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The German
Advisory Council
on the Environment

**Communication from the
Commission to the Council
and the European Parliament:
“Towards a strategy to protect and
conserve the marine environment”**

COM(2002) 539 final, 02.10.2002

Statement

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1. INTRODUCTION

The European Community, in the 6th Community Environment Action Programme, committed itself to develop a thematic strategy for the protection and conservation of the marine environment which is supposed to promote the sustainable use of the seas and the conservation of marine ecosystems. Against this background, the Commission of the European Communities adopted the Communication 'Towards a strategy to protect and conserve the marine environment'¹ which is intended to provide the basis for a future EU marine environmental protection strategy. Until now, the EU has confined its activities in the field of marine protection to the membership and co-operation in international marine environmental protection organisations. Although a number of acts of Community legislation - apart from other issues - also affect the protection of the marine environment, currently there exists no integrated strategy for the comprehensive protection of the marine environment. The Commission understands the Communication as a first step to depart from the sector-oriented approach which it has pursued until now and intends to initiate the development of an integrated ecosystem-based protection concept.

The Advisory Council on the Environment welcomes this approach. The increasing pressure on the marine environment which is caused by manifold sources and the complex nature of the marine ecosystems urgently require the substitution of the sector-orientated marine protection approach by an integrated ecosystem-based protection concept. This new approach needs to be developed and implemented without further delay. The effects of eutrophication, the input of hazardous substances and overfishing are the most significant threats to marine ecosystems. However, the Advisory Council on the Environment fears that the policies and measures which are announced in the Communication are insufficient to address the damages that already have occurred and the acute threats to the marine environment in an efficient and sustainable manner. Thus, the Advisory Council on the Environment recommends the Federal Government to promote the further development of the EU marine protection strategy while having particular regard to the aspects which shall be illustrated in this Comment.

¹ Commission of the European Communities, Communication from the Commission to the Council and the European Parliament - Towards a strategy to protect and conserve the marine environment, COM(2002) 539 final, 02.10.2002.

2. EUTROPHICATION

The Commission strives to eliminate human induced eutrophication problems by 2010 by a progressive reduction of anthropogenic inputs of nutrient to the marine environment.² Among the measures which are announced to attain this objective figure the following: the development of regional specific action and timeframes in collaboration with the regional marine conventions, the more vigorous implementation and enforcement of the nitrates and urban wastewater directives and the proposal of new, complementary instruments, including the reduction of ship NO_x emissions, in the context of the strategy to reduce air pollution from seagoing ships.³

Since none of these actions specifically addresses agricultural fertilisation which is the principal cause of the eutrophication of marine waters, the Advisory Council on the Environment considers the measures announced by the Commission to be inadequate to provide for an efficient protection of the marine environment from eutrophication effects. Nutrient inputs that stem from agricultural sources exceed nutrient inputs from industrial and urban waste water treatment plants and from atmospheric deposition by far. Furthermore a significant reduction of nutrient emissions, especially of phosphorous, originating from wastewater treatment plants was recorded over the past years. Disregarding this clear allocation of the pollution sources, the current structure of the EU agricultural policy encourages the excessive fertilisation of agricultural land. Consequently, a policy which strives to reduce the eutrophication of marine waters has to start from a fundamental reform of the current structure of the Common Agricultural Policy (CAP). The Advisory Council on the Environment approves the proposals which the Commission submitted in the context of the midterm review of the CAP⁴ as an essential first step of this reform. It is of the utmost importance to integrate the requirements of marine environmental protection into both pillars of the CAP. More financial means have to be transferred from the first to the second pillar of the CAP to provide better incentives for farming practices which result in reduced nutrient inputs.

Regrettably, these plans to reform the CAP have been called into question by certain interpretations of the Brussels European Council conclusions of October 2002 regarding the limitation of direct payments in the agricultural sector. These interpretations apparently influenced the drafting process of the proposals for Regulations which the European

² COM(2002) 539 final, 02.10.2002, page 19, objective 5.

³ COM(2002) 539 final, 02.10.2002, page 19, objective 5; page 23, action 9.

⁴ Commission of the European Communities, Communication from the Commission to the Council and the European Parliament - Mid-Term Review of the Common Agricultural Policy, COM(2002) 394 final, 10.7.2002.

