



GREEN GUIDE

ANNEX 2

Legislation influencing European ports



Introduction

Annex 2 provides a summary of European legislation related to the environment that influences the management of European Ports.

The annex was compiled by the Flemish Port Commission (FPC) in cooperation with the Dutch National Harbour Board (NHB) as part of a broader exercise that summarises legislation influencing ports overall and not only in the field of the environment. The authors are Jean-Pierre Merckx and Dirk Neyts, secretaries of the FPC, and Otto Rosier, who was NHB secretary until 31 December 2011. ESPO endorses the content and is responsible for the English translation and the up to date maintenance of the environmental part.

The annex is meant to be dynamic and as such subject to periodic review in order to reflect changes in the applied legal framework.



Table of Contents

Introduction.....	2
Table of Contents	3
The Birds and Habitats Directives, Natura 2000 (BHD)	4
Birds and Habitats.....	Error! Bookmark not defined.
Natura 2000	5
Biodiversity	6
Sulphur Content of Marine Fuels (SUL)	8
Pollution from Ships (PFS)	11
Greenhouse Gas Emissions (GGE)	13
The Decision on Greenhouse Gas Emissions	13
The Revision Climate and Energy Package.....	14
White Paper - Roadmap to a Single European Transport Area	14
Port Reception Facilities (PRF).....	16
Water Framework Directive (WAT)	18
National Emission Ceilings (NEC).....	20
Environmental Noise (ENO).....	21
Soil Framework Directive (SFD)	22
Regulation on Shipment of Waste (RSW).....	24
Waste Framework Directive (WAS)	26
Marine Strategy Framework (MSF)	28
Supplementary Directive on Priority Substances (DPS)	30
Ambient Air Quality (AAQ)	32
Maritime Spatial Planning (MSP).....	34
Credits.....	36



The Birds and Habitats Directives, Natura 2000 (BHD)

Birds and Habitats

Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds ("Birds Directive"), relates to the preservation of all species of naturally occurring birds in the wild. It covers the protection, management and control of these species and lays down rules for their exploitation. The Directive applies to birds, their eggs, nests and habitats in the European territory of the Member States to which the Treaty applies.

Member States have to take measures to maintain the population of bird species at a level corresponding to ecological, scientific and cultural requirements, while taking economic and recreational needs into account.

The Birds Directive was created during the 1970s, when birds were perceived as the most "at risk" species because of environmental degradation and hunting during migration. Gradually, however, the need occurred to protect other animals and plants too. That is why the European Council issued the Habitats Directive in 1992 (Directive 92/43/EEC on the preservation of natural habitats and of wild fauna and flora). These Directives apply to the protection of both certain species (from disruption and persecution) and of natural habitats. The protection of habitats aims at the preservation of specified species (for the birds, see Annex I of the Birds Directive; for other species, see Annex II of the Habitats Directive, for the protected habitat types, see Annex I of the Habitats Directive).

The Birds Directive was deemed necessary because a large number of wild bird species naturally occurring in the European territory of the Member States are declining in number, and very rapidly in some cases. This decline represents a serious threat to the conservation of the natural environment, particularly because the biological balance is in jeopardy. The species of wild birds naturally occurring in the European territory of the Member States are mainly migratory species. Such species constitute a common heritage and an effective bird protection is, therefore, typically a trans-frontier environmental problem entailing common responsibilities.

In order to protect natural wild birds, measures are deemed necessary to influence those factors that determine the population level of birds, being the effect of human activity. For example measures to



prevent the destruction and contamination of birds' dwelling places prohibition of capture and destruction of birds by man, as well as the trade that is based on these activities.

Natura 2000

Special Protection Areas under the Birds and Habitats Directives together form the Natura 2000 network (Directive 92/43/EEC), a scheme of internationally important natural areas that should guarantee the survival of certain species and habitats.

With the achievement of the Natura 2000 network, the European Commission wants to avoid the decline of biodiversity.

The so-called 'designation decisions' set geographical boundaries and conservation objectives. The designation as a Natura 2000 area could affect the existing uses (activities) by various sectors in or near those protected areas. For the individual Natura 2000 areas, management plans have to be designed, describing what is required to maintain or develop the sustainable conservation of the designated natural values. The management plans also stipulate how existing use (activities) in and near the protected area (including autonomous development) can proceed without having harmful effects on nature. For new use (activities), a license may be required.

In its Communication on European seaport policy (2007), the European Commission announced guidelines for the application of a European environmental and nature legislation for port development. This so-called Estuary Guidance has meanwhile been published in 2011.

Life+

The LIFE+ programme is the financial instrument for co-financing of innovative environmental and nature conservation projects. The programme has been granted a € 2,143 million budget for the period 2007-2013. During the third call for proposals which closed in November 2009, a total of 615 proposals were submitted. On 23 July 2010, the European Commission decided to grant 210 of these projects in the categories of nature and biodiversity, environmental policy and management, information and communications. The total allowance of Life+ amounted to € 250 million, the total of investment in these projects amounted to € 515 million.



