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EN

⁽¹⁾ Text with EEA relevance

III

(Preparatory Acts)

COUNCIL

COMMON POSITION (EC) No 11/2007

adopted by the Council on 23 July 2007

**with a view to adopting Decision No .../2007/EC of the European Parliament and of the Council
of ... on a paperless environment for customs and trade**

(2007/C 242 E/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Articles 95 and 135 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and
Social Committee ⁽¹⁾,

Acting in accordance with the procedure laid down in
Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) The Community and the Member States have committed themselves, under the Lisbon Agenda, to increasing the competitiveness of companies doing business in Europe. Pursuant to Decision 2004/387/EC of the European Parliament and of the Council of 21 April 2004 on interoperable delivery of pan-European e-Government services to public administrations, businesses and citizens (IDABC) ⁽³⁾, the Commission and the Member States should provide efficient, effective and interoperable information and communication systems for the exchange of information between public administrations and Community citizens.
- (2) The pan-European e-Government action, as provided for by Decision 2004/387/EC, requires measures to increase the efficiency of the organisation of customs controls and ensure the seamless flow of data in order to make

customs clearance more efficient, reduce administrative burdens, help to combat fraud, organised crime and terrorism, serve fiscal interests, protect intellectual property and cultural heritage, increase the safety of goods and the security of international trade and enhance health and environmental protection. For that purpose, the provision of information and communication technologies (ICT) for customs purposes is of crucial interest.

- (3) The Council Resolution of 5 December 2003 on creating a simple and paperless environment for customs and trade ⁽⁴⁾, which followed on from the Commission Communication on a simple and paperless environment for customs and trade, calls upon the Commission to draw up, in close cooperation with the Member States, a multi-annual strategic plan for creating a coherent and interoperable electronic customs environment for the Community. Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽⁵⁾ requires the use of data processing techniques for lodging summary declarations and for the electronic exchange of data between customs authorities, with a view to basing customs controls on automated risk-analysis systems.
- (4) Accordingly, it is necessary to lay down the objectives to be met in creating a paperless environment for customs and trade, as well as the structure, means and time limits for doing so.
- (5) The Commission should implement this Decision in close cooperation with the Member States. It is therefore necessary to specify the respective responsibilities and tasks of the parties concerned and to make provision as to how costs are to be shared between the Commission and the Member States.

⁽¹⁾ OJ C 318, 23.12.2006, p. 47.

⁽²⁾ Opinion of the European Parliament of 12 December 2006 (not yet published in the Official Journal), Council Common Position of 23 July 2007 and Position of the European Parliament of ... (not yet published in the Official Journal).

⁽³⁾ OJ L 144, 30.4.2004, p. 65. Corrected version in OJ L 181, 18.5.2004, p. 25.

⁽⁴⁾ OJ C 305, 16.12.2003, p. 1.

⁽⁵⁾ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

(6) The Commission and the Member States should share responsibility for the Community and national components of the communication and information exchange systems, in accordance with the principles set out in Decision No 253/2003/EC of the European Parliament and of the Council of 11 February 2003 adopting an action programme for customs in the Community (Customs 2007) ⁽¹⁾ and taking account of Decision No 2235/2002/EC of the European Parliament and of the Council of 3 December 2002 adopting a Community programme to improve the operation of taxation systems in the internal market (Fiscalis programme 2003-2007) ⁽²⁾.

(7) To ensure compliance with this Decision and consistency between the different systems to be developed, it is necessary to establish a monitoring mechanism.

(8) Regular reports by Member States and the Commission should provide information on the progress of implementation of this Decision.

(9) In order to achieve a paperless environment, there is a need for close cooperation between the Commission, customs authorities and economic operators. To facilitate that cooperation, the Customs Policy Group should ensure the coordination of the activities necessary for the implementation of this Decision. Consultation with economic operators should take place at both national and Community level at all stages of the preparation of those activities.

(10) Acceding countries and candidate countries should be permitted to participate in those activities, with a view to preparing for accession.

(11) Since the objective of this Decision, namely the creation of a paperless environment for customs and trade, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve that objective.

(12) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾.

(13) In particular, the Commission should be empowered to extend the time limits set out in Article 4(2), (3) and (5) of this Decision. Since those measures are of general scope and are designed to amend non-essential elements of this Decision, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC,

HAVE ADOPTED THIS DECISION:

Article 1

Electronic customs systems

The Commission and the Member States shall set up secure, integrated, interoperable and accessible electronic customs systems for the exchange of data contained in customs declarations, documents accompanying customs declarations and certificates and the exchange of other relevant information.

The Commission and the Member States shall provide the structure and means for the operation of those electronic customs systems.

Article 2

Objectives

1. The electronic customs systems referred to in Article 1 shall be designed to meet the following objectives:

- (a) to facilitate import and export procedures;
- (b) to reduce compliance and administrative costs and to improve clearance times;
- (c) to coordinate a common approach to the control of goods;
- (d) to help ensure the proper collection of all customs duties and other charges;
- (e) to ensure the rapid provision and receipt of relevant information with regard to the international supply chain;
- (f) to enable the seamless flow of data between the administrations of exporting and importing countries, as well as between customs authorities and economic operators, allowing data entered in the system to be re-used.

The integration and evolution of electronic customs systems shall be proportionate to the objectives set out in the first subparagraph.

⁽¹⁾ OJ L 36, 12.2.2003, p. 1. Decision as amended by Decision No 787/2004/EC (OJ L 138, 30.4.2004, p. 12).

⁽²⁾ OJ L 341, 17.12.2002, p. 1. Decision as last amended by Council Regulation (EC) No 885/2004 (OJ L 168, 1.5.2004, p. 1).

⁽³⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

2. The objectives set out in the first subparagraph of paragraph 1 shall be achieved by at least the following means:

- (a) the harmonised exchange of information on the basis of internationally accepted data models and message formats;
- (b) the re-engineering of customs and customs-related processes with a view to optimising their efficiency and effectiveness, to their simplification and to reducing the costs of customs compliance;
- (c) the offering to economic operators of a wide range of electronic customs services enabling those operators to interact in the same way with the customs authorities of any Member State.

3. For the purposes of paragraph 1, the Community shall promote the interoperability of electronic customs systems with the customs systems of third countries or of international organisations and the accessibility of electronic customs systems to economic operators in third countries, with a view to creating a paperless environment at international level where provided for under international agreements and subject to proper financial arrangements.

Article 3

Data exchange

1. The electronic customs systems of the Community and the Member States shall provide for the exchange of data between the customs authorities of the Member States and between those authorities and the following:

- (a) economic operators;
- (b) the Commission;
- (c) other administrations or official agencies involved in the international movement of goods (hereinafter 'other administrations or agencies').

2. Any disclosure or communication of data shall fully comply with prevailing data protection provisions, in particular Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽²⁾.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

Article 4

Systems, services and time limits

1. Member States shall, in cooperation with the Commission, make operational the following electronic customs systems according to the requirements and time limits set out in the legislation in force:

- (a) systems for import and export interoperating with the system for transit and enabling the seamless flow of data from one customs system to another throughout the Community;
- (b) a system of identification and registration for economic operators interoperating with the authorised economic operators system and enabling those economic operators to register only once for all their interactions with customs authorities throughout the Community, taking into account existing Community or national systems;
- (c) a system for the authorisation procedure, including the information and consultation process, the management of certificates for authorised economic operators and the registration of those certificates in a data base accessible by customs authorities.

2. Member States shall, in cooperation with the Commission and by ... (*), establish and make operational the common customs portals providing economic operators with the information needed for customs transactions in all Member States.

3. The Commission shall, in cooperation with the Member States and by ... (**), establish and make operational an integrated tariff environment enabling connection to other import and export related systems in the Commission and the Member States.

4. The Commission shall, in partnership with the Member States in the Customs Policy Group and by ... (***), evaluate the common functional specifications for:

- (a) a framework of single access points, enabling economic operators to use one single interface to lodge electronic customs declarations, even if the customs procedure is carried out in another Member State;
- (b) electronic interfaces for economic operators enabling them to conduct all customs-related business, even if several Member States are involved, with the customs authorities of the Member State where they are established; and

(*) Three years after the date of entry into force of this Decision.

(**) Five years from the date of entry into force of this Decision.

(***) Three years from the date of entry into force of this Decision.

(c) single window services providing for the seamless flow of data between economic operators and customs authorities, between customs authorities and the Commission, and between customs authorities and other administrations or agencies, and enabling economic operators to submit all information required for import or export clearance to customs, including information required by non customs-related legislation.

5. Within three years of a positive evaluation of the common functional specifications referred to in paragraph 4(a) and (b), the Member States shall, in cooperation with the Commission, endeavour to establish and make operational the framework of single access points and the electronic interfaces.

6. The Member States and the Commission shall endeavour to establish and make operational a framework of single window services. The evaluation of the progress achieved in this area shall be included in the reports referred to in Article 12.

7. The Community and the Member States shall provide for due maintenance of and the required improvements to the systems and services referred to in this Article.

Article 5

Components and responsibilities

1. Electronic customs systems shall consist of Community components and national components.

2. The Community components of electronic customs systems shall comprise in particular the following:

- (a) related feasibility studies and common functional and technical system specifications;
- (b) common products and services, including the necessary common reference systems for customs and customs-related information;
- (c) services of the Common Communications Network and Common Systems Interface (CCN/CSI) for the Member States;
- (d) the coordination activities performed by the Member States and the Commission when implementing and operating electronic customs systems within the Community common domain;
- (e) the coordination activities performed by the Commission when implementing and operating electronic customs systems within the Community external domain, excluding services designed to meet national requirements.

3. The national components of electronic customs systems shall comprise in particular the following:

- (a) the national functional and technical system specifications;
- (b) the national systems, including databases;

(c) network connections between customs authorities and economic operators, and between customs authorities and other administrations or agencies, within the same Member State;

(d) any software or equipment which a Member State considers necessary to ensure full use of the system.

