

Strategies for Effective Marine Environment Protection Policy

Ladies and gentlemen,

In the name of the German Advisory Council on the Environment (SRU), I welcome you to the 12th EEAC-Annual Conference in Berlin. We are very pleased to host precisely this interesting meeting. The commitment of the EU to elaborate a thematic strategy on the marine environment by March 2005 is a unique opportunity to address the challenges for the protection of the marine environment and to strengthen the policy profile of the marine protection agenda. Against this background, the German Advisory Council on the Environment not only published a special report on the Marine Environment this year. But, moreover, it is – without any question – justified that the European Marine Strategy is the topic of the 12th EEAC-Annual Conference.

The EEAC-Working Group Marine has elaborated an excellent draft for an EEAC-Statement „Towards a European Marine Strategy“. The necessary elements of such a strategy are subjects of the workshops and will be discussed in a broad discourse here in Berlin. We are especially happy that members of the EU-Commission with you, dear Mr. Hagsström, and of three important regional Conventions with you, Mr. Daubaras (HELCOM), Mr. Simcock (OSPAR) and Mr. Mifsud (UNEP), could manage to participate in this conference. Further, I would like to welcome the other speakers and the chairs of the workshops.

Last but not least, I would like to say thank you to our co-hosts, the German Council for Sustainable Development (RNE) and the German Advisory Council on the Global Environmental Change (WBGU), and to the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety for its financial support.

1. European seas still at risk

The European seas remain at considerable risk. The marine ecosystems are both endangered and harmed especially by Europe’s fishing industry, nutrient and pollution inputs, shipping, and diverse local encroachments such as raw materials extraction, tourism, coastal protection and, more recently, the use of wind energy. Although significant reductions of pollution and nutrient inputs have been achieved in some areas in the last two decades, there is still a long way to go to reach a satisfying state of the seas. For example, no sufficient improvements have been achieved as regards the impact of fishing and nutrient inputs from agriculture. Increasing pressures of use on the seas call for far-reaching

amendments in key policy areas. There is a need for greater efforts and, in some cases, for more fundamental structural changes.

2. European Marine Strategy - A chance for the marine environment

A look at the various fields of activity in marine environment protection - which means mainly fishing, hazardous substances, eutrophication, shipping and local or regional impacts like marine mining, dumping of dredged materials, pipelines, cable channels and planned offshore wind farms - reveals numerous sector-specific problems, deficits in action already taken and in opportunities available for further action. There are also fundamental cross-sectoral deficits, obstacles to success and management deficiencies. Although a number of acts of Community legislation affect the protection of the marine environment, currently there exists no coherent policy to manage the marine environment at the European level. Instead there is a complex web of interacting and overlapping policies that leave significant problems unaddressed.

The planned European Marine Strategy is, in principle, a major opportunity to deliver a coherent policy for the first time:

With its legislative powers in almost all areas of marine environment protection, the EU holds a key position of responsibility when it comes to protecting the seas. A great opportunity lies in the fact that EU law now commits the vast majority of North Sea, Baltic and Mediterranean riparian states to supranational cooperation and legislation. The binding nature of EU law on Member States and the special sanctions available for dealing with non-implementation ensure a relatively high level of effectiveness for EU law and for implementation of international marine protection goals by the Community. Under Article 211 EC, the Commission is the central body responsible for monitoring both the legislative implementation and the actual application of binding Community law in the Member States. It has standing to bring before the European Court of Justice proceedings for failure to fulfil Treaty obligations under Article 226 EC and, where appropriate, may even impose penalties under Article 228(2) EC.

EU law also ensures that Member States are less likely to operate on the freerider principle (relying on other Member States to act) or to point the finger at other states' failure to achieve set targets. These power relations enable the EU and its various bodies to make a significant contribution to implementing and enforcing marine protection goals.

