

THE LEGAL REGULATION ON MARINE STRATEGY. CASE STUDY: THE BLACK SEA REGION

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ABSTRACT: *Marine environmental degradation became apparent in European waters, particularly in the Black Sea, so it is opportune a coherent policy, coordinated and comprehensive for protection, improvement and sustainable use of degraded seas in Europe.*

Problems and threats to the sustainability of the marine environment resulting from the use of marine waters (eg: climate change, resource exploitation activities such as oil and gas, pollution by introducing dangerous substance from shipping, oil spills, telluric pollution, marine litter, industrial, agricultural or household waste, commercial fishing, pollution of the atmosphere and transatmospheric, noise, introduction of exotic species, etc..) led the European Union to develop a strategy for the marine environment to ensure its sustainable use.

The legal document establishing a framework for Community action in the field of marine environmental policy is Directive 2008/56/EC ("Marine Strategy" Framework Directive). This expands thus the EU Water legislation to cover marine environment and it is part of the new cross-sectoral integrated maritime policy for Europe.

The question is whether the transposition of the "Marine Strategy" Framework Directive in national legislation will ensure the legal framework for central objective of marine strategies that achieve "good ecological status" of the marine environment by 2020, and achieving policy community in all marine regions including the Black Sea marine region?

KEYWORDS: *"Marine Strategy" Framework Directive, strategy, marine protection, The Black Sea.*

JEL CLASSIFICATIONS: *K00, K32*

1. INTRODUCTION

In the last years marine environmental degradation became apparent in European waters, particularly in the Black Sea, so it is opportune a coherent policy, coordinated and comprehensive for protection, improvement and sustainable use of degraded seas in Europe.

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Concerns for environmental protection of the Black Sea began since the signing of Convention in Bucharest by the riparian states (Russia, Ukraine, Romania, Bulgaria, Turkey and Georgia) in 1992¹.

Historical look, environmental pollution, and therefore the marine environment, appeared with the man, but has developed and diversified since evolution of human society reaching today one of the most important concerns of specialists in different fields.

Pollution is a very serious problem that can affect the future of humanity and life on earth, as one of the most important concerns of contemporary society since the early '70s. United Nations Conference² has brought into focus the issue of environmental deterioration from human activities and achieved global legal framework meant to regulate the phenomenon as a whole. The documents of the Conference had a special significance, which is why later decisively influenced both national environmental laws and international conventions concluded by the content of this global meeting.

The legal framework for environmental protection in Romania is regulated by Government Emergency Ordinance no. 195/2005³ and in Article 2, paragraph 51, pollution is defined as "*the direct or indirect introduction of a pollutant that can harm human health and / or quality of the environment damage property or cause a deterioration or prevent the use of environmental recreational or other legitimate purposes*".

In Romania the waters are public state property and according to Article 136 of the Constitution represent waters with energy potential of national interest, beaches, territorial waters, natural resources of the economic zone and the continental shelf.

In the literature of international law, the territorial sea adjacent inland waters maritime zone corresponds to which the sovereignty of a state⁴. United Nations Convention about the Law of the Sea of December 10, 1982, signed at Montego Bay (Jamaica), provides, even in its preamble, States Parties wish to regulate, in a spirit of understanding and mutual cooperation, all issues law of the Sea⁵. This document is the most complex system of rules and principles to order the relations between states in law of the sea, and is considered as a true "constitution of the sea"⁶.

The surface near the sea known as the coastal zone which is particularly important because there live many species of plants and animals whose existence depends on the contact between sea and shore, and it is also where ports and tourism develops⁷.

Coastal zone in the European legislation is "*geomorphological area located on both sides of the seafront with the seaward limit the outer limit of the territorial waters of the*

¹ Convention On The Protection Of The Black Sea Against Pollution, 1992, www.blacksea-commission.org.

² Declaration of the United Nations Conference on the Human Environment, Stockholm, 1972, <http://www.unep.org>.

³ Government Emergency Ordinance no.195 of 22 December 2005 on environmental protection, published in the Official Gazette of Romania no. 1196 of 30 December 2005.

⁴ Chilea D., *Drept internațional public*, Publishing House Hamangiu, Bucharest, 2007, p. 193.