Article 6

Tasks of the Commission

The Commission shall, in particular, ensure the following:

- (a) the coordination of the setting-up, conformance testing, deployment, operation and support of the Community components, as regards electronic customs systems;
- (b) the coordination of the systems and services provided for in this Decision with other relevant projects relating to e-Government at Community level;
- (c) the completion of the tasks allocated to it under the multi-annual strategic plan provided for in Article 8(2);
- (d) the coordination of the development of Community and national components with a view to a synchronised implementation of projects;
- (e) the coordination at Community level of electronic customs services and single window services with a view to their promotion and implementation at national level;
- (f) the coordination of training needs.

Article 7

Tasks of the Member States

1. The Member States shall, in particular, ensure the following:

- (a) the coordination of the setting-up, conformance testing, deployment, operation, and support of the national components, as regards electronic customs systems;
- (b) the coordination of the systems and services provided for in this Decision with other relevant projects relating to e-Government at national level;
- (c) the completion of the tasks allocated to them under the multi-annual strategic plan provided for in Article 8(2);
- (d) the regular provision to the Commission of information regarding the measures taken to enable their respective authorities or economic operators to make full use of electronic customs systems;
- (e) the promotion and implementation at national level of electronic customs services and single window services;
- (f) the necessary training for customs officials and other competent officials.

2. Member States shall estimate and communicate annually to the Commission the human, budgetary and technical resources needed to comply with Article 4 and with the multi-annual strategic plan provided for in Article 8(2).

3. If there is a risk that an action envisaged by a Member State in relation to the setting-up or operation of electronic customs systems might compromise the overall interoperability or functioning of those systems, that Member State shall inform the Commission thereof prior to taking such action.

Article 8

Strategy and coordination

1. The Commission shall, in partnership with the Member States in the Customs Policy Group, ensure the following:

- (a) the determination of strategies, required resources and development phases;
- (b) the coordination of all activities related to electronic customs, in order to ensure that resources, including those already used at national and Community level, are used in the best and most efficient manner;
- (c) the coordination of legal, operational, training and IT development aspects, as well as the provision of information to customs authorities and economic operators as to those aspects;
- (d) the coordination of the implementation activities of all parties concerned;
- (e) the compliance by the parties concerned with the time limits set out in Article 4.

2. The Commission shall, in partnership with the Member States in the Customs Policy Group, draw up and keep updated a multi-annual strategic plan allocating tasks to the Commission and to the Member States.

Article 9

Resources

1. For the purposes of establishing, operating and improving electronic customs systems in accordance with Article 4, the Community shall make available the human, budgetary and technical resources required for the Community components.

2. For the purposes of establishing, operating and improving electronic customs systems in accordance with Article 4, the Member States shall make available the human, budgetary and technical resources required for the national components.

Article 10

Financial provisions

1. Without prejudice to the costs to be borne by third countries or international organisations within the framework of Article 2(3), costs relating to the implementation of this Decision shall be shared between the Community and the Member States in accordance with the provisions of paragraphs 2 and 3 of this Article.

2. The Community shall bear the costs relating to the design, acquisition, installation, operation and maintenance of the Community components referred to in Article 5(2), in accordance with the Customs 2007 Programme laid down in Decision No 253/2003/EC and any successor programme thereto.

3. Member States shall bear the costs relating to the setting up and operation of the national components referred to in Article 5(3), including interfaces with other administrations or agencies and economic operators.

4. Member States shall enhance their cooperation with a view to minimising costs by developing cost sharing models and common solutions.

Article 11

Monitoring

1. The Commission shall take all the necessary steps to verify that measures financed from the Community budget are being carried out in compliance with this Decision and that the results obtained are consistent with the objectives set out in the first subparagraph of Article 2(1).

2. The Commission shall, in partnership with the Member States in the Customs Policy Group, regularly monitor the progress made by each Member State and by the Commission towards compliance with Article 4, with a view to determining whether the objectives set out in the first subparagraph of Article 2(1) have been achieved and how the effectiveness of the activities involved in the implementation of electronic customs systems may be improved.

Article 12

Reports

1. Member States shall regularly report to the Commission on their progress with each task allocated to them under the multi-annual strategic plan referred to in Article 8(2). They shall notify the Commission of the completion of any of those tasks.

2. No later than 31 March of each year, the Member States shall submit to the Commission an annual progress report covering the period 1 January to 31 December of the preceding year. Those annual reports shall be based on a format established by the Commission in partnership with the Member States in the Customs Policy Group.

3. No later than 30 June of each year, the Commission shall, on the basis of the annual reports referred to in paragraph 2, establish a consolidated report evaluating the progress made by Member States and the Commission in particular towards compliance with Article 4, and the possible need for an extension of the time limits set out in Article 4(2), (3) and (5), and submit that report to the parties concerned and to the Customs Policy Group for further consideration.

4. Additionally, the consolidated report referred to in paragraph 3 shall contain the results of any monitoring visits that may be carried out. It shall also contain the results of any other controls and may set out the methods and criteria for use in any later evaluation, in particular evaluation of the extent to which electronic customs systems are interoperable and how they are functioning.

Article 13

Consultation with economic operators

The Commission and the Member States shall regularly consult economic operators at all stages of the preparation, development and deployment of the systems and services provided for in Article 4.

The Commission and the Member States shall each set up a consultation mechanism bringing together a representative selection of economic operators on a regular basis.

Article 14

Acceding or candidate countries

The Commission shall inform the countries which have been recognised as acceding or candidate countries of the preparation, development and deployment of the systems and services provided for in Article 4, and shall allow them to participate therein.

Article 15

Implementing measures

Extensions of the time limits set out in Article 4(2), (3) and (5) shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 16(2).

Article 16

Committee

1. The Commission shall be assisted by the Customs Code Committee.

2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 17

Entry into force

This Decision shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

Article 18

Addressees

This Decision is addressed to the Member States.

Done at,

For the European Parliament
The President

...

For the Council
The President

...

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

The Commission submitted the above-mentioned proposal to the Council on 5 December 2005 ⁽¹⁾.

The European Parliament delivered its Opinion at first reading on 12 December 2006, with no amendments to the proposal.

The European Economic and Social Committee delivered its Opinion on 13 September 2006 ⁽²⁾.

Under the codecision procedure (Article 251 TEC), on 23 July 2007 the Council, having regard to Parliament's first reading, adopted its common position on the draft Decision.

II. OBJECTIVE

The purpose of the proposed Decision is to create an instrument for the implementation of interoperable and accessible automated customs systems, both under the current and the future modernized Customs Code, and for coordinated processes and services. This instrument is intended to create the necessary commitments to implementing different customs electronic systems and the conditions for future commitments to the 'Single Window' and 'One-Stop Shop' concepts. Its main objective is to determine what action needs to be taken and what deadlines met by all stakeholders in order to achieve the objective of a simple and paperless environment for customs and trade by the time the Modernized Customs Code enters into force.

III. ANALYSIS OF THE COMMON POSITION

1. General

The Council, in its common position, shares the proposal's objective, which is to establish a paperless environment for customs and trade. Given however the technical difficulties inherent to such an ambitious project, linked with a substantial allocation of resources to be committed by national administrations, the Council favours a step-by-step approach, allowing the implementation of the electronic systems in cascading phases.

2. EP Amendments

The European Parliament did not adopt any amendments to the proposal.

3. New elements introduced by the Council

The main points of the common position which differ from the Commission's proposal are as follows:

Recitals 12 and 13

These new Recitals, in conjunction with Articles 15 and 16 empowering the Commission to adopt implementing measures, refer to the extension of the time limits provided for under paragraphs 2, 3 and 5 of Article 4. These measures, being of general scope and designed to amend non-essential elements of the Decision, are to be adopted under the regulatory procedure with scrutiny, in accordance with Council Decision 1999/468/EC of 28 June 1999, as amended by Decision 2006/512/EC.

Article 1 — Electronic customs systems

The drafting has been amended to clarify that the electronic exchange concerns 'data contained in customs declarations, documents accompanying the customs declarations, certificates and other relevant information'.

⁽¹⁾ OJ C 49, 28.2.2006, p. 37.

⁽²⁾ OJ C ...

Article 2 — Objectives

- Paragraph 1 point (c): the words ‘and the interception of dangerous and illicit goods’ have been deleted, as this objective was already included in the terms ‘control of goods’;
- Paragraph 1 point (d): the word ‘help’ has been added to indicate that electronic systems as such will not ensure the collection of duties, but will assist customs authorities in fulfilling this mission. The terms ‘customs duties and other charges’ have been introduced, in line with the text of the proposal for a Modernized Customs Code;
- Paragraph 1 point (e): the word ‘receive’ has been added to reflect the fact that the information should circulate back and forth along the international supply chain;
- Paragraph 1 point (f): the new drafting reorganises the data flow, between the authorities of exporting and importing countries, as well as between the customs authorities and the economic operators;
- Paragraph 2 point (b): the drafting has been amended to take account of customs-related processes, in line with the objectives laid down in paragraph 1;
- Paragraph 2 point (c): the principle of subsidiarity, already mentioned in Recital 11, concerns the whole Decision and should thus not be repeated here;
- Paragraph 3: The Council considers that the interoperability of the electronic customs systems, not only with the customs systems of third countries, but also with those of international organizations should be fostered, providing that such an objective be subject to proper financial arrangements.

Article 3 — Data exchange

- Paragraph 1 has been re-arranged and shortened, and the terms ‘customs authorities’ have been introduced, in line with the text of the proposal for a Modernized Customs Code. Under point (c), data exchange has been restricted to official agencies;
- In order to take account of current Community legislation on data protection, the Council has inserted a new paragraph 2 concerning the disclosure or communication of data.

Article 4 — Systems and services, and time-table

Article 4 has been amended to allow for cascading time-limits, an approach which the Council considers more appropriate for the implementation of the systems and services foreseen in the proposal.

