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# GREAT POTENTIAL BUT LITTLE IMPACT: THE EUROPEAN UNION'S PROTECTION POLICIES FOR THE BALTIC SEA

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ABSTRACT

*Since the completion of the Eastern enlargement in 2004, a major responsibility for addressing the Baltic Sea pollution lies with the European Union. It provides strong institutions to facilitate environmental decision-making and to enforce the implementation of regulations. However, the measures taken so far have not been sufficient to significantly improve the state of the Baltic Sea. In particular, the Common Agricultural Policy does not take the ecological characteristics of the region into consideration. Instead, it provides false incentives since it generally encourages farmers to increase production and to extend areas under cultivation. To enhance the EU's role, it is crucial to raise the awareness of the Baltic Sea's vulnerability in Brussels. Moreover, European regulations and policies should become more flexible and match the regional specific environmental requirements. At the same time, too heavy financial burdens and distortions of competition, especially for the region's agricultural sector, should be avoided.*

## INTRODUCTION

The Baltic Sea is often referred to as one of the most polluted seas in the world, whereby eutrophication constitutes the main threat to its marine environment (McGroarty 2008). While adverse natural conditions certainly contribute to the problem, eutrophication of the Baltic Sea is mainly caused by anthropogenic nutrient inputs. The major sources are nitrogen and phosphorus discharges from agricultural production and municipal waste water. In addition, emissions from the traffic and energy sectors as well as from agriculture contribute to the atmospheric deposition of nitrogen to the Baltic Sea. Eutrophication has adverse consequences for the marine ecosystem, such as widespread, sometimes toxic, algae blooms and oxygen depletion, especially in deeper waters, both leading to the death of organisms including fish (HELCOM 2009: 11).

Since 1974, international efforts to protect the Baltic Sea have mainly been carried out within the framework of the Helsinki Convention and its governing body, the Helsinki Commission (HELCOM), which has provided a central arena for the development of common approaches while involving all littoral states. However, the latter's key position can be questioned as a

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consequence of the 2004 completed EU's Eastern enlargement (Kern and Löffelsend 2008: 117). Due to three developments, it can be claimed that the EU today has replaced the Helsinki Convention as the potentially most important international institution in terms of combating the Baltic Sea eutrophication.

First, the Baltic Sea has almost become an internal sea of the EU, with Russia remaining the only non-member state among its coastal states. Furthermore, even the EU member states that are not situated in the Baltic Sea region, such as Great Britain, the Netherlands, and Belgium likewise contribute to nutrient inputs through atmospheric deposition. Moreover, due to its strong political weight and economic power, the EU has the potential to involve even non-member states such as Russia and Belarus into protection measures.[2]

Second, the EU has strong institutional capacities to facilitate decision-making and to enforce the implementation of imposed regulations. Of particular relevance in this respect is the supranational character of policy making, e.g., through majority voting, and of central actors, e.g., the European Commission, the European Parliament, and the European Court of Justice which discerns the EU from any other international organizations that may be relevant in the context of combating the Baltic Sea eutrophication.

Third, the EU holds competences within most of the policy fields that are relevant for the protection of the Baltic Sea, among others water and air protection, traffic, transport, fisheries and maritime affairs. Also, in this respect it differs from the majority of international environmental conventions which are often specialized on a particular problem but lack the necessary scope of actions to develop cross-sectoral abatement strategies. Of particular importance in this regard is the fact that agriculture which, on the one hand, constitutes the most important single source of the Baltic Sea pollution, on the other hand represents the policy sector within the EU where regulation competences have most consequently been transferred to the community level (Feindt 2008: 191).

This paper tries to answer the question why European efforts to save the Baltic Sea so far have failed in spite of the above-mentioned promising starting conditions. The first chapter will critically evaluate those of the EU's regulations within the context of water protection, marine protection, air pollution control and agricultural policy, which are relevant for addressing the Baltic Sea eutrophication. In the second chapter, the reasons for the EU's weaknesses will be analyzed, with a special focus on the role of environmental associations. Finally, suggestions for improvements will be presented.

## THE EU'S PROTECTION POLICIES

### *Water protection*

One of the first community activities that had been driven by concerns about the deteriorating quality of European waters was the adoption of the Bathing Water Directive in 1975. In this initial phase, however, the intention was to establish common rules and parameters for

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[2] E.g., under the Northern Dimension Environmental Partnership, see Nechiporuk et al. (2011: 49).

the monitoring and definition of bathing water quality rather than to introduce abatement measures. The directive urges authorities to check nitrates and phosphates "when there is a tendency towards the eutrophication of water" (Council of the EC 1976: 7).

