

MANAGEMENT OF ACTIVITIES FOR PROTECTION OF THE MARINE ENVIRONMENT UNDER SECONDARY EUROPEAN LAW: CURRENT PROBLEMS¹

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ABSTRACT: This scientific study is dedicated to the management of activities for protection of the marine environment under secondary European law. Its actuality is determined by the increasing degradation of the state of the marine environment on a regional and global level. The attention is paid to two groups of regulations of the European Union, and especially: a) related to the establishment of bodies with management or consultative functions; and b) with more general meaning for the state of the marine environment. Finally, some general conclusions and recommendations are given from the examined regulation.

KEY WORDS: Management of Activities, Marine Environment, Secondary European Law.

РЕЗЮМЕ: Настоящото научно изследване е посветено на управлението на дейности по опазване на морската среда по вторичното европейско право. Неговата актуалност е детерминирана от нарастващата деградация на състоянието на морската среда на регионално и глобално равнище. Вниманието е насочено към две групи правни актове на Европейския съюз, а именно: а) свързани с учредяването на органи с управленски или консултативни функции; и б) с по-общо значение за състоянието на морската среда. Накрая са направени някои по-общи изводи и препоръки от разгледаната правна уредба.

Ключови думи: управление на дейности, опазване на морската среда, вторично европейско право.

1. *Introduction*

The protection of the marine environment in the aspects of its protection from pollution and rational (sustainable) use of the natural resources as its components is one of the topical environmental problems of the current mankind. The reasons for it are based, from on hand, to its specificity as a complex (integrated) natural resource (i.e. consisting in several components – sea waters, sea flora and fauna, sea bed and and ores and minerals under sea

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bed), including as a subject of legal protection, and from the other hand, to variety of factors (natural and anthropogenic) which have influence to its state³. For the purposes of the protection of the marine environment it is necessary to be taken into account its links with other natural resources, for example with the coast line, including coastal beach strip as a part of it, as well as with the rivers flowing into the sea and ambient air. Besides, it should be mentioned the circumstance that already there is a trend of deterioration of the state of the marine environment on a global scale. For example, under the United Nations Environment Programme (UNEP), the state of the marine environment in coastal areas and closed and semi-enclosed seas in the period of 1972 – 1992 has deteriorated, in spite of the local efforts for its improvement⁴. It also shows as a serious environmental problem over-exploitation of living marine resources⁵. A similar tendency is seen also in the Bulgarian section of Black sea⁶. That is why the solving of this specific and integrated natural resource requires efficient implementation of as national environmental legislation as well as legal acts of the European Union (EU) and international agreements in this field.

The protection of the marine environment is one of significant problems of the EU environmental policy and legislation⁷. In art. 191, par. 2, sent. second of the Treaty on the Functioning of the European Union (Consolidated version - OJ C 326, 26.10.2012) there is limitation enumeration of the principles of the EU environmental policy which are at the same time principles of its environmental legislation, namely precaution, prevention, environmental damage should as a priority be rectified at source, and the polluter should pay⁸.

On a level of secondary law of the EU there are many legal acts in the field of protection of the environment which can be detached in a 5 groups as follows: a) legal acts with general meaning for protection of the marine environment, and especially related to the management of activities on its protection⁹; b) legal

³ See for example Стайнов, П., *Защита на природата (правни изследвания)*, София: БАН, 1970, с. 277-310; Пенчев, Г., *Правна защита на морската среда на Република България от замърсяване – история и съвременност*, в *100 години от рождението на проф. Михаил Андреев. Сборник статии*. София: УИ „Св. Климент Охридски“, 2011, с. 511 и цитираната там литература; Kiss, A., D. Shelton, *International environmental law*, Ardsley-on-Hudson (New York): Transnational Publishers, Inc., 1991, pp. 159–162; Kiss, A., D. Shelton, *Manual of European environmental law*, Cambridge: Grotius Publications Limited, 1993, pp. 277–279; Shelton, D., A. Kiss, *Judicial Handbook on Environmental Law*, Nairobi: UNEP, 2005, pp. 70–74.

