

## **Manual of European Environmental Policy**

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# Marine Strategy Framework Directive

<b>Formal Reference</b>	
<a href="#">2008/56/EC</a> (OJ L164 25.06.2008)	Directive establishing a framework for Community action in the field of marine environmental policy (Marine Strategy Framework Directive)
Proposed 24.10.05 – <a href="#">COM(2005)505</a>	
<b>Legal base</b>	Article 192 TFEU (originally article 175 TEC)
<b>Binding Dates</b>	
Entry into force	15 July 2008
Formal compliance	15 July 2010
Identification of competent authorities	15 July 2010
Initial assessment completed	15 July 2012
Good environmental status determined	15 July 2012
Environmental targets established	15 July 2012
Monitoring programmes to be operational	15 July 2014
Commission report on establishing marine protected areas	2014
Programme of measures to be developed	2015
Programme of measures in operation	2016
Commission first evaluation report	2019
Environmental objectives to be achieved	2020
Commission review of Directive	2023

## Purpose of the Directive

Directive 2008/56/EC establishes a framework within which Member States shall take the necessary measures to achieve or maintain good environmental status in the marine environment by the year 2020 at the latest. To this end, Marine Strategies shall be developed and implemented in order to protect and preserve the marine environment, prevent its deterioration or, where practicable, restore marine ecosystems and prevent and reduce inputs in the marine environment, so as to ensure that there are no significant impacts on or risks to marine biodiversity, marine ecosystems, human health or legitimate uses of the sea. Marine Strategies shall apply an ecosystem-based approach to the management of human activities.

Directive 2008/56/EC forms the ‘environmental pillar’ of the EU's Integrated Maritime Policy.

## **Summary of the Directive**

### **Scope**

Directive 2008/56/EC applies to all marine waters and takes account of the transboundary effects on the quality of the marine environment of third States in the same Marine Region or Sub-Region. It does not apply to those activities, the sole purpose of which is defence or national security. ‘Marine waters’ includes waters, the sea-bed 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. This includes coastal waters as included within the Water Framework Directive [2000/60/EC](#), ‘in so far as particular aspects of the environmental status of the marine environment are not already addressed through that Directive or other Community legislation’.

### **Marine Regions and Strategies**

Directive 2008/56/EC addresses the marine environment through ‘Marine Regions’. Article 4 specifies these as the Baltic Sea, North-East Atlantic Ocean, Mediterranean Sea and Black Sea. It also allows for their sub-division into Sub-Regions and provides a list of these for the North-East Atlantic Ocean and Mediterranean Sea.

For each Marine Region or Sub-Region Member States shall develop Marine Strategies (Article 5) for the waters over which they have jurisdiction. Joint Marine Strategies are not required for each Marine Region or Sub-Region (in contrast to the requirements of Directive 2000/60/EC). However, coordination between Member States is encouraged, including working through (and building on the work of) the regional seas Conventions (Article 6). Member States shall designate competent authorities to be responsible for implementation of the Directive (Article 7). The Marine Strategies shall include (Article 5) the following:

- An initial assessment by 15 July 2012 of the current environmental status of the waters concerned and the environmental impact of human activities.
- A determination by 15 July 2012 of good environmental status.
- Establishment by 15 July 2012 of environmental targets and associated indicators.
- Establishment and implementation by 15 July 2014 (except where otherwise specified in the relevant Community legislation) of a monitoring programme for assessment and regular updating of targets.
- A programme of measures developed by 2015 and in operation by 2016 designed to achieve or maintain good environmental status.

In undertaking the initial assessment, Member States shall (Article 8) take account of assessments made on coastal waters under Directive 2000/60/EC and assessments made by the regional seas Conventions. Member States shall cooperate with neighbours in a Marine Region to take account of transboundary issues and work to develop consistent methodologies. The assessments shall include the following:

- An analysis of the essential features and characteristics, and current environmental status of those waters, based on an indicative list set out in Annex III, which covers physical and chemical features, habitat types, biological features and hydro-morphology.
- An analysis of the predominant pressures and impacts (including trends), including human activity, on the environmental status of those waters based on an indicative list set out in Annex III, which covers the main cumulative and synergetic effects and takes account of assessments made under existing Community legislation.
- An economic and social analysis of the use of those waters and of the cost of degradation of the marine environment.