3. Integration as a key issue

However, it is still not clear that the Marine Strategy will contain sufficient mechanisms and institutional arrangements for a more effective protection of the European seas. The interaction between the different Community policies is a key issue for the success of a Marine Strategy. As the so called Cardiff-process has more or less failed, environmental protection policy has to come together particularly with fishing, agriculture, chemicals and transport policies in the Marine Strategy itself. To deliver an integrated marine policy, the Strategy needs to move beyond sectoral approaches. Therefore, the different EC Directorate Generals (DGs) have to be involved. But instead of doing so, important fields like fishing, agriculture and shipping are almost completely factored out during the present preparation of the Marine Strategy. The effectiveness of any strategy which excludes essential sources of pollution such as fishing, agriculture or marine transport will inevitably be limited. The ecosystematic approach to marine protection taken by the Commission is therefore from the outset incomplete. Considering the actual state of pollution, this can scarcely be regarded as appropriate. Why not, therefore, take cooperation between those sectors as an essential point of the Marine Strategy, as has already been the case with the joint communication of the DG Transport and the DG Environment following the *Prestige*-accident? The Marine Strategy would thus have a chance of becoming an example of genuine integration of environmental protection.

4. Policy recommendations for certain sources of pollution

Now, I would like to stress some key recommendations that the German Advisory Council on the Environment identified in its Special Report from this year as crucial at the European level for certain sources of pollution.

4.1 Path to Sustainable Fishing

Fish stocks must be managed so that their fishery utility is secured over time. The recommendations made by the ICES on the use and conservation of fish stocks provide the best available scientific basis. A key requirement of sustainable fisheries is thus the implementation of the ICES recommendations on conservation and recovery of fish stocks. Instead of negotiating annual total allowable catches (TACs), multi-annual catch limits should be fixed under the management and recovery plans for stocks involved. This includes fishing bans in instances where stocks have already fallen below safe biological limits.

The second key requirement for sustainable fisheries is that by-catches and discards be significantly reduced. A further increase in selectivity in fishing equipment and methods is

needed. Apart from application of measures to prevent by-catch, urgent consideration should be given to implementing a general ban on discards. In the main, any discards landed could be supplied to industrial fish processing and save fishing effort elsewhere. Also, the volume of discards can only be controlled by inspecting complete landings and with the view to researching ways to improve fishing equipment. Further, other technical measures are needed to reduce damage to the benthos.

The third basic condition for sustainable fisheries is the designation of undisturbed areas. There is a compelling need for additional protected areas. These no-fishing zones are urgently needed so that bottom fauna can develop undisturbed in areas where particularly sensitive benthic organisms find their habitats. The protected areas also serve to protect stocks of commercial fish species.

In implementing these targets, the EU carries a key responsibility given its extensive powers as regards the fishing industry and the great extent to which the Common Fisheries Policy (CFP) shapes the fishing sector. In terms of the foregoing evaluation and presentation of requirements for the CFP, the following is of key importance:

- Sustainable stock management with catch quotas and fishing bans that are – as pointed out above - tightly based on the ICES recommendations.
- Significant reductions of by-catches and discards.
- A broad protected area concept that considers all other uses of the seas and oceans.
- The withdrawal of all subsidies that foster high fishing capacities, and stronger support for sectoral reduction.
- Other appropriate codes of practice to prevent by-catches and discards, including a ban or restriction on particularly by-catch intensive industrial fisheries.
- Better enforcement through an EU control body and increased pressure for more effective enforcement measures within the Member States.

4.2 Reducing Nutrient Inputs in the seas

At the international level the riparian states of the North-East Atlantic, the North Sea and the Baltic agreed to a 50 per cent reduction by 1995 (compared with 1985) in inputs of nitrogen and phosphorus. While phosphorus inputs in surface waters were significantly reduced up to 1995, none of the states achieved anywhere near the 50 per cent reduction target for nitrogen inputs. The political will expressed in ambitious provisions set out by the International Conference on the Protection of the North Sea and by OSPAR and HELCOM must also be carried through to the ratification of practical measures both at EU and national

level. The lack of coherence between the individual regulatory levels is no longer acceptable. The Common Agricultural Policy (CAP) plays the important role like the CFP does in the fishing sector.