The Bathing Water Directive, together with the 1980 Drinking Water Directive, indicates that the European legislation on water pollution was initially motivated by the interest to protect the end-user (e.g., the swimmer or the consumer) and not so much the environment in general. This attitude changed in the 1990s. It then turned out that, in order to achieve the established targets for water quality, it would be necessary to address the pollution at source. The new approach was additionally enhanced through the Single European Act and the Maastricht Treaty, which introduced environmental protection as an independent policy goal of the European Union. Moreover, the serious state of the North Sea, in which heavy algal blooms repeatedly occurred during the 1980s, triggered a Council Resolution in 1988, which required the Commission to present proposals to address the problem (Prat 1990: 103). As a consequence, two of the hitherto main regulations in terms of combating eutrophication, the Urban Waste Water Directive and the Nitrates Directive, were adopted in 1991.

In order to take different regional conditions into account, both directives allow the possibility of a flexible implementation. Thus, they discern between sensitive and less sensitive areas as far as susceptibility to eutrophication is concerned and accordingly prescribe different standards in terms of sewage treatment and farming practices. While this has worked quite well in the case of the Urban Waste Water Directive, the implementation of the Nitrates Directive turned out to be more difficult. Several member states, including many in the Baltic Sea catchment area, e.g., Sweden and Poland, only designated relatively small parts of their territory as Nitrates Vulnerable Zones (IEEP 2007: 14). One reason for this reluctance seems to be the concern that the farming sector in the regions that fully comply with the requirements of the directive would lose its competitiveness against the regions that are less susceptible to eutrophication and therefore do not have to impose similar strict standards (European Parliament 2000: 6).

However, a HELCOM study revealed that even a consequent improvement of manure handling in accordance with the standards of the Nitrates Directive within all HELCOM contracting states would only bring about a marginal success. Because of the still rather weak provisions, only a maximum reduction of 6% of nitrogen runoffs to the sea could be expected. This would constitute a far too little improvement, taking into consideration the particular sensitivity of the Baltic Sea ecosystem (HELCOM 2006: 21).

A totally new approach in the EU's environmental policies has emerged at the turn of the millennium. Instead of addressing various polluters and pollution sources independently, the new idea was to develop broader goal-oriented strategies and thus to integrate various environmental objectives in one comprehensive act of legislation. The Water Framework Directive (WFD) adopted in 2000, thus sets the overall goal to reach a "good status" in European surface- and groundwater by the year 2015.[3] Member states are required to develop comprehensive River

[3] "Good status" is among others, defined by the absence of "accelerated growth of algae" and the situation when "nutrient concentrations do not exceed the levels established so as to ensure the functioning of the ecosystem" (Council of the EU 2000: 48–49).

Basin Management Action Plans (RBMPs), hereby to actively involve "all interested parties" and, where necessary, to engage in trans-border cooperation.

Basically, it is the intention of the WFD to "contribute to the protection of territorial and marine waters". It even explicitly refers to the goals of the European regional seas' conventions when stating that "this Directive is to make a contribution", to meet the obligations that result from these conventions. However, in a direct binding sense, the WFD applies only to the EU's "coastal waters" which are defined as a rather narrow strip of up to one nautical mile from the coast.[4]

Another weakness of the WFD is the lack of concretely prescribed measures which the member states have to impose when implementing the directive. What is more, it provides quite extensive provisions for exemptions, which give member states the right to extend the deadline for reaching a good environmental status not in 2015 but in 2027, for example, in cases of difficult "natural conditions" or if measures would be "disproportionately expensive". It is thus expected that in 50% of cases RBMPs will not lead to the achievement of "good status" by 2015 (Dworak et al. 2010).

### *Marine protection*

Only after the turn of the millennium the EU has started to acknowledge marine protection as an independent policy goal. This was due to two developments. First, the Amsterdam Treaty of 1997 once more strengthened the position of environmental protection vis-à-vis other Community objectives. As a consequence, in 2002, the Sixth Community Environment Action Programme was adopted, which called for the development of "a thematic strategy for the protection and conservation of the marine environment" latest by 2005.

