3.1 Introduction

The previous Chapter discussed the rules governing “whether” and “how” the Community may act to protect the marine environment and the instruments and mechanisms available under EC law. The present Chapter looks closely at the way the Community actually applies these rules and the approach it has taken with regard to marine issues. For the purpose of the discussion, “European oceans and seas” refer to the Baltic Sea, the North-East Atlantic and the Mediterranean Sea. Given the fact that, at the moment, none of the Black Sea coastal States is an EC member, the Black Sea is not covered.1

The protection and preservation of the marine environment and its essential functions have been a central element in the Community’s environmental policy since its inception. Nevertheless, despite the existence of adequate legal bases in the EC Treaty, marine environmental protection has traditionally played a subordinate role within European environmental law. So far, the Community has never developed a comprehensive policy on oceans as it did for other environmental areas and its action “at sea”, unlike “on land”, has been limited, fragmented and indirect. Given the cross-sectoral nature of marine issues, important aspects related to the protection of the marine environment have been directly or indirectly regulated within the framework of different policies (e.g., water quality, transport or fishing). For a long time, rather than establishing its own rules and standards, the Community has relied on the international ocean regime, either by urging its member states to adopt and implement existing international conventions or, when possible, by acceding to them itself. The present Chapter briefly discusses the main factors which have influenced this “multilateral” approach to ocean preservation. As a result, the legal regime for the preservation of the marine environment within the European Community may take the shape of a pyramid figure formed by three main building blocks: the global ocean regime (customary principles, the LOSC and Chapter 17 of Agenda 21 together with the WSSD Plan), which stands at the top, the international implementing regime (MEAs and Regional Seas Conventions) which stands in the middle, and sectoral EC legislation forming the base. The Chapter briefly describes

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1 The Community is not a party to the Black Sea Convention, which reserves membership only to states. However, since 2001 it has observer status in the Convention and in view of the next enlargement concerning Bulgaria and Romania (and Turkey), it has increased its participation in this forum. The Black Sea, moreover, is fully integrated in the new European Marine Strategy (e.g., COM (2002) 539, Para. 10 and p. 48).
this legal framework with strong attention being given to the action taken by the Community towards the implementation of its international commitments.

The “patchwork” regime applying to European seas leads to inconsistencies, overlaps and duplications and does not respond to the need to adopt an integrated approach to ocean issues as recommended at the international level. In the past few years, therefore, the Community has gradually changed its traditional approach. The Chapter concludes discussing the recent Commission’s proposal for a Marine Strategy and a Marine Strategy Directive and the steps taken towards the adoption of a comprehensive policy on oceans and seas.

3.1.1 The State of Europe’s Marine Environment

The latest official data on the status of Europe’s oceans and seas reveal a rather critical situation. In spite of the important results achieved in the past three decades in terms of controlling the traditional sources of pollution, European marine environment is still subject to serious pressure. As discussed in Chapter 1.4.1, the European seas, due to their ecological, geographical and socio-economic characteristics are particularly exposed to the threats posed by human activities, including merchant shipping and the introduction of non-native species from the ballast waters of ships, over-fishing and the use of destructive fishing practices (e.g., bottom trawling), ocean dumping, oil and gas extraction, land-based activities, especially agricultural practice and waste water treatment, as well as contamination from litter and noise pollution. As will be further

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4 Over-fishing is posing a serious threat to the very availability of commercial stocks (e.g., cod, hake and tuna) and has a strong impact on non-target species. See Commission (2005), Impact Assessment, infra n. 94, pp. 7-8; and COM (2002) 539, pp. 29-32.
5 Ocean dumping, however, no longer represents a major threat to European seas. See, in general, Chapter 7.2.1.
6 As discussed in 1.4.2, there is oil and gas extraction from the continental shelves of Denmark, Germany, the Netherlands and the UK. Despite a substantial reduction of discharges from offshore platforms, there is still a high risk of marine pollution associated with the expansion of drilling operations in deeper waters and ice-covered waters. E.g., Commission (2005), Impact Assessment, infra n. 94, p. 13 and COM (2002) 539, p. 34.
7 Eutrophication is a main problem in all European seas together with contamination by hazardous substances, urbanization, uncontrolled development of coastal areas, concentration of human activities along the coasts and tourism (e.g., Commission (2005), Impact Assessment, infra n. 94, pp. 10-13 and COM (2002) 539, p. 35.