



European Economic and Social Committee

NAT/166
Marine environment

Brussels, 14 May 2003

OPINION

of the European Economic and Social Committee

on the

**Communication from the Commission to the Council and the European Parliament –
Towards a strategy to protect and conserve the marine environment**

COM(2002) 539 final

On 2 October 2002 the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Communication from the Commission to the Council and the European Parliament – Towards a strategy to protect and conserve the marine environment
(COM(2002) 539 final).

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 1 April 2003. The rapporteur was **Mrs Sánchez Miguel**.

At its 399th plenary session (meeting of 14 May 2003), the European Economic and Social Committee adopted the following opinion with 103 votes for and three abstentions.

1. Introduction

1.1 One of the many topics addressed by the 6th Environment Action Programme (6th EAP) is the protection and conservation of the marine environment with the aim of promoting the sustainable use and protection of the seas. To date, individual policies that have an impact on the marine environment are clearly not having the desired effect; in fact, many of the threats that were identified when drafting the 6th EAP have become a reality, with repercussions far exceeding the worst predictions.

1.2 Predicted threats such as the degradation or loss of marine biodiversity, destruction of habitats owing to port developments and the increase in dangerous nutrients and substances - combined with other factors, the overall impact of which is not always appreciated, such as maritime transport and fishing - all point to the need for coordination between all sectors affecting the marine environment, with a view to defining an overall policy to reduce and put an end to the degradation of our seas.

1.3 Firstly, this effort to coordinate all policies that impact upon the marine environment must be planned at Community level. The geographical area must be limited to seas and oceans which form part of Community territorial waters or those of the candidate countries, while at the same time account must be taken of the potential influence of international treaties and conventions that have already been signed.

1.4 This will enable the strategy for the conservation and protection of the marine environment to remain part of the Community's Strategy for Sustainable Development, which promotes economic and social growth accompanied by environmental protection.

1.5 At international level, recognition must be given to the conclusions of the Johannesburg Summit¹, in particular those referring to the chapters on oceans and seas, fisheries, marine contamination and research. The most important of these conclusions in terms of their potential global impact are the following:

- apply, by 2010, the ecosystem approach, noting the Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem, and Decision V/6 of the Conference of Parties to the Convention on Biological Diversity;
- implement chapter 17 of Agenda 21, which establishes the programme of action for achieving the sustainable development of oceans, coastal areas and seas;
- establish an inter-agency coordination mechanism within the United Nations system;
- maintain or restore stocks to levels that can produce the maximum sustainable yield, where possible not later than 2015 for depleted stocks;
- implement the 1995 Code of Conduct for Responsible Fisheries;
- urgently develop the FAO's International Plan of Action for the Management of Fishing Capacity by 2005 and International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing by 2004;
- strengthen donor coordination and partnerships to enable developing countries to develop their national and regional capacities for infrastructure and integrated management;
- support the sustainable development of aquaculture;
- implement the Global Programme of Action and the Montreal Declaration on the Protection of the Marine Environment from Land-based Activities, with particular emphasis during the period from 2002 to 2006 on municipal wastewater, and the physical alteration and destruction of habitats;
- improve measures relevant to transboundary maritime transportation of radioactive material, radioactive waste and spent fuel;
- increase scientific and technical collaboration, and establish a regular process under the United Nations for global reporting on the state of the marine environment.

¹ World Summit on Sustainable Development in Johannesburg, South Africa. 26 August – 4 September 2002. Chapters I-IV.

1.6 It must not be forgotten, however, that European environmental objectives and actions are often better defined and more advanced than those drawn up at the Johannesburg Summit. The EU should therefore take the lead in the actions described above to ensure compliance with the Kyoto and Gothenburg agreements.

1.7 This Communication addresses the debate on a strategy to protect and conserve the marine environment in the European Union. It aims to have an impact at both European and international level, so that whatever conclusions are reached can have a knock-on effect. We cannot sit passively by while the marine environment deteriorates; sector-specific or national solutions alone are not enough, they need to be part of a Community and international framework.