Second, the EU had, not least as a consequence of the Lisbon Strategy of 2000, "discovered" the maritime dimension as a hitherto underestimated opportunity for the promotion of economic growth. Thus, in 2006 the European Commission published the "Green Paper on a Future Maritime Policy", which proposes a better coordination of traditional maritime branches and outlines possibilities for new business opportunities, e.g., within areas like offshore renewables, raw material extraction or marine biotechnology. At the same time, the Green Paper emphasizes the importance of the healthy nature as a prerequisite for economic activities like tourism and fisheries, but also for the realization of "non-market values", e.g., recreational activities or the pleasure of enjoying "the coast's scenic benefits" (European Commission 2006: 24). To enable the consideration of these aspects, the Green Paper calls also for the adoption of a thematic strategy for the marine environment, which should serve as the "environmental pillar" of the future maritime policy.

The European Parliament and the Council adopted the Marine Strategy Framework Directive (MSFD) in 2008 (Council of the EU 2008). Similarly to the Water Framework Directive, it aims at tackling marine pollution by providing a cross-sectoral framework intended to cover all the main pollution sources and by setting a time limit, in this case the year 2020, by which a good environmental status (GES) must be achieved. However, the responsibility for developing and

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4 One nautical mile corresponds to 1.852 kilometers.

implementing such measures is to a large extent handed over to the member states. They are required to develop national marine strategies according to the environmental situation of the respective seas to which they are bordering. They hereby should "take into account" the targets that are laid down in the regional sea conventions.

The degree to which the marine strategy hands over the responsibility to the national level appears to be rather counterproductive (Bertram and Rehdanz 2012: 11). For a successful realization of its objectives, a stronger commitment of the European level and a more binding inclusion of the regional level would have constituted a major advantage. Due to the transboundary character of marine pollution, it would have been more natural if the directive had urged the member states to develop joint marine strategies with regard to each of Europe's marine regions. Instead, in adopting national strategies, there is an inherent risk of differently ambitious targets and uncoordinated measures within one and the same marine region (Salomon 2009: 363).

Another weakness of the MSFD can be its reluctance to set ambitious targets for the integration of sectoral Community policies into the overall efforts for achieving a good environmental status of the marine regions. Whereas the strategy generally states that the new framework for marine protection policies should "foster the integration of environmental concerns into other policies, such as the Common Fisheries Policy, the Common Agricultural Policy and other relevant Community policies", it subsequently does not determine a possible proceeding which could lead to the demanded integration of sector policies. This applies especially to the CAP, which is not particularly addressed throughout the rest of the directive. Furthermore, emissions from shipping, which likewise account for a major pressure on Europe's marine environments, are not at all addressed within the marine strategy.

The directive generously allows exceptions from the target to reach GES by 2020. Article 14 thus opens the possibility that member states may not achieve this goal in case of "natural conditions which do not allow timely improvement" or if environmental damages result from "actions taken for reasons of overriding public interest which outweigh the negative impact on the environment." Member states may even abstain from fully implementing the directive if "the costs would be disproportionate taking account of the risks to the marine environment". Although the directive requires that these exceptions should not permanently preclude the achievement of GES in the concerned marine waters, it does not provide a clear time limit by which the exception should end at the latest.

### *Air pollution control*

In spite of the significant extent to which air pollution contributes to nutrient enrichments in European waters and soils, the aim to combat eutrophication has never been a major driving force for the development of the European air protection policies. Instead, the Community policies that emerged in the 1980s with the objective to address air pollution had primarily been driven by the intention to address problems like acidification and the formation of ground-level ozone and the resulting pressures on nature and human health. Although important legislative acts, e.g., the Large Combustion Plant Directive (1988) and the Integrated Pollution Preven-

tion and Control Directive (1996) certainly had positive effects in terms of reducing nitrogen emissions and thus addresssd an important source of the Baltic Sea eutrophication, the latter aspect was at best seen as a positive side effect but not as the main driving force. Only after the turn of the millennium the fight against eutrophication acquired a more independent position within the EU's air pollution control policy. An important step in that direction was made in the form of the 2001 National Emission Ceilings Directive (NECD). However, due to the priority which for a long time had been given to the fight against acidification within the European air protection policies, achievements in emission reduction are not equally distributed as regards various pollutants. While sulfur emissions have been sharply reduced in the EU between 1990 and 2010 and even nitrogen oxides emissions have decreased significantly, almost no reduction in ammonia emissions could be achieved during the last decades.