⁴ See *Saving Our Planet. Challenges and Hopes*, Nairobi: UNEP, 1992, p. 25.

⁵ *Ibidem*, p. 29.

⁶ See for example Пенчев, Г., *Цит. съч.*, с. 510–511 и цитираната там литература.

⁷ See for example Божанов, С., *Правна защита на българските морски пространства от замърсяване*, София: Деметра, 2009, с. 44-47; Пенчев, Г., *Сближаване на законодателството на Република България с правото на Европейския съюз в областта на опазване на водите*, Благоевград: Интелект – А, 1997, с. 69–87 и цитираната там литература.

⁸ See for example Пенчев, Г., *Принципи на българското екологично право*, София: Фондация „Граждани на Новата епоха“, 2017, с. 170–184 и цитираната там литература.

⁹ See for example Кушлиева, З., *Управление на дейности по опазване на морската среда от замърсяване по вторичното европейско право*, в *Морско търсене и спасяване. Сборник доклади. Втора международна Черноморска конференция по морско търсене и спасяване. Варна, 29-30 октомври 2008 г. Научно-приложна конференция, проведена във Варненския свободен университет “Черноризец Храбър”*, Варна: ВСУ “Черноризец Храбър”, 2010, с. 287–292 и цитираната там литература.

acts related to the protection of marine environment from pollution by ships¹⁰; c) legal acts concerning the protection of the natural resources on the High seas; d) legal acts on the protection of marine environment in process of investigation, search and exploitation of oil and gas in the sea-bed; and e) legal acts related to the participation of the EU in international agreements on protection of the marine environment. In this study the attention will be paid only to some of the first above mentioned group of legal acts.

The Commission of the EU (hereinafter in brief – “Commission”) adds the legal acts in the field of protection of the marine environment in sector “Water” of the environmental legislation of the EU¹¹. In my opinion, the marine environment should be treated as a self-dependent sector of the EU environmental legislation because of its specificity as an integrated natural resource.

The legal acts of the secondary European law with general meaning on the management of activities for protection of the marine environment which are obligatory for Member States can be detached in a 2 groups. First of them is related to establishment of bodies with managerial or consultative functions in the examined field. The second of them has more general meaning for the state of the marine environment in relation to measures on its protection. They will be analyzed in a more generalized way and with more attention on the obligations of the Member States under some directives. There will not be analyzed however, one resolution and one recommendation which are not legally-binding for Member States and in fact includes recommendations for some actions. They are Council Resolution of 26 June 1978 setting up an action programme of the European Communities on the control and reduction of pollution caused by hydrocarbons discharged at sea (OJ C 162, 08.07.1978) and Commission Recommendation of 16 September 2011 on the research joint programming initiative Healthy and Productive seas and Oceans (OJ C 276, 21.09.2011).

This study is in accordance with the existing legislation in force on August 14, 2018.

2. Legal acts of the EU related to the establishment of bodies with managerial or consultative functions on protection of the marine environment.

In this direction are adopted 3 regulations and 2 decisions, but one of the regulations in fact is related to the implementation of another of them. They will only be mentioned, as follows: Commission Decision 80/686/EEC of 25 June 1980 setting up an Advisory Committee on the control and reduction of pollution caused by hydrocarbons discharged at sea (OJ L 188, 22.07.1980, as amended)¹², Commission Decision 86/479/EEC of 18 September 1986

¹⁰ See for example Пенчев, Г., Правна защита на морската среда от замърсяване, причинено от кораби по вторичното европейско право: актуални проблеми, в *Енергийна и екологична сигурност в Черноморския регион. Кръгла маса, проведена в рамките на Лятната научна сесия на Юридическия факултет – 2012 във Варненския свободен университет „Черноризец Храбър” – 23 юни 2012 г.*, Варна: ВСУ “Черноризец Храбър”, 2013, с. 46–65 и цитираната там литература.

¹¹ See Web site of the Commission on the EU legislation: www.eur-lex.europa.eu.