- Paragraph 1: the common position commits Member States to make operational (and not only establish) the electronic systems under points (a) to (c) in accordance with the requirements and time-tables set in the legislation in force;
- Paragraph 1 point (a): the systems for import and export should interoperate with the system for transit (already implemented). Electronic interfaces have been moved under paragraph 4 point (b);
- Paragraph 1 point (b): the system of registration for economic operators, which should also allow their identification and interoperate with the authorised economic operators system, should take account of existing Community or national systems, in order to avoid overlaps or undue costs;
- Paragraph 1 point (c): the insertion of this new point follows from the proposal for a Modernized Customs Code and the role attributed therein to the authorized economic operator. Common customs portals have been moved to paragraph 2;
- Paragraph 2: provision moved from paragraph 1 point (c): while the drafting has been re-arranged, the substance of this provision on the common customs portals is unchanged;

- Paragraph 3: provision moved from paragraph 2 point (b): while the drafting has been re-arranged, the substance of this provision on an integrated tariff environment is unchanged;
- Paragraph 4: the Council considers that, in order to ensure that the objectives set out in the proposal can be safely met, the Commission should, within three years after the entry into force of this Decision and in partnership with Member States, evaluate the common functional specifications for a framework for single access points, electronic interfaces for economic operators (previously in paragraph 1 point (a)) and single window services;
- Paragraph 5: following the positive evaluation referred to in paragraph 4, within three years, Member States commit to endeavour to establish and make operational the framework for single access points and the electronic interfaces for economic operators;
- Paragraph 6: Member States and the Commission commit to endeavour to establish and make operational the framework of single window services, with progress in this area being evaluated and reported in accordance with Article 12;
- Paragraph 7: the new drafting allows for maintenance of, in addition to improvements to, the systems described in the above paragraphs.

Article 5 — Components and Responsibilities

The amendment to Article 5 clarifies responsibilities for Community and national components, the list of which having been made non-exhaustive, adds feasibility studies to the Community components and specifies the common system specifications.

Article 6 — Tasks of the Commission

- Point (a): the deployment of electronic customs systems has been added to the tasks, the list of which having been made non-exhaustive;
- Point (c): the Council inserted this provision, in order to link the tasks to be completed by the Commission to the multi-annual strategic plan (provided for in Article 8(2));
- Point (e): the Council considers that the co-ordination by the Commission at Community level of electronic customs services and single window services should also foster the promotion and the implementation of these services at national level;
- Point (f): the Council considers that the co-ordination of training needs is the responsibility of the Commission.

Article 7 — Tasks of the Member States

- Paragraph 1 point (a): the deployment of electronic customs systems has been added to the tasks, the list of which having been made non-exhaustive (in line with Article 6, point (a));
- Paragraph 1 point (f): training has been added to the list of tasks under the responsibility of Member States (this provision mirrors Article 6, letter (f));
- Paragraph 2: the Council considers that Member States should communicate annually to the Commission the resources needed to comply with Article 4 and with the multi-annual strategic plan;
- Paragraph 3: the Council considers that Member States should inform the Commission, and not seek its approval, prior to an action on the electronic customs systems which might compromise their interoperability or functioning.

Article 8 — Strategy and Co-ordination

The Council has amended the title of Article 8 to reflect the importance of a proper co-ordination and strategy in the implementation of systems and services foreseen in the proposal. In paragraph 1 point (c), the co-ordination of the information of the customs authorities and economic operators has been added. Paragraph 1 point (e) has been aligned with the new drafting of Article 4.

Article 10 — Financial provisions

- Paragraph 1 creates a link with Article 2(3), and the costs to be borne by third countries and international organizations in accordance with this provision;
- Paragraph 4: the first part of this provision has been transferred to Article 7(2).

Article 12 — Reports

- Paragraph 2 has been amended, with the delivery date of the annual report being postponed to March, giving sufficient time to Member States to prepare their reporting, and with these reports being based on a standard format;
- In paragraph 3, the Council postpones accordingly, from March to June, the delivery date of the consolidated annual report established by the Commission. This consolidated report should also evaluate the progress achieved by Member States and the Commission, in particular with regard to the implementation of systems and services set out in Article 4, and the possible need for an extension of the time-limits laid down in this Article. The consolidated report, which should also be submitted to the Customs Policy Group, should contain the results of any monitoring visits by the Commission.

Article 15 — Implementing measures

In this new provision, the Council provides for the adoption by the Commission in accordance with the regulatory procedure with scrutiny of implementing measures laying down an extension of the time-limits provided for under paragraphs 2, 3 and 5 of Article 4.

Article 16 — Committee

This new provision provides for the committee whose task is to assist the Commission in the adoption of the implementing measures referred to in Article 15.

IV. CONCLUSION

The Common Position, which has been unanimously adopted by the Council and which is supported by the Commission, has been designed to achieve, within a realistic timeframe and taking into account the technical and political challenges linked to it, the aim of the proposed Decision, which is to establish a paperless environment for customs and trade and to create an instrument for the implementation of interoperable and accessible automated customs systems and for coordinated processes and services.

COMMON POSITION (EC) No 12/2007**adopted by the Council on 23 July 2007**

**with a view to adopting Directive .../.../EC of the European Parliament and of the Council of ...
establishing a Framework for Community Action in the field of Marine Environmental Policy
(Marine Strategy Framework Directive)**

(Text with EEA relevance)

(2007/C 242 E/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and
Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the
Regions ⁽²⁾,

Acting in accordance with the procedure laid down in
Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) Marine waters under the sovereignty and jurisdiction of Member States of the European Union include waters in the Mediterranean Sea, the Baltic Sea, the Black Sea and the North-East Atlantic Ocean, including the waters surrounding the Azores, Madeira and the Canary Islands.
- (2) It is evident that the pressure on natural marine resources and the demand for marine ecological services are often too high and that the Community needs to reduce its impact on marine waters.
- (3) The marine environment is a precious heritage that must be protected, preserved and, where practicable, restored with the ultimate aim of maintaining biodiversity and providing diverse and dynamic oceans and seas which are clean, healthy and productive. In that respect, this Directive should deliver the environmental pillar of the future Maritime Policy for the European Union.
- (4) In line with Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme ⁽⁴⁾, a thematic strategy for the protection and conservation of the marine environment has been developed with the overall aim of promoting sustainable use of the seas and conserving marine ecosystems.
- (5) The development and implementation of the thematic strategy should be aimed at the conservation of the marine ecosystems. This approach should include protected areas and should address all human activities that have an impact on the marine environment.

(6) It is necessary to continue to establish biological and environmental targets and reference frameworks taking into account the objectives laid down in Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ⁽⁵⁾ (hereinafter referred to as the 'Habitats Directive'), Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds ⁽⁶⁾ (hereinafter referred to as the 'Birds Directive'), Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ⁽⁷⁾, and relevant international agreements.

(7) By applying an ecosystem-based approach to the management of human activities while enabling a sustainable use of marine goods and services, priority should be given to achieving or maintaining good environmental status in the Community's marine environment, to continuing its protection and preservation, and to preventing subsequent deterioration.

(8) In order to achieve those objectives, a transparent and coherent legislative framework is required. This framework should contribute to coherence between different policies and foster the integration of environmental concerns into other policies, such as the common fisheries policy, the common agricultural policy and other relevant Community policies. The legislative framework should provide an overall framework for action and enable the action taken to be coordinated, consistent and properly integrated with action under other Community legislation and international agreements.

(9) The diverse conditions, problems and needs of the various marine regions or sub-regions making up the marine environment in the Community require different and specific solutions. That diversity should be taken into account at all stages of the preparation of marine strategies, but especially during the preparation, planning and execution of measures to achieve good environmental status in the Community's marine environment at the level of marine regions and sub-regions.

⁽¹⁾ OJ C 185, 8.8.2006, p. 20.

⁽²⁾ OJ C 206, 29.8.2006, p. 5.

⁽³⁾ Opinion of the European Parliament of 14 November 2006 (not yet published in the Official Journal), Council Common Position of 23 July 2007 and Position of the European Parliament of ... (not yet published in the Official Journal).

⁽⁴⁾ OJ L 242, 10.9.2002, p. 1.

⁽⁵⁾ OJ L 206, 22.7.1992, p. 7. Directive as last amended by Directive 2006/105/EC (OJ L 363, 20.12.2006, p. 368).

⁽⁶⁾ OJ L 103, 25.4.1979, p. 1. Directive as last amended by Directive 2006/105/EC.

⁽⁷⁾ OJ L 327, 22.12.2000, p. 1. Directive as amended by Decision No 2455/2001/EC (OJ L 331, 15.12.2001, p. 1).