## **Assessment, good environmental status, targets and monitoring**

Following the assessment and reference to qualitative descriptors set out in Annex I Member States shall (Article 9), in respect of each Marine Region or Sub-Region concerned, determine, for the marine waters, a set of characteristics for good environmental status. Criteria and methodological standards to be used shall be laid down using the Committee procedure so 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. Member States shall also (Article 10) establish a comprehensive set of environmental targets and associated indicators for their marine waters to guide progress towards achieving good environmental status, taking account of the indicative lists of pressures and impacts set out in Annex III, and characteristics set out in Annex IV. In setting targets Member States shall take account of other relevant targets set at national, Community or international level.

Member States shall (Article 11) establish and implement coordinated monitoring programmes to assess environmental status on the basis of an indicative list of elements set out in Annex III and Annex V, and by reference to the environmental targets established. The programmes shall be compatible within Marine Regions or Sub-Regions and shall build upon relevant provisions for assessment and monitoring laid down by other Community legislation, including the Habitats Directive [92/43/EEC](#) and the Birds Directive [79/409/EEC](#), or under international agreements. Member States shall also work with neighbouring countries to coordinate monitoring programmes to ensure that methods are consistent and that transboundary issues are addressed. Specific monitoring methods can be adopted by the Committee procedure.

Member States are required to notify the Commission of the environmental targets, determination of good environmental status and monitoring programmes. Article 12 requires the Commission to assess (within six months of notification) whether these elements constitute an appropriate framework to meet the requirements of Directive 2008/56/EC and may ask the Member State concerned to provide any additional information that is available and necessary.

In September 2010 the Commission published a [Decision](#) (Decision 2010/477/EU) on criteria and methodological standards on good environmental status. The Commission Decision acknowledged that establishing criteria for some descriptors was problematic given the current state of knowledge, e.g. for litter and noise. The Decision provides indicators for measurement or assessment of the qualitative descriptors, but not more detailed explanations of what is meant by them. For example, for species it includes distributional range, distributional pattern, area covered. The Decision drew on the results of a working group

established to examine good environmental status<sup>1</sup>. This did suggest some more detailed explanations for environmental status. For fisheries, for example, it suggested ‘reproductive capacity should not be compromised’ and ‘predator performance reflects long term viability of components’. In the Decision these are not used, but only measurement indicators are included.

## **Programmes of measures**

Programmes of measures shall be drawn up by Member States by 2013 to achieve good environmental status (Article 13) and meet environmental targets. These shall take into account requirements in other EU environmental legislation. In developing the programmes of measures ‘Member States shall give due consideration to sustainable development and, in particular, to the social and economic impacts of the measures envisaged’. They shall include spatial protection measures, contributing to coherent and representative networks of marine-protected areas, adequately covering the diversity of the constituent ecosystems, such as areas designated under the Habitats Directive 92/43/EEC and the Birds Directive 79/409/EEC and marine-protected areas as agreed by the Community or Member States resulting from international or regional agreements. Where human activity having an impact is managed at Community or international level, Member States shall inform the relevant body with a view to taking relevant measures. Also in developing the programmes of measures, Member States shall consider the implications of their programmes of measures on waters beyond their marine waters in order to minimize the risk of damage to, and if possible have a positive impact on, those waters.

Member States shall notify the Commission of the programmes of measures within three months of their establishment. Following Member State notification, the Commission shall assess (Article 16) within six months whether they constitute an appropriate framework to meet the requirements of Directive 2008/56/EC, and may ask Member States to provide additional information. The assessments shall consider the coherence of programmes of measures within the different Marine Regions or Sub-Regions and across the Community.

Within three years of publication of a programme of measures (or an update), Member States shall submit a brief interim report on progress to the Commission (Article 18).