Commission recently published.⁵ These proposals fall significantly behind the Commission's original plans to reform the CAP. The Federal Government should decisively insist on the comprehensive realisation of the initially proposed reforms and urge for a better consideration of the requirements of marine environmental protection in the further development of the reforms. This applies in particular to the necessity to reduce the utilisation of fertilisers.

On the basis of the measures which the Commission announced in the Communication, the objective to eliminate the eutrophication of the North Sea and the Baltic Sea by the year 2010 cannot be attained. Therefore, the Advisory Council on the Environment advises the Federal Government to insist on a structural reform of the CAP according to the preceding outline.

3. HAZARDOUS SUBSTANCES

The sinking of the oil-tanker 'Prestige' off the north-western Spanish coast in November 2002 was yet another incident which raised the public awareness towards the immense threat which hazardous substances pose to the marine environment. The destruction of the ecosystems in the coastal and marine regions which are affected by the oil spill has disastrous effects on the local economy. It is against this background that the Advisory Council on the Environment stresses the necessity to modify and to tighten the relevant legislation and control mechanisms so as to minimise the probability of the occurrence of such accidents. Appropriate means for an enhanced shipping safety would be suitable technical equipment, the definition of shipping routes and emergency aid measures.⁶ Despite the, once more, overt shortcomings regarding the demands of navigational security and the corresponding control mechanisms, one must not disregard the fact that it is not the accidental but the chronic input of hazardous substances via rivers and the atmosphere that constitutes the principal source of pollution. In this regard, the

⁵ Commission of the European Communities, Proposal for a Council Regulation establishing common rules for direct support schemes under the common agricultural policy and support schemes for producers of certain crops; Proposal for a Council Regulation amending Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and repealing Regulation (EC) No 2826/2000; Proposal for a Council Regulation on the common organisation of the market in cereals; Proposal for a Council Regulation on the common organisation of the market in rice; Proposal for a Council Regulation on the common organisation of the market in dried fodder for the marketing years 2004/05 to 2007/08; Proposal for a Council Regulation amending Regulation (EC) No 1255/1999 on the common organisation of the market in milk and milk products; Proposal for a Council Regulation establishing a levy in the milk and milk-products sector, COM(2003) 23 final, 21.01.2003.

⁶ The Communication from the Commission to the European Parliament and to the Council on improving safety at sea in response to the Prestige accident, COM(2002) 681 final, 03.12.2002, can only constitute a first step in this direction.

Advisory Council on the Environment welcomes the Commission's intention to strive for a high quality level of marine waters and to ultimately approximate the concentrations of hazardous substances in the marine environment to the background values for naturally occurring substances and close to zero for man-made synthetic substances. The Commission intends to attain these objectives by, i. a., actively pursuing the implementation of the objectives set in the Water Framework Directive (WFD) and by aiming to integrate these objectives into other relevant Community policies. In this regard, the Commission considers the Community policies in the fields of chemicals and pesticides to be of particular significance. Although these measures are necessary to protect the marine environment from the threats posed by hazardous substances, they are insufficient to guarantee a comprehensive protection which complies with the obligations resulting from the relevant regional seas conventions. The implementation of the objectives of the WFD must take better account of the specific requirements of marine environmental protection. Community policies which affect the marine environment must adequately reflect these requirements.

Various substances which pose a serious threat to the marine environment and which – for that reason – have been classified as “chemicals for priority action” by the treaty Commissions of the regional seas Conventions for the North-Atlantic (OSPAR-Convention)⁷ and the Baltic Sea (HELSINKI-Convention)⁸ are not referred to in the Decision in which the EC by virtue of Article 16 para. 3 of the WFD establishes a list of priority hazardous substances.⁹ Among these substances figure polychlorinated biphenyls, various dioxin-isomers and a number of brominated flame retardants. The incoherence of the priority lists is, i. a., due to the fact that the EU and the regional marine protection organisations base the evaluation of the hazard which a substance poses to the marine environment on different criteria. In this context, the incoherent evaluation of the substances with regard to the specific threat which they pose to the marine environment is an essential aspect. By attributing priority for action to different – or rather to a lower number of - hazardous substances than prescribed by the regional seas protection organisations, the EU-regime provides for a deficient level of marine environmental protection.

