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The Regionalization of EC Marine Pollution Law: The Example of the Mediterranean Sea

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Following the adoption of a Community Regulation on the protection of the environment in the Mediterranean Region (Medspa) (see Appendix 1) and the establishment of a regional environmental programme (Envireg), this article will examine the impact of these measures on the Community's marine pollution policy in respect of the Mediterranean Sea. As it will be argued that the Community's room for manoeuvre is conditioned by UNEP's Mediterranean Action Programme (in particular the Barcelona Convention and its four protocols) the appropriateness of Medspa and Envireg will be judged in the light of this premises.

Following this overview, some tentative conclusions will be drawn on the possible wider implications of Medspa, Envireg and Norspa (the programme for the Irish Sea, the North Sea, Baltic Sea and North East Atlantic Ocean currently under consideration (see Appendix 2 for text)) for the future development of the Community's marine pollution policy.

Features of the Mediterranean Basin as a "Marine Region"

The exact meaning of the concept of a "marine region" is not undisputed¹ nor even is the definition of the "Mediterranean Basin" settled.² As has been pointed out, however, since the delimitation of a marine region is largely determined by political factors the search for a commonly agreed definition of the concept probably serves

¹ For different approaches to the concept see D. M. Johnston, and L. M. G. Enomoto, "Regional Approaches to the Protection and Conservation of the Marine Environment" in Johnston (ed.), *The Environmental Law of the Sea* (Erich Schmidt Verlag, Berlin, 1981) pp. 285ff.

² See EP Doc A 2-19/85, 14 April 1985, 9. The Barcelona Convention defines as the "Mediterranean Sea Area": "The maritime waters of the Mediterranean Sea proper, including its gulfs and seas, bounded to the west by the meridian passing through Cape Spartel lighthouse, at the entrance of the Straits of Gibraltar, and to the east by the southern limits of the Straits of the Dardanelles between Mehmetcik and Kumakale lighthouses" (Art. 1).

little purpose.³ In the case of the Mediterranean Sea, its semi-enclosedness has determined its geographical coverage: it is one of the most polluted marine regions in the world.⁴ About 650,000 tons of hydrocarbons are discharged into it each year (about 17 times the amount spilled by the Exxon Valdez in Alaska) 75 per cent of which is caused by deliberate discharge of bilge and ballast waters from tankers. The levels of heavy metals, in particular mercury, and synthetic organic compounds like PCBs and DDT which have been found to be present are a matter of great concern. Over 70 per cent of all municipal waste water is discharged without basic primary treatment which, in conjunction with agricultural fertilizers ending up in the sea, leads to eutrophication and the associated problem of algal blooms, fish deaths and damage to the tourist industry. The last, in many Mediterranean countries accounting for as much as 10 per cent of the GNP, is itself a major cause of marine pollution.⁵ Even without the seasonal influx of millions of tourists, over-population is putting a severe strain on natural resources, most notably drinking water.

The problems are exacerbated by the geophysical and biological characteristics of the region. A number of large rivers like the Nile, the Rhone, the Ebro and the Po flow into the Mediterranean Sea, carrying a diversity of industrial pollutants into the basin. In addition, the low water exchange and circulation mean that once introduced into the sea, substances remain there for decades.

For the specific characteristics of the Mediterranean to be properly accommodated, the advantages of a regional regime are paramount. Equally important is the fact that it is much easier to achieve progress amongst a few states which have reached a similar stage of development and pursue the common objective of protecting a given marine region, than at a global level where such centripetal forces are absent.⁶

Yet, the obstacles to the formation and implementation of such a regional regime for the Mediterranean Sea are formidable. The 18 Mediterranean countries,⁷ apart from all sharing an interest in the well-being of the Mediterranean, have very little else in common. Divided over three continents, they are often religiously,

³ P. H. Sand, *Marine Environment Law in the United Nations Environment Programme* (Tycooly Publishing, London and New York, 1988), p. xii.

⁴ Recent data can be found in a joint report by the World Bank and the European Investment Bank, *The Environmental Program for the Mediterranean* (World Bank/European Investment Bank, 1990).

⁵ Note that 1990 was declared "European Year of Tourism". Its objectives (see OJ 1988 NO C 326/307) are not easy to reconcile with environmental imperatives. On this problem see EP Doc A 3-0120/90 on the measures needed to protect the environment from potential damage caused by mass tourism. See also the report by the Commission on the European Year of Tourism COM (91) 95 final 21.3.1991

⁶ On the question of the relation between regional and global conventions see e.g. C. Odidi Okidi, *Regional Control of Ocean Pollution* (Sijthoff & Noordhoff, Alphen aan den Rijn, 1978); J. A. Yturriaga, *Regional Conventions of the Marine Environment* (Recueil des Cours, Academie de Droit International, 1979) I, Vd. pp. 319 ff.

⁷ Albania, Algeria, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Morocco, Spain, Syria, Tunisia, Turkey and Yugoslavia.

linguistically, economically and politically diametrically opposed. In terms of socio-economic development, a north-south divide is clearly discernable. Thus, whereas the northern Mediterranean countries have a tradition of co-operating within the OECD, Council of Europe, the EEC and COMECON, the southern countries are organized within the OAU and the Arab League.