⁵ Anechitoaie C., *Introducere în drept portuar*, Bren Publishing, Bucharest, 2007, p. 93.

⁶ Chilea D., *Op. cit.*, p. 192.

⁷ Stan M.I., 2013, European and International Legal Regulation of Environmental Impact Assessment in the coastal area of Romania, "*Juridical Current*" Journal, Petru Maior University of Targu Mures, vol. 2(53), pp. 111-118.

*Member States and the landward limit defined limit by Member States in their strategies for integrated coastal zone management*⁸.

Romania has ratified the Convention on the Law of the Sea, from Montego Bay, Law no.110/1996⁹, convention contributing to the development of new international approaches of integrated management of coastal zones and shall address in a more complete marine pollution problem.

In Romania, the normative act that has as main objective the protection and conservation of the marine environment from pollution is Law no. 98/1992¹⁰, ratifying the Convention on the Protection of the Black Sea against Pollution or "Bucharest Convention" and has three protocols as integral part: Pollution from land-based sources, pollution by dumping, pollution by oil or of other dangerous substances in emergency situations.

Parties to "Bucharest Convention" decided to act *"in order to achieve progress in the protection of the Black Sea marine environment and its living resources conservation, aware of the importance of the economic, social and environmental health of the Black Sea, convinced that natural and recreational resources of the Black Sea can be kept, first, through the joint efforts of the countries bordering the Black Sea, given the generally accepted rules and regulations generally accepted of international law"*.

Therefore, the problem of pollution of the Black Sea and thus protecting the environment should be approached in the broader context, of sustainable development.

A new phase of the process of achieving sustainable development in the Black Sea region has been developed in the Black Sea Commission, the *Strategic Action Plan for the Rehabilitation and Protection of the Black Sea*¹¹, which states that *"the state of the Black Sea environment continues to be a topic of concern due to further degradation of its ecosystem and irrational exploitation of its natural resources"*. Its general objectives follow *"to ensure a healthy environment for the people of the Black Sea region, both urban and rural areas, getting a diverse marine ecosystem biologically diverse and to support viable populations of higher organisms, including marine mammals and sturgeons, and provide livelihoods based on sustainable activities such as fishing, aquaculture and tourism in all Black Sea countries"*. The document contains a set of principles, policies and actions meant to lead to enhancing cooperation in the Black Sea region.

With the accession of Romania and Bulgaria in the European Union, to protect marine resources has been profiled an initiative presented as a Communication from the Commission to the Council and the European Parliament: "Black Sea Synergy - A New

⁸ Proposal for a Directive of the European Parliament and of the Council establishing a framework for maritime spatial planning and integrated coastal management, COM(2013) 133 final-2013/0074/COD, Bruxelles, 12.3.2013.

⁹ Law no. 110 of 10 October 1996 on the ratification of the United Nations Convention on the Law of the Sea, signed at Montego Bay (Jamaica) on 10 December 1982, published in Official Gazette of Romania no. 300 of 21 November 1996.

¹⁰ Law no. 98, of 16 September 1992 on the ratification of the Convention on the Protection of the Black Sea Against Pollution, signed in Bucharest on 21 April 1992 published in Official Gazette of Romania no. 242 of 29 September 1992.

¹¹ Document adopted by the Conference of Ministers of Environment of Black Sea Countries, Istanbul, Turkey, 30 to 31 October 1996, <http://www.mmediu.ro>.

Regional Cooperation Initiative"¹² to resume EU vision on cooperation in the Black Sea region countries and wishes *"to be a flexible framework to ensure greater coherence and policy guidance"*.

In the context of concerns promoting maritime policy designed to obtain a complete system for managing the uses of marine zones of Europe, is to adopt the European "Marine Strategy" Directive which is a vital component of the environment and regional cooperation.

2.THE EUROPEAN LEGAL REGULATIONS ON MARINE STRATEGY

Problems and threats to the sustainability of the marine environment resulting from the use of marine waters (eg: climate change, resource exploitation activities such as oil and gas, pollution by introducing dangerous substance from shipping, oil spills, telluric pollution, marine litter, industrial, agricultural or household waste, commercial fishing, pollution of the atmosphere and trans atmospheric, noise, introduction of exotic species, etc..) led the European Union to develop a strategy for the marine environment to ensure its sustainable use.