Biodiversity

Through its Communication on Biodiversity, the European Commission announced on 19 January 2010 the European Year of Biodiversity. During that year, it was established that the common goals concerning the reduction and reinstatement of the continued decline in biodiversity were not met with existing policies. This was confirmed in the Environmental Policy Review of 2009, which was published on 10 August 2010. With its Communication, which outlined several policy options, the European Commission laid the foundation for the debate on the strategy and policy to be carried out. This initiative was followed by a consultation in the second half of 2010. At the same time the European Parliament urged to make an effort to stop the decline in biodiversity by 2020.

On 21 June 2011, Environment Ministers at the European Council reached an agreement on a common strategy and goals to tackle the decline of the biodiversity and the impoverishment of ecosystems and, where possible to make progress by 2020. The implementation of this strategy and the achievement of the goals also closely relate to the reform of the common agricultural and fisheries policy and the budget reform. The policy will, therefore, take its final shape in a later stage. Port related elements from the projected policy measures are to prevent the access of harmful exotic species (that for example enter EU waters through ballast water) and the identification, improvement, reconsideration or elimination of funding that harms the biodiversity.

Some relevant documents

Council directive of 2 April 1979 on the conservation of wild birds (European Council) (wild birds directive, consolidated)

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (European Council) (wild birds directive, consolidated)

Managing Natura 2000-sites. The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC (European Commission)

2009 Environment Policy Review (European Commission)



Communication from the Commission to the European Parliament, the Council, The Economic and Social Committee and the Committee of the Regions. Our life insurance, our natural capital: an EU biodiversity strategy to 2020 (European Commission)

Estuary Guidelines 2011 (European Commission)



Sulphur Content of Marine Fuels (SUL)

Sulphur is by nature present in liquid and solid fuels such as oil and coal. Consequently, most marine fuel contains sulphur. The combustion of these fuels creates sulphur oxides (SO_x) and particulate matter including primary soot particles, and secondary inorganic sulphate particles formed as a result of atmospheric oxidation of sulphur dioxide. During the combustion process nitrogen oxides (NO_x) are also formed.

The emissions of sulphur dioxide and of particulate matter can cause damage to human health and to the environment. Furthermore, the emission of nitrogen oxides contributes to the formation of ground-level ozone, which may also be harmful to human health and vegetation.

These emissions can be reduced by imposing limits to the sulphur content of fuels as a condition for their use in Community territories. This was the aim of the Council Directive of 26 April 1999 relating to the reduction of sulphur content of certain liquid fuels, amending Directive 93/12/EEC. The directive, however, does not apply to most of the fuels that are used by seagoing vessels.

Nevertheless, atmospheric emissions from seagoing ships contain air pollutants, greenhouse gases and ozone depleting substances. These emissions do not disperse harmlessly to the sea, nor do they stop at national boundaries. Ships' air pollutant emissions, particularly in coastal areas and in ports, disperse to land, causing environmental problems which affect human health, the natural and built environment. Wherever they are emitted, ships' greenhouse gas emissions contribute to global climate change, and their emissions of ozone-depleting substances damage the ozone layer.

Despite major efforts at international level, so far, no environmental issues have completely been solved. On the contrary, some problems, such as climate change, the ozone in the troposphere or the lower layers of atmosphere are getting worse. In other words, there is much room for improvement. Seagoing vessels are largely susceptible to these improvements, as they are, so far, not much included in the majority of EU legislation on emissions.



Therefore, the European Parliament and Council are trying to reduce the emissions of sulphur dioxide and particulate matter from ships to a minimum by amending Directive 1999/32/EC. The goal is mainly to set up:

- A threshold of 1.5% for sulphur content of marine fuels used by all ships on the North Sea, English Channel and the Baltic Sea, according to the IMO (International Maritime Organisation) agreement on the so-called SO_x emission control area. This will contribute to a reduction of acidification and an improvement in air quality;
- A threshold of 1.5% for the sulphur content of marine fuels used by passenger vessels on regular services to or from any Community port, in accordance with EU standards for passenger ships. This will improve the air quality around ports and coasts and create sufficient demand to ensure the availability of low sulphur fuel across the EU;
- A 0.2% threshold for the sulphur content of fuels used by ships and inland waterway vessels while they are at berth in EU ports, in order to reduce local emissions of sulphur oxides and suspended particulate matter and thus to improve the air quality .

Furthermore, the following two measures are being recommended:

- Modification of the rules for heavy fuel on land arising from Directive 2001/80/EC relating to large combustion plants.
- The establishment of a Regulatory Committee to agree in the future on technical amendments which do not require political co-decision.

The proposal for a Directive of the European Parliament and Council amending Directive 1999/32/EC on the sulphur content of marine fuels was adopted on 20 November 2002 by the Commission and forwarded to Council and Parliament. With this proposal, a long-lasting decision procedure started that ended about two and a half years later when the Parliament and the Council signed Directive 2005/33/EC amending Directive 1999/32/EC as regards the sulphur content of marine fuels.

In the meantime, the International Maritime Organization (IMO) established a scheme (IMO Marpol Convention, Annex VI) to designate the North Sea, the English Channel and the Baltic Sea as a low sulphur area for ships, a so-called 'Sulphur Emission Control Area' (SECA). With this arrangement, the sulphur content of marine fuel used in these and similar areas will be further reduced to 0.1% by 1 January 2015. At present, the considerably reduced norm of 1% already applies. This strict standard applies to shipping



through the Channel and in the North and Baltic Seas. The current standard for the rest of the world is 4.5%; as from 2020 it will be converted to a 0.5% standard.