A reform of the CAP is needed that goes far beyond the compromise reached in June 2003. Above all, this means:

- The targets aimed at increased production contained in Article 33 (1) EC should be replaced with an environmentally focused wording.
- The marine environment protection targets must actually be integrated into agricultural policy (Article 6 EC).
- Payment of agricultural subsidies must be completely decoupled from production volume without broad exceptions.
- Modulation or reallocation of funding from the first to the second pillar of the CAP must take place in significantly greater scope than planned and in the longer term should replace the payments made under the first pillar.

The Nitrates Directive should be put into practice in coastal and marine waters. Eutrophic coastal and marine waters or those at risk of eutrophication must be identified and handled as areas at risk. The specific protection needs of the seas should also be integrated into the action programmes to be developed under the Water Framework Directive. Where necessary, the competent authorities should agree targets in the action programmes that go beyond the actual requirements, especially as regards agricultural activities in river catchment areas.

Given that monitoring is often difficult in the agricultural sector, the German Advisory Council on the Environment calls for pending and future action programmes to be focused on fewer but more controllable provisions that also serve water protection such as

- area-specific restrictions on livestock numbers,
- year-round vegetation coverage with intermediate fruit crops and winter vegetation and
- a widespread ban on ploughing of grassland.

4.3 Protecting the seas from hazardous substances

Protection of the seas from harmful substances calls for a broader approach to environmental and, particularly, chemicals policy that takes in marine environment protection requirements. Installation-specific emission restrictions are not enough. The German Advisory Council on the Environment accordingly considers key instruments of effective

marine environment protection to be emission limits *plus* systematic bans and restrictions on the use of those chemicals which cannot be adequately controlled at source.

- The generation target of OSPAR and HELCOM should be integrated in all relevant EU directives and regulations and consequently in national legislation. The aim should be the cessation of inputs, emissions and losses of harmful substances in the marine environment by no later than 2020. Further development and implementation of the Water Framework Directive and of all harmful substance-related EU policies must take in both the substantive aims and the timeline contained in the generation target.

- The German Advisory Council on the Environment also sees a need for harmonisation of the EU evaluation system with those systems of OSPAR and HELCOM, especially concerning substances with PBT properties, with the evaluation system used in European water protection and chemicals policy. The existing EU evaluation system fails to give adequate consideration to the needs of marine environment protection. Priority hazardous substances under the Water Framework Directive should be at least those substances contained in the OSPAR and HELCOM lists of substances for priority action.

- Of utmost importance in this regard is that, at Community level, Member States agree emission threshold values as quickly as possible – at least for the 33 substances already identified as priority – and, at national level, emission threshold values for other pollutants listed in the Annex to the Water Framework Directive. The Water Framework Directive must not suffer a similar fate to that of the Water Pollution Directive (76/474/EEC), in which hexachlorobenzenes are the only persistent organic pollutants for which the EU has so far laid down emission limits.

- Emission permits under the Water Framework Directive should also take into account the emissions impact on the marine environment.

4.4 Combating Pressures and Risks from Shipping

Marine transport and the regulation thereof are naturally influenced by their international character. Like the battle against chronic marine pollution, improvements in marine safety require international cooperation. The International Maritime Organisation (IMO) therefore plays a significant role. Nevertheless the IMO's approach to finding solutions generally involves a lengthy decision-making process and is often reduced to the lowest common denominator. And, furthermore, international marine safety standards are effective only if they are subject to a uniform implementation which is designed to meet certain effectiveness criteria. As is the case for such bodies in the other fields of international environmental law, no comprehensive powers of enforcement have been conferred on the IMO as an

international organisation. However, unlike the IMO, the EU has at its disposal mechanisms for monitoring, implementation and enforcement under Articles 211, 226 and 228(2) EC.