Existing Regional Regimes: UNEP's Mediterranean Action Plan

For the reasons outlined above, as well as for considerations of political feasibility,⁸ soon after the United Nations Environment Programme was established in 1972⁹ it was decided that for the protection of the oceans a regional strategy would be most opportune. This strategy is now popularly known as "The Regional Seas Programme" and under it 23 regional seas conventions and protocols have been adopted.¹⁰ The Mediterranean Sea was the first of UNEP's regional Conventions and the experience of the Mediterranean has served to facilitate subsequent action in other regions.¹¹

The Mediterranean Action Plan (MAP) was adopted in Barcelona in 1975 at the first intergovernmental conference organized by UNEP.¹² It basically consists of three elements:

- (a) a framework convention and four protocols;
- (b) integrated planning of development and resource management in the Mediterranean basin (blue plan) and the Priorities Action Program (PAP);
- (c) a co-ordinating programme of continuous monitoring and research relating to pollution in the Mediterranean (MEDPOL).

The framework treaty, with two separate implementing protocols, was adopted at the second conference at Barcelona on 16 February 1976.¹³ Since then, two more protocols have been adopted; the Athens protocol of 1980 on the protection of the Mediterranean against pollution from land-based sources and the Geneva protocol of 1982 concerning Mediterranean specially protected areas.

The convention contains the general obligation to "prevent, abate and combat pollution of the Mediterranean Sea Area and to protect and enhance the marine

⁸ See Johnston and Enomoto, "Regional Approaches", 325.

⁹ GA Res. 2997 (XXVII) of 15 December 1972.

¹⁰ Note that this regional approach was institutionalized as late as 1978 (after the adoption of MAP) when UNEP's Governing Council adopted Decision 6/2 of 24 May 1978 and Programme Document UNEP/GC.6/7 (1978). See Sand, *Marine Environment Law*, p. xii

¹¹ The Persian/Arabian Gulf, the Gulf of Guinea, the Southeast Pacific, the Red Sea, the Caribbean, the Indian Ocean and the Southwest Pacific are currently covered by UNEP's Regional Seas Programme.

¹² UNEP/WG.2/5, (1975) XIV ILM 481.

¹³ Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention) 1976. Protocol for the Prevention of Pollution of the Mediterranean by Dumping from Ships and Aircraft, Protocol Concerning Co-operation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency. Text of the Convention and all Protocols reproduced in Sand, *Marine Environment Law*, pp. 1-44.

environment in that Area".¹⁴ Individual provisions apply to pollution caused by dumping from ships and aircraft, discharges from ships, exploration and exploitation of the continental shelf and the sea-bed and land-based sources. Contracting Parties are under a duty to co-operate in taking the necessary measures in cases of pollution emergencies. In addition the framework convention contains provisions on, *inter alia*, the setting up of a pollution monitoring system, scientific and technological co-operation, liability and compensation, institutional arrangements and settlement of disputes.

The relation between the convention and the protocols is such that in order to become party to the convention a State must also become a party to at least one protocol while, conversely, no one may become a contracting party to a protocol unless at the same becoming a party to the convention.¹⁵ The annexes to the protocols (e.g. the black and grey lists substances annexed to the 1980 Athens protocol) form an integral part of the protocols. Importantly, a simplified procedure for amending the annexes is provided for, facilitating adaption of the protocols to changed circumstances.¹⁶

In summary, most of the legal framework for the protection of the Mediterranean is in place. How, despite existing political and socio-economical constraints, it has been possible to form a special Mediterranean regime¹⁷ which more than 50 years after its naissance is generally judged to be a success, is a question that has occupied the minds of many political scientists.¹⁸ Indeed, other examples where countries like Syria and Israel are openly co-operating are very hard to find. The need to co-operate to protect the Mediterranean can be said to have led to the birth of a "Mediterranean Community".¹⁹ Whatever the recipe for the relative success of the Mediterranean regime may be, it would be unwise to change its ingredients.²⁰ Thus, any separate action by the European Community should be complementary and fit within the existing framework of action.²¹

¹⁴ Article 4

¹⁵ Article 23 of the Convention. The Convention and Protocols have been widely ratified, see Sand, *Marine Environment Law*.

¹⁶ See Article 17 of the Convention

¹⁷ The concept of an environmental regime is understood by political scientists as consisting of . . . sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations. See S. D. Krasner, "Structural Causes and Regime Consequences" in Krasner (ed), *International Regimes*, (Cornell U.P., New York, 1983).

¹⁸ See e.g. O. R. Young, "The Politics of International Regime Formation: Managing Natural Resources and the Environment", and P. M. Haas, "Do Regimes Matter? Epistemic Communities and Mediterranean Pollution Control" (1989) 43 *International Organization* 3.

¹⁹ See M. Dejeant-Pons, *Protection et développement du bassin Méditerranéen*. (Economica, Paris, 1987), p. 2

²⁰ For a theory of the factors that determine the success or failure of international environmental regimes see Young, "The Politics of International Regime Formation".