Basically, the strategy must create a framework for the broad participation of stakeholders and must contain a few main elements: to express a major objective, to establish a means by which to fulfill that objective, lead to measurable results. It can be said that these strategies are some "supporting instruments", which complete standard instruments that act as incentives for the adoption of measures for environmental protection¹³.

Directives are documents which set binding targets for Member States only, leaving them how to achieve them¹⁴.

Legal regulations which refers only to the marine environment is Directive no. 56 of 17 June 2008¹⁵, establishing a framework for Community action in the field of marine environmental policy ("Marine Strategy" Framework Directive).

This Framework Directive extends thus the EU Water legislation to cover the marine environment and is the environmental component of the new cross-sectoral Integrated Maritime Policy of Europe.

In statement of reasons it is specified that *"elaboration and implementation of the thematic strategy should be aimed at the conservation of marine ecosystems. This approach should include protected areas and all human activities that have an impact on the marine environment"*. By applying the ecosystem approach to management of human activities should *"give priority to achieve or maintain good environmental status in the marine environment, continuing its protection and preservation, and prevent further deterioration"*. In this sense, it requires Member States to guarantee "good ecological status" of all marine regions or subregions of Europe which means the environmental status of marine waters in the sense of being *"clean, healthy and productive within their intrinsic conditions and through sustainable use of the marine environment"*.

¹² COM(2007) 160 final, Bruxelles, 11.04.2007.

¹³ Petrescu-Mag R.-M., *Protecția mediului în contextul dezvoltării durabile. Legislație și instituții*, Bioflux Publishing, Cluj-Napoca, 2011, p. 76, <http://www.editura.bioflux.com.ro/docs/Petrescu-Mag.pdf>.

¹⁴ Idem 11, p. 35.

¹⁵ Directive 2008/56/EC of the European Parliament and of the Council (JO L 164/19, 25.6.2008).

Introducing the concepts of marine regions or subregions in European Union legislation on marine environment has scientific means from ecological point of view and certainly will facilitate the implementation of ecosystems-based regional approach.

Article 5, paragraph 1 of the Directive provides that *"each Member States shall, for each marine region or subregion concerned, a marine strategy for its marine applies to the waters"*. Paragraph 2 specifies that Member States sharing a marine region or subregion shall cooperate to guarantee that the measures required to achieve the Directive's objectives are coherent and coordinated in the concerned marine area.

A key component of this approach is the development by each Member State of a strategy for its marine environment applied to its marine waters, following a number of procedural and administrative stages contained in the following plan of action:

a) preparation:

(i) an initial assessment, to be completed by July 15, 2012, the current environmental status of the waters concerned and the environmental impact of human activities thereon, in accordance with Article 8;

(ii) a determination performed by July 15, 2012 the "good ecological status" for the waters concerned, in accordance with Article 9, paragraph 1;

(iii) establishment, by July 15, 2012, a series of environmental objectives and associated indicators, in accordance with Article 10, paragraph 1;

(iv) elaboration and implementation by July 15, 2014, unless otherwise provided in Community legislation, a monitoring program for ongoing assessment and regular updating of objectives, in accordance with Article 11, paragraph 1;

b) program of measures:

(i) development, at the latest by 2015, a program of measures designed to achieve or maintain good environmental status in accordance with Article 13, paragraphs 1, 2 and 3;

(ii) implementation at the latest by 2016, the program provided for in point (i) in accordance with Article 13, paragraph 10.

The second chapter of the Directive relates to the development of marine strategies and includes provisions on assessment, determining good environmental status, setting environmental objectives, monitoring programs, notification and assessment, as follows:

a) For the preparation, Directive 2008/56/EC stated in Article 8 that for each marine region or subregion, Member States *"proceed to a initial assessment of their marine waters taking into account of existing data when available and includes the following elements"*:

- an analysis of the essential specificities and characteristics and environmental status of those waters evaluation of physical and chemical characteristics, habitat types, biological features and hydro-morphology;

- an analysis of the predominant pressures and impacts, including those resulting from human activities, that influence the environmental status of those waters;

- an economic and social analysis of the use of water and the cost of degradation of the marine environment.

