

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council establishing a Framework for Community Action in the field of Marine Environmental Policy (Marine Strategy Directive)

COM(2005) 505 final — 2005/0211 COD

(2006/C 185/04)

On 29 November 2005, the Council decided to consult the European Economic and Social Committee, under Article 175 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for the Committee's work on the subject, adopted its opinion on 21 March 2006. The rapporteur was **Ms Sánchez Miguel**.

At its 426th plenary session, held on 20 and 21 April 2006 (meeting of 20 April), the European Economic and Social Committee adopted the following opinion by 137 votes in favour and three abstentions.

1. Conclusions and recommendations

1.1 The EESC appreciates the proposal for a Directive, which falls within the context of the thematic strategy for the protection and conservation of the marine environment; this could integrate and coordinate certain existing legal measures, particularly as regards the methodology for action in the field, which is similar to that set down in the Water Framework Directive (WFD).

1.2 However, from a critical standpoint, the EESC believes that while the proposal is necessary, it does not go far enough: the status of our seas and oceans has deteriorated so badly that more coercive measures will be needed in order to implement and monitor compliance with existing measures. Moreover, the proposal only partially covers the status of the marine environment. The EESC therefore believes that a framework directive would be more effective when subsequently integrating and developing the aspects that are not covered in depth here.

1.3 By utilising existing legislative or management instruments rather than creating new ones, Member States can be spared additional costs and, above all, increased bureaucracy. Arrangements are also included for public and stakeholder consultation and participation, which are key factors for the public's involvement in environmental issues.

1.4 The EESC wishes to make several recommendations which it considers necessary in order to improve the proposed Directive, so that the Commission can evaluate its contributions as a sector of civil society concerned by this issue.

1.4.1 Firstly, it is necessary to clarify and strengthen the Commission's monitoring and coordinating role vis-à-vis the regional authorities that are required to assess and plan the targets and the measures for applying these to the marine environment under their control. The aim should be to harmonise and balance actions throughout coastal areas, bearing in mind that seas and oceans stretch across borders. Centralised

coordination would make it possible to intervene in the non-EU countries where Community action would be feasible and, in particular, with which the EU has international agreements.

1.4.2 As the good status of marine waters depends to a large extent on quantitative factors, the EESC believes that quantitative descriptors should also be included in the definitions given (particularly the definition of good environmental status based on general qualitative descriptors), as was the case for continental waters in the WFD. As pointed out in point 5.5 below, the environmental targets should, at the very least, be those specified in the Communication, since the format proposed in the Directive is so general that it could prevent them from being fully effective.

1.4.3 The ambiguous wording used in referring to the selection of special areas (defined by their inability to reach the environmental targets) could lead to misuse; the EESC therefore proposes that the reasons for this special status be clearly and carefully defined, along with the procedures for approval by the Commission.

1.5 Lastly, there are two focus areas which are very important if the objectives proposed here are to be effectively applied. The first concerns the immediate application of all previous measures affecting the marine environment, such as those relating to the ERIKA I, II and III packages, in particular referring to ports of refuge, the trans-European network for monitoring maritime traffic, setting up a Member State auditing system for ship registration, investigating and identifying waste (such as bombs, containers with radioactive products), etc.

1.5.1 The second focus area relates to research in the marine environment. By increasing and improving knowledge, it will be possible to set clear objectives and establish the programmes of measures needed to restore good environmental status. Greater participation in the European Framework Programmes for Research is therefore required.

2. Background

2.1 The present proposal is based on a Communication ⁽¹⁾ which the Commission submitted in 2002. It establishes a strategy for the ecological protection and conservation of the marine environment, with the aim of promoting sustainable use of the seas and conserving marine ecosystems. The Sixth Community Environment Action Programme already mentioned the need to set up measures for protecting and conserving the marine environment, and stressed that the objective of sustainable use of European seas and oceans cannot be achieved through individual policies. It has become clear that swift action is urgently needed, as many of the dangers forecast in the Sixth Programme have become reality, with much greater severity than was ever predicted ⁽²⁾.

2.2 The starting point of the strategy proposed in the above-mentioned Communication is the situation of the European marine environment, which is undergoing severe deterioration and is suffering from the effects of climate change, pollution by hazardous substances, commercial fishing, eutrophication, and the added danger of introduced exogenous species. If other, institutional obstacles are also taken into account, such as the exclusive jurisdiction that Member States have over their own territorial waters, the existence of international conventions that also apply to non-EU countries, and various global agreements ⁽³⁾, it becomes clear that this strategy must be implemented, despite all the hurdles identified.