## **Exceptions**

A Member State may identify instances within its marine waters where the environmental targets or good environmental status cannot be achieved in every aspect through measures taken by that Member State. These can include action or inaction for which the Member State concerned is not responsible; natural causes; *force majeure*; modifications or alterations to the physical 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; and natural conditions that do not allow timely improvement in the status of the marine waters concerned. Such instances shall be communicated and justified to the Commission. In such cases, Member States shall take appropriate ad hoc measures (integrated into the programmes of measures) aiming to continue pursuing the environmental targets, to prevent further deterioration in the status of the marine waters affected and to mitigate the adverse impact at the level of the Marine Region or Sub-Region concerned. In cases of overriding public interest, Member States shall ensure that the modifications or alterations 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.

In developing and implementing the Marine Strategies, beyond the initial assessment, Member States are not 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, and provided that there is no further deterioration. In such cases Member States shall communicate and justify their actions to the Commission.

## **Recommendations for Community action**

Where a Member State identifies an issue that has an impact on environmental status of its marine waters and that cannot be tackled by national measures, or that is linked to another Community policy or international agreement, it shall inform and justify its view to the Commission (Article 15). The Commission shall respond within a period of six months, such as with appropriate recommendations for measures.

## **Updating**

Member States are required to ensure that their Marine Strategies are kept up to date (Article 17). Every six years Member States shall review, and communicate results to the Commission and regional seas Conventions, the following:

- The initial assessment and the determination of good environmental status.
- The environmental targets.
- The monitoring programmes.
- The programmes of measures.

## **Public consultation and information**

Member States shall ensure that all interested parties are given ‘early and effective opportunities to participate’ in the implementation of the Directive, involving, where possible, existing management bodies or structures, including Regional Sea Conventions, Scientific Advisory Bodies and Regional Advisory Councils (Article 19). Member States shall publish, and make available to the public for comment, summaries of the following elements of their Marine Strategies:

- The initial assessment and the determination of good environmental status.
- The environmental targets.
- The monitoring programmes.
- The programmes of measures.

The importance of the Directive on Access to Environmental Information (Directive [2003/4/EC](#)) is stressed, including making available to the Commission data and information used in the initial assessment and resulting from monitoring programmes. Such information shall also be made available to the [European Environment Agency](#).

## **Commission reports**

The Commission shall publish a first evaluation report on the implementation of Directive 2008/56/EC within two years of receiving all programmes of measures and, in any case, by 2019 at the latest (Article 20) and further reports every six years thereafter. Such reports shall include the following:

- A review of progress in the implementation of Directive 2008/56/EC.
- 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 organizations and conventions.
- A survey of the Marine Strategies, together with suggestions for their improvement.
- A summary of the information received from Member States relating to assessments, monitoring and implementation of programmes of measures.
- A summary of the response to each of the interim reports on programmes of measures.
- A summary of the responses to comments made by the European Parliament and the Council on previous Marine Strategies.
- A summary of the contribution made by other relevant Community policies to the attainment of the objectives of Directive 2008/56/EC.

By 15 July 2012 at the latest, the Commission shall publish a report assessing the contribution of Directive 2008/56/EC to the implementation of existing obligations, commitments and initiatives of the Member States or the Community at Community or international level.

On the basis of the information provided by the Member States by 2013, the Commission shall report by 2014 on progress in the establishment of marine protected areas, with regard to existing obligations under Community law and international commitments (Article 21).

## **Financing, review, technical adaptations**

Directive 2008/56/EC (Article 22) states that implementation shall be supported by existing Community financial instruments.

The Commission is to review Directive 2008/56/EC by 15 July 2023 at the latest (Article 23).

Article 24 presents the scope of technical adaptations that can be adopted through the Regulatory Committee procedure (Article 25). Amendments may be made to Annex III (indicative list of characteristics, pressures and impacts), Annex IV (indicative list of characteristics to be taken into account for setting environmental targets) and Annex V (monitoring programmes) as well as to methodological standards for these annexes and Annex I (qualitative descriptors for determining good environmental status and technical formats for reporting).

