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Each edition of **Brussels in Brief** considers topics that relate to the overall thematic focus of the current Newsletter issue.

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Brussels in Brief

Developing the EU's Marine Policy

Marine resources are of high importance for Europe's citizens and industries, as well as in their own right, which is perhaps not surprising given that 40% of the EU's territory is under water. Between 3% and 5% of the EU's GNP is estimated to be generated directly from marine-based industries and services, with the maritime transport sector sustaining more than 2.5 million jobs in the EU. The total value of economic assets found in the 500m coastal strip alone has been estimated to be worth between Euro 500 and 1000 billion (2000). Significantly for the EU as a trading block, 90% of the EU's external trade and 43% of its internal trade (in tonnes) is transported by sea.

As with other ecosystems, marine and freshwater environments are affected by social and economic activities. Loss of biodiversity, degradation and change in habitat structures, pollution and the possible effects of climate change are threatening Europe's seas and waterways. Key drivers of change vary between Europe's seas but include commercial fishing, gas and oil exploration, shipping, waste dumping, dredging, irrigation, urbanisation and agriculture. In many cases, improvements have been made in terms of reducing the impact of different sectoral activities, but the development of new technologies and the sheer volume of activity is expected to outstrip improvements secured.

To date, EU policies dealing explicitly with marine issues have been comparatively limited, rather piecemeal and heavily focused on regulating fisheries and transport activities. Environmental legislation has almost exclusively been designed for terrestrial purposes. In only a small number of cases is legislation applicable throughout the EU's marine territory. The relatively unregulated nature of the EU's oceans and seas has meant that policies have struggled to keep up with technological advances, rather than helping to shape them in the interest of sustainable development.

Concerns over the fragmented and reactive nature of EU marine policy, coupled with a desire to boost the performance of maritime sectors, have led to two EU processes being initiated. One is to result in a Marine Thematic Strategy in 2005; the other is to result in a Maritime Policy Green Paper in 2006. This issue of **Brussels in Brief** explores the emergence of, interlinkages between and potential opportunities presented by these two marine policy documents.

• Background to the EU's marine environmental policies

A range of policies has been developed since the 1970s to protect the marine environment from hazardous substances and, more recently, to conserve marine habitats and species. Much like their terrestrial counterparts, marine environmental protection efforts have involved setting broad environmental quality or process standards. As with terrestrial issues, there has also been progress in 'greening' relevant EU sectoral policies, notably those relating to maritime transport and fisheries.

In these endeavours, the EU has developed a 'push-pull' relationship with regional seas agreements and other international instruments. In some cases, EU standards have helped to secure more stringent standards internationally; in other cases, more stringent international standards have led to the tightening of EU law.

The overall result has been a gradual strengthening over more than three decades, of both 'core' and sectoral marine environmental protection measures. Weaknesses and inconsistencies remain, however.

'Core' marine environmental policies

At present, the best-known EU policy concerned with water quality and quantity issues is the 2000 Water Framework Directive (2000/60; see below), which extends one mile offshore. Together with the Bathing Water, Nitrates from Agricultural Sources and Urban Waste Water Treatment Directives, these water laws make an important contribution in terms of tackling coastal pollution. A series of other laws seek in particular to reduce emissions of hazardous substances to water, and thus contribute to meeting EU and international marine water quality objectives.

This predominantly land-based approach to marine environmental protection was re-balanced somewhat during the 1990s by EU nature conservation legislation as set out in the Birds (79/409) and Habitats (92/43) Directives. Both Directives were conceived from a terrestrial perspective and apply to the EU 'territory'. While this was initially considered by many to refer only to the EU's inshore waters, it is now commonly accepted that the Directives apply throughout the EU's waters. The Directives – still in the process of implementation – are consequently emerging as the main EU tool for marine environmental protection.

The Environmental Impact Assessment and Strategic Environmental Assessment Directives are equally being applied offshore. Overall, however, progress in developing and applying environmental policies to the marine environment has been incomplete. As detailed below, the EU has consequently committed to developing a strategy to address – in a coherent and holistic manner – the growing marine environmental challenge.

Applying the Habitats Directive in the marine environment – issues with jurisdiction

Following a case brought by Greenpeace UK, the UK High Court ruled in 2000 that the Habitats Directive applies out to the limits of the UK Continental Shelf and superjacent waters up to a limit of 200 nautical miles from the baseline.¹ This ruling is binding only in the UK and there has been no equivalent ruling from the European Court of Justice.