Although the European Commission in the recent years has acknowledged the need to address eutrophication through air pollution control measures, its realization has suffered from a clash with other objectives of the European environmental politics, in particular the fight with the climate change. Thus, the EU is promoting a shift from road to sea transport in order to make use of the fact that the latter produces considerably less $CO_2$ per ton-kilometer as compared with road transport. However, the concept of establishing "motorways of the sea" (European Commission 2001) neglects the fact that ships release about twice as much $NO_x$ than do modern truck models (EEB 2004).

A similar conflict also exists as regards the road traffic. Here, the concern about climate change has led to the promotion of vehicles driven by diesel instead of gasoline as a way to reduce petrol consumption. However, the fact that the former produce up to three times more $NO_x$ emissions than the latter had been neglected for several years (Vestreng et al. 2009). Finally, it is also striking that the revision and strengthening of the NECD, which was originally scheduled for 2004, has been repeatedly postponed. A further delay until 2014 seems to be possible. The failure to adequately make use of such an important tool of addressing atmospheric nutrient depositions has been explained by the need to offer some member states compensation in exchange for their approval of the EU's climate and energy package in 2007 (Ågren 2008).[5]

### *Agricultural policy*

The hitherto most far reaching attempt to include environmental considerations into the design of the Common Agricultural Policy (CAP) is related to the Luxembourg Declarations of 2003. The reform introduced Cross Compliance as a new policy tool, which implies that direct financial support is only paid to farmers who adhere to regulations on environmental protection. Moreover, the Luxembourg Declarations had formerly introduced a rural development policy, including agri-environmental programs, as a second pillar of the CAP. The Strategic Guidelines for Rural Development point to the problem of water pollution from agriculture and explicitly call for taking into account "soil protection, protection and conservation of the marine environment".[6]

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5 Two officials, Swedish Ministry of the Environment, 16.06.2010.

6 European Union, 2006; this passage is remarkable since it is the first time ever that the need to protect the marine environment is mentioned in the context of the EU's agricultural policy. See Guttenstein (2007: 13).

Thus, basically, a framework has been created for considering marine protection requirements in European agriculture. However, the extent to which agri-environmental programs are actually imposed depends almost completely on the member states and the farmers. Some constraints may prevent the agri-environmental programs from becoming an effective instrument for water protection policies. First, their implementation depends on the ability of the member states to provide funding for co-financing. The old member states have to allocate 50%, the new member states 25% of the total costs from their national budgets. The result is that not all financial resources which the EU has allocated for the purpose are in fact used, because member states are reluctant to pay their share.

Second, a potential weakness is related to the fact that member states have quite a lot of freedom of action in defining which kind of measures they actually want to pursue as part of rural development actions. Thus, national governments might choose to primarily support socio-economic projects and only allocate the legally required minimum support to environmental measures. But even the money that goes to environmental projects has not necessarily to be directed to water protection measures. There is no legal obligation for that at all (EEA 2006: 37). If member states decide to prioritize other environmental goals like, for instance, the mitigation of hazardous effects of pesticides, this could ultimately lead to the situation when no agri-environmental programs that could contribute to combat the eutrophication of marine waters are being established (Guttenstein 2007: 13).

Finally, the Luxembourg Declarations have not removed the major basic weaknesses of the CAP. These are insufficient environmental protection standards (e.g., in the Nitrates Directive) and the fact that the CAP is generally encouraging farmers to continuously increase agricultural production, e.g., by moving towards highly specialized and intensive large-scale farming and by increasing the areas that are under cultivation. This tendency has been additionally enhanced by the EU's recent call for increasing the cultivation of energy crops (Scheuer and Rouillard 2009: 38). Even in the regions that are highly susceptible to eutrophication, i.e. the Baltic Sea catchment area, farmers can hardly escape these false incentives of the CAP, since this might lead to lower yields and thus to a loss of competitiveness against the regions where agricultural production is not to the same extent questioned by environmental constraints.

## EXPLAINING THE WEAKNESSES

### *The lack of awareness at the European level*

In Brussels, the awareness of threats to the EU's marine environment seems to be biased, as often more attention is given to the seas in the west and the south than to the Baltic Sea.[7] This may be due to the fact that most of the Baltic Sea states are relatively new members in the EU and thus have had less time and opportunity to impact views and political processes within the European bureaucracy. Moreover, the Baltic Sea states have so far not sufficiently managed to occupy marine-protection-related staff positions in the European Commission.

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[7] Several interviewees in the European Commission pointed to the development of the EU's Integrated Maritime Policy as an example for a political process in which interests of Atlantic member states had dominated the agenda.