⁷ Convention for the Protection of the Marine Environment of the North-East Atlantic of 22. September 1992, 32 ILM (1993), entry into force: 25.03.1998; ratified by the EC by virtue of Council Decision No. 98/249/EC of 7 October 1998, OJ No. L 104 of 03.04.1998, p. 1.

⁸ Convention on the Protection of the Marine Environment of the Baltic Sea Area, entry into force: 17.01.2001; ratified by the EC by virtue of Council Decision No. 94/157/EC, OJ No. L 73 of 16.03.1994, p. 19.

⁹ Decision No. 2455/2001/EC of the European Parliament and of the Council of 20 November 2001 establishing the list of priority substances in the field of water policy and amending Directive 2000/60/EC, OJ No. L 331 of 15.12.2001, p. 1.

This failure of the regime also amounts to a breach of the obligation to co-operate with other parties to the regional seas conventions. Therefore, the Advisory Council on the Environment considers the harmonisation of the procedures for the evaluation of hazardous substances and the completion of the EU-WFD-list on hazardous substances according to the requirements of public international law to be of urgent necessity. All substances which by OSPAR and HELCOM have been classified as substances for priority action must be qualified as priority hazardous substances according to the WFD.

The Advisory Council on the Environment notes that the relevant provisions of the WFD also fall short of adequately addressing the timeframe which is envisaged by the international agreements. Both the OSPAR- and the HELSINKI-Commissions committed themselves to the principle, commonly referred to as the 'Generation Target' which has been established by the International Conference on the Protection of the North Sea. According to this principle, all discharges, emissions and losses of hazardous substances to the marine environment shall come to a complete stop by the year 2020. The WFD requires the European Commission to base the proposals for the cessation or phasing-out of discharges, emissions and losses of priority hazardous substances upon a timetable of 20 years.¹⁰ The way in which this provision is drafted, however, provides - at best - for the achievement of the Generation Target regarding those substances which by virtue of Decision 2455/2001/EC are already listed as priority hazardous substances. The regime of the WFD falls short of providing for the achievement of the Generation Target concerning those substances which, deviant from the OSPAR- and HELCOM-lists, have not been qualified as priority hazardous substances and all substances which are listed as candidate substances in Annex 3 to the 'OSPAR Strategy with regard to hazardous substances'. It is due to this deficiency that the Commission's general declaration of intent to actively pursue the implementation of the objectives of the WFD qualifies as the minimum obligation which the EU owes in the light of its international responsibility. Therefore, the Advisory Council on the Environment recommends to work towards the modification of the wording of objective No. 4 and action No. 5¹¹ so as to clearly reflect the timely dimension of the Generation Target. As a member of OSPAR and HELCOM the EU should unrestrictedly align its marine environmental protection strategy to this reasonable objective.

The Commission correctly strives to integrate aspects of marine environmental protection in the EU chemicals policy which is currently under review. As a basis for the reform process the Commission published a White Paper in which it announced the introduction of a new system

¹⁰ Article 16 para. 6, sub-para. 1, indent 1, sentence 2 of the WFD.

¹¹ COM(2002) 539 final, 02.10.2002, p. 22.

for the control of hazardous substances.¹² However, the process of drafting proposals for legislation to implement the measures which are laid down in the White Paper is considerably delayed. First drafts of these legislative acts, moreover, indicate a significant weakening of the Commission's initial proposals. These are, i. e., attributable to interventions made by the German economy which continued regardless of the agreement of March 2002 reached by the Federal Government, the German chemical industry association ('Verband der chemischen Industrie' – VCI), the mining, chemical and energy industrial union ('Industriegewerkschaft Bergbau, Chemie und Energie' - IGBCE) concerning a constructive attitude towards the White Paper. As elaborated in more detail in its Environmental Report of 2002, the Advisory Council on the Environment approves the principles of the new system but also calls for certain improvements.