The European Commission proposed to incorporate the IMO agreement through the revision of Directive 1999/32. The proposed revision however appeared to go beyond what was decided at IMO level on the sulphur content of marine fuel. At the same time the Commission announced a 'toolbox' in which it wants to support the maritime industry in the transition from high to low sulphur fuel for the maritime industry. In summer 2012 Parliament and Council reached a first-reading compromise on the Commission's proposal. Parliament formally endorsed the compromise in September 2012. Once Council adopts it, the revised Directive can enter into force. Member States will then have 18 months to adopt the necessary provisions at national level.

Some relevant documents

Council directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC (European Council)

Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005 amending Directive 1999/32/EC relating to the sulphur content of marine fuels (European Commission and the Council)



Pollution from Ships (PFS)

The basis of the Community policy on maritime safety was established on 24 February 1993 in a Communication from the European Commission entitled "A common policy on safe seas' (COM (93) 66 final).

This Community policy on maritime safety, prevention of marine pollution and living and working conditions on board of ships, takes account of the approach of international institutions such as the International Maritime Organization (IMO) and the International Labour Organisation (ILO).

Therefore, a number of measures were listed in the framework programme attached to the Commission Communication of 24 February 1993. These measures mainly aim for the implementation and possible expansion of the standards established by these international organisations.

The programme included a series of legislative measures in a wide range of fields which relate to maritime safety and protection of the marine environment. The revision of Community legislation depends on the new rules that are approved at international level. These international rules are mostly technical and are regularly amended, because of the fast-moving technological developments in shipbuilding, equipment, navigation and communication.

Due to the technical nature of these rules, the Council basic legal acts, Regulations or Directives generally provide the possibility to implement these amendments through the so-called "Committee Procedure". These regulatory committees were set up under Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission. As regards maritime safety, five specific committees were established. However, the procedure through the regulatory committees led to a lack of transparency and coordination. Early 1993, the need to integrate these five committees into one committee was acknowledged.

This integration was accomplished by Regulation (EC) Nr. 2099/2002 of the European Parliament and the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and amending directives on maritime safety and on prevention of pollution from ships.



The aim of this Regulation was to develop the implementation of Community legislation on maritime safety, prevention of pollution from ships and the protection of shipboard living and working conditions:

- By establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) which centralises the tasks of the committees established under the relevant Community legislation on maritime safety;
- By accelerating the revision and facilitating the amendment of such legislation.

On 5 March 2003, a new proposal to counter pollution caused by ships was adopted by the Commission. On 7 September 2005, Directive 2005/35/EC of the European Parliament and the Council on ship source pollution and the introduction of penalties for infringements was signed.

Some relevant documents

Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and amending the Regulations on maritime safety and the prevention of pollution from ships (European Parliament and the Council)

Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (European Parliament and the Council)



Greenhouse Gas Emissions (GGE)

On 23 April 2009, the European Parliament and the Council signed Decision No 406/2009/EC on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (Decision No 406/2009/EC). The discussions on this issue started in January 2008 following a proposal from the European Commission. This Decision is essentially applicable to the industrial sector (including power plants, oil refineries and steel mills – accounting for almost half the Union's CO₂ emissions).

Up to now, no agreement has been reached tackling greenhouse gas emissions (GGE) of shipping at international level. However, the Commission should take regional measures within 2012 to fulfil its international commitments in abating Climate Change. Such a proposal should minimise the negative impact on the Community's competitiveness while taking into account the potential environmental benefits. The Commission started an online consultation in spring 2012, as part of an impact assessment on potential measures that can be implemented at EU level. The results of the impact assessment are expected for the end of 2012 and a political decision on an EU approach may follow in the first quarter of 2013. The idea of having EU measures on greenhouse gasses however remains very controversial.

The Decision on Greenhouse Gas Emissions

The decision needs to implement the commitments made by the European Council to combat climate change and promote renewable energy. A thorough reform of the emissions trading system (ETS) will impose an EU-wide cap on emissions and should be an incentive for all major CO₂-emitting players to develop clean production technologies. The package enables the European Union to reduce greenhouse gas emissions by at least 20% by 2020 and to increase the consumption of renewable energy to 20%. The reduction in emission will reach 30% by 2020 when a new international agreement on climate change is concluded.

Building on EU Emission Trading System (ETS) (Directive 2003/87/EC), it was decided to strengthen the single, EU-wide carbon market which will include greenhouse gases (currently only CO₂ is included) and involve all major industrial emitters. The emission allowances put on the market will be reduced annually to allow emissions covered by the ETS to be reduced to 21% below the 2005 level in 2020.



The power sector, forming the majority of EU emissions, will face full auctioning from the start of the new regime in 2013. Other industrial sectors, as well as the aviation sector, will step up to full auctioning gradually, although an exception may be made for sectors particularly vulnerable to competition from producers in countries without comparable carbon constraints. In addition, auctions will be open: any EU operator will be able to buy allowances in any Member State.