This analysis should take into account elements regarding coastal, transitional and territorial waters covered by relevant provisions of Community legislation in force, in

particular Directive 2000/60/EC¹⁶ establishing a framework for Community action in the field of water policy.

In preparing the initial assessment Member States should make every effort to ensure that the assessment methodology is consequent in marine region or subregion concerned, and that impacts and transboundary features are taken into account.

Regarding the same matter, under Article 9, EU Member States determine that for the marine waters of each marine region or subregion concerned, a set of characteristics for good environmental status and establish a comprehensive set of environmental objectives and associated indicators for their marine waters, in order to guide progress towards achieving good environmental status of the marine environment, as provided in Article 10, paragraph 1.

Article 11 provides that "*Member States shall develop and implement coordinated monitoring programs for the permanent assessment of the environmental status of their marine waters*" and shall, in the interests of consistency and coordination to ensure that:

- monitoring methods are consistent across marine region or subregion concerned, to facilitate comparison of monitoring results;

- pertinent impacts and transboundary characteristics are taken into account.

b) To stage establishing programs of measures Framework Directive provides in Article 13 that the Member States shall lay down the initial assessment determined in the first stage, taking into account the objectives set.

Member States should integrate measures developed in a program of measures, taking into account that Community legislation as well as forthcoming legislation on environmental quality standards in water or under international agreements.

Paragraph 3 clarifies that Member States should take full account of sustainable development and in particular the social and economic impacts of the measures envisaged to be cost-effective and realizable technically from.

The normative framework established by the Directive is designed to take into account the scientific and technological development it means that the programs of measures should be flexible enough to respond to various threats and pressures on marine ecosystems generated by human activities. Therefore, it is necessary to make provisions for regular updating of marine strategies.

This legal instrument contains extensive provisions on updating, reporting, consulting and informing by the fact that actively promotes public access to information and decision-making on the state of the marine environment and the management of maritime activities.

In conclusion, "Marine Strategy" Framework Directive 2008/56/EC is the regulatory framework for all European Union Member States to adopt the necessary measures to achieve or maintain good environmental status of the maritime environment by 2020.

The European Union legislative concerns on integrated maritime policy are part of the Proposal for a Directive of the European Parliament and of the Council¹⁷ establishing a framework for marine spatial planning and integrated coastal zone management. The main

¹⁶ Directive 2000/60/EC of the European Parliament and of the Council (JO L 327, 22.12.2000).

¹⁷ Proposal for a Directive of the European Parliament and of the Council establishing a framework for maritime spatial planning and integrated coastal management, COM(2013) 133 final-2013/0074/COD, Bruxelles, 12.3.2013, p. 3.

aim of the proposed Directive is *"to promote the sustainable development of maritime and coastal activities and sustainable use of coastal and marine resources by establishing a framework for the effective implementation maritime spatial planning in EU waters and integrated coastal zone management in the regions coastal Member States"*.

The proposal establishes a framework for maritime spatial planning and integrated coastal zone management as a systematic approach, coordinated, inclusive and integrated transboundary maritime governance, the legal basis of the "Marine Strategy Framework Directive.

On the other hand, the main instrument at European Union level to promote integrated coastal zone management is the European Parliament and Council Recommendation 2002/413/EC¹⁸ on the implementation of integrated coastal zone management in Europe.

Therefore, the proposal for a directive, in accordance with national and international legislation, Member States must develop and implement plans for maritime spatial planning and coastal zone management strategies, taking into account both the particular region or subregion, and the sectoral activities (exploitation of oil and gas ore deposits, shipping, submarine cables and pipelines, fishing, aquaculture and sites of nature conservation, use of renewable energies, etc..), so an integrated coastal zone management.

3.STAGE OF THE REGULATION STRATEGY REGARDING MARINE ENVIROMENT IN ROMANIA

Romania participated continuous in international environmental policy, signed and ratified the most important conventions, resolutions, declarations and environmental agreements. The process of harmonization of Romanian legislation with Community law continued after accession to the European Union in 2007.