²¹ Article 3 of the Barcelona Convention stipulates that "The Contracting parties may enter into bilateral or multilateral agreements, including regional or subregional agreements, for the protection of the marine environment of the Mediterranean Sea against pollution, provided that such agreements are consistent with this Convention and conform to international law . . .".

European Community Policy on the Protection of the Mediterranean Sea

The Community's environmental policy dates back to 1973 when the first action programme on the environment was adopted.²² With a legal basis in the Treaty since 1986,²³ it is now a well established policy field. More than 100 Directives are in force, over 20 of which concern the Community's marine environment and hence the Mediterranean Sea.²⁴ The fourth action programme reaffirmed earlier commitments to develop an environmental strategy for the Mediterranean Basin. In addition, the Community is a Contracting Party to the Barcelona Convention and its four protocols.²⁵

Some of the Directives are clearly of great importance for the Mediterranean.²⁶ First of all, the Directive on municipal waste water which the Council adopted in March of this year,²⁷ requires as a rule that by the year 2000 waste waters must be subjected to secondary treatment before being disposed of. In addition, Directive 76/464 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community²⁸ controls the release of dangerous substances from land-based sources. To date, 17 substances²⁹ are subject to EC limit values and quality objectives and, with an accelerated procedure for the control of future substances almost certain to result from the present EC Intergovernmental Conference on Political Union, many more substances will follow in the near future. Of particular importance in view of the Mediterranean's dependency on tourism is Directive 76/160 on the quality of bathing water³⁰ which contains micro-biological and physico-chemical parameters for bathing waters. Decision 86/85 sets up an information system on oil pollution at sea while a special EC Task Force on oil pollution has recently proved its effectiveness in the Persian Gulf and is now assisting in the Mediterranean.³¹ Directive 79/409 on the protection of wild birds provides for the protection of habitats of certain wild birds,³² a regime that will be extended with the adoption of the proposed directive on the protection of natural and semi-natural habitats and of wild fauna and flora.³³

²² OJ 1973 No. C 112.

²³ The relevant provisions are Article 130R-130T EEC, see D. Freestone, "European Community Environmental Law and Policy" (1991) 18 *Journal of Law and Society* 135-154.

²⁴ For an overview of EC water directives, see J. Somsen, "EC Water Directives" (1990) 1 *Water Law* 93-98.

²⁵ See Council Decisions 77/585, OJ 1977, No. L240/1; 81/420, OJ 1981 No. L162/4; 83/101, OJ 1983 No. L67/1; 84/132 OJ 1984 No. L68/36.

²⁶ Note that of the 40,000 kilometres of Mediterranean coastline, more than 22,000 are within the present territory of the Community (France, Greece, Italy, Spain).

²⁷ At the time of writing the official text is not yet available. See *Europe* of 14.3.91, 11 and 20.3.91, 9.

²⁸ OJ 1976 No. L 129/23.

²⁹ Mercury, cadmium, hexachlorocyclohexane, carbon tetrachloride, DDT, pentachlorophenol, aldrin, dieldrin, endrin, isodrin, hexachlorobenzene, hexachlorobutadiene, chloroform, 1,2 dichloroethane, TRI, PER, TCB.

³⁰ OJ 1976 No. L 31/1.

³¹ Decision 86/85, OJ 1986 No. L 77/33.

³² OJ 1979 No. L 103/1.

³³ OJ 1988 No. C 247/3. See also COM(90) 59 final.

While Community legislation has thus a profound impact on the Mediterranean Sea at the same time, being equally applicable throughout the whole of the Community, it hardly constitutes a satisfactory environmental policy for the Mediterranean. Yet, Article 130R(3) EEC provides that in taking action relating to the environment, account shall be taken of, *inter alia*, "the environmental conditions in the regions of the Community" and "the economic and social development of the Community as a whole and the balanced development of its regions". The technique of harmonization of national laws through Community regulation, however, is ill-suited to take account of the special needs of certain marine regions within the Community. The environmental dimension of the European Regional Development Fund on the other hand, intended to redress regional imbalances in the Community, has been disappointing. The latter is due to the "economic" orientation of the Fund as well as to staff shortages in DG XI to ensure compatibility between environmental and regional policy.³⁴ At the same time, Article 130R(4) seems effectively to rule out the creation of a special "European Environment Fund".³⁵

A turning-point in the Community's environmental policy for the Mediterranean came in 1986 when the Commission announced its intention to propose a "programme for the protection of the environment and promoting economic development", hereinafter referred to as Envireg.³⁶ This regional environmental programme was eventually established in May 1990. Governed by the regulations of the European Regional Development Fund, its main priority is in fact to combat pollution in coastal regions, in particular in the Mediterranean (so-called objective 1, 2 or 5(b) regions).³⁷

Thus the specific objectives of Envireg are:

- to reduce pollution of coastal areas, particularly in the Mediterranean regions, whose economy depends significantly on tourism;
- to promote the planning of land use in coastal areas in such a way as to preserve natural beauty and enhance biotopes;
- to contribute to a better control and management of toxic and hazardous waste;
- to strengthen know-how relating to the design and management of facilities for reducing pollution.