2. Summary of the Communication

2.1 The current state of the marine environment presents a significant number of information gaps for Community authorities. For the Commission, the lack of an integrated approach based on all the policies with an impact on the marine environment means that there is a need to draw up inventories of all the information available. This would subsequently provide the basis on which to build a thematic strategy.

2.2 Available information on the environmental quality of the seas and oceans includes primarily:

- Regional marine conventions²
- European Environment Agency reports
- Information on biodiversity collected in the context of the review of the Common Fisheries Policy³; developments in marine zones; eutrophication of water; transportation and discharge of oil, etc.

2.3 The other part of the equation is the current legislation to protect and conserve the marine environment, where a distinction must be made between strictly Community legislation and international legislation. The former⁴ includes - in general - the Water Framework Directive (WFD)⁵,

² ANNEX I contains information taken from these Conventions.

³ COM(2002) 181 final – EESC Opinion 1369/2002

⁴ As listed in Annex 2.

⁵ Directive 2000/60/EC – OJ L 327 of 22.12.2000

the Habitat⁶ and Birds⁷ Directives, and the IPPC Directive⁸ and – more specifically – directives on waste water treatment and bathing water, maritime transport legislation, the CAP, etc.

2.4 International legislation is laid down in Conventions governing general aspects such as protecting the marine environment and specific aspects such as protecting marine species, preventing contamination by dangerous substances, chronic oil pollution, etc. The most important Conventions are OSPAR⁹, HELCOM¹⁰ and BARCELONA¹¹.

2.5 There is only limited information available about the effects of existing legislation owing to the fact that, in general, such effects only manifest themselves in the long term and because there is no national monitoring of the state of the marine environment in their maritime waters. The Commission presents the situation from two aspects:

- Gaps in available information
- A review of current activities regarding monitoring, assessment, reporting/data management and research¹²

2.6 Because the outlook is anything but positive, a number of objectives are proposed for each specific aspect of the marine environment. In general, the Communication states that the Marine Strategy should constitute a contribution to the Community's Strategy for Sustainable Development. Therefore, and as indicated in the 6th EPA, it should promote the sustainable use of the seas and conservation of marine ecosystems, including sea beds, estuarine and coastal areas, paying special attention to sites with a high biodiversity value.

2.6.1 The specific objectives refer to the following:

- Loss of Biodiversity and Destruction of Habitats (three objectives are established to contain biodiversity decline)
- Hazardous Substances (one objective)
- Eutrophication (one objective)

⁶ Directive 92/43/EC – OJ L 206 of 22.07.1992

⁷ Directive 79/409/EC – OJ L 103 of 25.04.1979

⁸ Directive 96/61/EC – OJ L 82 of 22.03.1997

⁹ Convention for the Protection of the Marine Environment of the North East Atlantic

¹⁰ Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area

¹¹ Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean

¹² ANNEX 3

- Radionuclides (one objective)
- Chronic Oil Pollution (one objective)
- Litter (one objective)
- Maritime Transport (one objective)
- Health and Environment (one objective)
- Climate Change (three objectives)
- Improving the Knowledge Base (one objective).

2.7 The Commission proposes twenty-three specific actions aimed at achieving these objectives through prevention and application of the precautionary principle. All are based on measures provided for under current legislation and are essentially designed to conserve biodiversity by designating special conservation areas and developing regional water management plans in line with regional marine conventions.

2.8 Particular attention must be paid to those proposed actions that are designed to foster coordination and cooperation at both Community and international level, e.g. the proposal for improved coordination between all bodies dealing with marine protection in the framework of the United Nations and Agenda 21.

2.9 Improving the knowledge base is at present one of the most advanced actions, as a timetable has already been set to develop monitoring procedures along similar lines to the Water Framework Directive.

3. **General comments**

3.1 The EESC welcomes the Commission proposal as it opens the debate with all the parties interested in conserving and protecting the marine environment. However, in response to the regrettable and increasingly frequent pollution of our maritime waters, the EESC calls for a stronger political commitment from Member States to implementing existing legislation and for the perpetrators to be held liable in an effective way.

