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## TECHNICAL PAPER FROM THE CPMR GENERAL SECRETARIAT

# MARINE ENVIRONMENT AND DEVELOPMENT OF THE REGIONS: ISSUES RAISED BY THE MARINE STRATEGY FRAMEWORK DIRECTIVE (MSFD)

As part of the [approach](#) launched during the CPMR Political Bureau in February 2014, this paper addresses issues relating to the marine environment at international and European level in terms of the development of the maritime regions. This paper will focus on the implementation of the Marine Strategy Framework Directive (MSFD), cornerstone of European marine environment policies, and of the interpretation by the European Union of international conventions in this field.

After an initial, very complex phase of analysing the environmental status of European waters, the MSFD should now enter a phase to define the policy measures that Member States should implement in order to achieve and protect the good environmental status of European waters. This is likely to have a significant impact on all policies that have an effect on the marine environment, and therefore on the development strategies of maritime Regions.

Due to the necessity to focus their development policies within the framework of a sustainable approach, their political responsibilities in the territories, and the fact that the transposition of the MSFD into national law will involve obligations concerning all regional policies that have an impact on the marine environment, the Regions are to be key partners of the European Union in this process.

The implementation of the MSFD raises questions however, that this paper addresses after having repositioned the MSFD in the context of international conventions relating to the marine environment. These questions, which the CPMR poses from the perspective of the development of the territories, are as follows:

- Will the lack of available data allow for a marine environment strategy of the European Union to be established?
- Is the European regulation too demanding and complex?
- Which links between blue growth and current marine environment policies?

At this stage, these issues require investigating in more depth and a number of actions to be taken by the CPMR, which are listed in conclusion and which shall be included in the documents prepared for the next General Assembly of the CPMR (Umeå, Västerbotten (SE), 24 -26 September 2014). In the meantime and following the meeting of the CPMR Political Bureau on 6 June 2014, a specific meeting involving experts from the Regions will be held on 24 June 2014 in Brussels.

## I. RIO+20 AND MSFD: EXTENDING THE SUSTAINABLE DEVELOPMENT APPROACH TO THE SEA AT INTERNATIONAL AND EUROPEAN LEVEL

### I.1. A COMING TOGETHER OF SUSTAINABLE DEVELOPMENT AND THE SEA AT INTERNATIONAL LEVEL

Several international treaties and multilateral agreements address the conservation and sustainable use of oceans and seas. In parallel with the IMO's activity, focusing on maritime transport issues (e.g. [MARPOL](#), [OPRC](#), [OPRC-HNS](#) conventions), a set of more general initiatives concerning the sustainable development approach and its extension to the Sea have been developed within the framework of the UN. In addition to the **United Nations Convention on the Law of the Sea (UNCLOS)**, which defines the basic legal framework of activities affecting the seas and oceans, the following have been developed:

- The Regional Seas Programme of the United Nations Environment Programme ([UNEP](#)) aims to address the degradation of the oceans and coastal areas particularly through the creation of action plans. In most cases, these action plans are based on a regional convention and related protocols, such as: the Baltic Marine Environment Protection Commission ([HELCOM](#)), the Commission for the Protection of the Marine Environment of the North-East Atlantic ([OSPAR](#)), Commission on the Protection of the Black Sea Against Pollution ([BSC](#)) and the Convention for the Protection of the Mediterranean Sea Against Pollution ([Barcelona Convention](#)).
- Chapter 17 of Agenda 21, adopted in 1992, aiming to achieve the sustainable development of oceans and seas.
- The Convention on Biological Diversity ([CBD](#)), also adopted in 1992, and Decisions II/10 (conservation and sustainable use of marine and coastal biological diversity) and V/6 (ecosystem approach), which defines the key elements for a fair and integrated approach to the conservation and sustainable use of the coastal marine environment.
- The commitments of the World Summit on sustainable development held in Rio in 2002 on the application of an ecosystem approach to the Oceans and the follow-up provided through Resolution n° 66/288 "[The future we want](#)", adopted in 2012 during the Rio+20 Summit, through which the Regions commit to protect and restore the health, productivity and resilience of the oceans and marine ecosystems as well as to maintain their biodiversity by enabling their conservation and their sustainable use; and to effectively apply an ecosystem approach and the precautionary principle in the management of activities having an impact on the marine environment.