Measures eligible for Envireg funding include, *inter alia*, the construction of sewage treatment plants and infrastructures involved in the collection and treatment of

³⁴ In 1988 in DG XI a staff of merely two was responsible for carrying out this test. See L. Kramer, "La CEE, l'environnement et la politique regionale", *Revue du Marché Commun* 321 (1988) 549

³⁵ It provides: "Without prejudice to certain measures of a Community nature, the Member States shall finance and implement the other measures." Note, however, that the Commission has recently proposed the creation of a Special Instrument for the Environment (LIFE), COM(91) 28 final.

³⁶ 20th General Report of the Commission 1986 No. 26. Also 4th Environmental Action Programme 1, point 2.3.17.

³⁷ See Notice to the Member States laying down guidelines for operational programmes, which Member States are invited to establish within the framework of a Community initiative concerning the environment, OJ 1990 No. C 115/3, 9.5.90.

solid waste in urban areas with fewer than 100,000 residents. Port installations for storing and treating ship's ballast and washing of bilge water containing oily residues and other chemical substances may likewise receive Envireg support. The amount of Community support granted depends on the importance of the problem (determined by factors like the resident population and the scale of polluting industry) and on the quality of the programmes submitted.

The European Parliament, though welcoming the programme in general terms, has been rather critical on some points, notably the low amount of EC funding set aside for the first three years (500M ECU) and the general fact that the ERDF is used to finance the project.³⁸ Yet, Envireg is a vital supplement to general Community marine law and an important step towards a more integrated approach to the problem.

Even more specifically aimed at the Mediterranean region is the Regulation on action by the Community for the protection of the environment in the Mediterranean region (Medspa), which became operative on 9 March 1991.³⁹ The initiative dates back to 1984 when the Commission set out a strategy on the protection of the environment in the Mediterranean.⁴⁰ A very important element of Medspa is undoubtedly that it applies to the whole of the Mediterranean Region, both within the Community and outside it, together with the Spanish and Portuguese territories of the Iberian Peninsula south of the river Tagus not on the Mediterranean coast. The communication foresaw a preparatory phase running from 1986 to 1988, mainly dedicated to the collection of data and the preparation of an integrated EC Mediterranean environmental policy. In close co-operation with MAP, the World Bank and the European Investment Bank, some concrete measures relating to, *inter alia*, water and waste management and nature conservation were planned.

In 1988 the Commission presented its medium- and long-term strategy and a package of priority measures.⁴¹ The action plan, spanning from 1989 to 1998, is based on the principle that it should be consistent with other international efforts, notably the Mediterranean Action Plan. For a period of five years, a limited number of priority measures would be addressed. In selecting these measures, the most important criteria are compatibility with the priorities set in the context of MAP, the extent to which the problem has a "Mediterranean nature" and, finally, its urgency. It is hence that Medspa seeks to avoid unsettling the equilibrium achieved by UNEP. In respect of the measures relating to water management, this formula led to the following priorities;

- improved water availability (through recycling, exploitation of new sources, prevention of wastage, etc.)
- improved water quality (through treatment of raw water, instalment of sewerage systems, treatment of ballast waters from ships, etc.)

³⁸ See EP Doc. A 3-0046/90, 23.2.1990.

³⁹ Council Regulation No. 563/91, OJ 1991 No. L 63/1, 9.3.91 (reproduced as Appendix 1).

⁴⁰ See COM(84) 206 final 12.4.1984, OJ 1984 No. C 133/12, 21.5.84

⁴¹ COM(88) 392 final, 21.11.1988.

The regulation of 9 March 1991 provides Medspa with a legal framework and further clarifies its objectives, the sort of measures eligible for Community financial support and the criteria for receiving funding.⁴² Its geographic coverage has remained unchanged thus including non-EC States. Amongst its objectives is "integrating Community action and the operations carried out at regional, national and international level". Encouraging scientific and technological co-operation is also included as a separate objective, again following the lines set out by the Barcelona Convention.⁴³

The priority measures for the first five-year phase annexed to the Regulation once more reflect the concern not to upset the balance achieved in the Mediterranean through previous regional efforts. A distinction is made between, on the one hand, non EC countries, where the emphasis is placed on establishing the requisite environmental administrative structures and providing technical assistance and, on the other hand, EC countries, where in order to qualify for Community assistance the measures must be much more concrete. As regards the latter, the measures are almost identical to those under Envireg. Therefore, Article 5(2) provides that operations benefiting from aid under Structural Funds or other Community financial instruments (notably Envireg) do not qualify for support under Medspa, which is hence complementary to Envireg. The difference between the two instruments, apart from their geographical scope, is captured in Article 5(3): financial support under Medspa is subject to the condition that environmental protection must be the principal objective of the operation. Envireg, on the other hand, is orientated as much towards regional development as to protection of the Mediterranean. The mere 25m ECU available for the first two years is a blemish on this otherwise encouraging initiative.⁴⁴ However, the explication of an overall environmental policy for the Mediterranean basin and its integration into other policy concerns is itself invaluable and should work as a catalyst for the use of existing resources in a manner which is compatible with this policy.