Paradoxically, the Baltic Sea Region seems to suffer from the positive image which Northern Europe has generally acquired in the area of environmental protection. This positive reputation has facilitated the emergence of a false impression among European policy makers who tend to believe that the Baltic Sea is among the cleanest marine waters in Europe, instead of acknowledging that exactly the opposite is correct. But even in the cases when policy-makers know about the true environmental situation of the Baltic Sea, they do not naturally draw the conclusion that much priority should be given to actions at the European level. This has again to do with the positive reputation of Northern European governance structures and, in particular, of the Helsinki Commission which is very often pointed out as a role model for cooperation in marine protection at a regional sea level. Consequently, there is a widespread impression that the Baltic Sea states must be very well prepared to deal with any regional specific environmental problems on their own instead of asking the European Union to push forward the protective actions for the Baltic Sea.

The lack of awareness for the Baltic Sea's serious environmental situation is further reinforced by the conditions for political deliberations that characterize the work of the European Commission. If seen from the Brussels perspective, the Baltic Sea region is often perceived as being located within a rather remote corner of Europe.[8] This does not only result in a reduced awareness for the region, but also has consequences in very practical terms. The remoteness is limiting the opportunities of environmental activists from the Baltic Sea region to make their voices heard in European politics. If, for instance, workshops are arranged in Brussels with the intention to influence decision-making processes in the European maritime policies, it is easier for NGO representatives from Belgium and the surrounding countries (e.g., from Paris, Amsterdam or London) to participate than it is for those who are residing in the Baltic Sea region, who would have to spend much more time and money for the trip to Brussels.[9] Thus, it is more likely that environmental concerns, which are represented by the major European NGOs with headquarters in and around Brussels and which are important in the pan-European perspective, are being considered within the European policy-making more often than those that are mainly relevant for a particular sub-region.

### *Insufficient NGO involvement*

Generally, the representation of the Baltic Sea's specific environmental interests at the NGO level in Brussels does not seem to work in a perfect way. Although environmental NGOs are well developed in most of the Baltic Sea states and enjoy a high reputation, their functional link to the European level is not strong enough. Their activities are targeted very much towards national or macro-regional actors (HELCOM), instead of seeking channels to influence the core European actors such as the European Commission. There is an unintended, rather invisible dividing line between NGO activities that take place at a pan-European level, directed to the central actors in Brussels and aiming to address environmental problems that are relevant

8 Official at the Brussels based West Finland European Office, 02.12.2009.
9 Official, European Commission, 07.09.2010.

for the EU as a whole on the one hand and those who more or less exclusively focus on the situation of the Baltic Sea on the other.

Among the all-European environmental organizations with offices in Brussels, there are those who are very prominent in the public, e.g., Greenpeace, WWF, or Friends of the Earth. They frequently manage to get the media coverage and thus play an important role in shaping the awareness of urgent challenges such as, for instance, climate change, accidental pollution (e.g., oil spills from tankers or oil-platforms) or threats related to Genetic Modified Food.[10] Thus, it is relatively easy to place such kinds of concerns high on the EU's political agenda. In contrast, the eutrophication of marine waters is not a topic pushed forward by those prominent NGOs. In not doing so, they are just reflecting the views predominant in most of the member states where eutrophication is neither perceived as a relevant issue nor something which is likely to make the headlines.

At the European level, *Seas at Risk* has specialized in lobbying for marine protection. Through its office in Brussels, this NGO has a realistic chance to impact decision-making processes within the EU. However, one of the organization's policy officers has openly admitted that "eutrophication issues, to be honest, are not part of Seas at Risk's expertise."[11] Instead, she referred to the expertise and activities of the Coalition Clean Baltic which, as an umbrella organization of various environmental organizations in the Baltic Sea region, has specialized on the sea's particular challenges and especially on the fight against the Baltic Sea eutrophication. Located in Uppsala, the Coalition Clean Baltic indeed plays a significant role in deliberations on marine protection policies around the Baltic Sea and within the HELCOM framework. However, the organization is naturally not sufficiently involved in policy-making processes at the EU level, as this would require a stronger presence in Brussels.