Directive 2008/56/EC was transposed by Government Emergency Ordinance no. 71/2010¹⁹, approved by Law no. 6/2011²⁰ and must contribute to coherence between different policies, agreements and legislative measures in the marine environment, aiming to ensure integration of activities in this area.

The preamble²¹ to the Law no. 6/2011 for the approval and modification of Government Emergency Ordinance no. 71/2010 shows that the Romanian legislation in force does not contain sufficient through which ensure full protection of marine waters. Thus, the provisions of the water Law 107/1996²², as amended and supplemented, treating only coastal waters, which are located one nautical mile from the nearest point of the baseline. Also, the Government Emergency Ordinance no. 202/2002²³ on the integrated management of the coastal zone, which does not contain clear provisions for the

¹⁸ Recommendation 2002/413/EC of the European Parliament and of the Council of 30 May 2002 concerning the implementation of Integrated Coastal Zone Management in Europe (OJ L 148, 6.6.2002).

¹⁹ Government Emergency Ordinance no. 71 of 30 June 2010 on the Marine Strategy, published in Official Gazette of Romania no. 452 of 2 July 2010.

²⁰ Law no. 6 of 1 March 2011 approving Government Emergency Ordinance no. 71/2010 on the establishment of Marine Strategy, published in Official Gazette of Romania no. 159 of 4 March 2011.

²¹ See <http://www.cdep.ro/proiecte/2013/100/20/6/em234.pdf>.

²² Law no. 107 of 25 September 1996 - Water Law, published in Official Gazette of Romania no. 244 of 8 October 1996.

²³ Government Emergency Ordinance no. 202 of 18 December 2002 on the Integrated Coastal Zone Management, published in Official Gazette no. 965 of 28 December 2002.

protection and conservation of the ecological status of the Black Sea marine ecosystem. The normative act aims to conserve the marine environment from pollution, which also applies to the territorial sea and exclusive economic zone is Law 98/1992 ratifying the Convention on the Protection of the Black Sea against Pollution.

Therefore, the transposition of the "Marine Strategy" Framework Directive will ensure the legal framework for central objective of marine strategies that achieve "good ecological status" of the marine environment by 2020, and implementation of Community policy in all marine regions including the Black Sea marine region.

Article 1 of Government Emergency Ordinance no. 71/2010 stipulates that the central public authority in the water sector, the Ministry of Environment and Climate Change, develop and implement the Marine Strategy: the protection and conservation of the marine environment, prevent its deterioration or, where possible restore marine ecosystems in areas where they have been affected, and prevention and reduce inputs external in the marine environment, with a view phasing out pollution on condition to ensure that there are no significant impacts or risks to marine biodiversity, marine ecosystems, human health or legitimate uses of the sea.

Article 3 states that the Marine Strategy is based "*ecosystem approach to management of human activities*", because man is one who uses natural resources for economic and social development and human activity is the default so that can produce major changes in the marine ecosystem.

It can be said, therefore, that the impact of development and implementation of marine strategy will lead to awareness of the need to protect the marine environment, implicit human health having regard premises to ensure sustainable development in the Black Sea region.

In the Article 6 states that in order to achieve the coordination referred to in Article 5, "*to the extent this is possible and opportune*" will use existing regional institutional structures. Romania considered that this requirement must be achieved within the "Bucharest Convention" because the institutional framework allows the involvement of states bordering the Black Sea.

Romania considers that, in addition to the institutional framework provided by "Bucharest Convention" regional cooperation should take into account other international agreements, namely *Agreement* between the Ministry of Environment and Water of Bulgaria and the Ministry of Environment and Water for cooperation on water management²⁴ and *The International Commission for the Protection of the Danube River* (ICPDR). Romania should be noted that the *Consultative Group on Biodiversity Conservation, Consultative Group on Pollution Monitoring and Evaluation* and meetings with commissioners presented the "Marine Strategy" Framework Directive, in purpose of initiating a dialogue among all states for its implementation in the marine region Black Sea²⁵.

In this respect, Romania had to implement Directive 2008/56/EC for developing and implementing marine strategies in the action plan imposed in a very short time.

²⁴ signed in Bucharest on 12 November 2004.