2.3 Another communication ⁽⁴⁾ was issued on the same date as the present proposal, but was not referred to the EESC. It states that a Green Paper is to be drawn up on the marine environment strategy. The EESC believes that the Commission should take into account the observations and content of its opinions, and that the best way to achieve this would be to carry out a further consultation that would incorporate the EESC's expertise and opinions on policies affecting the marine environment (fisheries, transport, hydrocarbons, etc.). It is important for the EESC to make its stance known, as the representative of civil society.

3. Summary of the proposals

3.1 The proposed Directive includes an instrument for the implementation of the strategy for conservation and protection of the marine environment. It also takes account of international conventions, particularly those signed by the Commission and Member States under UN auspices ⁽⁵⁾ and regional

⁽¹⁾ COM(2002) 539 final – Communication from the Commission to the Council and the European Parliament: Towards a strategy to protect and conserve the marine environment.

⁽²⁾ For a deeper insight, see Opinion OJ C 133, 6.6.2003 on the Communication from the Commission to the Council and the European Parliament: Towards a strategy to protect and conserve the marine environment. Rapporteur: Ms Sánchez Miguel.

⁽³⁾ Chapters I-IV of the conclusions of the Johannesburg Summit, held on 26 August - 4 September 2002, include agreements on oceans and seas, fisheries, marine pollution and research. See opinion OJ C 133, 6.6.2003.

⁽⁴⁾ COM(2005) 505 final of 14.10.05.

⁽⁵⁾ United Nations Convention on the Law of the Sea (UNCLOS) adopted by Council Decision 98/392/EC, 23 March 1998.

agreements ⁽⁶⁾, whose objectives the Directive should serve to meet.

3.2 The proposal is divided into five chapters, the first of which sets out the subject matter (Article 1), scope (Article 2), marine regions and sub-regions (Article 3), marine strategies (Article 4), rules for coordination and cooperation between Member States (Article 5) and competent authorities (Article 6).

3.3 In this first section, particular attention should be paid to Article 4, which covers the marine strategy which Member States should establish for each marine region and which should include, at least:

- an initial assessment of the environmental status of the waters, and the environmental impact of human activities thereon;
- a definition of the good environmental status of these waters;
- the establishment of environmental targets;
- the establishment and implementation of a monitoring programme for targets.

This should be accompanied by a programme of measures to be implemented by 2016, at the latest, in order to achieve the good environmental status of seas and oceans.

3.4 The marine strategies are developed in the second and third chapters: Chapter II sets down the rules for drawing up these strategies, and Chapter III covers the programmes of measures.

3.4.1 The measures for **establishing the marine strategies** are based on the requirement for Member States to carry out an initial assessment of their marine waters (Article 7). This is to include various aspects, such as an economic and social analysis of their use and of the cost of their degradation. The good environmental status (Article 8 and Annex II) and environmental targets (Article 9 and Annex III) are defined, and, lastly, the means of establishing the monitoring programmes (Article 10 and Annexes II and IV) and the approval method (Article 11) are set down.

⁽⁶⁾ Convention on the protection of the marine environment in the Baltic Sea, Decision 94/157/EC; Convention for the protection of the marine environment of the north-east Atlantic, Decision 98/249/EC; Convention for the protection of the Mediterranean Sea against pollution, Decision 77/585/EEC, amended in 1995.

3.4.2 The third chapter lays down the **Programmes of measures** to be implemented by the Member States for each of their marine regions (Article 12 and Annex V) in order to achieve good environmental status, in line with the initial assessment. The Commission must also be notified of these (Article 14) so it may subsequently approve them (Article 15). Ad hoc measures are included for special areas (Article 13).

3.5 Chapter IV covers the rules for updating the strategies for each marine region (Article 16), and the requirement to draw up interim reports every three years (Article 17). Article 18 is worth noting, as it sets down the rules for public information and consultation, in compliance with Directive 2003/35/EC. The Commission is also required to draw up evaluation reports on the implementation of the Directive (Article 19), whose content is to be reviewed 15 years after entry into force.

3.6 Finally, Chapter V contains the technical provisions, with particular reference to the Annexes (Article 21) and the committee that will assist the Commission with its task (Article 22).