Major international negotiations processes are now taking place on the link between sustainable development and the Sea through, for example, the maritime dimension of the Millennium Development Goals (MDGs), or more specific negotiations on the issue of marine biodiversity beyond the jurisdiction of the States.

## **I.2. TRANSLATION OF INTERNATIONAL OBJECTIVES AND INTEGRATION OF THE MARINE ISSUES THROUGH THE MSFD AT EUROPEAN LEVEL**

### **The MSFD, cornerstone for the marine environment**

The EU's sustainable development approach is designed in line with international principles: the ecosystem approach, but also the precautionary principle and polluter pays principle. Initially, European Union legislation in the field of the environment applied to the land (e.g. Natura 2000, Water Framework Directive...). Gradually these laws were extended to the Sea, and recently, marine environmental issues have been integrated within the MSFD. It now oversees European regulations concerning the marine environment and gives concrete meaning to international commitments through European legislation.

The MSFD sets the objective for the States to define a strategy to achieve "good environmental status" in their waters by 2020. These strategies must be coordinated within four regions covering the European basins: the Baltic Sea, the North-East Atlantic<sup>1</sup>, the Mediterranean Sea and the Black Sea.

For each marine sub-region, an action plan should be presented by the Member States after development with relevant stakeholders (including the Regions that are involved in several countries, which is essential insofar as they will be restricted by the measures adopted, that are susceptible to have an impact on all policies affecting marine waters). This plan consists of:

1. An initial assessment of the environmental status of the marine waters and the environmental impact of human activities (2012);
2. A definition of good environmental status based on qualitative descriptors (2012);
3. A definition of the related indicators and targets (2012);
4. A monitoring programme (2014);
5. A programme of specific measures designed to achieve or maintain good environmental status of marine waters (2015-2016).

The potential impact of this process on development strategies is important, as the sustainability of activities affecting the Sea is a prerequisite for the development of the Regions and the well-being of their populations, and the fact that all of their land-based or maritime policies likely to affect marine waters are subject to the requirement to respect the "good environmental status".

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<sup>1</sup> The North-East Atlantic includes the North Sea, identified as a distinct sub-area within it

At this point, the Member States should have provided an assessment of the status of their seas, adopted a definition of "good environmental status" of their waters, and defined a comprehensive set of targets and related indicators in order to guide efforts with a view to achieving good environmental status of the marine environment by 2020.

This step is fundamental because it determines the future of the strategy built around the MSFD.

### **A difficult implementation**

Reports<sup>2</sup> published in February 2014 by the European Commission on the implementation of the MSFD paint a worrying picture: the data transmitted by the Member States is significantly insufficient to help establish the subsequent adoption of policy measures. For the EC, it is necessary to imply *"renewed and intensified efforts and rapid and important change in the way Member States, the European Commission, RSCs (Regional Seas Conventions) and other relevant organisations work together, focusing on joint action and planning, as well as policy coherence across sectors"*<sup>3</sup>.

This EC observation was put forward during the [HOPE](#) conference organised by DG Environment, as well as during the informal Environment Council in Athens on 14 May 2014.

The difficulties encountered as part of the implementation of the MSFD raise a number of technical and political questions.

## **II- QUESTIONS RAISED BY THE CPMR CONCERNING THE IMPLEMENTATION OF THE MSFD**

The CPMR intends to develop its work with its Member Regions on the basis of the questions below:

### **II.1. WILL THE LACK OF AVAILABLE DATA ALLOW FOR A MARINE ENVIRONMENT STRATEGY OF THE EUROPEAN UNION TO BE ESTABLISHED?**

The EC Report on the implementation of the MSFD highlights the very significant difficulties encountered in the gathering of data to define the good environmental status of the European waters. For the EC, due to the lack of data gathered at this stage, *"it will be challenging not only to achieve GES by 2020, but even to know how far we are from meeting the objective"*<sup>4</sup>.