²⁵ National Institute for Marine Research and Development "Grigore Antipa", "Initial assessment of the Marine environment" – Draft, July 2012, <http://www.mmmediu.ro/beta/domenii/managementul-apeilor-2/stadiul-implementarii-directivelor-europene/>, p. 15.

At this moment, Romania is in the preparation phase, which is the first component of the action plan. According to the program was developed "*Initial assessment of the Marine environment*" and "*Determination of good environmental status of the Black Sea Romanian Waters*" by the *National Institute for Marine Research and Development "Grigore Antipa"* in July 2012²⁶. These documents were public debate on central authority site in the water sector, the Ministry of Environment and Climate Change for 3 months, until October 16, 2012.

Based on the initial assessment made pursuant to Article 8, paragraph 1, the central public authority in the water sector set for territorial marine waters of a full set of objectives and indicators to achieve good environmental status in the marine environment.

Monitoring program for the ongoing assessment of the ecological status of the Black Sea is achieved through a European-funded project and is coordinated by the *National Institute for Marine Research and Development "Grigore Antipa"*²⁷ in partnership with the *National Research and Development Institute for Marine Geology and Geoecology (GeoEcoMar)*, "*Ovidius*" *University of Constanta*, *Institute of Oceanology - Bulgarian Academy of Sciences (IO-BAS)* and the *University of Sinop in Turkey*. The project entitled "*Marine Strategy Framework Directive Guiding Improvements in the Black Sea Integrated Monitoring System*" - MISIS²⁸ is expected be finalized in March 2014 and aims to develop a coherent program of activities to improve the quality and effectiveness of the integrated system monitoring environmental data in the Black Sea under the "*Marine Strategy*" Framework Directive.

The overall objective is to support efforts to protect and restore environmental quality and sustainable development of the Black Sea and the specific objectives are to improve the availability and quality of physical, chemical and biological data for integrated assessment of the state of the Black Sea environment, increasing number and size of marine protected areas in the Black Sea, as well as their degree of protection, increase stakeholder involvement and raising public awareness regarding environmental issues.

Monitoring programs should be established and implemented until 2014. Therefore, MISIS project completion depends on whether Romania is in terms of the action plan required by the Directive, so the key to solving the problem in the development of marine strategy.

The second component of the action plan, program of measures must be developed until 2015 and be operational within a year of its development, according to Article 12, paragraph 10 of Government Emergency Ordinance no. 71/2010.

As a consequence, to fulfill the objective of Directive 2008/56/EC, a "good ecological status" must be reached in all European marine waters by 2020.

²⁶ See "Initial assessment of the Marine environment" – Draft, July 2012, "Determination of good environmental status of the Black Sea Romanian Waters" – Draft, July 2012, <http://www.mmediu.ro/beta/domenii/managementul-apelor-2/stadiul-implementarii-directivelor-europene/>.

²⁷ See International projects, National Institute for Marine Research and Development "Grigore Antipa", <http://www.rmri.ro>.

²⁸ "MSFD Guiding Improvements in the Black Sea Integrated Monitoring System", www.misisproject.eu.

4. CONCLUSIONS

Directive 2008/56/EC introduces a number of new concepts in European legislation such as: marine region, subregion, maritime strategy, good ecological status, measures program and is a complex instrument that establishes for the first time a comprehensive legislative framework to European Union, aims to protect and conserve the marine environment.

A feature of this new generation of European legal instruments is that it establishes a methodology for management of natural resources, adaptable and focused on enhanced cooperation between Member States and regional coordination.

Directive is developed by prescribing a predetermined calendar of actions within a clearly defined management type, which must be respected by Member States to achieve and maintain good environmental status of marine waters, no later than 2020.

Respecting the action plan established as well as the transposition quality of provisions in national law by Romania and the other Member States, may lead to the successful implementation of an integrated maritime policy for the European marine zones, including the Black Sea marine region.

In conclusion, the strategy of the marine environment in the Black Sea region depends on: the level of cooperation between Member States and with third countries, regional bodies with roles and responsibilities in environmental protection, the way of implementation in practice of directive actions, material resources and financial, and not least the political will, and if put into practice will provide the prerequisites for sustainable development in the Black Sea region.