- By implementing international standards in directives and regulations and subsequently enforcing that legislation, the EU can make a significant contribution to improving marine safety. First, the Commission can take action with a view to ensuring the uniform implementation of international maritime standards on vessels flying the flag of a Member State. By enforcing stricter port State controls in Community ports, the Commission can, moreover, exert appropriate pressure on “third-country vessels”.

- However, the EU’s role in the field of marine-safety policy is not limited merely to that of an “aid to implementation”. It is true that, in principle, the primacy of international law in the field of marine safety should remain the rule, but where the marine safety standards agreed under international law prove to be inadequate to protect seas and coastlines, the EU may in certain circumstances itself take the initiative. In such situations the EU can act as a “motor” for the development of stricter global provisions on marine safety by adopting Community rules which are more exacting than those enacted under international law. The example of the phasing out of single-hull tankers impressively demonstrated the EU’s potential in this respect. Where necessary, the EU should not hesitate to perform the function of an impulse for international law, where appropriate by setting regional standards, and thus contribute to that law’s development. Stricter regional conditions for calling at ports are in keeping with the relevant international law.

But, both in its function as an aid to implementation and in its role as a policy maker, the EU must endeavour to create a coordinated and constructive coexistence of Community policy on protection of the marine environment and Community marine safety policy. The current work on a European strategy for marine protection offers, as said before, the opportunity to do so.

4.5 Protecting Regional Habitats

The European seas are increasingly influenced by diverse local activities like marine mining, the dumping of dredged material, pipelines, cable channels and planned offshore wind farms. Alongside and in conjunction with the ubiquitous pressures posed by shipping, fisheries and substance inputs, these regional impacts can, to a significant and increasing extent, contribute to the endangerment, degradation and destruction of marine communities and their habitats. The number and size of relatively untouched and undisturbed habitats that could serve both as breeding and recovery areas is dwindling rapidly. Against this background, there is an urgent need for more effective measures than those already implemented: firstly, to protect ecologically valuable areas from disturbance (especially

breeding, resting and recovery areas) and, secondly, to achieve a minimum of protection from excessive encroachments.

- Therefore, the integrated protected area network aimed for under the Habitats Directive and the Bird Directive and also under the HELCOM System of Coastal and Marine Baltic Seas Protection Areas (BSPA) and the OSPAR Marine Protected Area Programme has to be implemented as soon as possible.

- There is a need for stringent and transparent linkage, harmonisation and simplification of the various protection programmes, protected area categories and criteria, including the integration of species-specific protection provisions from the prevailing species protection agreements.

- Marine spatial planning alongside land-based spatial planning has to be implemented to ensure that diverse uses are formally and bindingly coordinated – both in terms of the uses themselves and of marine environment protection requirements – particularly to avoid locating industry in valuable or sensitive habitats. The German Advisory Council on the Environment sees an integrated strategy and action plan together with spatial coordination as vital to marine environment protection, which is essentially a multilateral, cross-sectoral responsibility. It appears that national programmes of this kind do not yet exist in Germany and many other Member States. The EU should thus require national programmes to ensure that such plans are uniform and can be integrated both horizontally and vertically.

5. Towards a European Policy on the Marine

As I said at the beginning, the commitment of the EU to elaborate a thematic strategy on the marine environment by March 2005 is a unique opportunity to address the challenges described above and to strengthen the policy profile of the marine protection agenda. Against this background, key objective of the Conference is the contribution to the ongoing orientation debate on the thematic strategy. The variety of the speakers and the chairs of workshops offers first hand insight on the challenges and the strategic reflections of the European Commission and the stakeholders involved. The EEAC Marine Working Group furthermore will expose the EEAC-Statement on the thematic strategy on the marine environment.

I look forward to interesting discussions and I wish you a pleasant stay in Berlin.