- (10) Each Member State should therefore develop a Marine Strategy for its marine waters which, while being specific to its own waters, reflects the overall perspective of the marine region or sub-region concerned. Marine Strategies should culminate in the execution of programmes of measures designed to achieve or maintain good environmental status. However, Member States should not be required to take specific steps where there is no significant risk to the marine environment, or where the costs would be disproportionate taking account of the risks to the marine environment, provided that any decision not to take action is properly justified.
- (11) By reason of the transboundary nature of the marine environment, Member States should cooperate to ensure the coordinated development of Marine Strategies for each marine region or sub-region. Since marine regions or sub-regions are shared both with other Member States and with third countries, Member States should make every effort to ensure close coordination with all Member States and third countries concerned. Where practical and appropriate, existing institutional structures established in marine regions or sub-regions, in particular Regional Sea Conventions, should be used to ensure such coordination.
- (12) Member States having borders on the same marine region or sub-region covered by this Directive, where the status of the sea is critical to the extent that urgent action is needed, should endeavour to agree on a plan of action including the earlier entry into operation of programmes of measures. In such cases, the Commission should be invited to consider providing supportive action to Member States for their enhanced efforts to improve the marine environment by making the region in question a pilot project.
- (13) Not all Member States have marine waters as defined in this Directive and, therefore, the effect of the provisions of this Directive which exclusively address Member States which have marine waters should be limited to those Member States.
- (14) Since action at international level is indispensable to achieve cooperation and coordination, this Directive should further enhance the coherence of the contribution of the Community and its Member States under international agreements.
- (15) The Community and its Member States are each parties to the United Nations Convention on the Law of the Sea (UNCLOS) approved by Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the UNCLOS and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof⁽¹⁾. The obligations of the Community and its Member States under those agreements should therefore be taken fully into account in this Directive.
- (16) This Directive should also support the strong position taken by the Community, in the context of the Convention on Biological Diversity approved by Council Decision 93/626/EEC⁽²⁾, on halting biodiversity loss, ensuring the conservation and sustainable use of marine biodiversity, and on the creation of a global network of marine protected areas by 2012. Additionally, it should contribute to the achievement of the objectives of the Seventh Conference of the Parties to the Convention on Biological Diversity, which adopted an elaborate programme of work on marine and coastal biodiversity with a number of goals, targets and activities aimed at halting the loss of biological diversity nationally, regionally and globally and at securing the capacity of the marine ecosystems to support the provision of goods and services, and a programme of work on protected areas with the objective of establishing and maintaining ecologically representative systems of marine protected areas by 2012. The obligation for Member States to designate Natura 2000 sites under the Birds Directive and the Habitats Directive will make an important contribution to this process.
- (17) This Directive should contribute to the fulfilment of the obligations and important commitments of the Community and the Member States under several relevant international agreements relating to the protection of the marine environment from pollution: the Convention on the Protection of the Marine Environment of the Baltic Sea Area, approved by Council Decision 94/157/EC⁽³⁾, the Convention for the Protection of the Marine Environment of the North-East Atlantic, approved by Council Decision 98/249/EC⁽⁴⁾, including its new Annex V on the Protection and Conservation of the Ecosystems and Biological Diversity of the Maritime Area and the corresponding Appendix 3, approved by Council Decision 2000/340/EC⁽⁵⁾, the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, approved by Council Decision 77/585/EEC⁽⁶⁾, and its amendments from 1995, approved by Council Decision 1999/802/EC⁽⁷⁾, as well as its Protocol for the Protection of the Mediterranean Sea Against Pollution from Land-Based Sources, approved by Council Decision 83/101/EEC⁽⁸⁾, and its amendments from 1996, approved by Council Decision 1999/801/EC⁽⁹⁾. This Directive should also contribute to the fulfilment of Member States' obligations under the Convention on the Protection of the Black Sea Against Pollution, under which they have entered into important commitments relating to the protection of the marine environment from pollution, and to which the Community is not yet a party but in respect of which it has observer status.
- ⁽¹⁾ OJ L 179, 23.6.1998, p. 1.
- ⁽²⁾ OJ L 309, 13.12.1993, p. 1.
- ⁽³⁾ OJ L 73, 16.3.1994, p. 19.
- ⁽⁴⁾ OJ L 104, 3.4.1998, p. 1.
- ⁽⁵⁾ OJ L 118, 19.5.2000, p. 44.
- ⁽⁶⁾ OJ L 240, 19.9.1977, p. 1.
- ⁽⁷⁾ OJ L 322, 14.12.1999, p. 32.
- ⁽⁸⁾ OJ L 67, 12.3.1983, p. 1.
- ⁽⁹⁾ OJ L 322, 14.12.1999, p. 18.

- (18) Third countries with waters in the same marine region or sub-region as a Member State should be invited to participate in the process laid down in this Directive, thereby facilitating achievement of good environmental status in the marine region or sub-region concerned.
- (19) Ensuring the integration of conservation objectives, management measures and monitoring and assessment activities set up for marine protected areas which Member States may wish to designate as part of programmes of measures is crucial for the achievement of the objectives of this Directive.
- (20) Since programmes of measures executed under Marine Strategies will be effective only if they are devised on the basis of a sound knowledge of the state of the marine environment in a particular area and are tailored as closely as possible to the needs of the waters concerned in the case of each Member State and from the general perspective of the marine region or sub-region concerned, provision should be made for the preparation at national level of an appropriate framework, including marine research and monitoring operations, for informed policy-making. At Community level, support for associated research should be continuously enshrined in research and development policies. Recognition of marine issues in the Seventh Framework Programme on Research and Development is an important step in that direction.
- (21) As a first step in the preparation of programmes of measures, Member States across a marine region or sub-region should undertake an analysis of the characteristics of, and pressures and impacts on, their marine waters, identifying the predominant pressures and impacts on those waters, and an economic and social analysis of their use and of the cost of degradation of the marine environment. They may use assessments already carried out in the context of Regional Sea Conventions as a basis for their analyses.
- (22) On the basis of such analyses, Member States should then determine for their marine waters a set of characteristics for good environmental status. For those purposes, it is appropriate to make provision for the development of criteria and methodological standards to ensure consistency and to allow for comparison between marine regions or sub-regions of the extent to which good environmental status is being achieved.
- (23) The next step towards achieving good environmental status should be the establishment of environmental targets and monitoring programmes for ongoing assessment, enabling the state of the marine waters concerned to be evaluated on a regular basis.
- (24) Member States should then establish and implement programmes of measures which are designed to achieve or maintain good environmental status in the waters concerned, while accommodating existing Community and international requirements and the needs of the marine region or sub-region concerned.
- (25) It is appropriate that Member States take the abovementioned steps, given the precision of focus needed. In order to ensure cohesion of action across the Community as a whole and in relation to commitments at global level, it is essential that Member States notify the Commission of the steps taken, in order to enable the Commission to assess the coherence of action across the marine region or sub-region concerned and to advise Member States as appropriate.
- (26) For reasons of fairness and feasibility, it is appropriate to make provision for cases where it would be impossible for a Member State to achieve the level of ambition of the environmental targets set.
- (27) In that context provision should be made for two special cases. The first special case refers to the situation where it is impossible for a Member State to meet its environmental targets because of action or inaction for which the Member State concerned is not responsible, or because of natural causes or *force majeure*, or because of actions which that Member State has itself taken for reasons of overriding public interest which outweigh the negative impact on the environment, or because natural conditions do not allow timely improvement in the status of marine waters. The Member State concerned should substantiate why it considers that such a special case has arisen and identify the area concerned, and should take appropriate *ad hoc* measures with the aim of continuing to pursue the environmental targets, preventing further deterioration in the status of the marine waters affected and mitigating the adverse impact within the marine region or sub-region concerned.
- (28) The second special case refers to the situation where a Member State identifies an issue which has an impact on the environmental status of its marine waters, perhaps even of the entire marine region or sub-region concerned, but which cannot be tackled by measures taken at national level or which is linked to another Community policy or to an international agreement. In such a case, arrangements should be made to inform the Commission of this within the framework of notification of programmes of measures and, where Community action is needed, to make appropriate recommendations to the Commission and the Council.
- (29) However, the flexibility introduced for special cases should be subject to control at Community level. As regards the first special case, it is therefore appropriate that, in the course of assessment, due consideration be given to the efficacy of any *ad hoc* measures taken. Moreover, in cases where the Member State refers to action taken for overriding reasons of public interest, it should be ensured that any changes to the marine environment as a consequence do not permanently preclude or compromise the achievement of good environmental status in the marine region or sub-region concerned or across marine waters of other Member States. The Commission should advise Member States accordingly if it considers that the measures envisaged are not sufficient or suitable to ensure coherence of action across the marine region or sub-region concerned.

- (30) As regards the second special case, the Commission should consider the issue and respond within a period of six months. The Commission should reflect, as appropriate, the recommendations of the Member State concerned when presenting related proposals to the European Parliament and the Council.
- (31) In view of the dynamic nature of marine ecosystems and their natural variability, and given that the pressures and impacts on them may vary with the evolution of different patterns of human activity and the impact of climate change, it is essential to recognise that the determination of good environmental status may have to be adapted over time. Accordingly, it is appropriate that programmes of measures for the protection and management of the marine environment be flexible and adaptive, and take account of scientific and technological developments. Provision should therefore be made for the updating of Marine Strategies on a regular basis.
- (32) Provision should also be made for the publication of programmes of measures and updates thereof, and for the presentation to the Commission of interim reports describing progress in the implementation of these programmes.
- (33) To ensure the active involvement of the general public in the establishment, implementation and updating of Marine Strategies, provision should be made for proper public information on the different elements of Marine Strategies, or their related updates, as well as, upon request, relevant information used for the development of the Marine Strategies in accordance with Community legislation on public access to environmental information.
- (34) The Commission should present a first evaluation report on the implementation of this Directive within two years of receiving all programmes of measures and, in any case, by 2021 at the latest. Subsequent Commission reports should be published every six years thereafter.
- (35) Provision should be made for the adoption of methodological standards for the assessment of the status of the marine environment, monitoring, environmental targets and the adoption of technical formats for the purposes of transmission and processing of data in line with Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (Inspire) ⁽¹⁾.
- (36) Measures regulating fisheries management should be taken only in the context of the Common Fisheries Policy, as set out in Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy ⁽²⁾, based on scientific advice, and this Directive does not therefore address such measures. Articles 30 and 31 of the Euratom Treaty regulate discharges and emissions resulting from the use of radioactive material and this Directive should therefore not address them.
- (37) The common fisheries policy should take into account the environmental impacts of fishing and the objectives of this Directive.
- (38) In the event that Member States consider that action in the fields mentioned above or other fields linked to another Community policy or to an international agreement is desirable, they should make appropriate recommendations for Community action.
- (39) Since the objectives of this Directive, namely protection and preservation of the marine environment, the prevention of its deterioration and where practicable the restoration of that environment in areas where it has been adversely affected, cannot be sufficiently achieved by Member States and can therefore, by reason of the scale and effects of the Directive, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (40) Programmes of measures and subsequent action by Member States should be based on an ecosystem-based approach to the management of human activities and on the principles referred to in Article 174 of the Treaty, in particular the precautionary principle.
- (41) This Directive respects the fundamental rights, and observes the principles, recognised by the Charter of Fundamental Rights of the European Union ⁽³⁾, in particular Article 37 thereof which seeks to promote the integration into the policies of the Union of a high level of environmental protection and the improvement of environmental quality in accordance with the principle of sustainable development.
- (42) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁴⁾.

⁽¹⁾ OJ L 108, 25.4.2007, p. 1.

⁽²⁾ OJ L 358, 31.12.2002, p. 59.

⁽³⁾ OJ C 364, 18.12.2000, p. 1.