Specifically, the EC notes :

- **A lack of indicators:**
  - **Environmental indicators.** A certain number of Member States often encountered very significant difficulties when developing or gathering indicators. As an example, among the 23 European States that are concerned by the MSFD, only 17 were able to fully carry out all the tasks relating to data collection. In addition, *"Some Member States did not distinguish clearly between the determination of GES and the targets themselves, or did not take into account their initial assessment in developing targets, turning a comprehensive, holistic process into a series of unrelated reporting exercises"*;
  - **Socio-economic indicators.** The Member States have not been able to deliver comprehensive socio-economic analysis of the use of marine waters and the costs of the environmental degradation of the marine environment. This point is very important in terms of the development of the Regions, insofar as the consideration of socio-economic issues is naturally at the heart of the potential impact of specific measures to be taken later.
- **A lack of comparable indicators and concepts between States and within maritime basins.** The EC underlines a lack of coordination within the maritime basins, which makes it impossible to carry out comparisons between the Member States' Reports. According to the EC: *"there is no shared EU understanding of GES...There are over 20 different GES determinations across the EU, and therefore no common or comparable goals"*<sup>5</sup>.

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<sup>2</sup> Refer to :

- [The first phase of implementation of the Marine Strategy Framework Directive \(2008/56/EC\)](#)
- [Commission staff working document](#)
- Reports per [country](#) and [region](#)

<sup>3</sup> COM (2014) 97 final, page 11

<sup>4</sup> COM (2014) 97 final, page 8

<sup>5</sup> COM (2014) 97 final, page 8

These elements are worrying, in terms of the European Union's ability to develop a strategy capable of protecting the marine environment on the one hand, and on the other hand in terms of the ability of the European Union to be objective in its approach to marine environmental issues. In a context that is bursting with the economic potential of Seas and Oceans, and where very partisan views on the state of the marine environment challenge each other, what can the strategy of the MSFD, even the maritime dimension of Rio+20, be based on if so much data is lacking? **Does this mean that the very general observation of the environmental status of marine waters, though recently confirmed in a [report](#) by the European Environment Agency, remains too general or partial to establish an objective policy and concrete measures?**

## II.2. IS THE EUROPEAN REGULATION TOO COMPLEX?

Observations of difficulties in implementing the MSFD leads to a second questioning on the feasibility, in terms of administrative ability and in technical terms, of the implementation of a process as ambitious as that of the MSFD. A process of this magnitude is, in itself, not in question, as the obligations that it implies and the obligations that are derived from it stem from the obligation voted by the Member States.

However the proliferation of European regulations is clear, particularly in the field of the environment and the use of marine and coastal areas: the MSFD interacts with 25 regulations or European Directives<sup>6</sup>. Even if the MSFD is rightly presented as a streamlining tool (just like the Directive that is currently being adopted on Maritime Spatial Planning), this generates a sense of complexity, especially from the Regions' perspective that the whole set of obligations and political, administrative and financial burdens focuses on. Warning signs were given on some issues. As an example, the Maremed project [report](#) on the implementation of the Water Framework Directive, developed on the initiative of the CPMR Intermediterranean Commission underlined the difficulties and complexity of this exercise on the ground.

More generally, at regional and local level, political decision-makers and professionals (marine energy industry, fishermen, businesses in the tourism sector, port clusters, SMEs and SMIs...) are often faced with a complex legislative framework. This sometimes makes it difficult to resolve conflicts generated between the uses of the sea and coastal areas and slows down initiatives, as the examples below demonstrate.

Even if, once again, the MSFD and the Directive currently being adopted on Maritime Spatial Planning are presented by the European Commission as streamlining instruments of European legislation, the difficulties of implementing the MSFD will raise these questions again. Should the number of texts be reduced and their content and management merged over time?

## II.3. WHAT LINKS BETWEEN BLUE GROWTH AND CURRENT ENVIRONMENTAL POLICIES?

The blue growth approach was recently formulated at European level to reflect the explosion of maritime economic potential. This explosion is accompanied by powerful economic and industrial dynamics across the whole world, in all fields that are likely to have a strong impact on the environment such as marine energies, exploitation of marine mineral resources, tourism, and more developed activities such as fisheries.

There is no possible future for blue growth if marine resources are not exploited in a sustainable way: the issue is therefore not to consider the sea as an Eldorado to pillage. Sustainable development is not only necessary, but it is also a source of growth and jobs.