¹² This Committee is a consultative body to the Commission. For more details on Decision 80/686/EEC, see for example Пенчев, Г., *Сближаване на законодателството на Република България с правото на Европейския съюз в областта на опазване на водите*, с. 77; Пенчев, Г., *Правна защита на морската среда от замърсяване, причинено от кораби по вторичното европейско право: актуални проблеми*, с. 49–50.

establishing an Advisory Committee on the protection of the environment in areas under serious threat (Mediterranean basin) (OJ L 282, 03.10.1986)¹³, Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208, 05.08.2002, as amended)¹⁴ 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 (OJ L 324, 29.11.2002, as amended)¹⁵ and Regulation (EU) No 911/2014 of the European Parliament and of the Council of 23 July 2014 on multiannual funding for the action of the European Maritime Safety Agency in the field of response to marine pollution caused by ships and oil and gas installations (OJ L 257, 28.08.2014)¹⁶.

3. Legal acts of the EU with more general meaning for the state of the marine environment

In this direction are adopted 2 directives and 1 decision, related to the implementation of one of them. They are: 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) (OJ L 164, 25.6.2008, as amended), Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning (OJ L 257, 28.08.2014) and Commission Decision (EU) 2017/848 of 17 May 2017 laying down criteria and methodological standards on good environmental status of marine waters and specifications and standardized methods for monitoring and assessment, and repealing Decision 2010/477/EU (OJ L 125, 18.05.2017).

Directive 2008/56/EC has fundamental meaning for protection of the marine environment of the EU and especially for its policy in this field. The main purpose of that directive is establishment of “framework” for taking measures, including by adoption of “marine strategies” by the Member States, to achieve and maintain good environmental status of the marine environment by the year 2020 at the latest (art. 1). It is applicable to the marine waters of the EU under art. 3, par. 117, but from its scope are excluded activities related to the national

¹³ This Committee is also a consultative body to the Commission. For more details on Decision 86/479/EEC, see for example Пенчев, Г., *Правна защита на морската среда от замърсяване, причинено от кораби по вторичното европейско право: актуални проблеми*, с. 50.

¹⁴ This Agency has managerial functions in two directions - shipping activities and prevention of marine environment from pollution by ships. That is why, in fact, it has more general functions – managerial on shipping transport, from one hand, and environmental, from the other hand.

¹⁵ This Committee is a consultative body to the Commission.

¹⁶ This regulation is related in fact to the implementation of Regulation (EC) No 1406/2002. It is temporary legal act for the period 01.01.2014 – 31.12.2020. Regulation (EU) No 911/2014 regulates the conditions for financing of the activities of the European Maritime Safety Agency during this period.

¹⁷ According to art. 3, item 1 of the directive: “marine waters” means: a) waters, the sea bed and subsoil on seaward side of the baseline from which the extent of territorial waters is measured extending to the outmost reach of the area where Member State has and/or exercises jurisdictional rights, in accordance with the UNCLOS, with the exception of waters adjacent to the countries and territories mentioned in Annex II to the Treaty and the French

security and national defence (art. 2). The examined directive is amended in 2017 concerning the updating of its Annex III in the light of scientific and technical progress¹⁸.

Hereinafter below will be enumerated some more important legal measures for protection of the marine environment under this directive:

Determination of the sea regions and sub-regions of the EU (art. 4).

Among them is designated Black sea (par. 1, letter "d").

Obligation for the Member States, in respect of each marine region or sub-region concerned, to develop a marine strategy for their marine waters in accordance with the plan of action (art. 5, par. 1).