The unbalanced representation of the Baltic Sea environmental interests at the NGO level can be exemplified by the way in which position papers intended to impact the ongoing CAP reform for the financial period 2013–2020 are being presented. Various environmental NGOs have contributed to the consultation process. However, none of their position papers refer to the harmful consequences of agricultural activities on the particularly sensitive marine environment of the Baltic Sea. No contribution has been delivered to the consultation by Seas at Risk.[12]

Since the work of environmental associations at the EU level to a large extent depends on funding by the European Commission, the missing focus on the Baltic Sea specific problems reflects the already described lack of awareness in the Brussels bureaucracy. More generally, the weak position of combating marine eutrophication in the contributions of European NGOs to environmental debates is a consequence of the largely non-alarming and non-visible manner in which the problem in most European countries is experienced. Thus, it is much easier for

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10 Among the press releases published by Greenpeace, ca. 95% of those related to agriculture are contributing to the debate on GMOs. Moreover, 80% of the organization's press releases related to maritime policies are dealing with fishery issues. In contrast, marine eutrophication is almost a non-issue in the publications by Greenpeace.

11 E-mail to the author on 19.11.2009.

12 The position papers are made available for the public by the European Commission on: http://ec.europa.eu/agriculture/cap-post-2013/debate/contributions/index_en.htm#contributor2

accidental ecological catastrophes like oil spills from tank ships or drilling platforms to make headlines than to scandalize oxygen depletion in deep water layers. The latter remains a rather abstract notion, which is difficult for the media to illustrate (Richards and Heard 2005: 25). It is not easy to explain, and the responsibility can hardly be assigned directly. Thus, societal actors like environmental NGOs and the media, who otherwise would be expected to take over the role of advocating marine protection, are rather reluctant to pick up the subject as they cannot expect to benefit much from it in terms of public recognition, new members, additional readers or donations.

### *The regulation gap at the macro-regional level*

Involving the EU in the Baltic Sea protection implies the challenge to cope with a certain tension. On the one hand, there is no way to address the Baltic Sea eutrophication without giving the EU a decisive role to play. This is because competences within the relevant policy areas are largely located at the community level, and only the EU institutions have the capacity to facilitate effective policy-making processes across the various involved sectors and to enforce the implementation of and compliance with the decided regulations. On the other hand, it should be taken into consideration that only the minority of the EU member states are directly and profoundly interested in cleaning up the Baltic Sea. Moreover, even those actors and states who as bordering states in principle might be interested in the sea's environmental situation could, as a consequence of other overriding priorities in European politics, be reluctant to fully make use of the EU's potential to develop effective Baltic Sea protection measures.

One strategy to overcome this tension would be to strive for general solutions from which not only the Baltic Sea region but also other countries and regions throughout the EU could benefit. In fact, this has so far been the dominant approach in the development of European water and marine protection policies. It is the reason why, for instance, both the Urban Waste Water Directive and the Nitrates Directive imply a considerable degree of flexibility. With the intention to address the rather different environmental needs throughout Europe, they require stricter standards for wastewater treatment and fertilizer application, depending on whether the affected regions are suffering or not from eutrophication. Also, the Common Agricultural Policy, in particular through its second pillar, provides the opportunities which are open for a flexible adoption of measures at a member state level according to their specific environmental requirements.

This middle-of-the-road approach to harmonizing environmental legislation throughout Europe, while maintaining a certain amount of flexibility, has so far been a successful strategy, as it has contributed to improve water environments in several member states and marine areas. However, it has turned out that the inherent degree of flexibility is not sufficient to solve the problem of the Baltic Sea eutrophication. Both the above-mentioned directives would not entail considerable improvements for this sea, even if each Baltic Sea state would implement them in the strictest possible way, i.e. include an 80% removal of phosphates in wastewater treatment and declare the whole Baltic Sea catchment area as a Nitrates Vulnerable Zone.

Furthermore, the Common Agricultural Policy in its current state by far does not include those kinds of flexible mechanisms that would be necessary to prevent the further deterioration

of the Baltic Sea environment, which indeed has to be expected if the current CAP regulations would be extended to Poland, Lithuania, Latvia, and Estonia in the financial period after 2013 (Larsson and Granstedt 2010).

When developing the Marine Strategy Framework Directive, the EU has made some attempts to acknowledge that particular marine regions may need specific policy approaches and tailor made regulations. These considerations have been accompanied by a fundamental debate on the question whether and to which extent the macro-regional level should constitute an independent dimension in developing the EU legislation. The issue has unveiled conflicting positions among the European Commission, the European Parliament, and different groups of member states whose arguments in turn have influenced the position of the Council.

In a report on the Commission's proposal for a MSFD, the European Parliament suggested that, in addition to the proposal of the Commission, according to which member states should develop national marine strategies on their own, the directive should also require that "Member States sharing a Marine Region shall ensure that a single, joint Marine Strategy is produced per region or sub-region". The implementation and monitoring of these macro-regional strategies should then be assisted by management units that likewise should be installed jointly for the respective marine regions (European Parliament 2006a).

