimum necessary if the EU is to be successful in implementing the MSFD, protecting its oceans and seas, and to ensure its marine waters will provide a sustainable source of development for the generations to come.

¹⁴ Article 16 MSFD.