Conclusions

With Medspa and Envireg the European Community possesses important new instruments to supplement and strengthen, in a responsible and integrated manner, existing efforts to protect the Mediterranean Sea from pollution. The premiss that any EC Action applicable to non-EC States should supplement the regime as formed by MAP has been secured by the programmes.

Envireg and Medspa, about to be supplemented by Norspa,⁴⁵ may also mark the beginning of a shift of emphasis from the Community's policy to protect its aquatic environment through uniform standards applicable equally throughout the

⁴² For details on the administrative provisions of Medspa see (1991) *Water Law* 75.

⁴³ See Article 11 of the Convention.

⁴⁴ See also the opinion of the European Parliament, OJ 1991. No. C 19/1, 28.1.1991.

⁴⁵ COM(90) 498 final; OJ 1991 No. C 21/13; reproduced in Appendix 2.

Community, towards a more regionalized approach. Though *Envireg*, *Medspa* and *Norspa* do not introduce such regional standards, conceptually they acknowledge that for the different marine regions in the Community different Community strategies are necessary.

A second indication for the development of such a regionalized EC policy for the aquatic environment may, paradoxically, be found in the Commission's current work on a proposal for a Directive on minimum quality objectives for waters applicable throughout the Community. It is clear that without such a required minimum quality objective, set at EC level and applicable to all waters in the Community, regional diversification of standards (set nationally, regionally or Community-wide) is impossible.⁴⁶

⁴⁶ See L. Ginjaar, "Towards a New EC-Waterpolicy" (1988) 18/6 *Environmental Policy and Law*, 210 ff.

Appendix 1

COUNCIL REGULATION (EEC) No 563/91
of 4 March 1991

on action by the Community for the protection of the environment in the
Mediterranean region (Medspa)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130s thereof,

Having regard to the proposal from the Commission (*),

Having regard to the opinion of the European Parliament (**),

Having regard to the opinion of the Economic and Social Committee (**),

Whereas, pursuant to Article 130r of the Treaty, one of the objectives of action by the Community relating to the environment is to preserve, protect and improve the quality of the environment; whereas, in preparing this action, the Community is required to take account, *inter alia*, of environmental conditions in the various regions of the Community and of the economic and social development of the Community as a whole and the balanced development of its regions;

Whereas, pursuant to Article 2 of the Treaty, the Community has as its task, *inter alia*, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion and an increase in stability;

Whereas certain action for the protection of the environment in the Mediterranean region can be carried out more successfully by the Community than by individual Member States;

Whereas the Council resolution of 7 February 1983 on the continuation and implementation of a European Community policy and action programme on the environment (1982 to 1986) (***) includes protection of the Mediterranean region among the areas in which it is

particularly important for Community action to be carried out; whereas this area was again included in the resolution of 19 October 1987 (****) on the continuation and implementation of the abovementioned policy and action programme from 1987 to 1992, which listed overall and integrated environmental protection of the Mediterranean region as one of the priority areas;

Whereas in its communication on the protection of the environment in the Mediterranean basin (****) submitted to the Council on 24 April 1984, the Commission undertook to formulate a strategy and plan of action for the protection of the environment in this region; whereas the latter were defined in the communication to the European Parliament, the Council, and the Economic and Social Committee on the protection of the environment in the Mediterranean region, adopted by the Commission on 14 November 1988;

Whereas, in view of the ecological sensitivity of the Mediterranean environment and the pressures to which it is exposed, the environmental operations carried out at regional, national, Community and international level must be intensified and made more effective;

Whereas, since the region forms an ecological entity, protection of the Mediterranean would be inconceivable without a combined effort by all the coastal States;

Whereas, by virtue of geomorphological and socio-economic similarities, the Atlantic coast of the Iberian peninsula, south of the river Tagus, is an ecological entity linked with the Mediterranean region;

Whereas the Community should contribute to implementation of the environmental operations by providing financial support for certain specific measures;

Whereas a management committee should be set up to assist the Commission in implementing this Regulation,

(*) OJ No C 80, 30. 3. 1990, p. 9, and

OJ No C 25, 1. 2. 1991, p. 2.

(**) OJ No C 19, 28. 1. 1991.

(***) OJ No C 332, 31. 12. 1990, p. 116.

(****) OJ No C 46, 17. 2. 1983, p. 1.

(*) OJ No C 328, 7. 12. 1987, p. 1.

(**) OJ No C 133, 21. 5. 1984, p. 12.

HAS ADOPTED THIS REGULATION:

Article 1

1. Community action for the protection of the environment in the Mediterranean region (Medspa), hereinafter referred to as the 'Medspa' action, is hereby instituted.

2. The Medspa action shall cover the entire Mediterranean region, both within the Community and outside it, together with the Spanish and Portuguese territories of the Iberian Peninsula south of the river Tagus not on the Mediterranean coast, hereinafter referred to as the 'region concerned'.

Article 2

The objectives of the Medspa action shall be:

- to intensify efforts to protect and improve the quality of the environment and increase the effectiveness of Community environment policy and measures in the region concerned,
- to help make the environmental dimension a more integral part of action taken by the Community pursuant to other Community policies,
- to increase cooperation and coordination on protection of the environment in the region concerned by integrating Community action and the operations carried out at regional, national and international level,
- to encourage the transfer of the appropriate technologies to protect the Mediterranean environment.