A more far-reaching proposal by the European Parliament even suggested the possibility to designate specific marine regions as pilot areas (European Parliament 2006b). Accordingly, the member states that share a common marine region should have the possibility to agree on greater efforts to move ahead within their group, if compared to the general European time schedule. Such a pilot area should then officially be acknowledged by the European Commission. The further going efforts of member states within a pilot area should then be supported by the EU among others through providing additional financial support.

The idea of creating pilot areas was even further substantiated through an additional suggestion of the European Parliament, according to which the Baltic Sea region should explicitly be mentioned in the MSFD as a possible first pilot area. The HELCOM Baltic Sea Action Plan should then serve as a tool for achieving the objectives of a pilot program. This suggestion constitutes an interesting move as its realization would definitely have left behind the hitherto applied principle of striving for general solutions when developing the new EU legislation. Instead, the Baltic Sea would have explicitly been singled out as an area which needs to be treated differently from the other parts of Europe.

The European Parliament's idea to add a strong macro-regional dimension to the EU's MSFD was subsequently weakened by objections from the Council and the European Commission. During the Council deliberations in 2006, the delegations of the member states expressed rather different attitudes towards the idea of developing joint marine strategies at the macro-regional level instead of applying national approaches. A clear discrepancy between the Northern and the Southern European countries became visible. On the one hand, delegations from the Baltic Sea states, in particular those from Latvia, Sweden, Lithuania, and Estonia, very clearly advocated macro-regional approaches, i.e. they required the development of joint marine strategies and the establishment of legally binding links to the targets set by regional sea conventions.

In contrast, France as well as Cyprus expressed reservations. They pointed to the fact that the Mediterranean region, in contrast to other European marine regions, is bordered more by third countries than by member states. Given this broader variety within the region, they argued that it would be rather difficult to establish a strong and efficient Mediterranean convention to take over central tasks in implementing the EU's MSFD.

However, France did not completely reject the idea of giving regional conventions a binding role within the EU's legal framework. Referring to positive examples, e.g., cases in which the European Court of Justice had based its decisions on the Barcelona and UNCLOS Conventions, the French government suggested to select carefully and determine explicitly which of the various marine conventions in fact would be appropriate to be used to fulfil the requirements of the MSFD. The strongest reservations against giving marine conventions a binding role in the implementation of the EU law were expressed by Germany which stressed the difficulty to find a clear and legally correct formulation for the relationship between both institutional levels. Moreover, the German government expressed concerns that any kind of macro-regional differentiation within the EU could result in distorted conditions of competition and thus undermine the single market principle (Council of the EU 2006).

In the end, it turned out that the strong emphasis on promoting macro-regional approaches within the context of the MSFD mainly got support from the Nordic and Baltic states, whereas the rest of the EU member states either held an indifferent position or directly rejected the suggestion. In the concluding statement, the Council justified its definitive refusal to require the development of joint single marine strategies per region by the argument that this would dilute the legal responsibility for compliance among the member states. The Council made it clear that generally only a national state can bear the ultimate responsibility for meeting obligations under the Community legislation (Council of the EU 2007). Moreover, the Council also rejected the idea of giving the existing marine conventions a binding legal role and to explicitly mention the Baltic Sea region as a possible pilot area within the MSFD. Instead, only a weak, non-binding formulation was taken up, according to which member states "as far as possible" shall consider the programs developed by Regional Sea Conventions. Also, the general idea of establishing pilot regions was not dropped completely, albeit the formulation about supportive actions which the regions in question could expect from the Commission was made rather vague and thus is not likely to become a basis for concrete measures.

The debate about whether and to which extent the macro-regional regulation level should be considered in the MSFD reveals that more ambitious EU protection policies for the Baltic Sea do not only fail due to the lack of political will to improve environmental conditions. They are also impeded by differences member states and Community actors have regarding institutional preferences and general targets concerning the European integration process. When developing environmental legislation, concerns about regional specific requirements have to be kept in balance with the interest of keeping all European regions on the same track. In other words, the Baltic Sea environment suffers from the fact that the institutional and legal instruments that might be beneficial for the Baltic Sea are being refused since they do not provide useful tools in the case of the Mediterranean Sea.