The new system, as envisaged by the European Commission, is supposed to consist of the elements registration, evaluation and authorisation of chemicals and is commonly referred to as the 'REACH-system'. According to the White Paper all substances with an annual production volume exceeding one tonne should be subject to registration in a central database. The evaluation requires the careful assessment of the hazards for the human health and the environment caused by chemical substances in order to identify adequate risk-management measures. Regarding substances of very high concern, authorities will have to give a specific permission before such a substance can be used for a particular purpose, marketed as such or as a component of a product. Substances which are carcinogenic, mutagenic or toxic to reproduction (this applies to CMR-substances of the categories 1 and 2) and substances with persistent organic pollutant properties are supposed to be covered by the special permission requirement regardless of their production volume. In the White Paper, the European Commission announces to postpone the decision about the incorporation of additional substances into the REACH-system. In addition to those chemical substances which according to the White Paper are supposed to come under the authorisation requirement of the new REACH-system, both substances with persistent, bioaccumulative and toxic properties (PBT-substances) and very persistent and very bioaccumulative substances (VPVB-substances) pose a significant threat to the marine environment.

The Advisory Council of the Environment is of the opinion that, in the process of the further development of the new chemicals strategy, it is vital to extend the ambit of the forthcoming REACH-system to all substances which qualify as being very hazardous. This implies the necessity to extend the authorisation requirement to PBT- and VPVB-substances. The authorisation requirement should be applicable regardless of the production volume of the substances. Moreover, the elaboration of the common criteria for the classification of substances

¹² Commission of the European Communities, White Paper – Strategy for a future Chemicals Policy, COM(2001) 88 final, 27.02.2001.

as PBT and VPVB has to be carried out in conformity with the requirements of public international law (OSPAR). Hazardous substances often have damaging effects to the environment even if they occur in low concentrations. Thus, the Advisory Council on the Environment advocates to revoke or to significantly reduce the production volume threshold which is currently being discussed as the precondition for the applicability of the REACH-system. Moreover, the temporal dimension of the generation target must be integrated into the REACH-system. This necessitates to subject all substances which are listed in the priority lists of the regional seas conventions to the authorisation requirement. The authorisations are to be issued on the condition that the utilisation of the substances concerned is carried out so as to guarantee that after the year 2020 - at the latest - no releases of the substances to the environment can occur. Moreover, in view of the transport effects of the natural environment, the Advisory Council on the Environment considers it essential to subject substances which are produced exclusively for extra-Community export to the REACH-system. The availability of less hazardous substitute chemicals must be established as an independent reason for the refusal of the authorisation of a substance.

The Advisory Council on the Environment welcomes the Commission's initiative to integrate aspects of marine environmental protection into the Community's pesticides policy. In the process of further developing this policy, particular attention should be drawn to the requirement to include all those pesticides in the Community's pesticides policy which have been classified as substances for priority action by the OSPAR and HELCOM Commissions. In addition, the further development and the implementation of the EU pesticides policy must take due account of the Generation Target. This, in the view of the Advisory Council on the Environment, requires the prohibition of those pesticides, which have been qualified as substances for priority action by the regional seas conventions. The Federal Government should work towards such a prohibition on EU level.

4. FISHERIES

The Advisory Council on the Environment welcomes the intention of the Commission to halt the drastic decline of the fish stocks by an improved integration of environmental protection requirements into the Common Fisheries Policy (CFP). In this regard, the Commission, in a Communication dated May 2002, announced its intention to progressively implement an ecosystem-based approach, to the extent permitted by scientific knowledge.¹³ By this means, a sustainable management of fish stocks could be attained in the long term. However, the

¹³ See the Communication from the Commission setting out a Community Action Plan to integrate environmental protection requirements into the CFP, COM(2002) 186 final, 28.05.2002.

Advisory Council on the Environment considers the measures which the Commission announces to reach this objective to be insufficient to halt the substantial threats which marine ecosystems face due to overfishing and the utilisation of fishing techniques harmful to marine ecosystems. To halt these threats, the immediate reduction of the fishing pressure to a level which permits the long-term conservation and, as the case may be, the recovery of the fish stocks is required. In the light of the existential threat of numerous fish stocks, the (temporal) closure of particularly endangered fisheries must urgently be taken into consideration as an emergency measure. Accordingly, last autumn, the International Council for the Exploration of the Sea (ICES) recommended the closure of the cod fishery in the North Sea, the Skagerrak the Irish Sea and in the waters west of Scotland. Moreover, the sustainable management of fish stocks necessitates the efficient monitoring of compliance with catch restrictions. However, there is no such efficient surveillance today and, due to insufficient enforcement, the actual catch rates exceed the TACs by far. This situation has to change if fish stocks are not to be definitely lost and the fishing sector be brought to a complete ruin.