⁽⁴⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

(43) Power should be conferred on the Commission to adapt Annexes III, IV and V to this Directive to scientific and technical progress. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(44) Power should be conferred on the Commission to lay down criteria and methodological standards for the recognition of good environmental status and to adopt specifications and standardised methods for monitoring and assessment. Since those measures are of general scope and are designed to supplement this Directive by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC,

in a manner that is compatible, so far as reasonable and practicable, with the objectives of this Directive.

Article 3

Definitions

For the purposes of this Directive the following definitions shall apply:

1. 'marine waters' means waters, the seabed and subsoil on the seaward side of the baseline from which the extent of territorial waters is measured extending to the outmost reach of the area where a Member State has and/or exercises jurisdictional rights, in accordance with the UNCLOS, with the exception of waters adjacent to the countries and territories mentioned in Annex II to the Treaty and the French Overseas Departments and Collectivities. Marine waters on the seaward side of the baseline to which Directive 2000/60/EC applies are included only insofar as relevant elements for the protection of the marine environment which are outside the scope of Directive 2000/60/EC are concerned;
2. 'marine region' means a sea region which is identified under Article 4. Marine regions and their sub-regions are designated for the purpose of facilitating implementation of this Directive and are determined taking into account hydrological, oceanographic and bio-geographic features;
3. 'Marine Strategy' means the strategy to be developed and implemented in respect of each marine region or sub-region concerned as laid down in Article 5;
4. 'environmental status' means the overall state of the environment in marine waters, taking into account the structure, function and processes of the constituent marine ecosystems together with natural physiographic, geographic and climatic factors, as well as physical and chemical conditions including those resulting from human activities in the area concerned;
5. 'good environmental status' means the environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas which are clean, healthy and productive within their intrinsic conditions, and the use of the marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations, i.e.:
 - (a) the structure, functions and processes of the marine ecosystems, together with the associated physiographic, geographic and climatic factors, allow those ecosystems to function fully and to maintain their resilience. Marine species and habitats are protected, human-induced decline of biodiversity is prevented and diverse biological components function in balance;

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject-matter

1. This Directive establishes a framework for the protection and preservation of the marine environment, the prevention of its deterioration and, where practicable, the restoration of that environment in areas where it has been adversely affected.

For that purpose, Marine Strategies shall be developed and implemented with the aim of achieving or maintaining good environmental status in the marine environment by the year 2021 at the latest.

2. Marine Strategies shall apply an ecosystem-based approach to the management of human activities while enabling the sustainable use of marine goods and services.

3. This Directive shall contribute to coherence between, and aim to ensure the integration of environmental concerns into, the different policies, agreements and legislative measures which have an impact on the marine environment.

Article 2

Scope

1. This Directive shall apply to all marine waters as defined in Article 3(1).

2. This Directive shall not apply to activities the sole purpose of which is defence or national security. Member States shall, however, endeavour to ensure that such activities are conducted

- (b) hydro-morphological, physical and chemical properties of the ecosystems, including those properties which result from human activities in the area concerned, support the ecosystems as described above. Anthropogenic inputs of substances and energy into the marine environment do not cause pollution effects.

Good environmental status shall be determined at the level of the marine region or sub-region as referred to in Article 4, on the basis of the generic qualitative descriptors in Annex I. Adaptive management on the basis of the ecosystem approach shall be applied with a view to progressing towards good environmental status;

6. 'criteria' means distinctive technical features that are closely linked to generic qualitative descriptors;
7. 'environmental target' means a qualitative or quantitative statement on the desired condition of the different components of marine waters in respect of each marine region or sub-region. Environmental targets shall be established in accordance with Article 10;
8. 'pollution' means the direct or indirect introduction into the marine environment, as a result of human activity, of substances or energy, including human-induced marine underwater noise, which results or is likely to result in deleterious effects such as harm to living resources and marine ecosystems, hazards to human health, the hindering of marine activities, including fishing, tourism and recreation and other legitimate uses of the sea, impairment of the quality for use of sea water and reduction of amenities or, in general, impairment of the sustainable use of marine goods and services;
9. 'specific area' means an area in the marine waters of a Member State where environmental targets cannot be achieved through measures taken by that Member State for reasons listed in Article 14;
10. 'regional cooperation' means cooperation and coordination of activities between Member States and, whenever possible, third countries sharing the same marine region or sub-region, for the purpose of developing and implementing Marine Strategies;
11. 'Regional Sea Convention' means any of the international conventions or international agreements together with their governing bodies established for the purpose of protecting the marine environment of the marine regions referred to in Article 4, such as the Convention on the Protection of the Marine Environment of the Baltic Sea, the Convention for the Protection of the Marine Environment of the North-East Atlantic and the Convention for the Marine Environment and the Coastal Region of the Mediterranean Sea.

Article 4

Marine regions and sub-regions

1. Member States shall, when implementing their obligations under this Directive, take due account of the fact that marine waters covered by their sovereignty or jurisdiction form an integral part of the following marine regions:

- (a) the Baltic Sea;
- (b) the North East Atlantic Ocean;
- (c) the Mediterranean Sea;
- (d) the Black Sea.

2. Member States may, in order to take into account the specificities of a particular area, implement this Directive by reference to subdivisions at the appropriate level of the marine waters referred to in Paragraph 1, provided that such subdivisions are delimited in a manner compatible with the following marine sub-regions:

- (a) in the North East Atlantic Ocean:
 - (i) the Greater North Sea, including the Kattegat, and the English Channel;
 - (ii) the Celtic Seas;
 - (iii) the Bay of Biscay and the Iberian Coast;
 - (iv) in the Atlantic Ocean, the Macaronesian bio-geographic region, being the waters surrounding the Azores, Madeira and the Canary Islands;
- (b) in the Mediterranean Sea:
 - (i) the Western Mediterranean Sea;
 - (ii) the Adriatic Sea;
 - (iii) the Ionian Sea and the Central Mediterranean Sea;
 - (iv) the Aegean-Levantine Sea.

Member States shall inform the Commission of any subdivisions by the date specified in the first subparagraph of Article 24(1) but may revise these upon completion of the initial assessment referred in Article 5(2), point (a)(i).

Article 5

Marine Strategies

1. Each Member State shall, in respect of each marine region or sub-region concerned, develop a Marine Strategy for its marine waters in accordance with the plan of action set out in points (a) and (b) of paragraph 2.

2. Member States shall cooperate to ensure that, within each marine region or sub-region, the measures required to achieve the objectives of this Directive, in particular the different elements of the Marine Strategies referred to in points (a) and (b), are coordinated, as follows:

(a) preparation:

- (i) an initial assessment, to be completed by ... (*), of the current environmental status of the waters concerned and the environmental impact of human activities thereon, in accordance with Article 8;
- (ii) a determination, to be established by ... (*), of good environmental status for the waters concerned, in accordance with Article 9(1);
- (iii) establishment, by ... (**), of a series of environmental targets and associated indicators, in accordance with Article 10(1);
- (iv) establishment and implementation, by ... (***) except where otherwise specified in the relevant Community legislation, of a monitoring programme for ongoing assessment and regular updating of targets, in accordance with Article 11(1);

(b) programme of measures:

- (i) development, by 2016 at the latest, of a programme of measures designed to achieve or maintain good environmental status, in accordance with Article 13(1), (2) and (3);
- (ii) entry into operation of the programme provided for in point (i), by 2018 at the latest, in accordance with Article 13(7).

3. Member States having borders on the same marine region or sub-region covered by this Directive should, where the status of the sea is so critical as to necessitate urgent action, endeavour to agree on a plan of action in accordance with Paragraph 1 which includes an earlier entry into operation of programmes of measures. In these cases:

- (a) the Member States concerned shall inform the Commission of their revised timetable and proceed accordingly;
- (b) the Commission shall be invited to consider providing supportive action to Member States for their enhanced efforts to improve the marine environment by making the region in question a pilot project.

4. Member States shall develop and implement all the elements of Marine Strategies referred to in points (a) and (b) of Paragraph 2, but in doing so they shall not be required to take

specific steps where there is no significant risk to the marine environment, or where the costs would be disproportionate taking account of the risks to the marine environment.

Where, for either of these reasons, a Member State does not take any steps, it shall provide the Commission with the necessary justification to substantiate its decision.

Article 6

Regional cooperation

1. In order to achieve the coordination referred to in Article 5(2), Member States shall, where practical and appropriate, use existing regional institutional cooperation structures, including those under Regional Sea Conventions, covering that marine region or sub-region.

2. For the purposes of this Directive, Member States shall, within each marine region or sub-region, make every effort, using relevant international fora, including mechanisms and structures of Regional Sea Conventions, to coordinate their actions with third countries having sovereignty or jurisdiction over waters in the same marine region or sub-region.

In that context, Member States shall, as far as possible, build upon relevant existing programmes and activities developed in the framework of structures stemming from international agreements such as Regional Sea Conventions.

Coordination and cooperation shall be extended, where appropriate, to all Member States in the catchment area of a marine region or sub-region, including land-locked countries, in order to allow Member States within that marine region or sub-region to meet their obligations under this Directive, using established cooperation structures prescribed in this Directive or in Directive 2000/60/EC.

Article 7

Competent authorities

1. Member States shall, by ... (****), for each marine region or sub-region concerned, designate the authority or authorities competent for the implementation of this Directive with respect to their marine waters.

By ... (*****), Member States shall provide the Commission with a list of the competent authorities designated, together with the items of information listed in Annex II.

(*) Four years after the date of entry into force of this Directive.

(**) Five years after the date of entry into force of this Directive.

(***) Six years after the date of entry into force of this Directive.

(****) Three years after the date of entry into force of this Directive.

(*****) 42 months after the date of entry into force of this Directive.

At the same time, Member States shall send to the Commission a list of their competent authorities as regards those international bodies in which they participate and which are relevant for the implementation of this Directive.

Member States within the catchment area of each marine region or sub-region shall also designate the authority or authorities competent for cooperation and coordination as referred to in Article 6.

2. Member States shall inform the Commission of any changes to the information provided pursuant to Paragraph 1 within six months of such a change coming into effect.