4. Comments on the proposal

4.1 The current proposal for a Directive should be considered in relation to the aforementioned Communication from the Commission to the Council and the European Parliament: Towards a strategy to protect and conserve the marine environment (for a deeper insight, see opinion CESE/578/2003 on this Communication). The key points of the Communication are as follows:

- the individual policies of Member States are not having the desired effect of improving the marine environment; in fact the state of Community waters is gradually deteriorating;
- Member States are not efficiently monitoring the status of marine waters;
- scientific knowledge of the marine environment is insufficient and requires a greater commitment to research;
- in connection with the need for a strategy to protect and restore the marine environment, there are well-defined criteria and targets, which are to be pursued via 23 possible actions.

4.2 The following points were raised in the EESC opinion:

- a) the Communication represents a step towards the establishment of measures to protect and restore the marine environment;

- b) however, a clear and efficient methodology for action is required, similar to that set down in the Water Framework Directive (WFD);

- c) this methodology, based on ecosystems, should include provisions on the 'good status of waters', zoning of the marine environment, definition of criteria and coordination mechanisms for authorities, etc.

4.3 In this context, the proposed Directive incorporates a number of points from the EESC opinion, which it interprets from its own angle, and establishes a methodology for action similar to that put forward by the WFD. However, there are clear differences regarding the role of the Commission and Member States and the organisation of various aspects of the methodology. The reasons for these differences, or their usefulness, are not clearly explained, and there are some sharp contradictions. For example:

- a) the Communication points out the inefficiency of individual policies and the Community framework, and yet this model of action is maintained in the proposal for a Directive;

- b) the Communication gives an exhaustive definition of criteria, targets and actions, yet they correspond only in part to those in the proposal for a Directive.

4.4 The EESC believes that the proposal for a Directive:

- a) is necessary but not sufficient to rehabilitate and protect the marine environment of interest to the EU, which extends beyond the marine waters under its jurisdiction;
- b) is a good starting point, with significant aspects that need fine-tuning;
- c) is not complete; new elements should be developed subsequently and included in the proposal, in order for it to become a framework Directive with the required scope and depth.

4.5 Application of the Directive falls almost entirely upon the Member States; the Commission provides guidance for initiatives, is updated by Member States and approves or rejects the definitions of the environmental status, the environmental targets and indicators, the monitoring programme, and the programme of measures for special areas, *mutatis mutandis*.

4.6 The Directive does not establish new legislative or management instruments, but makes use of existing Community instruments and the international agreements signed by the European Union.

- 4.7 It clarifies the way in which the public and stakeholders will participate via the Member States.

5. Specific comments

5.1 Experience gained from the implementation of more ambitious European measures in Member States (WFD, IPPC) shows that the Commission must play an active role not only in monitoring but also in coordinating and centralising the initiatives undertaken in order to support Member States, while complying with the subsidiarity principle. To this end, the Commission should arrange and chair a forum of competent authorities for each marine sub-region and region, attended by interested parties from scientific institutions with proven experience in the field, and by the authorities responsible for fisheries and radio-nuclides policy.

5.2 As well as covering the information and approval requirements for the proposed initial assessment, good environmental status, environmental targets, the monitoring programme and the programme of measures (including ad hoc measures for special areas), the Directive should establish a procedure for action and a timeframe for processing any objections that might arise. This procedure should involve stakeholders and the general public, and include sufficient incentives.

5.3 The initial assessment is described in Annex II. In the table on pressures and impacts, it would be useful (in line with the criterion given in the Communication prior to the proposal for a Directive) to define the anthropogenic causes and their relation to the pressures and impacts, and to the criteria and targets for marine protection, in order to link these with the actions and policies of the strategy.

5.4 The definition of 'good environmental status' and 'environmental status of the marine environment' is based on 'generic qualitative descriptors, detailed criteria and standards'. Quantitative descriptors should also be included, as they are necessary for certain variables relating both to the initial assessment and the good environmental status. Quantitative reference points are also needed for tracking certain variables in the monitoring programmes (e.g. phytoplankton density).

5.5 The environmental targets are defined in Article 9 and Annex III using overly general criteria. It would be useful to set minimum criteria and targets; at the very least, those contained in the 2002 Communication should be included:

- deterioration of biodiversity and destruction of habitats;
- hazardous substances;
- eutrophication;
- radio-nuclides;

- chronic oil pollution;
- residues and waste;
- maritime transport;
- health and environment;
- climate change.