However, there is considerable scope in the implications of sustainable development. Numerous examples of the interpretations of environmental standards exist, and could be used. These include:

- **Examples of difficulties in the development of renewable energies, such as those encountered with regard to the Viking wind farm (Shetland, Scotland).** Viking is a joint partnership between the Regional Council of Shetland and SSE plc, an electricity company. It will be the third park in Scotland if built and a major potential source of employment and wind energy in Shetland. Consent for the park was granted by the Scottish Energy Minister in April 2012. Nevertheless, in September 2013, a judgment following an action brought by a local NGO ruled that the project did not take due account of the obligations under the Wild Birds Directive (2009/147/EC) for the Whimbrel, which is a protected migratory species. The Scottish Ministers and Viking Energy appealed the decision.
- **Examples relating to the management of spaces, as in the case of the setting up of a fishing reserve in the Natura 2000 area of the Seine Bay (France).** The French Marine Protected Areas Agency and the Regional Directorate for Environment, Development and Housing (*DREAL: Direction Régionale de l'environnement, de l'aménagement et du logement*) in the Manche asked for four

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<sup>6</sup> Refer to Table n°2, page 7: <http://www.eea.europa.eu/publications/marine-messages>

fishing reserve areas to be established, in part of the Natura 2000 area located to the west of the Seine Bay, in order to protect wildlife as well as marine habitats. This proposal generated a strong reaction from associations of leisure fishermen and the Regional Committee for Maritime Fisheries and Marine Aquaculture (CRPMEM: *Comité Régional des Pêches Maritimes et des Elevages Marins*) in Basse-Normandie. As an operator involved in the management of the Natura 2000 sites, the CRPMEM had the opportunity to underline the complexity of the regulatory procedures associated with this.

The Regions are often at the forefront of initiatives aiming to overcome these difficulties. In parallel, they are also important actors in initiatives at sea basin level. Again, many examples could be given, including:

- The [SHAPE](#) project, which involves the Regions in the integrated management of natural resources, risk prevention and the resolution of conflicts between uses and users of the Adriatic Sea. SHAPE is co-financed by the 2007-2013 IPA Adriatic programme.
- The [GIONHA](#) project that aims to protect the development of marine resources and precious ecosystems of the marine area in the northern part of the Tyrrhenian Sea. The project is co-financed by the 2007-2013 cross-border Cooperation Programme Italy-Maritime France.

The debates on the management of expanding economic activities in the Seas and the Oceans will not lose any of their intensity in the years to come. At this stage, it is difficult to anticipate how these discussions will continue and what their impact will be on the way of thinking in terms of the regulations and environmental principles at international and European level: what actual content will be given when it is time for the measures to be taken in connection with the MSFD and more widely in the practical implementation of the Rio+20 maritime commitments?

#### NEXT STEPS FOR THE CPMR

It is important for the CPMR to continue integrating marine environmental issues in its maritime agenda, given their increasing impact for the Regions, particularly through the MSFD. Monitoring the implementation of the MSFD on the issues raised in this paper particularly involves:

- An interaction with the CPMR Member Regions on their contribution to the implementation of the MSFD and the difficulties that they encounter in this context. In several countries, the Regions are already involved in the practical implementation of the MSFD. Now that it enters into its second phase of implementation, it is possible and important to further develop the Regions' view.
- A link with the CPMR Geographical Commissions on maritime basins:
  - Interact with the Member States in the framework of regional Conventions, where appropriate through the observer role that they have (e.g. the Baltic Sea Commission is an observer within HELCOM);
  - Bring the discussions on the implementation of the MSFD, which contains a maritime basin dimension of the initiatives concerning the maritime basin strategies, and the discussions on the maritime dimension closer together: it is important that these two aspects are coordinated. The MSFD's ecosystem approach is reflected strongly within the sea basin strategies and the maritime dimension of macro-regional strategies.
- To integrate the international maritime dimension within the CPMR's action, through relevant Working Groups and the Geographical Commissions, from a European perspective, insofar as it is developed in compliance with the international processes on the maritime dimension of the Rio commitments.