CHAPTER II

MARINE STRATEGIES: PREPARATION

Article 8

Assessment

1. Member States shall make an initial assessment of their marine waters, taking account of existing data where available and comprising the following:

- (a) an analysis of the essential characteristics and current environmental status of those waters, based on the indicative lists of elements set out in Table 1 of Annex III, and covering the physical and chemical features, the habitat types, the biological features and the hydro-morphology;
- (b) an analysis of the predominant pressures and impacts, including human activity, on the characteristics and environmental status of those waters, based on the indicative lists of elements set out in Table 2 of Annex III, and covering the qualitative and quantitative mix of the various pressures, as well as discernible trends;
- (c) an economic and social analysis of the use of those waters and of the cost of degradation of the marine environment.

2. The analyses referred to in Paragraph 1 shall take into account elements regarding coastal, transitional and territorial waters covered by relevant provisions of Directive 2000/60/EC. They shall also take into account, or use as their basis, other relevant assessments such as those carried out jointly in the context of Regional Sea Conventions, so as to produce a comprehensive assessment of the status of the marine environment.

Article 9

Determination of good environmental status

1. By reference to the initial assessment made pursuant to Article 8(1), Member States shall, in respect of each marine region or sub-region concerned, determine, for the marine waters, a set of characteristics for good environmental status, on the basis of the generic qualitative descriptors listed in Annex I

as well as criteria and methodological standards provided for in Paragraph 3 of this Article.

They shall take into account the indicative lists of elements set out in Annex III and, in particular, physical and chemical features, habitat types, biological features and hydro-morphology.

2. Member States shall notify the Commission of the assessment made pursuant to Article 8(1) and of the determination made pursuant to Paragraph 1 of this Article within three months of completion of the latter.

3. Criteria and methodological standards for the determination of good environmental status, which are designed to amend non-essential elements of this Directive by supplementing it, shall be laid down, on the basis of Annexes I and III, in accordance with the regulatory procedure with scrutiny referred to in Article 23(3) by ... (*) in such a way as to ensure consistency and to allow for comparison between marine regions or sub-regions of the extent to which good environmental status is being achieved. Before proposing such criteria and standards the Commission shall consult all interested parties, including Regional Sea Conventions.

Article 10

Establishment of environmental targets

1. On the basis of the initial assessment made pursuant to Article 8(1), Member States shall, in respect of each marine region or sub-region, establish a comprehensive set of environmental targets and associated indicators for their marine waters so as to guide progress towards achieving good environmental status in the marine environment, taking into account the indicative list of characteristics set out in Annex IV.

When devising those targets and indicators, Member States shall take into account the continuing application of relevant existing environmental targets laid down at national, Community or international level in respect of the same waters, ensuring that these targets are mutually compatible.

2. Member States shall notify the Commission of the environmental targets within three months of their establishment.

Article 11

Monitoring programmes

1. On the basis of the initial assessment made pursuant to Article 8(1), Member States shall establish and implement coordinated monitoring programmes for the ongoing assessment of the environmental status of their marine waters on the basis of the indicative lists of elements set out in Annex III and the list set out in Annex V, and by reference to the environmental targets established pursuant to Article 10.

(*) Two years after entry into force of this Directive.

Monitoring programmes shall build upon, and be compatible with, relevant provisions for assessment and monitoring laid down by Community legislation or under international agreements.

2. Member States shall notify the Commission of the monitoring programmes within three months of their establishment.

3. Specifications and standardised methods for monitoring and assessment which take into account existing commitments and ensure comparability between monitoring and assessment results, and which are designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(3).

Article 12

Notifications and Commission's advice

On the basis of all the notifications made pursuant to Articles 9(2), 10(2) and 11(2) in respect of each marine region or sub-region, the Commission shall advise each Member State on whether the elements notified constitute an appropriate framework to meet the requirements of this Directive.

In formulating its advice, the Commission shall consider the coherence of frameworks within the different marine regions or sub-regions and across the Community and may ask the Member State concerned to provide any additional information that is available and necessary.

CHAPTER III

MARINE STRATEGIES: PROGRAMMES OF MEASURES

Article 13

Programmes of measures

1. Member States shall, in respect of each marine region or sub-region concerned, identify the measures which need to be taken in order to achieve or maintain good environmental status, as determined pursuant to Article 9(1), in their marine waters.

Those measures shall be devised on the basis of the initial assessment made pursuant to Article 8(1) and by reference to the environmental targets established pursuant to Article 10(1), and taking into consideration the types of measures listed in Annex VI.

2. Member States shall integrate the measures devised pursuant to Paragraph 1 into a programme of measures, taking into account relevant measures required under Community legislation, in particular Directive 2000/60/EC, or international agreements.

3. When drawing up the programme of measures pursuant to paragraph 2, Member States shall give due consideration to sustainable development and, in particular, to the social and economic impacts of the measures envisaged.

Member States shall ensure that measures are cost-effective and technically feasible, and shall carry out impact assessments, including cost-benefit analyses, prior to the introduction of any new measure.

4. Programmes of measures established pursuant to this Article should include measures such as the use of special areas of conservation pursuant to Directive 92/43/EEC and the use of special protection areas pursuant to Directive 79/409/EEC, and marine protected areas as agreed by the Community or Member States concerned in the framework of international or regional agreements to which they are parties.

In this context Member States should ensure that these areas contribute to a coherent and representative network of marine protected areas.

5. Member States shall indicate in their programmes of measures how the measures are to be implemented and how they will contribute to the achievement of the environmental targets established pursuant to Article 10(1).

6. Member States shall notify the Commission and any other Member State concerned of their programmes of measures, within three months of their establishment.

7. Subject to Article 16, Member States shall ensure that the programmes are made operational within two years of their establishment.

Article 14

Exceptions

1. A Member State may identify specific areas within its marine waters where, for any of the reasons listed under points (a) to (d), the environmental targets cannot be achieved through measures taken by that Member State, or, for reasons referred to under point (e), they cannot be achieved within the time schedule concerned:

- (a) action or inaction for which the Member State concerned is not responsible;
- (b) natural causes;
- (c) *force majeure*;
- (d) changes to the characteristics of marine waters brought about by actions taken for reasons of overriding public interest which outweigh the negative impact on the environment, including any transboundary impact;
- (e) natural conditions which do not allow timely improvement in the status of the marine waters concerned.

The Member State concerned shall identify such areas clearly in its programme of measures and shall substantiate its view to the Commission. In identifying specific areas a Member State shall consider the consequences for Member States in the marine region or sub-region concerned.

However, the Member State concerned shall take appropriate *ad hoc* measures aiming to continue pursuing the environmental targets, to prevent further deterioration in the status of the marine waters affected for reasons identified under points (b), (c) or (d) and to mitigate the adverse impact at the level of the marine region or sub-region concerned or in the marine waters of other Member States.

2. In the situation covered by point (d) of Paragraph 1, Member States shall ensure that the changes do not permanently preclude or compromise the achievement of good environmental status at the level of the marine region or sub-region concerned or in the marine waters of other Member States.

3. The *ad hoc* measures referred to in the third subparagraph of Paragraph 1 shall be integrated as far as practicable into the programmes of measures.

Article 15

Recommendations for Community action

1. Where a Member State identifies an issue which has an impact on the environmental status of its marine waters and which cannot be tackled by measures adopted at national level, or which is linked to another Community policy or international agreement, it shall inform the Commission accordingly and provide a justification to substantiate its view.

The Commission shall respond within a period of six months.

2. Where action by Community institutions is needed, Member States shall make appropriate recommendations to the Commission and the Council for measures regarding the issues referred to in Paragraph 1. Unless otherwise specified in relevant Community legislation, the Commission shall respond to any such recommendation within a period of six months and, as appropriate, reflect the recommendations when presenting related proposals to the European Parliament and to the Council.

Article 16

Notifications and Commission's advice

On the basis of the notifications of programmes of measures made pursuant to Article 13(6), the Commission shall advise each Member State on whether the programmes notified consti-

tute an appropriate framework for achieving good environmental status as determined pursuant to Article 9(1).

In formulating its advice, the Commission shall consider the coherence of programmes of measures across the Community and may ask the Member State concerned to provide any additional information that is available and necessary.

CHAPTER IV

UPDATING, REPORTS AND PUBLIC INFORMATION

Article 17

Updating

1. Member States shall ensure that, in respect of each marine region or sub-region concerned, Marine Strategies are kept up to date.

2. For the purposes of Paragraph 1, Member States shall review, in a coordinated manner as referred to in Article 5, the following elements of their Marine Strategies every six years after their initial establishment:

- (a) the initial assessment and the determination of good environmental status, as provided for in Articles 8(1) and 9(1) respectively;
- (b) the environmental targets established pursuant to Article 10(1);
- (c) the monitoring programmes established pursuant to Article 11(1);
- (d) the programmes of measures established pursuant to Article 13(2).

3. Details of any updates made following the reviews provided for in Paragraph 2 shall be sent to the Commission, to the Regional Sea Conventions and to any other Member States concerned within three months of their publication in accordance with Article 19(2).

4. Articles 12 and 16 shall apply *mutatis mutandis* to this Article.

Article 18

Interim reports

Member States shall, within three years of the publication of each programme of measures or update thereof in accordance with Article 19(2), submit to the Commission a brief interim report describing progress in the implementation of that programme.

Article 19

Public consultation and information

1. In accordance with relevant existing Community legislation, Member States shall ensure that all interested parties are given early and effective opportunities to participate in the implementation of this Directive.

2. Member States shall publish, and make available to the public for comment, summaries of the following elements of their Marine Strategies, or the related updates, as follows:

- (a) the initial assessment and the determination of good environmental status, as provided for in Articles 8(1) and 9(1) respectively;
- (b) the environmental targets established pursuant to Article 10(1);
- (c) the monitoring programmes established pursuant to Article 11(1);
- (d) the programmes of measures established pursuant to Article 13(2).

3. With regard to access to environmental information, Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC ⁽¹⁾ shall apply.

Member States shall provide the Commission, for the performance of its tasks in relation to this Directive, with access and use rights in respect of that data and information, in accordance with Directive 2007/2/EC.