3.2 With regard to the proposals made in the Communication, the EESC broadly shares the principles on which they are based – such as the coordination of policies that impact upon a particular environment (in this case, the marine environment) – and has in fact called for such principles to be respected in many of its opinions. The EESC understands that the Community's

Strategy for Sustainable Development is achieved by implementing such policies across the board. However, there is no point in continuing to legislate if legislation is not implemented and monitored by the competent authorities. The division of powers between these authorities must not result in a legislative vacuum that renders the laws ineffective.

3.3 An examination of the aforementioned objectives reveals that most of them relate to compliance with existing legislation, analysing and assessing the effects of substances and other aggressions in the marine environment, observing and studying other effects, etc. The EESC welcomes the "ecosystem-based approach" insofar as it signals the use of a new methodology; however, the document does not explain what this means. Without this, it is impossible to judge if the strategy presented (objectives and actions) is in keeping with the above approach¹³. Suffice it to say that there are thirty-three different ecosystems in the Mediterranean, each one subject to very different pressures and impacts depending on their precise location.

3.4 Secondly, the strategy outlined merely reiterates existing guidelines and activities, the achievements of which – as is the case for many other environmental policies – can be summed up as "one step forward for environmental protection, but two steps back for the state of the environment itself". Thus all the actions proposed to achieve the objectives are limited to:

- complying with and/or adapting existing directives;
- assessing, studying, analysing, observing;
- coordinating conventions and reports.

3.5 Another strategy may need to be found and, among the various options to be explored, a central role could be given to effectiveness, i.e. the EU's real capacity for influencing marine issues, by enhancing:

- legislative instruments (whether binding and mandatory, or simple agreements and conventions);
- economic instruments (trade agreements, third country funding programmes).

3.6 Actions could therefore be drawn up by area, for example:

¹³ The stakeholder Conference on the Commission proposal held on 4-6 December 2002 in Køge, Denmark defined the concept as "the comprehensive integrated management of human activities based on best available scientific knowledge about the ecosystem and its dynamics, in order to identify and take action on influences which are critical to the health of the marine ecosystems, thereby achieving sustainable use of ecosystem goods and services and maintenance of ecosystem integrity". Furthermore, the ecosystem approach is the primary framework for action under the Convention on Biological Diversity. An ecosystem approach to marine and coastal biological diversity is still under development.

- Area 1. Coastal waters, corresponding to the territorial waters of Member States, where the Community has full powers to regulate, monitor and penalise and where many Community and national provisions already exist.
- Area 2. Waters and seas in maritime areas where the Community has strong powers (200 miles), either because they fall within its territorial waters or because it has political or economic influence.
- Area 3. Waters and seas where the Community has few powers owing to the fact that they are international waters (e.g. Community fleet fishing grounds, holiday destinations for EU citizens).

3.7 An examination of the aforementioned Community legislation with an impact on the marine environment reveals many gaps in environmental protection measures; in fact, a number of measures are currently under review and others are unlikely to be implemented owing to the moratorium on their entry into force, opposition from many Member States¹⁴, and delays in their transposition and subsequent implementation.

3.8 The very important role given to marine conventions in the Communication must be downgraded and partially replaced by EU legislative initiatives. Such international agreements impose considerable restrictions, in general concerning binding obligations. They are of considerable value in defining strategies for achieving objectives, in involving different countries, etc., but lack teeth when it comes to penalising infringements if they are not duly recognised in the specific legislation of each state. Moreover, their potential for adapting to scientific, technical or social progress is very limited owing to lengthy procedures for drafting, ratification and entry into force.

3.9 The Committee also wishes to point out that international conventions are very limited. Firstly, they only apply to a limited geographical area and therefore only cover certain areas of oceans and seas - namely waters that fall under the jurisdiction of Member States and, at best, some bordering countries – and cannot protect other areas in which Community interests are at stake, such as fishing grounds in the African Atlantic that are exploited by European enterprises. Secondly, such conventions are not completely binding as they cannot be enforced and are therefore somewhat ineffective.