In the absence of clarification from the European Court of Justice, the European Commission has stated its opinion that if a Member State exerts its sovereign rights in an exclusive economic zone of 200 nautical miles then the Habitats Directive should also apply in that zone (COM(1999)363).

However, where Member States have not established any control of waters outside 12 nautical miles they cannot enforce the Habitats or other environmental Directives outside those limits.

¹ *R v The Secretary of State for Trade and Industry, ex parte Greenpeace Ltd*; [2000] 2 CMLR 94

'Greening' maritime sector policies

The EU has also managed to introduce environmental provisions within its relevant 'sectoral' policies, most notably the Common Fisheries Policy – the EU's only dedicated marine policy, and the Common Transport Policy.

Fishing is considered to be the human activity with the greatest effect on Europe's marine ecosystems. Fisheries conservation also happens to be an area under the exclusive competence of the EU. Following major reforms of the Common Fisheries Policy (CFP) in 2002, its core objective is to ensure that exploitation of living aquatic resources provides sustainable economic, social and environmental conditions. In practice, this is in large part translated into measures that seek to limit the overall level of fishing, as well as managing the type of fishing that is permitted. The transition to ecosystem-based management and application of the precautionary approach is central to the CFP's stated objectives, even if this has not been given a great deal of practical effect.

For more information see:

www.europa.eu.int/comm/fisheries/reform/conservation_en.htm

Maritime transport is the second major EU sectoral policy affecting the marine environment, be it positively or negatively. Although the EU has a so-called 'Common Transport Policy', the EU's intervention in this area is relatively limited compared to fisheries. This has been particularly the case as regards maritime transport, an area that Member States have long sought to protect as their own. This is also reflected in the fact that the Community is not a party to the UN International Maritime Organization, which is the principal international body active in this area.

In practice, however, a series of major maritime incidents, ongoing problems with accidental and intentional pollution from shipping, and the general increase in the volume of maritime traffic has led to a progressive strengthening of EU policy in this area. Building on legislation introduced in the early 1990s, the 'Erika' and 'Prestige' disasters in 1999 and 2002, respectively, have contributed to a significant strengthening of maritime transport pollution legislation.

For further information on EU maritime transport policy see:

www.europa.eu.int/comm/transport/maritime/index_en.htm

• Developing a coherent approach to marine environmental protection – the Marine Thematic Strategy

The European Commission has, since 2002, been working on the development of a Marine Thematic Strategy that is due to be delivered in 2005. The Strategy is a legal requirement arising out of the EU's Sixth Environment Action Programme (6EAP) (Decision 1600/2002). The 6EAP sets the main lines of the EU's environmental policy for the decade. Although the 6EAP itself contains relatively few concrete commitments, including in the area of the marine environment, it does highlight the marine environment as one of seven areas demanding further, more detailed investigation and attention within so-called 'Thematic Strategies'.

The 6EAP provides little guidance as to what specifically the Marine Thematic Strategy (MTS) should contain. It simply states that the MTS shall take into account international obligations, and the need to reduce emissions and impacts from maritime transport and other sea and land-based activities.

The Commission therefore had a great deal of freedom in the way it approached the MTS, as long as it involved close consultation with relevant parties. An initial step was the preparation of a scoping Communication entitled 'Towards a strategy to protect and conserve the marine environment' (COM(2002)539). The paper was used as the basis for discussion at a major European stakeholder conference in 2002, and was later endorsed by the European Parliament and the Environment Council in 2003.

Thematic Strategies – a new approach to EU policy making

The 6EAP requires that seven Thematic Strategies be produced. These 'daughter' EAPs are to tackle issues that are particularly complex, that affect diverse actors and whose resolution demands numerous and creative solutions.

The Thematic Strategies have to be elaborated in close consultation with the relevant parties. They can suggest a range of approaches, including new legislation, more effective implementation of existing legislation, measures to integrate environmental considerations within sectoral policies, improved collaboration and partnership with various stakeholders, better information for purchasers, measures to tackle international issues, etc. They can also include quantitative environmental targets and timetables against which the various measures can be evaluated.

The Thematic Strategies can take the form of a Communication from the Commission or a proposal that would result in a legally binding decision adopted by the European Parliament and the Council.

Detailed work was subsequently taken forward in various working groups, focusing on the ecosystem-based approach, monitoring and assessment, hazardous substances, and strategic goals and objectives. The conclusions from these discussions and a proposed approach to the final MTS were then presented and discussed at a second stakeholder conference held in 2004.