Article 20

Commission reports

1. The Commission shall publish a first evaluation report on the implementation of this Directive within two years of receiving all programmes of measures and, in any case, by 2021 at the latest.

The Commission shall publish further reports every six years thereafter. It shall submit the reports to the European Parliament and to the Council.

2. The reports provided for in Paragraph 1 shall include the following:

- (a) a review of progress in the implementation of this Directive;

⁽¹⁾ OJ L 41, 14.2.2003, p. 26.

- (b) a review of the status of the marine environment in the Community, undertaken in coordination with the European Environment Agency and the relevant regional marine and fisheries organisations and conventions;

- (c) a survey of the Marine Strategies, together with suggestions for their improvement;

- (d) a summary of the information received from Member States pursuant to Articles 12 and 16 and of the assessments made by the Commission, in accordance with Article 16, in relation to information received from Member States pursuant to Article 15;

- (e) a summary of the response to each of the reports submitted to the Commission by Member States pursuant to Article 18;

- (f) a summary of the responses to comments made by the European Parliament and the Council on previous Marine Strategies;

- (g) a summary of the contribution made by other relevant Community policies to the attainment of the objectives of this Directive.

Article 21

Review of this Directive

The Commission shall review this Directive by ... (*) and shall, where appropriate, propose any necessary amendments.

CHAPTER V

FINAL PROVISIONS

Article 22

Technical adaptations

1. Annexes III, IV and V may be amended in the light of scientific and technical progress in accordance with the regulatory procedure with scrutiny referred to in Article 23(3), taking into account the periods for the review and updating of Marine Strategies laid down in Article 17(2).

2. In accordance with the procedure referred to in Article 23(2),

- (a) methodological standards may be adopted for the application of Annexes I, III, IV and V;

- (b) technical formats may be adopted for the purposes of transmission and processing of data, including statistical and cartographic data.

(*) 15 years after the date of entry into force of this Directive.

*Article 23***Regulatory Committee**

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

*Article 24***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... (*) at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the texts of the main measures of national law which they adopt in the field covered by this Directive.

3. Member States without marine waters shall bring into force only those measures which are necessary to ensure compliance with requirements under Article 6 and Article 7.

Where such measures are already in force in national legislation, Member States concerned shall communicate to the Commission the text of those measures.

*Article 25***Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 26***Addressees**

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament
The President

...

For the Council
The President

...

(*) Three years after the date of entry into force of this Directive.

ANNEX I

GENERIC QUALITATIVE DESCRIPTORS TO BE CONSIDERED WHEN DETERMINING GOOD ENVIRONMENTAL STATUS**(REFERRED TO IN ARTICLES 3, POINT (5), 9(1), 9(3) AND 22)**

- (1) All elements of the marine food webs, to the extent that they are known, occur at normal abundance and diversity.
- (2) Non-indigenous species introduced by human activities are at levels that do not adversely alter the ecosystems.
- (3) Populations of all commercially exploited fish and shellfish are within safe biological limits.
- (4) Human-induced eutrophication is minimised, especially adverse effects thereof.
- (5) Species and habitats show a distribution, abundance and quality in line with prevailing physiographic, geographic and climatic conditions. Biodiversity is maintained.
- (6) Sea floor integrity is at a level at which the functions of the ecosystems are safeguarded.
- (7) Permanent alteration of hydrographical conditions does not adversely affect marine ecosystems.
- (8) Concentrations of contaminants are at levels not giving rise to pollution effects.
- (9) Contaminants in fish and other seafood for human consumption do not exceed levels established by Community legislation or other relevant standards.
- (10) Properties and quantities of marine litter do not cause harm to the marine environment.
- (11) Introduction of energy, including underwater noise, does not adversely affect the marine environment.

To determine the characteristics of good environmental status in a marine region or sub-region as provided for in Article 9(1) of this Directive, Member States shall consider each of the generic qualitative descriptors listed in this Annex in order to identify those descriptors which are to be used to determine good environmental status for that marine region or sub-region. When a Member State considers that it is not appropriate to use one or several of those descriptors, it shall provide the Commission with a justification in the framework of the notification made pursuant to Article 9(2) of this Directive.

ANNEX II

COMPETENT AUTHORITIES**(REFERRED TO IN ARTICLE 7(1))**

- (1) Name and address of the competent authority or authorities — the official name and address of the competent authority or authorities identified.
- (2) Legal status of the competent authority or authorities — a brief description of the legal status of the competent authority, or authorities.
- (3) Responsibilities — a brief description of the legal and administrative responsibilities of the competent authority or authorities, and of its role in relation to the marine waters concerned.
- (4) Membership — when the competent authority or authorities acts as a coordinating body for other competent authorities, a list of these is required together with a summary of the institutional relationships established in order to ensure coordination.
- (5) Regional or sub-regional coordination — a summary is required of the mechanisms established in order to ensure coordination between the Member States whose marine waters fall within the same marine region or sub-region.

ANNEX III

INDICATIVE LISTS OF CHARACTERISTICS, PRESSURES AND IMPACTS
(REFERRED TO IN ARTICLES 8(1), 9(1), 9(3), 11(1) AND 22)

Table 1

Characteristics

Physical and chemical features	<ul style="list-style-type: none"> — Topography and bathymetry of the seabed; — Annual and seasonal temperature regime and ice cover, current velocity, upwelling, wave exposure, mixing characteristics, turbidity, residence time; — Spatial and temporal distribution of salinity; — Spatial and temporal distribution of nutrients (DIN, TN, DIP, TP, TOC) and oxygen; — pH, pCO₂ profiles or equivalent information used to measure marine acidification.
Habitat types	<ul style="list-style-type: none"> — The predominant seabed and water column habitat type(s) with a description of the characteristic physical and chemical features, such as depth, water temperature regime, currents and other water movements, salinity, structure and substrata composition of the seabed; — Identification and mapping of special habitat types, especially those recognised or identified under Community legislation (the Habitats Directive and the Birds Directive) or international conventions as being of special scientific or biodiversity interest; — Habitats in areas which by virtue of their characteristics, location or strategic importance merit a particular reference. This may include areas subject to intense or specific pressures or areas which merit a specific protection regime.
Biological features	<ul style="list-style-type: none"> — A description of the biological communities associated with the predominant seabed and water column habitats. This would include information on the phytoplankton and zooplankton communities, including the species and seasonal and geographical variability; — Information on angiosperms, macro-algae and invertebrate bottom fauna, including species composition, biomass and annual/seasonal variability; — Information on the structure of fish populations, including the abundance, distribution and age/size structure of the populations; — A description of the population dynamics, natural and actual range and status of species of marine mammals and reptiles occurring in the marine region or sub-region; — A description of the population dynamics, natural and actual range and status of species of seabirds occurring in the marine region or sub-region; — A description of the population dynamics, natural and actual range and status of other species occurring in the marine region or sub-region which are the subject of Community legislation or international agreements; — An inventory of the temporal occurrence, abundance and spatial distribution of non-indigenous, exotic species or, where relevant, genetically distinct forms of native species, which are present in the marine region or sub-region.
Other features	<ul style="list-style-type: none"> — A description of the situation with regard to chemicals, including chemicals giving rise to concern, sediment contamination, hot spots, health issues and contamination of biota (especially biota meant for human consumption); — A description of any other features or characteristics typical of or specific to the marine region or sub-region.

Table 2

Pressures and impacts

Physical loss	<ul style="list-style-type: none"> — Smothering (e.g. by artificial structures, disposal of dredge spoil); — Sealing (e.g. by permanent constructions).
Physical damage	<ul style="list-style-type: none"> — Changes in siltation (e.g. by outfalls, increased run-off, dredging); — Abrasion (e.g. by boating, anchoring, commercial fishing); — Selective extraction (e.g. by commercial fishing, aggregate dredging, entanglement).
Other physical disturbance	<ul style="list-style-type: none"> — Underwater noise (e.g. boat activity, seismic); — Marine litter.
Interference with natural hydrological processes	<ul style="list-style-type: none"> — Significant changes in thermal regime (e.g. by outfalls, power stations); — Significant changes in salinity regime (e.g. by constructions impeding water movements, water abstraction).
Contamination by hazardous substances	<ul style="list-style-type: none"> — Introduction of synthetic compounds (e.g. priority substances under Directive 2000/60/EC which are relevant for the marine environment, biologically active substances, pesticides, antifoulants, pharmaceuticals, resulting e.g. from losses from diffuse sources, accidental pollution by ships, atmospheric deposition); — Introduction of non-synthetic compounds (e.g. heavy metals, hydrocarbons, resulting e.g. from accidental pollution by ships, atmospheric deposition, riverine inputs); — Introduction of radio nuclide.
Nutrient and organic matter enrichment	<ul style="list-style-type: none"> — Inputs of nitrogen and phosphorus (e.g. direct discharges from point sources, losses from diffuse sources including agriculture, atmospheric deposition); — Organic enrichment (e.g. mariculture, riverine inputs).
Biological disturbance	<ul style="list-style-type: none"> — Introduction of microbial pathogens; — Introduction of non-indigenous species and translocations; — Selective extraction of species (e.g. by commercial and recreational fishing).