5.6 The programme of measures (Article 12, Annex IV) should, at least, include the measures that are mandatory under EU law, particularly in relation to coastal waters, where the action programme aims to prevent damage caused by the abovementioned sources of pollution. It should also include the mandatory measures set down in international agreements and conventions, and the 'ad hoc' measures designed to alleviate the deterioration of the marine environment in 'special areas'. This has the advantage of bringing together all the measures and initiatives spread between different provisions and regulations, thus making them easier to comply with.

5.6.1 However, it is important to ensure that these programmes of measures do not remain restricted to this minimum: as has been shown, it has not been sufficient to prevent the deterioration of the environment, and it is unlikely to be sufficient to achieve the desired good environmental status in the marine environment. In this context, it would be useful to circulate good eco-technology practices (eco-friendly toilets, phosphate-free detergents, buffer zones and restrictions applicable to coastal areas, etc.) throughout coastal countries, on a regular basis.

5.7 The proposal allows Member States to select special areas in which the environmental targets cannot be achieved for the following reasons:

- action or inaction by another State (EU or non-EU country);
- natural causes or *force majeure*;
- physical modifications or alterations brought about by 'actions taken for overriding reasons of public interest'.

5.7.1 This wording is so ambiguous that it could lead to misapplication. Therefore:

1. these causes should be clearly and carefully defined, by:
 - listing the actions or lack of action by other States that could affect the achievement of the environmental targets;
 - specifying the phenomena considered as natural causes and the criteria determining *force majeure*;

- specifying the criteria for defining the concept of 'general interest';
2. procedures should be set up for the Commission to approve these exceptions, with the involvement of stakeholders and the general public.
- 5.8 In terms of coordination and cooperation, it is important to consider the non-EU countries bordering EU waters, not just those countries that are parties to international agreements, so as to encourage them to cooperate and achieve good environmental results.

Brussels, 20 April 2006.

5.9 Lastly, the proposal channels stakeholder and public participation through the existing State systems. These are subject to doubt in many countries, sometimes because of a lack of transparency, sometimes due to delays in responding to queries, and sometimes because of the ambiguity surrounding 'stakeholder' organisations. The Commission should therefore establish a practical, effective procedure for collecting and managing complaints from stakeholders and the public, and guaranteeing the public's right to information, consultation and participation. The *mutatis mutandis* criterion should therefore be removed from the approval system, as stated above.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

Opinion of the European Economic and Social Committee on The management of industrial change in cross-border regions following EU enlargement

(2006/C 185/05)

On 20 July 2005 the future Austrian Presidency of the Council of the European Union decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on *The management of industrial change in cross-border regions following EU enlargement*

The Consultative Commission on Industrial Change, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 22 March 2006. The rapporteur was Mr Krzaklewski.

At its 426th plenary session, held on 20 and 21 April 2006 (meeting of 21 April), the European Economic and Social Committee adopted the following opinion by 69 votes to two with five abstentions.

Part 1 — Summary of the EESC's conclusions and recommendations

The Austrian Government issued a formal request for the Consultative Commission on Industrial Change (CCMI) to prepare an exploratory opinion on *Industrial change and EU enlargement: Examining the effects in border regions*.

The Committee considers that, in the course of the next Presidency, it is important to establish a precise and distinct definition of what is meant by the term 'REGION' in a cross-border and industrial context. One should distinguish regions bordering non-EU Member States and take into account whether or not a given neighbouring state is a candidate country.

It is important to establish how one can distinguish between the effects of the changes that occurred in these regions in the 1990s and those arising from EU accession, to assess the effec-

tiveness of Community instruments used in these areas before and after accession and to establish the time lag with which EU policies were implemented in these regions as compared with elsewhere.

The Committee notes that a very important and possibly decisive factor which has affected the conduct and development of industrial policy in cross-border regions in the enlarged Europe, both now and in the past, is the ability of stakeholders in these regions to access EU Structural Fund resources. Increasing their role in these regions is absolutely vital. The Proposal for a Regulation of the European Parliament and of the Council establishing a European grouping of cross-border cooperation (EGCC) is a new opportunity in this area. The Committee places particular emphasis on the need to include economic and social interest groups as well as other civil society organisations, particularly training establishments, concerned in the