3.9.1 However, although it recognises their limited impact, the EESC believes that the EU must continue to develop its environmental policy within international conferences and organisations as a way of defending the model of sustainable development.

3.10 With regard to the proposed objectives, it would be a good idea to extend them in at least three crucial areas:

¹⁴ Reform of the Common Fisheries Policy. COM(2002) 181 final – EESC Opinion 1369/2002

- prevention of serious accidents with environmental consequences for marine waters, occurring both on land and at sea and for which Directives already exist (e.g. Seveso II, Erika);
- management of the use of coastal areas, as regulated in the WFD (e.g. urban planning, infrastructures, related economic activities, waste water treatment);
- international maritime transport and the use of dubious legal ploys, such as "flags of convenience" which are largely responsible for the current disarray in this area and for the considerable environmental consequences (e.g. spillages, accidents, transportation of dangerous products without guarantees, use of products that are toxic for the marine environment).

3.11 The remaining objectives listed in the Communication are very ambitious and undoubtedly rational in the context of the overall objective (i.e. sustainable use of the seas and conservation of its ecosystems). However, neither the actions or the proposed timetable properly correspond to the objectives.

3.12 The twenty-three actions linked to the fourteen objectives are in no way innovative and lack an element or elements on which to build an integrated policy. In the Water Framework Directive, this "cornerstone", which acts as a basis for the integration of policies, is the "good state" of waters.

3.13 Many actions are not given a timescale for compliance and those that are have such long deadlines that it is unlikely they will achieve the desired results. Some analyses are an exception (e.g. the 2004 review of the relationship between OSPAR and radioactive substances, the strategy to eliminate discharges of oil from different sources, and litter).

By way of example, the deadlines for reducing chronic oil pollution are:

- 2010 to comply with existing discharge limits
- 2020 to act on the sources of such discharges.

This delay is incomprehensible when in reality the technology available enables illegal discharges by ships to be detected and located in real time (ENVISAT satellites).

3.14 With regard to assessing the impact of Community directives, there are various viewpoints on and interpretations of the state of Community waters. Marine environment indicators do not reveal any major progress and in many cases demonstrate a decline. For example, fishing levels off the Mediterranean coast reveal that "coastal fishing" areas are depleted, fish farms have problems of environmental sustainability, etc.

3.15 The situation is deteriorating despite the many directives governing the management and use of marine waters under Member State jurisdiction. The impact of Community legislation must therefore be assessed in order to identify the causes for its relative failure, and the necessary measures taken to improve its effectiveness. It is vital that the interested parties (e.g. ecologists, trade unions, industry) participate in this assessment and that financial, scientific and technical resources are released. The European Environment Agency must also play a key role in this.

4. **Proposed new actions to be considered in relation to the protection and conservation of the marine environment**

4.1 The EESC believes it is necessary for the proposed actions to be extended, as events since the drafting of the Communication clearly demonstrate the need for these actions to be strengthened and for them to include all rules that improve compliance with Community legislation already in force.

4.2 Without losing sight of the aim of this Communication - i.e. the protection and conservation of the marine environment – the following proposals should therefore be included in the actions, as they both improve coordination between the various policies affecting the marine environment and seek to deal with situations that cause alarm among European citizens.

4.2.1 From the point of view of consistency between policies, the Commission should define the concept "**good state of the marine environment**" as the ultimate objective of the 23 actions linked to the 14 objectives. This would provide a link between all the actions, and a single innovative and unifying methodology.

4.2.2 Moreover, reducing the deadlines for implementing the legislation and the periods proposed for the conservation and protection actions would be an effective way of slowing down the deterioration of the marine environment. The generous deadlines currently provided for many of the actions would make them ineffective, while at the same time the marine environment is deteriorating at an alarming rate.