ANNEX IV

INDICATIVE LIST OF CHARACTERISTICS TO BE TAKEN INTO ACCOUNT FOR SETTING ENVIRONMENTAL TARGETS**(REFERRED TO IN ARTICLES 10(1) AND 22)**

- (1) Adequate coverage of the elements characterising marine waters under the sovereignty or jurisdiction of Member States within a marine region or sub-region.
 - (2) Need to set (a) targets establishing desired conditions based on the definition of good environmental status; (b) measurable targets and associated indicators that allow for monitoring and assessment; and (c) operational targets relating to concrete implementation measures to support their achievement.
 - (3) Specification of environmental status to be achieved or maintained and formulation of that status in terms of measurable properties of the elements characterising the marine waters of a Member State within a marine region or sub-region.
 - (4) Consistency of the set of targets; absence of conflicts between them.
 - (5) Specification of the resources needed for the achievement of targets.
 - (6) Formulation of targets, including possible interim targets, with a timescale for their achievement.
 - (7) Specification of indicators intended to monitor progress and guide management decisions with a view to achieving targets.
 - (8) Where appropriate, specification of reference points (target and limit reference points).
 - (9) Due consideration of social and economic concerns in the setting of targets.
 - (10) Examination of the set of environmental targets, associated indicators and limit and target reference points developed in light of the environmental objectives laid down in Article 1 of this Directive, in order to assess whether the achievement of the targets would lead the marine waters falling under the sovereignty or jurisdiction of Member States within a marine region to a status matching them.
 - (11) Compatibility of targets with objectives to which the Community and its Member States have committed themselves under relevant international and regional agreements, making use of those that are most relevant for the marine region or sub-region concerned with a view to achieving the environmental objectives laid down in Article 1 of this Directive.
 - (12) When the set of targets and indicators has been assembled, they should be examined together relative to the environmental objectives laid down in Article 1 of this Directive to assess whether the achievement of the targets would lead the marine environment to a status matching them.
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ANNEX V

MONITORING PROGRAMMES**(REFERRED TO IN ARTICLES 11(1) AND 22)**

- (1) Need to provide information for an assessment of the environmental status and for an estimate of the distance from, and progress towards, good environmental status in accordance with Annex III and with the criteria and methodological standards to be defined pursuant to Article 9(3) of this Directive.
- (2) Need to ensure the generation of information enabling the identification of suitable indicators for the environmental targets provided for in Article 10 of this Directive.
- (3) Need to ensure the generation of information allowing the assessment of the impact of the measures referred to in Article 13 of this Directive.
- (4) Need to include activities to identify the cause of the change and hence the possible corrective measures that would need to be taken to restore the good environmental status, when deviations from the desired status range have been identified.
- (5) Need to provide information on chemical contaminants in species for human consumption from commercial fishing areas.
- (6) Need to include activities to confirm that the corrective measures deliver the desired changes and not any unwanted side effects.
- (7) Need to aggregate the information on the basis of marine regions or sub-regions in accordance with Article 4 of this Directive.
- (8) Need to ensure comparability of assessment approaches and methods within and between marine regions and/or sub-regions.
- (9) Need to develop technical specifications and standardised methods for monitoring at Community level, so as to allow comparability of information.
- (10) Need to ensure, as far as possible, compatibility with existing programmes developed at regional and international level with a view to fostering consistency between these programmes and avoiding duplication of effort, making use of those monitoring guidelines that are the most relevant for the marine region or sub-region concerned.
- (11) Need to include, as part of the initial assessment provided for in Article 8 of this Directive, an assessment of major changes in the environmental conditions as well as, where necessary, new and emerging issues.
- (12) Need to address, as part of the initial assessment provided for in Article 8 of this Directive, the relevant elements listed in Annex III including their natural variability and to evaluate the trends towards the achievement of the environmental targets laid down pursuant to Article 10(1) of this Directive, using, as appropriate, the indicators established and their limit or target reference points.

ANNEX VI

PROGRAMMES OF MEASURES**(REFERRED TO IN ARTICLES 13(1) AND 22)**

- (1) Input controls: management measures that influence the amount of a human activity that is permitted.
- (2) Output controls: management measures that influence the degree of perturbation of an ecosystem component that is permitted.
- (3) Spatial and temporal distribution controls: management measures that influence where and when an activity is allowed to occur.
- (4) Management coordination measures: tools to ensure that management is coordinated.
- (5) Economic incentives: management measures which make it in the economic interest of those using the marine ecosystems to act in ways which help to achieve the good environmental status objective.
- (6) Mitigation and remediation tools: management tools which guide human activities to restore damaged components of marine ecosystems.
- (7) Communication, stakeholder involvement and raising public awareness.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

In October 2005, the Commission adopted its proposal ⁽¹⁾ 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). This proposal was presented to the Council on 21 November 2005.

The European Parliament adopted its first reading Opinion on 13 November 2006.

The Committee of the Regions adopted its Opinion on 26 April 2006 ⁽²⁾.

The European Economic and Social Committee adopted its Opinion on 20 April 2006 ⁽³⁾.

The Council adopted its Common Position on 23 July 2007.

II. OBJECTIVE

The main objective of the proposed Directive, which should be seen as the environmental pillar of the future EU Maritime Policy, is to establish a framework for the protection and preservation of the marine environment, the prevention of its deterioration and, where practicable, the restoration of that environment in areas where it has been adversely affected.

This would be done through development and implementation, by the Member States, of marine strategies with the aim of achieving or maintaining good environmental status in the marine environment by the year 2021 at the latest.

Marine strategies would apply an ecosystem-based approach to the management of human activities while enabling the sustainable use of marine goods and services.

Furthermore, the Directive would contribute to the coherence between, and would aim to ensure the integration of environmental concerns into, the different policies, agreements and legislative measures which have an impact on the marine environment.

Cooperation at regional level would be essential to successful implementation of the Directive. In return, the Directive would contribute to enhancing action at international level, in particular in the context of regional seas conventions for the protection of the marine environment, by providing a clear, legally enforceable framework within which Member States would operate.

III. ANALYSIS OF THE COMMON POSITION

General

The common position incorporates a number of the European Parliament's first-reading amendments, either verbatim, in part or in spirit. These improve or clarify the text of the proposed Directive. However, other amendments are not reflected in the common position because the Council agreed that they were unnecessary or unacceptable or, in several cases, because provisions from the original Commission proposal were deleted or thoroughly redrafted.

In particular, the Council has sought to clarify the scope and objectives of the proposed Directive by adding definitions of key terms and concepts (Article 3) as well as an annex (Annex I) containing generic qualitative descriptors to guide determination of good environmental status, bearing in mind that the proposal is for a framework Directive that should not burden implementation with too much technical detail.

Furthermore, the Council has added or amended a number of provisions to specify Member States' obligations in implementation. Notably, the obligations of Member States without marine waters are clarified in a way that ensures that all EU Member States will cooperate towards achieving good environmental status in the marine environment (Articles 6 and 24).

⁽¹⁾ Doc. 13759/05 — COM(2005) 505 final.

⁽²⁾ OJ C 206, 29.8.2006, p. 5.

⁽³⁾ OJ C 185, 8.8.2006, p. 20.

The common position also foresees situations where environmental targets established by Member States might not be achieved or might not be achieved within the timetable foreseen (Article 14). In such cases, Member States would be under the twofold obligation to provide the Commission with justifications and to take ad hoc measures so as to mitigate damage. On the other hand, the text agreed by the Council provides for situations where more urgent or stronger action is needed (cf. Article 5(3) concerning pilot projects and Article 13(4) on marine protected areas).

Specific

(1) *Good environmental status (GES)*

The Council, very much like the EP, has considered that GES is central to this proposed Directive. Both institutions have logically complemented the initial proposal with a definition and a set of qualitative descriptors to guide determination of good environmental status in each marine region or sub-region.

Although many of the elements covered by the 11 amendments adopted by the EP concerning GES are addressed in the common position, it must be stressed that the two institutions have taken rather different approaches. The Council's concept is mostly based on status (in other words: what are the features that need to be present for the status of the marine environment to be considered good; cf. Annex I), but recognises that, for obvious reasons, some human activities (related to agriculture, fisheries or shipping) are more likely than others to increase pressure on the marine environment (cf. Table 2 of Annex III). On the other hand, most EP amendments, though not all, focus on human-induced, and even sector-specific, pressure upon that environment. Furthermore, the level of technical detail in several EP amendments is not compatible with the Council's approach to this proposal for a framework Directive.

(2) *Objectives, timetables and costs*

The Council stresses that it has adopted an ambitious and realistic approach to the related issues of obligations and timetables.

As opposed to the EP, the Council is not in favour of an overall tightening of deadlines, in particular 2017 instead of 2021 for achieving good environmental status, given the high diversity of situations across Europe. Nevertheless, the common position allows for speedier implementation wherever Member States deem that it is desirable and/or feasible (cf. Article 5 (3)). It should also be noted that the timetable adopted by the Council for this Directive is compatible with the implementation and reporting timing under the Water Framework Directive.

The Council also considered that it would be unrealistic, no matter how desirable, to make achievement of good environmental status, even by 2021, a legally binding objective (compare EP amendment 24 with Article 1 (1), second subparagraph in the common position). The common position makes it mandatory to take a number of measures and steps according to a precise timetable. This alone should ensure visible progress towards the GES objective, if not complete achievement by 2021.

Along similar lines, the Council also considered that Member States, in developing and implementing marine strategies, should not be under an obligation to take steps where there is no significant risk to the environment, or where action would entail disproportionate costs taking into account the risks to the marine environment. Here too, however, Member States are required to provide the Commission with a justification.

(3) *Marine strategies and regional cooperation*

The Council can agree with the EP that cooperation within marine regions or sub-regions, both amongst EU Member States and with third countries, is crucial. The common position emphasises the need to use existing international institutional cooperation structures, including those established under regional seas conventions, to avoid duplication of efforts.

The Council cannot, however, accept the notion, suggested in amendment 33, of joint responsibility for developing one single marine strategy per region or sub-region. This would dilute the legal responsibility for compliance between several Member States and would hinder progress towards the objective of the proposed Directive. The Council considers that the ultimate responsibility for meeting obligations under Community legislation in general, and under this Directive in particular, must lie strictly with individual Member States.

IV. CONCLUSION

The Council believes that the common position represents a balanced package of measures that would contribute to the pursuit of the objectives of Community environmental policy outlined in Article 174(1) EC Treaty. It would respond adequately to the request set out in the 6th Community Environment Action Programme ⁽¹⁾, reflecting the urgent need to address increasing concerns in relation to the state of Europe's oceans and seas and aiming 'to promote the sustainable use of the seas and conserve marine ecosystems'.

It would in particular advance significantly the protection and preservation of the marine environment. It would also ensure effective implementation by the Member States, taking due account of specific circumstances at regional or sub-regional level.

The Council looks forward to constructive discussions with the European Parliament with a view to the early adoption of the Directive.

⁽¹⁾ Decision No 1600/2002/EC (OJ L 242, 10.9.2002, p. 1).