The EU Emissions Trading Scheme has, according to the European Commission, proved to be an effective instrument to find a market-based solution to provide incentives for cuts in greenhouse gas emissions. At present, the system covers some 10,000 industrial companies across the EU, including power plants, oil refineries, and steel mills, accounting for almost half of the EU's CO₂ emissions. Under the new system over 40% of total emissions will be covered by the ETS.

In sectors not covered by the ETS such as buildings, transport, agriculture and waste, the EU will reduce emissions to 10% by 2020 compared with 2005 levels.

The decision also refers to specific targets that are set for each EU Member State to reduce the use of biofuel by a minimum of 10% in the transport sector by 2020.

The Revision Climate and Energy Package

In December 2008, the European Council of Ministers and the European Parliament agreed on a Climate and Energy Package. This package includes a revision and strengthening of the Emissions Trading System (ETS), the EU's key tool for cutting emissions cost-effectively. This package also integrated new Regulations on the quality of transport fuel and a Regulation on the reduction of CO₂ emissions from passenger cars.

White Paper - Roadmap to a Single European Transport Area

The "White Paper - Roadmap to a Single European Transport Area" (see paragraph 7, WHP) explicitly addresses greenhouse gas emissions by the transport sector. According to the White Paper, the reduction of mobility is not an option, nor is not taking any action at all. The almost total dependence on oil to fuel the transport system has to be ended without sacrificing the system's efficiency or compromising the mobility of people and businesses. The aim of the Transport White Paper is to reduce emissions in aviation up to 50% by 2050, emissions of ships by 40 to 50% and reduce emissions from road transport by 80%. At



the same time, a growth in passenger traffic by 50% and freight transport by 80% is expected for the same period.

Some relevant documents

Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (European Parliament and the Council)

Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (European Parliament and the Council)



Port Reception Facilities (PRF)

The aim of Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues is to reduce the discharge of ship-generated waste and cargo residues into the sea, especially illegal discharges, from ships using ports in the Community. This can be done by making available and improving reception facilities.

The Community is seriously concerned about the pollution of seas and shores of EU Member States through (illegal) discharges of ship-generated waste and cargo residues, specifically on the implementation of the 1973 International Convention for the Prevention of Pollution from Ships as amended by the relating Protocol of 1978 (MARPOL 73/78).

MARPOL 73/78 was designed to preserve the marine environment through the complete elimination of pollution by oil and other harmful substances and the minimisation of accidental discharge of such substances. It required the signatories to provide port reception facilities in their ports. MARPOL 73/78 was ratified by all Member States.

In its resolution of 8 June 1993 on a common policy on safe seas, the Council identified the development of the availability and use of waste reception facilities in the Community as a priority action.

The pollution of seas is a transnational problem. Therefore, taking action at Community level is the most effective way, under the subsidiarity principle, to ensure common environmental standards for ships and ports throughout the whole Community. According to the proportionality principle, a Directive is the appropriate legal instrument, as it provides a framework for uniform and compulsory application of environmental standards by Member States, while each State is free to decide which implementation tools best fit its internal system.

In the interest of improving pollution prevention and avoiding distortion of competition, the environmental requirements should apply to all ships, irrespective of the flag they fly, and adequate reception facilities should be made available in all ports of the Community.



In order to reduce the discharge into the sea, all ships are obliged to transfer their waste to a reception facility prior to departure, unless the ship's own waste storage capacity suffices to the next port. A compulsory fee system – whether or not waste is transferred – encourages the transfer of ship-generated waste to ports instead of discharge into the sea..

In 1998, the European Commission proposed the file, which went through the entire co-decision procedure until the Directive was signed on 27 November 2000 by the European Parliament and the Council. Member States had to implement the Regulation as from 28 December 2002; with the exemption for sewage (this Directive took effect 12 months after the entry into force of Annex IV of MARPOL 73/78).

For the moment the directive on port reception facilities for ship-generated waste and cargo residues is being revised. A stakeholder consultation was completed by mid-2011. The European Commission is currently completing its impact assessment. A proposal for an amended directive is expected by the end of 2012 or in spring 2013.

Some relevant documents

Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues (European Parliament and the Council)



Water Framework Directive (WAT)

The European Parliament and the Council agreed on 23 October 2000 on the Directive establishing a framework for Community action on water policy (Directive 2000/60/EC).

The aim of the Water Framework Directive (WAT) is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

1. Prevents from further deterioration, protects and enhances aquatic ecosystems and their water requirements, terrestrial ecosystems and water areas which directly depend on aquatic ecosystems;
2. Promotes sustainable use of water, based on long-term protection of available water resources;
3. Enhances protection and improvement of the aquatic environment, including specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing out of discharges, emissions and losses of priority hazardous substances;
4. Ensures the progressive reduction of pollution of groundwater and prevent further pollution;
5. Contributes to mitigating the effects of floods and droughts.

This will contribute to:

- The availability of sufficient surface water and groundwater of good quality for a sustainable, balanced and equitable water use;
- A significant reduction of groundwater pollution;
- The protection of territorial and marine waters;
- To achieve the objectives of relevant international agreements, including those aimed at preventing and eliminating the pollution of the marine environment, by Community actions under Article 16, paragraph 3, to cease or phase-out discharges, emissions and losses of priority hazardous substances, in order to achieve concentrations near the background values for naturally occurring substances and to achieve near zero concentrations for synthetic substances.