4.2.3 At international level, improving the monitoring of compliance with international Conventions through the International Maritime Organisation, as agreed at the Copenhagen European Council on 12-13 December 2002¹⁵, will help extend the impact of protection and conservation legislation. At the same time, means should be sought to make these Conventions more effective, using economic instruments that **reward** compliance by third country signatories with technical and financial assistance.

4.2.4 One very important issue that has been highlighted during recent maritime disasters is that of scientific research into **bioremediation** systems that enable damage to be repaired in a way

¹⁵

See the Communication from the Commission to the European Parliament and to the Council on improving safety at sea COM (2002)681 and the Presidency Conclusions, Copenhagen European Council, 12-13.12.2002 (13/12/2002, No. 400/02).

that is more respectful of the marine environment¹⁶. The Commission should therefore increase coordination between the 6th Research Programme and the 6th Environment Programme so that some of their resources can be set aside for practical environmental research.

4.2.5 The EESC believes that, in addition to the new actions proposed, actions designed to inform people about environmental policies must not be overlooked and, in particular, education must continue to be used as a means of raising awareness of and applying these policies in the future.

4.2.6 With regard to including new actions designed to help prevent the causes of recent marine disasters - many of which have already been approved, and in circumstances similar to today's¹⁷ - a distinction should be made between actions that only concern legislation awaiting implementation, actions that require economic assistance in order to be carried out, and actions that have still to be developed.

4.2.6.1 The first group of actions would include:

- Redrafting of Regulation (EC) No 417/2002 of the European Parliament and of the Council of 18 February 2002¹⁸ on the issue of double hull or equivalent design requirements for oil tankers, to include the objective of a **safe and clean ship**.
- Immediate implementation of Directive 2001/106/EC of the European Parliament and of the Council of 19 December 2001 amending Directive 95/21/EC concerning the enforcement of international standards for ship safety, pollution prevention and shipboard living and working conditions.
- Adoption and implementation of the proposal for a Directive of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage, and the proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law¹⁹.

4.2.6.2 The second group – i.e. actions that only require economic assistance from the EU to be put into force²⁰ - would include:

16 Such systems were used, with positive results, at the time of the Exxon Valdez disaster in Alaska.

17 The measures adopted by the European Parliament and the Council, and contained in the ERIKA I and ERIKA II packages, enter into force on 1.1.2003 for single hull tankers.

18 The Commission presented a proposal to amend the Regulation on 20.12.2002, Opinion CESE 415/2003

19 The application of the polluter pays principle is based on the model in force in the USA. Operators should not be allowed, however, to sidestep responsibility by using flags of convenience and thereby evade Community legislation, as has been happening in practice. The Commission has just presented COM(2003) 92 final, a Proposal for a Directive on ship-source pollution/criminal sanctions.

20 The European Council of 21/22.3.2003 approved the strengthening of these economic measures.

- the immediate implementation of the measures contained in the ERIKA I and ERIKA II packages, in particular those referring to preparing ports of refuge for ships in distress; strengthening a trans-European network for monitoring maritime traffic; and ensuring that the Member States provide a sufficient number of inspectors for Community ports,
- keeping dangerous ships away from the main maritime routes by creating corridors far from the coast,
- setting up an auditing system for States in which ships are registered,
- investigating and identifying waste (such as chemical bombs, containers with radioactive products) deposited in the marine environment.

4.2.6.3 Finally, the third group would include the development of new procedures for applying the rules aimed at stopping companies and competent authorities from using flags of convenience, registering ships to brass plate companies, etc. to water down and evade responsibilities, checks and taxes.

4.3 The EESC is concerned by the lack of coordination between the competent authorities, not only at Member State level but also at regional level, whether in the same Member State or not. The Committee would therefore suggest using some of the systems already provided for this purpose in Community legislation, such as the stipulation in the Water Framework Directive that the various authorities in a river basin must coordinate with each other when implementing the designated river basin plan and, above all, must provide regular information on each of the jurisdictional areas in which this plan is developed.

Brussels, 14 May 2003.

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