Article 3

1. The budgetary resources allocated to the Medspa action will be shown in the annual appropriations in the general budget of the European Communities, account being taken of the financial perspective and within the limit of the budget funds available for that year.

2. The abovementioned budgetary resources shall be used in accordance with this Regulation.

3. The amount estimated necessary for the execution of the Medspa action during the first two years is ECU 2.5 million.

Article 4

Priority measures for the first five-year phase of the Medspa action are listed in the Annex. For the second five-year phase, the priority measures will be reviewed in accordance with Article 13.

Article 5

1. The financial support provided for in this Regulation may be granted in respect of operations corresponding to the priority measures referred to in Article 4.

2. Operations benefiting from aid under the Structural Funds or other Community financial instruments shall not qualify for the financial support provided for in this Regulation.

3. The financial support may be granted in respect of the operations referred to in paragraph 1 where they have environmental protection as their principal objective.

Article 6

1. All natural or legal persons and associations bearing ultimate responsibility for the execution of the operations referred to in Article 5 may qualify for financial support.

2. The financial support shall take the form of:

- capital grants towards investment in projects other than infrastructure projects, or
- financial contributions towards pilot or demonstration schemes, towards measures designed to provide the information necessary for the execution of the Medspa action or of the technical assistance measures implemented on the initiative of the Commission, or
- interest rebates for infrastructure projects, or
- repayable advances decided on a case-by-case basis.

Article 7

Community financial support for the operations referred to in Article 5 shall be subject to the following limits:

- a maximum of 50 % of the total cost in the case of public investment projects, and pilot or demonstration schemes,
- a maximum of 30 % of the total cost in the case of private investment projects for non-commercial purposes,
- 100 % of the total cost of information and public-awareness campaigns and of the costs of executing the measures implemented on the initiative of the Commission.

Article 8

1. In order to guarantee the success of the operations carried out by beneficiaries of Community financial support, the Commission shall take the necessary measures to:

- verify that operations financed by the Community have been properly carried out,
- prevent and take action against irregularities,
- recover any sums unduly paid as a result of irregularities or negligence.

2. Without prejudice to audits carried out by the Court of Auditors in liaison with the national audit bodies or competent national departments pursuant to Article 206a of the Treaty or to any inspection carried out on the basis

of Article 209 (c) of the Treaty, Commission officials or employees may carry out on-the-spot checks, including sample checks, in respect of operations financed under the Medspa action.

Before carrying out an on-the-spot check, the Commission shall give notice to the beneficiary concerned with a view to obtaining all the assistance necessary.

3. For a period of three years following the last payment in respect of any operation, the beneficiary of financial support shall keep available for the Commission all the supporting documents regarding expenditure on the operation.

Article 9

1. The Commission may reduce or suspend payment of financial support in respect of any operation if it finds an irregularity or a significant change affecting the nature or conditions of the action or measure for which the Commission's approval has not been sought.

2. If the completion dates have not been respected or if a particular operation has been carried out in such a manner that payment of only part of the financial support allocated to it is justified, the Commission shall ask the beneficiary to submit his comments within a fixed period. Unless adequate justification is produced, the Commission may cancel the remaining portion of that support.

3. Any overpayment shall be returned to the Commission. Interest may be charged on sums not repaid in due time. The Commission shall lay down the detailed rules for the implementation of this paragraph.

Article 10

1. The Commission shall ensure effective monitoring of the implementation of the Medspa action. Such monitoring shall be carried out by means of reporting procedures agreed jointly between the Commission and the beneficiary of the operation and by spot checks.

The Commission shall report to the Committee referred to in Article 11 on the progress made in implementing the Medspa action, including the use made of appropriations.

2. For each multiannual action, the beneficiary shall submit progress reports to the Commission within six months of the end of each full year of implementation.

In addition, a final report shall be submitted to the Commission within six months of completion of the operation; for each operation to be implemented over a period of less than two years, the beneficiary shall submit a report to the Commission within six months of completion of the action. The Commission shall determine the form and content of the reports.

3. On the basis of the monitoring reports and procedures referred to in paragraphs 1 and 2, the Commission shall make any necessary adjustments to the amount

of the financial support approved initially, to the conditions for granting that support and to the projected schedule of payments.

4. The Commission shall lay down the detailed rules for the implementation of this Article.

Article 11

1. For the purposes of executing the priority measures and the operations referred to in Articles 4, 5, 6 and 7, the Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the second subparagraph.

Article 12

The list of operations which have received financial support shall be published for information purposes in the *Official Journal of the European Communities*.

Article 13

The Medspa action shall be executed for an initial phase of five years starting on 9 March 1991. In 1994 at the latest, the Commission shall submit a report to the Council containing an assessment of the experience of this first phase, accompanied by appropriate proposals, in particular with regard to the priority measures to be taken during the second five-year phase. In 1995 at the latest, the Council, acting by qualified majority, shall decide on the proposal for this second phase.

Article 14

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States

Done at Brussels, 4 March 1991.