The Water Framework Directive (WFD) requires Member States to adopt environmental quality goals and to develop river basin management plans before 2009 to ensure that these quality objectives are met and maintained. The ecological quality objectives are related to the characterisation of the affected body of



water (natural, strongly modified or artificial water). Chemical quality targets will be established in the EU WFD Priority Substances Daughter Directive (see DPS, paragraph 42). The WFD extends to coastal waters (12 nautical miles for ecological quality objectives and 1 mile for chemical quality goals).

Some relevant documents

Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (European Parliament and the Council)



National Emission Ceilings (NEC)

On 23 October 2001, the European Parliament and the Council adopted the Directive on national emission ceilings for certain atmospheric pollutants (Directive 2001/81/EC).

National Emission Ceilings Directive (NEC) aims at limiting emissions of acidifying and eutrophying pollutants and ozone precursors in order to improve the protection in the Community of the environment and human health against risks of adverse effects from acidification, soil eutrophication and ground-level ozone. The ultimate goal is that:

- Critical levels and loads are not exceeded,
- Everyone is effectively protected against recognised health risks from air pollution by establishing national emission ceilings - taking the years 2010 and 2020 as benchmarks - and through successive revisions as defined in Article 4 and 10.

Member States are limited in their annual national emissions of the pollutants sulphur dioxide (SO₂), nitrogen oxides (NO_x), volatile organic compounds (VOC) and ammonia (NH₃). The NEC Directive had to be revised in 2010. Proposals for this Directive will however be done in conjunction with other policies that are being prepared or planned, as announced by the European Commission early 2011. In a new NEC Directive ceilings will undoubtedly be set lower, but it's not clear, how much lower.

Some relevant documents

Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (European Parliament and the Council)



Environmental Noise (ENO)

The European Parliament and the Council adopted on 25 June 2002 a Directive related to the provision and management of noise nuisance (2002/49/EC). The Directive provides a common basis for the noise problem in the European Union. The basic principles of this Directive are the same as those of other environmental policies.

1. Monitoring the environmental problem; by requiring competent authorities in Member States to draw up "strategic noise maps" for major roads, railways, airports and agglomerations, using harmonised noise indicators L_{den} (day-evening-night equivalent level) and L_{night} (night equivalent level). These maps will be used to assess the number of people affected and sleep-disturbed respectively throughout Europe;
2. Informing and consulting citizens about noise exposure, its effects, and the measures considered to address noise, in line with the principles of the Aarhus Convention;
 - 1.
3. Addressing local noise issues by requiring competent authorities to draw up action plans to reduce noise where necessary and maintain the noise level where it is acceptable from a human health point of view. The directive does not set any threshold value, nor does it prescribe the measures to be used in the action plans, which remain at the discretion of the competent authorities;
 - 2.
4. Developing a long-term EU strategy, which includes objectives to reduce the number of people affected by noise in the longer term, and which provides a framework for developing a Community policy on noise reduction at its source. Additional legislation on noise emission is considered.

The first EU-wide noise mapping exercise in 2007 found considerable differences in assessment methods, data collection and quality. On 14 September 2012, the European Commission published common noise assessment methods in Europe (CNOSSOS-EU) to allow exposure to noise from transport (road, rail, air traffic) and from industry to be assessed more easily, and for coherent and comparative data to be provided on noise levels to which Europeans are exposed. The ultimate aim is to reduce those levels.

Some relevant documents

Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise (European Parliament and the Council)



Soil Framework Directive (SFD)

The European Commission introduced a request on 22 September 2006 for a Directive from the European Parliament and the Council establishing a framework for the protection of soil and for the amendment of Directive 2004/35/EG.

The suggested directive includes:

- The achievement of a common framework concerning the soil protection on the basis of the principles of the preservation of soil functions, prevention of soil degradation, reduction of the effects of soil degradation; rehabilitation of degraded soils and integration in other sectoral policies.
- The demand to establish, describe and assess the impact of certain sectoral policy orientations on soil degradation processes; taking into account the protection of soil functions.
- The commitment for land owners to take precautions when it appears that the way they use the soil impedes significantly the normal soil functions.
- An approach to soil sealing to ensure a more rational use of land in accordance with Article 174 of the EC Treaty and to maintain as many soil functions as possible.
- Mapping of areas where there is a risk of erosion, of organic matter decline, salinisation, compaction and landslide, and the establishment of a national action programme. The size of the threatened areas should therefore be checked. In order to guarantee a consistent and comparable approach, the determination of the risks should take place on the basis of common elements. This includes the parameters that are known as the driving forces for the different soil threats. Targets to reduce the risks should be adopted, just as measures to achieve these objectives. These programmes can be built on the standards and on the measures which are already formulated and implemented at national and community level.
- Measures to limit the introduction of hazardous substances in soils. These measures will avoid an accumulation of such substances in the soil so that they do not compromise the soil functions and that they do not create a risk for the human health and the environment.
- The creation of an inventory of contaminated sites, the setting up of a funding mechanism for the curing of “orphan sites”, the disposition of soil reports and the establishment of a national strategy for the curing of the assessed contaminated sites. There is a definition of “contaminated sites” and a list of the potentially contaminated soil activities. These are the basis for the tracing of potentially contaminated sites, which is a preparatory step for the creation of an inventory of effectively contaminated sites. To complement the above-mentioned information, the seller and the potential buyer have to write a report about the actual state of the soil (“Soil Report”). This report has to be written for every single sale. A similar provision on the energy performance of the buildings is already part of the Community law (see Article 7 of Directive 2002/91/EC).