A new dimension of the European policy-making was opened up in 2009 by the adoption of the EU Strategy for the Baltic Sea Region, which is the first in a series of envisaged strategies for various European macro-regions. The Baltic Sea Strategy has the chance to address some of the structural weaknesses of the EU political system that so far have prevented effective protection policies regarding the sea's marine environment. Of major importance is the strategy's inherent potential to facilitate cross-sectoral policy coordination (European Commission 2012: 7). This has turned out already during the preparation phase which involved an extensive cooperation across 19 different Directorates-General – an experience that was unprecedented in the working procedures of the European Commission[13]. Nevertheless, the Baltic Sea Strategy cannot be regarded as an adequate compensation for the failure to establish the Baltic Sea pilot area under the MSFD. It neither includes the adaptation of the EU law towards the environmental requirements of the Baltic Sea nor allocates additional financial resources to support the adoption of urgently needed measures, e.g., to increase the purification levels of Wastewater Treatment Plants or to radically redesign the CAP throughout the Baltic Sea region.

In the long term, however, the Strategy may initiate certain beneficial developments within the target region. As a side effect, the region may be provided with better opportunities to influence decision-making processes within the EU central institutions (Schymik 2011: 10). The Baltic Sea region thus serves as a testing ground for the development of policies and management strategies which, if successful, can ultimately inspire the development of new EU legislation (European Commission 2011: 8). Moreover, cooperation experience may lead to an increasingly similar perception of common regional challenges among the affected EU member states. This may encourage them to take concerted actions and push jointly for the Baltic Sea protection at the European level, thereby increasing their bargaining power[14].

## CONCLUSIONS

Eutrophication of the open sea is not a major problem for any other European marine environment apart from that of the Baltic Sea. Consequently, one cannot expect that marine eutrophication will ever be on top of the European environmental policy agenda. It is all the more important to increase the knowledge of the particular sensitivity of the Baltic Sea within the EU's central institutions and in particular the European Commission. Normally, it should be a task of environmental organizations to point out urgent environmental challenges. It therefore constitutes a great weakness that the serious state of the Baltic Sea is not being adequately addressed by the NGO sector at the European level. To overcome this situation, it would be crucial to eliminate the dividing line that virtually exists between the environmental networks acting in the Baltic Sea regional context and those that are engaged in pan-European policy-making in Brussels.

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13 Official, Permanent Representation of Sweden to the European Union, December 2009.

14 A positive example of this mechanism can be seen in the Commission's proposal for a stricter legislation on phosphates in detergents, which was made in 2010 in response to a joint pressure from the member states that participate in the Baltic Sea and Danube Strategies. See European Commission (2010: 5).

Since marine eutrophication in itself cannot be expected to become a driving force within the European policy making, it is important to connect the issue to other, more prominent environmental topics and emphasize potential double benefits. For instance, increasing fertilizer efficiency should not only be regarded as a measure to combat eutrophication, but also put in the "more popular" context of combating climate change. Moreover, economic advantages, for example, in terms of lower expenses for fertilizer application and for drinking water treatment, could be emphasized. Double benefits from combating eutrophication, among others, also emerge in the tourism and fisheries sectors (Österblom et al. 2010).

Pointing out its interrelations with the other policy areas may also help to overcome the fragmentation of policy making, which otherwise constitutes a major disadvantage of the EU's political system, in particular when it comes to the integration of environmental considerations into the CAP. For many decades, decision-making had been taking place within a rather isolated policy network consisting of the Agricultural and Fisheries Council at the centre and interrelated experts from the European Commission's DG Agri and the European farmers' lobby organizations. Including the CAP into cross-sectoral approaches has proven to be extremely difficult due to the policy's exceptional position within the EU's broader institutional structure. Thus, it is important to make an optimal use of the points of access to CAP decisions that the system nonetheless provides for non-agricultural actors. These points are found within the EU's supranational bodies, such as the Commission, the Parliament, and the European Court of Justice, which have often pushed for environmental progress in order to improve public perception and increase their institutional legitimacy (Bongardt 2007: 66). In this regard, it is important to note that the European Parliament, which previously has only been involved on the basis of the consultation procedure, now has the right of co-decision in agricultural affairs through the Lisbon Treaty. Given the generally high profile which the Parliament has developed as an advocate for environmental protection, this may open up new opportunities to shift discussions on agricultural reforms away from closed circles and to make them a topic of public debates. However, it will be essential to avoid the possibility that the environmental profile of the European Parliament will suffer from its enhanced legal position by the fact that the latter will probably encourage farmers' interest groups to strengthen their efforts to influence the parliamentarians (Knill and Liefferink 2007: 99).

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