For the implementation of this legal measure it is necessary to be taken into account 3 definitions of legal terms according to art. 3 of this directive. They are, as follows: "marine waters" means: a) waters, the seabed and subsoil on the seaward side of the baseline from which the extent of territorial waters is measured extending to the outmost reach of the area where a Member State has and/or exercises jurisdictional rights, in accordance with the UNCLOS, with the exception of waters adjacent to the countries and territories mentioned in Annex II to the Treaty and the French Overseas Departments and Collectivities; and b) coastal waters as defined by Directive 2000/60/EC, their seabed and their subsoil, in so far as particular aspects of the environmental status of the marine environment are not already addressed through that Directive or other Community legislation" (point 1); "marine region" means a sea region which is identified under Article 4. Marine regions and their subregions are designated for the purpose of facilitating implementation of this Directive and are determined taking into account hydrological, oceanographic and biogeographic feature" (point 2); "marine strategy" means the strategy to be developed and implemented in respect of each marine region or subregion concerned as laid down in Article 5" (point 3).

Obligation for the Member States to develop regional cooperation on protection of the marine environment (art. 6).

Obligation for these countries to designate their competent authority for the implementation of this directive concerning marine regions or sub-regions of the EU (art. 7).

Special rules related to the preparation of the marine strategies of the Member States (art. 8-12).

Some of them are: a) obligation for those States to carry out an initial assessment and analysis of the status of their national marine waters (art. 8); b) obligation for those States to establish, for each marine region or sub-region within their national jurisdiction, the characteristics for determining the "good

Overseas Departments and Collectivities; and b) coastal waters as defined by Directive 2000/60/EC, their seabed and their subsoil, in so far as particular aspects of the environmental status of the marine environment are not already addressed through that Directive or other Community legislation." In relation to this definition it must be taking into account that "Directive 2000/60/EC" means 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 (OJ L 327, 22.10.2000) and "UNCLOS" means United Nations Convention on the Law of the Sea, 1982.

¹⁸ See Commission Directive (EU) 2017/845 of 17 May 2017 amending Directive 2008/56/EC of the European Parliament and of the Council as regards the indicative lists of elements to be taken into account for the preparation of marine strategies (OJ L 125, 18.05.2017). This legal possibility for updating is regulated in art. 24, par. 1 of Directive 2008/56/EC.

environmental status" of the marine environment and to inform the Commission therefore (art. 9); c) obligation for those States to define, for each marine region or sub-region, within their national jurisdiction, the specific environmental objectives for achieving the good status of the marine environment and to notify the Commission therefore (art. 10); d) obligation for these countries to adopt programs, including coordinated, for monitoring of their marine waters and to notify the Commission therefore (art. 11). Definition of the term "good environmental status" is set in art. 3, point 5 of this directive where it is stated that: "good environmental status" means the environmental status of marine waters where these provide ecologically diverse and dynamic oceans and seas which are clean, healthy and productive within their intrinsic conditions, and the use of the marine environment is at a level that is sustainable, thus safeguarding the potential for uses and activities by current and future generations, i.e.: a) the structure, functions and processes of the constituent marine ecosystems, together with the associated physiographic, geographic, geological and climatic factors, allow those ecosystems to function fully and to maintain their resilience to human-induced environmental change. Marine species and habitats are protected, human-induced decline of biodiversity is prevented and diverse biological components function in balance; b) hydro-morphological, physical and chemical properties of the ecosystems, including those properties which result from human activities in the area concerned, support the ecosystems as described above. Anthropogenic inputs of substances and energy, including noise, into the marine environment do not cause pollution effects. Good environmental status shall be determined at the level of the marine region or subregion as referred to in Article 4, on the basis of the qualitative descriptors in Annex I. Adaptive management on the basis of the ecosystem approach shall be applied with the aim of attaining good environmental status".

Special rules on the preparation and adoption of programmes of measures as a component of the marine strategies of the Member States (art. 13-16).

Some of them are: a) obligation for these States to adopt "programmes of measures" for each marine region or sub-region within their national jurisdiction for them to achieve and maintain good environmental status of marine waters and to notify the Commission therefore (art. 13); b) providing of exceptions to the achievement and maintenance of good environmental status of the marine waters for the country concerned, and notifying the Commission therefore (art. 14); c) legal possibility for these States to make recommendations for action at Community level to the Commission and to the Council in the case of failure to resolve a problem related to the state of their marine environment with national efforts (art. 15).

Special rules related to the updating of the information, reporting and public information on marine strategies of the Member States (art. 17-23).