## Development of the Directive

Directive 2008/56/EC had its formal origin in the 2002 EU Sixth Environmental Action Programme<sup>2</sup>. This included an objective to develop ‘a Thematic Strategy for the protection and conservation of the marine environment taking into account, inter alia, the terms and implementation obligations of marine Conventions, and the need to reduce emissions and impacts of sea transport and other sea and land-based activities’. This was followed by a Communication from the Commission ‘Towards a strategy to protect and conserve the marine environment’ ([COM\(2002\)539](#)). The Communication provided a summary of the current understanding of the threats to the marine environment and of the policy measures then in place relevant to these threats. The Communication stated that the overall objective was that the Marine Thematic Strategy should contribute to the Community Strategy for Sustainable Development. Therefore, it should promote the sustainable use of the seas and conservation of marine ecosystems, paying special attention to sites holding a high biodiversity value. The Communication set out a series of further objectives ‘with a view to promoting sustainable use of the seas and conserving marine ecosystems’. At this stage, the Communication did not suggest that the Thematic Strategy would include a broad marine protection legislative instrument.

The Marine Thematic Strategy was published three years later, but in the interim, a series of developments took place to support and influence its development. Two major stakeholder conferences were held in Denmark and the Netherlands, which explored fundamental issues of marine protection as well as details of what might be included in a legislative instrument. Responses were also received from the EU institutions and the Regional Seas Conventions. Also to support the process, the Commission established an Inter-Organisational Consultation Forum with representatives from a wide range of European and International organizations as well as working groups on strategic goals and objectives, the ecosystem approach to management of human activities and hazardous substances, as well as drawing on the work of a working group on marine protection established under the Habitats Directive 92/43/EEC [Birds and their habitats]. The European Commission also held an internet-based consultation from 15 March to 9 May 2005 to elicit relevant opinions from stakeholders on the specific measures being considered for inclusion in the Thematic Strategy – in particular the possibility of a legal framework. The Commission concluded from the consultation that its proposed approach was broadly endorsed. Six environmental non-governmental organizations (NGOs) (BirdLife International, Greenpeace, International Fund for Animal Welfare, Oceana, Seas at Risk and the World Wide Fund for Nature) issued a joint statement in June 2005 stating that a Directive was the ‘first real chance to translate global commitments into real action for the management of both Europe's seas and areas beyond national jurisdiction’ and indicating key elements that it should contain.

The Marine Thematic Strategy, with a proposal for a Directive, was published in October 2005 ([COM\(2005\)505](#)). The accompanying Communication argued that the legal and institutional framework for protecting Europe's seas was fragmentary and inadequate and, therefore, a broad framework Directive was needed to address this deficiency, while still recognizing the need for other EU environmental and sectoral policies, as well as actions under the Regional Seas Conventions, to continue to contribute to marine protection objectives. The key objectives for a new policy should be to deliver:

- A high level of protection for Europe's oceans and seas.
- An improved knowledge base to inform policy making.

- Integrated and cost-effective actions to reduce pressures.
- Effective monitoring and assessment to make sure goals are achieved and actions deliver results.

The logic of the processes of the proposed Directive were retained in the adopted Directive 2008/56/EC and drew on the processes set out in the Water Framework Directive [2000/60/EC](#). However, the proposal did not provide any descriptors for elaborating what was meant by ‘good environmental status’ and had the target of meeting good environmental status by 2021.

The six environmental NGOs that responded to the 2002 Communication responded to the proposed Directive stating that ‘regrettably, the proposal falls far short of ambitious targets’ and that it would not deliver effective protection. The Committee of the Regions also sought a stronger Directive, for example arguing that good environmental status should be achieved by 2018. The German Advisory Council on the Environment was more critical stating that in ‘taking the form of a proposed Directive whose targets and programming fall far short of what is needed, the Thematic Strategy combines probing analysis with a highly deficient plan of action’.

The European Parliament's first opinion was adopted in December 2005. The key view of the European Parliament was to shorten the timetable for implementation (achieving good environmental status by 2017), provide greater clarity on what constitutes good environmental status (proposing descriptors for this), require greater cooperation on developing Marine Strategies and enhance integration with other EU policies. The Council reached a political agreement on the text on 18 December 2006, but it was not until 23 July 2007 that a formal Common Position was adopted. The Common Position aimed to clarify the scope and objectives of the proposal by adding definitions of key terms and concepts as well as an annex containing generic qualitative descriptors on determining good environmental status. Unlike the Parliament, the Council was not in favour of an overall tightening of deadlines, in particular 2017 instead of 2021 for achieving good environmental status, although the Common Position allowed for speedier implementation wherever Member States wish. The Council considered its timetable as both ambitious and realistic and compatible with the implementation and reporting timetable under the Water Framework Directive 2000/60/EC (2021 being the end of the second River Basin Management Plan cycle). The Council considered that it would be unrealistic to make achievement of good environmental status a legally binding objective. Instead, the Common Position required mandatory action on specific measures to contribute to achieving it. Also it considered that Member States 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 (with justification provided to the Commission).