Furthermore, the by-catch rates of juvenile fish, non-target species, marine mammals and birds have to be reduced without further delay. This claim has particular relevance regarding the by-catch of juvenile fish which are below their minimum landing size, since this practice results in the significant loss of potential yields from a fishery. Due to considerable injuries, approximately 90 % of the discarded fish do not survive the discard. Thus, the vast majority of discarded fish cannot grow to their permitted landing size and cannot contribute to the reproduction of the stock. In the long term, the destruction of benthic ecosystems by ground trawlers will result in a decreased productivity of the ecosystems. A fact which the Commission is perfectly aware of. In its 'action-plan for the conservation of the biological diversity of fisheries'¹⁴ it proclaimed wide-ranging regulatory and technical measures, in particular with a view to reducing by-catch rates.

At the EU Fisheries Council, however, not even the reluctant reform proposals made by the Commission could win recognition. The TACs which the Council agreed in the course of its meeting held last December considerably exceed the restrictions which are necessary to conserve the most endangered fish species. The Council thus granted preference to the short-term economic interests of the fishing sector over the mandatory requirements of the conservation of fish stocks. The Advisory Council on the Environment is of the opinion that this policy is inappropriate and that it will prove fatal for the future of the fishing sector. In contrast, the Advisory Council on the Environment welcomes the position which the Federal Government advocated in the Fisheries Council and its endeavours towards the realisation of a reasonable and conserving management of fish stocks. After all, certain measures regarding the

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more efficient control of catch-rates and a halt to the spending of public funds for trawler construction were agreed.

The Advisory Council on the Environment advises the Federal Government to continue to urge the necessary reforms vigorously. In particular, the Federal Government should work towards the adoption of long-term management plans. These plans should set up restrictions on the permitted catch quotas which allow the sustainable reproduction of fish stocks as well as the necessary recovery programmes. Moreover, environmentally sound fishing techniques should be promoted and, in the process the implementation of the Habitats-Directive, no-take zones should be established in particularly vulnerable marine environments. The Commission's plans regarding the preservation of the marine biodiversity should be substantiated promptly and be integrated in the CFP as far as possible.

5. CONCLUDING RECOMMENDATIONS

The further development of the EU marine protection strategy offers the Federal Government the exceptional opportunity to assume a leading role in the sectors agriculture, chemicals and fisheries which have been examined in this comment. This applies in particular to the agriculture and fisheries sectors since the statements in the Communication with regard to these sectors are apparently influenced by the Commission's lack of courage to give an impetus to the urgently required reforms. Hence, the Advisory Council on the Environment recommends the Federal Government to emphatically participate in the development of the EU marine protection strategy at an early stage having particular regard to the following aspects:

1. A radical structural reform of the CAP is urgently required. The principal aim of this reform must be the halt of the over-fertilisation of agricultural land.
2. The measures which the EU-Commission proposed in the framework of the mid-term review of the CAP have to be further developed and implemented with a particular view to the reduction of the eutrophication of marine waters.
3. On EU-level, the Federal Government should urge not to carry out the enlargement of the Union so as to impede the necessary reforms of the CAP.
4. At least those substances which are referred to in the lists of substances for priority action drawn up by the HELSINKI and OSPAR Commissions must be qualified as priority hazardous substances according to Article 16 para. 3 of the WFD.
5. The further development and the implementation of both the WFD and of all EU policies which are applicable to hazardous substances has to be carried out with regard to the realisation of the substantial and temporal aims of the Generation Target.
6. The entire range of very hazardous substances has to come under the ambit of the future REACH-system. This applies in particular to PBT and VPVB substances and regardless of

the fact whether the substances are produced for intra-Community trade or exclusively for export. The thresholds for the applicability of the REACH-system have to be revoked or significantly reduced.

7. The availability of less hazardous substitute chemicals must be established as an independent reason for the refusal of the authorisation of a substance under the REACH-system.
8. Regarding those pesticides which under the regional seas conventions have been qualified as substances for priority action, a union wide prohibition must be introduced.
9. As an emergency measure, the complete closure of those fisheries which are significantly threatened must urgently be taken into consideration.
10. The drafting and implementation of all relevant policies has to strive for a minimisation of the negative environmental impacts of fishery.
11. Efforts have to be made towards the realisation of a reasonable, sustainable and – as far as possible – ecosystem based management of fishing stocks.

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