For the Council
The President
J. F. POOS

ANNEX

MEDSPA ACTION

1. Priority measures eligible under this Regulation

A. *Action in the Community*

- for coastal towns with fewer than 100 000 inhabitants and small islands: collection, treatment, storage and disposal of waste water and solid waste,
- collection, treatment, storage, recycling and disposal of sewage sludge and toxic and dangerous waste,
- treatment of water from ships' tanks containing residues of oil and other chemicals,
- integrated management of biotopes of Community interest in coastal regions,
- protection of soil threatened or degraded by fire or desertification; protection of land against coastal erosion.

B. *Action in non-Community Mediterranean countries*

- help with the establishment of the requisite environmental administrative structures,
- technical assistance required for the establishment of environmental policies and action programmes.

2. Operations to deal with a problem likely, within a short time, to give rise to a lasting change in the ecological conditions in the area concerned may also be regarded as priority measures.

Appendix 2**Proposal for a Council Regulation (EEC) on specific action to protect the environment in the coastal areas and coastal waters of the Irish Sea, North Sea, Baltic Sea and North-East Atlantic Ocean**

COM(90) 498 final

(Submitted by the Commission on 20 December 1990)

(91/C 21/06)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130s thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas pursuant to Article 130r of the Treaty one of the chief objectives of Community action relating to the environment is to preserve, protect and improve the quality of the environment;

Whereas the declaration on the environment of the European Council of Rhodes of 2 and 3 December 1988 stated that special attention should be devoted to the seas and coastal areas of Member States, which are of outstanding economic and ecological importance, in particular the Mediterranean region, the North Sea and the Irish Sea;

Whereas the resolution of 19 October 1987 of the Council of the European Communities and of the representatives of the Governments of the Member States, meeting within the Council, on the continuation and implementation of a European Community policy and action programme on the environment (1987 to 1992) ⁽¹⁾ states that it is important for Community action to concentrate on combating fresh-water and marine pollution by means of a general improvement of the aquatic environment, in particular of the North Sea and the Mediterranean Sea;

Whereas the Council of the European Communities and the representatives of the Governments of the Member

States, meeting within the Council, adopted the recommendations contained in the Community action programme on the environment (1987 to 1992);

Whereas the ministerial declaration of the participants in the Third International Conference on the Protection of the North Sea, held in The Hague on 7 and 8 March 1990, stressed the need to protect the environment of the North Sea, and adopted a package of specific measures together with a precise timetable;

Whereas protection of the environment of the Irish Sea, the North Sea, the Baltic Sea and the North-East Atlantic Ocean requires a combined international effort by all the littoral States; whereas certain measures in this field can be carried out more effectively at Community level than at the level of the individual Member States;

Whereas the Community should grant financial support within the limits of available resources to projects relating to protection of the environment in certain coastal areas and coastal waters, and to the administrative and technical flanking measures essential to their implementation;

Whereas an adequate amount of funding is required in order to attain the objectives of the scheme; whereas the first phase is to be of five years' duration and extends beyond the period which is covered by the Interinstitutional Agreement and the financial perspective; whereas it is not possible at this stage to fix definitively the necessary funds for the entire period covered by the action plan;

Whereas an advisory committee should assist the Commission in implementing this Regulation;

Whereas, to this end, recourse should be had to the committee set up by the Medspa Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Community action to protect the environment in the coastal areas and coastal waters of the Irish Sea, North Sea, Baltic Sea and North-East Atlantic Ocean (Norspa) is hereby instituted.

⁽¹⁾ OJ No C 328, 7. 12. 1987, p. 1.

Article 2

The objectives of the action to be undertaken under this Regulation shall be:

- (a) to intensify efforts to protect and improve the quality of the environment and to implement Community environment policy in the areas concerned;
- (b) to maintain and increase the effectiveness of Community measures on the environment in the areas concerned pursuant to other Community policies;
- (c) to increase cooperation between the littoral States on protection of the environment by integrating Community actions and the operations carried out at regional, national and international level;
- (d) to promote the development and use of clean or low-emission technologies, as the transfer of these technologies and the exchange of experience would benefit the environment in the areas concerned.

Article 3

1. The amount of Community expenditure estimated necessary for the implementation of the action provided for in this Regulation is ECU 10 million during the first two years.

2. The budgetary authority shall determine the resources available for each financial year during the annual budgetary procedure, in compliance with the financial perspectives.

Article 4

1. The financial support provided for in this Regulation may be granted in respect of operations suited to giving rise to a lasting improvement in the quality of the coastal areas and coastal waters referred to in Article 1 and which reflect the priorities listed in the Annex.

2. Financial support for an operation is decided in accordance with the procedure laid down in Article 11.

Article 5

1. Operations benefiting from aid under a Structural Fund or any other Community financial instrument shall not qualify for the financial support provided for in this Regulation.

2. The financial support may be granted in respect of the operations referred to in Article 4 provided such operations do not qualify for aid under a Structural Fund or to the process of economic and social reform of the countries of Central and Eastern Europe.

Article 6

1. All natural or legal persons and associations bearing ultimate responsibility for the implementation of the operations referred to in Article 4 may qualify for financial support.