The whole process was characterised by its inclusiveness, with a large amount of stakeholder involvement. Representatives from 35 countries, including some non-European countries, were invited to participate in the process. Importantly in terms of integration of environmental issues within sectoral policies, the process engaged representatives from DG Fisheries and DG Transport, as well as DG Environment. The aim of this approach was to build a shared understanding of the challenges facing the EU in the area of marine environmental policy, but also a shared ownership as to the resulting MTS.

To conclude the MTS process, an open consultation on the Thematic Strategy itself was launched in March 2005. This suggests that two key documents will be unveiled by the Commission later in 2005: a Communication and a proposed Directive.

Suggested Communication on the Marine Environment

A communication on the marine environment will describe the state of the marine environment, the pressures upon it, and the need for action. Specific objectives in relation to future EU marine policy will also be detailed. These are to be divided into four main categories, each containing a range of specific aims, as follows.

- To protect and, where practicable, restore the function and structure of marine ecosystems in order to achieve and maintain good environmental status of these ecosystems – this includes a variety of specific targets including the application of an ecosystem-based approach and the halting of the loss of marine biodiversity by 2010.
- To phase out pollution in the marine environment to ensure there are no significant impacts or risks to human and/or ecosystem health and/or the uses of the sea.
- To control the use of marine services and goods and other activities in marine areas that have or may have a negative impact on the status of the marine environment.
- To apply the principles of good governance both within Europe and globally.

The Communication is to explain the interactions between the Strategy and other existing policies and actions which already impact on the marine environment, eg the interactions with the implementation of the Habitats and Birds Directives and with the Common Fisheries Policy. The possible application of the objectives and principles in seas adjacent to those covered by the EU are also to be considered, especially in relation to the use of deep waters.

Despite its promising contents, the direct impact of the Communication will be limited. As a Communication it will simply represent a statement of Commission policy. It will not represent

EU policy, ie agreed by all three EU institutions, nor will it impose binding legal requirements on the institutions themselves or the Member States. Before the Communication's contents are translated into practice additional measures will need to be elaborated and adopted. That is the intention of the Commission's expected proposal for a marine Directive.

Suggested Marine Framework Directive

The idea of a proposal for a marine Directive has been discussed within the Commission and amongst key stakeholders for some time. The envisaged objective of such a proposal would be to ensure that the MTS objectives are in fact transferred into action, initially set out in EU and national legislation, before being implemented on the water.

Specifically, the Directive would introduce the following:

- The objective to protect, conserve and improve the quality of the marine environment through the achievement of 'good environmental status' in European seas.
- EU ecosystem-based marine regions would be defined/established on the basis of their hydrological, oceanographic and bio-geographic features. For each region an implementation plan would have to be developed by the coastal Member States. The plan would contain an assessment of the pressures and threats impacting on the marine environment and their costs. These plans would then outline a monitoring and assessment programme.
- Finally, there would be requirements under the Directive in relation to monitoring and reporting, details of which have not as yet been specified.

In effect, the Directive, if adopted, would establish global objectives to be met, but using regionally differentiated programmes of measures.

Even with this regional dimension, however, the potential implications of such a Directive are enormous. Extensive discussions are therefore expected, among the Member States in particular, of the potential costs and potential benefits of such a directive. These discussions will invariably be coloured by experiences with the Water Framework Directive (see below).

The need for obligations to be differentiated according to regions will also likely emerge as a key issue, particularly in the Mediterranean Sea where coastal Member States have relatively little control over the quality of the sea.

Lessons from onshore – the Water Framework Directive

The drive for coordination and integration of EU freshwater policy is already well underway, following adoption of the Water Framework Directive (WFD). The WFD demands integrated river basin management of water resources, linking and co-ordinating all previous water policies into a common framework.

Much like the MTS, the WFD was the result of an intensive exchange process between experts, stakeholders and policy

makers. And once the Commission proposal was ready, it took a further three years to be agreed by the Council and European Parliament. Even with such preparation and discussion, implementation of the Directive has not been timely or effective in all Member States. In July 2004, nine Member States were issued warnings from the Commission for failing to transpose the Directive (due in December 2003). Some Member States have become increasingly concerned about the level of resources necessary to give full effect to the Directive.

For more information on implementation of the WFD, see: <http://europa.eu.int/comm/environment/water/water-framework/strategy3.pdf>

• Developing a Maritime Sector Policy – the Green Paper

In July 2004, two years after work on the MTS had commenced, the new European Commission President Barroso was appointed. Among his earliest announcements was his intention to set up a Task Force to prepare a Green Paper on 'the future of EU Maritime Policy'. The Task Force was to be led by Commissioner Borg responsible for Fisheries and Maritime Affairs.