On 9 October 2007 the European Parliament Environment Committee debated the proposal for a second time, taking account of the Council Common Position. The Committee concluded by recommending that the Parliament remain committed to a number of the amendments that it had introduced in its first reading. However, before a Second Reading was held discussion between the Parliament and Council resulted in an agreed compromise text. The result was that much of the final text drew on the amendments of the Council, with limited additions from the Parliament (or compromises), such as the compromise deadline for achieving good environmental status being moved to 2020.

## Implementation of the Directive

Member States had until July 2010 to transpose Directive 2008/56/EC into national legislation. Information about national transposition can be found in the national [execution measures](#) communicated by the Member States. It is too early to examine levels of practical implementation to determine the extent of compliance.

Member State reports to the Commission on different aspects of the implementation of the Directive are not yet required. However, the platforms for future delivery and access to these reports are already available and can be found in the Reporting Obligations Database. Separate platforms are provided for reporting on the [initial assessment](#), [monitoring programmes](#), [programmes of measures including establishment of marine protected areas](#) and [progress on implementation of programmes of measures](#). The Commission has published a list of public consultation processes taking place in the Member States at this [link](#).

The Marine Directors (leading officials) of the Member States have met regularly to take forward implementation of the Directive in [May 2009](#), December 2009, [May 2010](#), [December 2010](#), [May 2011](#) and [December 2011](#).

The May 2009 meeting of the Marine Directors established working groups under the Common Implementation Strategy (CIS) to support implementation of the Directive - on good environmental status, on data, information and knowledge exchange and on economic and social assessment. The results of the working group on good environmental status are discussed above.

The European Environment Agency published ten key messages on marine ecosystems in March 2010<sup>3</sup>. This stressed the threats marine ecosystems are under and the importance of implementation of the Marine Strategy Framework Directive. A number of Research Framework projects are exploring aspects of the implementation of the Directive, such as seeking to interpret the Ecosystem Approach which underlies the adaptive management framework of the Directive<sup>4</sup>. The European Commission has also funded research on the economic assessment of measures within programmes of measures<sup>5</sup>.

## Related Legislation

In the wider policy context, the Marine Strategy Framework Directive is stated to be the 'environmental pillar' of the EU's Integrated Maritime Policy (see section on [Maritime Policy](#)). There are a number of other EU Directives that have a strong interaction with Directive 2008/56/EC. These include:

- Water Framework Directive ([2000/60/EC](#)).
- Nitrates Directive [91/676/EEC \(2008/56/EC\)](#).
- Dangerous Substances Directive ([76/464/EEC](#)) and its Daughter Directives.
- Urban Waste Water Treatment Directive ([91/271/EEC](#)).
- Directive [2008/105/EC](#).
- Habitats Directive [92/43/EEC](#).
- Birds Directive [79/409/EEC](#).

## References

- 1 JRC and ICES 2010. Scientific Support to the European Commission on the Marine Strategy Framework Directive Management Group Report. March 2010.
- 2 For further discussion on the early development of Directive 2008/56/EC, see: Farmer, A M (2006) A European Union Marine Strategy Directive, *The Journal of International Maritime Law* 12, pp 122–133.
- 3 EEA 2010. 10 messages for 2010 — marine ecosystems. European Environment Agency, Copenhagen [[link](#)].
4. Farmer, A., Mee. L., Langmead, O., Cooper, P., Kannen, A., Kershaw, P. and Cherrier, V. 2012. *The Ecosystem Approach in Marine Management*. EU FP7 KNOWSEAS Project. ISBN 0-9529089-5-6. [[Link](#)].
5. Arcadis, Bath University and EUCC 2012. *Economic assessment of policy measures for the implementation of the Marine Strategy Framework*. [[link](#)].