On 14 November, the European Parliament determined its position in first reading on the proposition of the European Commission. In the Environment Council meeting of 20 December 2007 no political agreement was reached. Germany, France, Malta, The Netherlands, Austria and the United Kingdom rejected the proposal for various reasons; a blocking minority. Up to September 2012, the situation did not change. The European Commission did not change, nor withdraw its proposition. Member States maintained their position. Further action is not expected before 2013.

Some relevant documents

Proposal for a directive of the European Parliament and of the Council establishing a framework for the protection of soil and amending Directive 2004/35/EC (European Commission)



Regulation on Shipment of Waste (RSW)

The European Parliament and the Council approved on 14 June 2006 the Regulation on shipment of waste (Regulation 1013/2006/EEG).

The import and export of waste is internationally governed by the Basel Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal. The European Community is a party to this Convention and incorporated it in 1993 in the Regulation (259/93/EEG) of the Council, the so-called Regulation on European Shipment of Waste. This Regulation was valid as from May 1994 and aimed at supervising and controlling waste movements in order to take account of the need to preserve, protect and improve the environmental quality.

The Regulation was based on the guiding principles of the Community Waste Management Strategy (i.e. prevention, helpful application and definitive separation) and contained a set of norms according to which the Community as a whole should allow its own waste removal. These norms also refer to the necessity of individual Member States to take account of the geographical circumstances and the possible need for specialised installations for certain types of waste.

In the meantime, the 1993 EVOA (259/93/EEG) was amended. The new Regulation (1013/2006/EEG) was published on 16 July 2006 and was valid as from 12 July 2007. In 2006 and 2008, there were two modifications (*Corrigendum to Regulation (EC) No 1013/2006*). Both procedural and substantive changes occurred with the introduction of the new EVOA. The main changes are:

- Two lists of waste instead of three: the new Regulation has a green and an orange list (respectively one list of waste that has to be accompanied by certain information and a list of waste for which the procedure of prior written notification and contentment applies).
- Compulsory form for the shipment of waste from the green list: the possibility to use a free transport scheme expires.
- Introduction of a new notification: the duty to inform is now compulsory for the shipment of more than 20kg waste mentioned on the green list. As concerns waste from the orange list, the duty of information is only compulsory when transport is organised with a written authorisation.



- For transport to non-OESD countries, the Land Regulation (1418/2007, 29 November 2007) applies. In that Regulation, it is stated which countries wish to receive waste from the green list and whether or not the waste is subject to notification.
- In the future there will be a list of mixed waste that can be considered as green waste.

Some relevant documents

Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (European Parliament and the Council)

Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (the Council)

Corrigendum to Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste



Waste Framework Directive (WAS)

On 21 December 2005, the European Commission submitted a proposal to review the Waste Framework Directive to the European Parliament and the Council. Following the entire procedure, the European Parliament and the Council adopted the Directive on 19 November 2008 (Directive 2008/98/EC).

This directive sets out a mechanism to tackle one of the issues around the waste definition: criteria to determine when some waste streams cease to be waste (for example, when composted biological waste becomes compost). It revised the 1975 Waste Framework Directive in order to set recycling standards and to force EU Member States to develop national waste prevention programmes. This revision also merged, streamlined and clarified legislation, contributing to better regulation.

The main changes of the Waste Framework Directive are:

- Introduction of an environmental goal;
- Clarification of the concepts of useful application and disposal;
- Clarification of the conditions under which hazardous waste may be mixed;
- Introduction of a procedure to clarify the conditions under which waste ceases to be waste;
- Introduction of minimum standards or of a procedure to establish minimum standards for a range of waste management operations;
- Introduction of requirements to develop national programmes for the prevention of waste.

This Directive establishes measures to reduce the environmental impacts of production and waste management. The Directive also stipulates that Member States should establish priority measures to prevent or to reduce their waste production. Secondly, it aims at ensuring waste recovery through reusing, recycling and other applicable proceedings.

A significant detail for seaports, which has been discussed in the European Parliament and at the Council, is the appreciation of dredged-material from the point of view of this Framework. Initially, the proposal considered as waste “all substances we want to get rid of”. Thus, sediment removed for nautical reasons and dispersed elsewhere in the same water system, was considered to be waste. However, this approach is not practical at all, especially when looking at the enormous amount of sediment from tidal ports that has to be removed regularly. From an environmental point of view, there is no reason to bring clean sediment within the scope of this directive. Clean sediment should be either dispersed in salt waters or used on land.



Ultimately it was decided that the Waste Framework Directive does not apply to dredged material when the sediment is displaced within the same water system, if:

- (1) The displacement is necessary for reasons of water management to prevent flooding, to diminish the consequences of flooding and drought, or as a part of land reclamation;
- (2) It can be proven that the sediment is non hazardous;
- (3) Obligations under other relevant Community legislation are accomplished.