2. The financial support shall take the form of:

— capital grants towards investment in projects other than infrastructure projects,

or

— financial contributions towards pilot or demonstration projects and to measures providing an incentive or creating awareness, and towards initiatives designed to acquire the information necessary for the implementation of the operations, improve supervision and monitoring of the environment concerned and promote the exchange of experience and technology transfer.

Article 7

Community financial support for the operations referred to in Article 5 shall be subject to the following limits:

— a maximum of 50 % of the total cost in the case of public investment projects,

— a maximum of 30 % of the total cost in the case of private investment projects,

— a maximum of 100 % of the total cost of measures designed to acquire the information necessary for implementation of the operations or of incentive and awareness measures taken at the initiative of the Commission.

Article 8

1. In order to guarantee the success of the operations carried out by beneficiaries of Community financial support, the Commission shall take the necessary measures:

— to verify that actions financed by the Community have been properly carried out,

— to prevent and take action against irregularities,

— to recover any amounts wrongly paid as a result of an irregularity or negligence.

2. Without prejudice to checks carried out by the Court of Auditors in conjunction with the competent national control institutions or services under Article 206a of the EEC Treaty or to any inspection carried out on the basis of Article 209c of the EEC Treaty, Commission officials or employees may carry out on-the-spot checks, including sample checks, in respect of operations financed by Community action.

Before carrying out an on-the-spot check, the Commission shall give notice to the beneficiary concerned with a view to obtaining all the assistance necessary.

3. For a period of three years following the last payment in respect of any operation, the beneficiary of financial support shall keep available for the Commission all the supporting documents regarding expenditure on the operation.

Article 9

1. The Commission may reduce or suspend payment of assistance in respect of a particular operation if it finds irregularities or a significant change affecting the nature or conditions of implementation of the action for which the Commission's approval has not been sought.

2. If the completion dates have not been respected or if a particular operation has been carried out in such a manner that payment of only part of the financial assistance allocated to it is justified, the Commission shall ask the beneficiary to submit his comments within a specified period. Unless adequate justification is produced, the Commission may cancel the remaining portion of the financial assistance concerned.

3. Any sum which is unduly received by the beneficiary shall be repaid to the Commission. Interest may be charged on sums not repaid in due time. The Commission shall lay down the detailed rules for the implementation of this paragraph.

Article 10

1. The Commission shall ensure effective monitoring of implementation of the Community action. Such monitoring shall be carried out by means of reporting procedures agreed jointly between the Commission and the beneficiary of the operation and by spot checks.

2. For each multiannual action, the beneficiary shall submit progress reports to the Commission within six months of the end of each full year of implementation.

A final report shall be submitted to the Commission within six months of completion of the operation; for each operation to be implemented over a period of less than two years, the beneficiary shall submit a report to the Commission within six months of completion of the action. The Commission shall determine the form and content of the reports.

3. On the basis of the monitoring reports and procedures referred to in paragraphs 1 and 2, the Commission shall make any necessary adjustments to the amount of the financial support approved initially, to the conditions for granting that support and to the projected schedule of payments.

4. The detailed rules for the implementation of this Article are laid down according to the procedure set out in Article 11.

Article 11

1. For the purposes of implementing the operations referred to in Article 4 the Commission shall be assisted by a committee of an advisory character created by ... (Medspa).

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on this draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

3. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

4. The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 12

The list of measures which have received financial support shall be published for information purposes in the *Official Journal of the European Communities*.

Article 13

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

It shall apply for 10 years, divided into two five-year phases. Before the end of the first phase, the Commission shall assess the results and report to the Council and to the European Parliament. If appropriate, the Commission shall propose amendments to this Regu-

lation, in particular with regard to the priority measures to be taken for the implementation of the second phase.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX

Community action to protect the environment in the coastal areas and coastal waters of the Irish Sea, North Sea, Baltic Sea and North-East Atlantic Ocean

Priority measures

A. Action in the European Community

1. Nutrients

Measures to reduce nutrient inputs in coastal areas, including those due to agricultural activities.

2. Dangerous substances

All measures designed to reduce:

- inputs of persistent, toxic and potentially bioaccumulative substances entering the seas concerned from rivers, estuaries and the atmosphere,
- dumping and incineration at sea of sewage sludge, industrial waste and dredged materials,
- pollution from ships and offshore installations.

3. Industry

Identification of measures suited to speeding up the application of emission standards and possible establishment of sectoral agreements for industries responsible for significant pollution from point sources, such as the paper and pulp industry, fertilizer industry, biocide manufacturing and formulation industry, pharmaceuticals industry.

4. Conservation and protection of species and habitats

Application of appropriate measures for:

- integrated management of biotopes of Community and international interest,
- reduction or elimination of coastal erosion or disappearance of the dune belt in certain wetlands, coastal and estuarine areas of ecological importance.

B. Action directed at the non-Community coastal States of the area concerned

All measures supporting the development of:

- cooperation between seaboard States,
 - exchange of experience in the fields listed under A,
 - where appropriate, transfer of clean or low-emission technologies, technical assistance for the establishment of policies and action programmes and the creation of administrative and regulatory structures in the environment field.
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