The Task Force has a 'cross-cutting' Steering Group made up of Commissioners for Enterprise and Industry, Transport, Environment, Regional Policy, Fisheries and Maritime Affairs, Research and Energy. The Steering Group, also chaired by Commissioner Borg, is to provide political guidance to and periodically review the work of the Task Force.

The Green Paper to be produced by the Task Force is to focus on the potential benefits to be gained by bringing together the different strands of EU maritime policy. An integrated approach is to be taken, seeking coordination and collaboration on maritime affairs at both global and regional levels. The overall aim is to boost the economic potential of the sea, avoiding conflicts and enhancing synergies between various industrial, technological and commercial maritime activities. That said, as Commissioner Borg has acknowledged, 'the first basic question to be addressed is whether the EU actually needs a maritime policy and, if so, what shape and form should it take'.²

The Green Paper is to be published in the first half of 2006. External experts, including public authorities and NGOs, are to be consulted on key issues and best practice. It does not appear to be the case that external stakeholders will be directly involved in the Task Force. According to a Communication from Commissioner Borg, however, the mobilising effect of the decision to establish a Task Force is already visible. 'Member States and regional authorities, stakeholder groups and international partners have already submitted numerous positive reactions and suggestions for this future policy.'

For more information, the Communication from President Barroso is available at: http://europa.eu.int/comm/fisheries/doc_et_publ/factsheets/legal_texts/docscm/en/com_maritime_en.pdf

The Commission's Maritime Unit website is at: http://europa.eu.int/comm/fisheries/maritime/index_en.htm

• The Marine Thematic Strategy and the Maritime Green Paper – making the connection

The precise relationship between the two initiatives – the MTS and the Green Paper – is not entirely clear at present. Indications are that the Commission wants the documents to support and complement each other, and there is to be considerable effort going into ensuring that this happens. How this will be achieved

in practice remains to be seen, particularly given the potential for one set of interests to dominate the other.

At a conceptual level at least, the two documents can be seen to be quite different and complementary. The Green Paper is essentially a marine equivalent to rural or urban development strategy. It should ideally provide a blueprint for sustainable development in the marine context, drawing together social, environmental and economic objectives in a way that is mutually coherent and reinforcing. To this end it should seek to sustain a healthy marine environment, and on that basis, work towards establishing a sustainable and in the long term, competitive maritime sector.

The Thematic Strategy, in contrast, has a purely environmental focus, aimed at identifying environmental problems and the policy adjustments needed to tackle these. It therefore provides the ideal 'environmental' input into the Green Paper discussions. The challenge will be to ensure that environmental limits identified in the MTS are fully reflected in the Green Paper, and not simply watered down by short-term social and economic considerations.

Of course, the two documents themselves will have differing legal status. The MTS is a legal requirement arising from the 6EAP. Although, if produced in the form of a Communication, it will not be legally binding, it is likely to give rise to a proposed Directive. This, if adopted, will be binding on Member State governments, and require transposition into national law. By contrast, the Green Paper is likely to be more concerned with general reflection about issues rather than production of binding Community law. Legal proposals may follow, but are not expected in the first instance.

Perhaps the biggest concern is that the Green Paper discussions could serve to delay the adoption of the marine Directive. Member States may wish to 'keep their options open' by deferring agreement on marine environmental objectives until they have a better view of the socio-economic potential of the EU's maritime sector and the associated implications of a rigorous environmental policy in this area.

Of course, Member States may simply use the Green Paper as a reason to slow down and eventually halt difficult discussions on the marine Directive. Maintaining momentum behind the MTS and the proposed Directive could prove to be both challenging and critical.

• Towards an effective EU marine policy?

Existing EU marine policies, both environmental and sectoral, are significant and continued effort is needed to ensure that these are effectively implemented. In particular, this includes the Habitats, Birds and Water Framework Directives, which together already offer tremendous scope for improved marine environmental protection in the short and medium term.

The renewed attention being given to marine issues, in large part due to the Sixth Environmental Action Programme and the new Commission President, is to be welcomed as providing opportunities to further consolidate action in this important area. The question for Europe and stakeholders now seems to be whether, in developing environmental and more general marine policies, the overall package is sufficiently coherent, that environmental limits can be sufficiently respected and that the vision of a future maritime sector is based on long-term sustainability.

The chances of success would seem to be greatly enhanced if action is underpinned by an appropriate and concrete set of environmental objectives.

² "Borg Task Force Sets Sail Towards", EuropeanVoice.com