Some relevant documents

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain directives (European Parliament and the Council)



Marine Strategy Framework (MSF)

The Integrated Maritime Policy is fully aligned with, and supportive of, other EU policies including the development of a knowledge economy (Lisbon) and the sustainable development principles (Gothenburg). The latter was elaborated in the European Marine Strategy, which is anchored in the Marine Strategy Framework Directive. This marine strategy forms the environmental basis of the European Marine Policy.

On 17 July 2006, the European Commission introduced a proposal for a “Directive from the European Parliament and the Council to establish a framework for community measures as concerns the policy in regard to the Marine environment” (Marine Strategy Framework, MSF). The European Parliament and the Council signed the framework (2008/56/EG) on 17 June 2008.

The MSF obliges Member States to develop and implement marine strategies. The goal is to achieve and maintain good environmental conditions for all European bordered seas by 2020 at the latest. The MSF has the following goals:

- Taking care of the protection and the maintenance of the marine environment,
- Preventing deterioration,
- Improving damaged ecosystem.

The MSF divides the European seas in marine regions and subregions. The development of strategies for the marine environment takes place in different phases. By 2015, a series of measures should be developed so that the measures are applicable in 2016. By 2020, the measures should result in a good state for the marine environment. Member States from the same marine region have to collaborate in order to have coherence and coordination in their marine strategies. Besides, they should take care of synchronising with non Member States which are in the same marine region, especially for regional maritime agreements.

Marine strategies are based on the protection and preservation of the ecosystem and on the management of human activities, so that the collective pressure they exert remains acceptable.

It is essential to have a certain flexibility to reduce the costs when there is no large risks for the marine environment. Member States are not obliged to follow special measures if there is no specific risk for the



environment or if these measures are not in line with the risk. Member States have then to prove that the marine environment would not be further damaged and have to prevent the environment from constant threat..

After the completion of the second reading by the European Parliament, the Council agreed on MSF on 14 May 2008. This provides Member States with a framework which enables them to undertake every useful measure in order to achieve and maintain a good state by 2020 at the latest. Therefore, Member States should develop and implement marine strategies oriented towards the three above-mentioned goals. Step by step, sea pollution should thus be diminished in order to rule out any risk for the sea biodiversity, the marine ecosystem, the public health and the normal use of the sea.

Since the approval of the MSF, its implementation is proceeding well not only at European level, but also at Member States level. On 1 September 2010, the European Commission introduced criteria according to which the environmental state will be determined and have to be reached by 2020. The Commission believes that the environmental state of the sea should be assessed on the basis of biological diversity, fish population, eutrophication, contaminants, waste and noise. These criteria have been chosen on the basis of current scientific knowledge and they can be adapted in function of new scientific insights.

Some relevant documents

Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (European Parliament and the Council)



Supplementary Directive on Priority Substances (DPS)

On 17 July 2006, the European Commission introduced a proposal for a Directive of the European Parliament and the Council concerning norms about the environmental quality on water policy and amending Directive 2000/60/EG. On 16 December 2008, Directive 2008/105/EC was signed by the European Parliament and the Council.

This Directive on Priority Substances brings precision to article 16 of the Water Framework Directive, which stipulates that restrictions should be determined for these priority substances. For this purpose, the European Commission drew up a first list in 2001 with normative suggestions for 33 priority substances. The new directive may affect decentralised authorities with respect to water purification, as new demands for the purification of water are imposed.

The supplementary directive focuses on 33 contaminating substances. By 2018, Member states should have made progress to achieve the maximum allowed concentrations and the annual average of the 13 priority hazardous substances. Cadmium, lead, mercury and chemical compounds with these elements are part of these 13 substances. The European Commission will draw up a report of the progress made in this area, as well as on the basis of an inventory of the emissions, discharges in water and losses in the member states. The list of priority substances and of the corresponding allowed concentrations should be revised at the latest two years after the introduction of the supplementary directive. The European Parliament added 13 new substances (among others dioxins, PCB's, biphenol) to the original list of the potential priority or priority hazardous substances. These 13 substances should be taken into account when the list is revised. Next to discharge – so-called mixing zones – the allowed concentrations of one or more substances and other priority pollutants may be exceeded, if and only if the norms in the respective body as a whole are respected. Member States can define the mixed zones on the basis of certain criteria. In harbour areas, the density of matter in suspension can be temporarily very high due to dredging. According to the rapporteur of the European Parliament this needs careful consideration.

In the meantime, the European Commission prepares a modification of the supplementary directive. Apparently the Commission is considering the introduction of biota norms for certain substances in the proposal as, after a water analysis, the problem of substances could be either underestimated or cannot be



detected. For the time being, the Commission is not prepared to introduce norms for sediment. Once the proposal is published, a co-decision procedure will follow.

The proposal for a revised supplementary directive was published on 31 January 2012 (COM (2011) 876 final). Highlights are:

- *Extension of the current list of 33 priority substances with 15 other substances or categories of substances among which 3 medical drugs.*
- *Modification of the current list of priority substances with respect to environmental standards and/or their status (priority of priority dangerous).*
- *Additional rules, like a lower monitoring frequency, for dangerous substances of which the use has been prohibited but will linger in the environment because of their persistence.*
- *Rules on a watch list in which is stipulated that in preparation of a next selection procedure a limited number of substances (10-20) is to be monitored on a limited number of locations in each member state.*

The European Commission proposes the introduction of biota standards next to the existing maximum allowed concentrations in water. On the other hand and as expected, the Commission does not propose the introduction of sediment standards.

Some relevant documents

Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council (European Parliament and the Council)



Ambient Air Quality (AAQ)

On 21 September 2005, the European Commission introduced a proposal for a Directive of the European Parliament and the Council on ambient air quality and cleaner air for Europe. On 11 December 2007, the European Parliament and the Council of Ministers achieved an agreement on the new EU Directive. The Council adopted its Common Position on 25 June 2007 (Directive 2008/50/EC).

The Commission proposal aimed at deeply revising five individual elements of the existing acquis and at merging these elements in one single directive. This would simplify and streamline the existing stipulations, i.e. on the issue of control and reports. The proposal would also update the stipulations in the light of new scientific developments and would take care of a better control of the exposure of the population.

The Directive Ambient Air Quality is a keystone in the thematic strategy in the campaign against air pollution in Europe. For the first time, restrictions were established for the finest particulate matter (PM_{2,5}; particle size < 2,5µm), which is more dangerous than particulate matter (PM₁₀) for the human health.

The Directive provides a target value for the finest particulate matter of 25 µg/m³ in 2010. This concentration will be the limit value in 2015. As from 2020, an intensified limit value will be applied for PM_{2,5}: 20 µg/m³. The European Commission will evaluate this value in 2013 and will subsequently either fix this value or propose another one. In both cases, Member States are obliged to reduce the PM_{2,5} concentration by 15 to 20% by 2020 compared to the average concentration in the period 2008 – 2010 in urban areas. Moreover, Member States have to ensure that the exposure level is below 20 µg/m³ in urban areas by 2015 (“exposure concentration obligation”). This “exposure concentration obligation” will also be evaluated in 2013.

The existing rules with respect to rougher particulate matter (PM₁₀) are still valid, i.e a threshold value of 40 µg/m³ for the annual average concentration. For the time being, no further reduction is anticipated. The daily average concentration may not exceed 50 µg/m³ more than 35 times a year.

In 2009, the European Commission allowed several Member States (on their request) to temporarily exceed the air quality norms (derogation). On the other hand, an infringement procedure was opened



against some Member States because they exceeded the air quality norms. Since early 2011, the revision of the Thematic Strategy air quality and the Directive of Air Quality combined with the Directive National Emission Ceilings is being prepared (see also paragraph on National Emission Ceilings).

Some relevant documents

Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (European Parliament and the Council)



Maritime Spatial Planning (MSP)

The European institutions (Council, Parliament and Commission) consider maritime spatial planning as an important tool for the development of an integrated maritime policy in Europe. With its announcement “Roadmap for Maritime Spatial Planning: Achieving Common Principles in the EU”, the European Commission issued the first outline for a Community approach of the MSP.

The roadmap simplifies the development of the spatial structure of the sea and of the coastal zone. Moreover, it is one of the tools for the implementation of the European Integrated Maritime Policy, according to the Commission. Spatial arrangement on the sea may contribute to the preparation of coastal zones for the consequences of climate change, such as the rising of the sea level, floods, changing marine ecosystems and investments in the coastal protection. The Commission indicates that 22 out of 27 Member States located at the seaside have a coastline length of roughly 70,000 kilometres. Moreover, approximately 40% of EU citizens live in coastal zones.

On 17 December 2010, the European Commission issued the “Maritime spatial planning in the EU-achievements and future development” report. Its conclusion clearly points to the need for further action at EU level if Europe wants to achieve a coherent framework for Maritime Spatial Planning. In view of this, the Commission enquired the impact of different possibilities for the extension of the maritime spatial arrangement and the planning of the coastal zones. The results were presented in 2011. By combining maritime and related activities of various sectors into a single planning framework, the MSP may prevent conflicts, maximize synergy as well as guarantee an efficient and sustainable use of the scarce maritime place.

On 22 March 2011, the European Commission started an online consultation in order to collect background information for a future policy for MSP and Integral Coastal Management. The Commission alludes to a European directive that helps the co-operation between the member states. A proposal for a directive MSP has been introduced in the working-plan 2012 of the European Commission. In September 2012, its publication was still pending.



Some relevant documents

Communication from the Commission. Roadmap for Maritime Spatial Planning: Achieving Common Principles in the EU (European Commission)

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Maritime Spatial Planning in the EU – Achievements and future development (European Commission)



Credits

For further information, please contact:

European Sea Ports Organisation – ESPO vzw/asbl

Treurenberg 6

B-1000 Brussel / Bruxelles

Belgium

Tel. : + 32 2 736 34 63

Fax : + 32 2 736 63 25

E-mail : mail@espo.be

www.espo.be

Flemish Port Commission

Wetstraat 34-36

B-1040 Brussel

Belgium

Tel.: + 32 2 209 01 11

Fax: + 32 2 217 70 08

E-mail: vhc@serv.be

<http://www.serv.be/vhc>

Dutch National Harbour Board (NHB)

Postbus 20906

2500 EX Den Haag

The Netherlands

Tel.: + 31 70 351 76 15

Fax: + 31 70 351 76 00

E-mail: info@havenraad.nl

<http://www.havenraad.nl>