They are: (a) obligation for Member States to update their marine strategies once a every six years (art. 17); (b) obligation for these States to give to the Commission an "interim reports" on the progress of the implementation of the national "programs of measures" (art. 18), c) obligation for those States to guarantee public access to information on generalized elements of their marine strategies during their development and after their adoption (art. 19); (d) legal possibility for funding by EU of the development of the national maritime strategies of these countries (art. 22).

Establishment of the “Regulatory Committee” with consultative functions to the Commission (art. 25).

Obligation for the Member States to inform the Commission about “the texts of the main measures of national law which they adopt in the field covered by this Directive” (art. 26, par. 2).

There are 6 annexes with organizational and technical character to the examined directive. They are: Annex I. Quality descriptors for determining good environmental status (referred to in articles 3 (5), 9 (1), 9 (3) and 24); Annex II. Competent authorities (referred to in art. 7 (1)); Annex III. Indicative lists of characteristics, pressures and impacts (referred to in articles 8(1), 9 (1), 9 (3), 10 (1), 11 (1) and 24)); Annex IV. Indicative list of characteristics to be taken into account for setting environmental targets (referred to in articles 10 (1) and 24); Annex V. Monitoring programmes (referred to in art. 11 (1) and 24); Annex VI. Programmes of measures (referred to in art. 13 (1) and 24)¹⁹.

Directive 2008/56/EC is transposed in the Bulgarian legislation with the Ordinance for protection of the environment in the sea waters, adopted with Decree of the Council of Ministers (CM) of the Republic of Bulgaria No. 273 of 30 November 2010 (State Gazette (SG) No. 94 of 2010, into force on November 30, 2010).

Commission Decision (EU) 2017/848 in fact is related to Directive 2008/56/EC²⁰. Its subject matter is outlined in art. 1 and includes the establishment of: “a) criteria and methodological standards to be used by Member States when determining a set of characteristics for good environmental status in accordance with art. 9, par. 1 of Directive 2008/56/EC, on the basis of Annexes I and III and by reference to the initial assessment made pursuant to art. 8, par. 1 of that Directive, to assess the extent to which good environmental status is being achieved, in accordance with art. 9, par. 3 of that Directive; b) specifications and standardised methods for monitoring and assessment, to be used by Member States when establishing coordinated monitoring programmes under art. 11 of Directive 2008/56/EC, in accordance with art. 1, par. 4 of that Directive; c) a timeline for the establishment of threshold values, lists of criteria elements and methodological standards through Union, regional or sub-regional cooperation; d) a notification requirement for criteria elements, threshold values and methodological standards”.

Hereinafter below will be enumerated some more important legal measures in the examined field under the decision.

¹⁹ About some problems on the implementation of this directive, see for example Juda, L., The European Union and the Marine Strategy Framework Directive: Continuing the Development of European Ocean Use Development, in *Ocean Development and International Law*, London, 2010, Vol. 41, Issue 1, pp. 34–54; McQuatters-Gollop, A., Challenges for implementing the Marine Strategy Framework Directive in a climate of macroecological change, in *Philosophical Transactions of the Royal Society A*, London, 2012, Vol. 370, Issue 1980, pp. 5636–5655; Newton, A., A. Borja, C. Solidoro, M. Gregoire, Implementing the European Marine Strategy Framework Directive: Scientific challenges and opportunities, in *Continental Shelf Research*, Amsterdam, 1 October 2015, Vol. 108, pp. 141–143.

²⁰ With art. 7 of this decision is repealed Commission Decision 2010/477/EU of 1 September 2010 on criteria and methodological standards on good environmental status of marine waters (OJ L 232, 02.09.2010).

Special rules related to the obligations for Member States on the use of criteria, methodological standards, specifications and standardised methods (art. 3).

Special rules connected with the obligations of these countries on setting of threshold values through EU, regional or sub-regional cooperation (art. 4).

Obligation for Member States, in cases of necessity of establishment of threshold values, lists of criteria elements or methodological standards through EU, regional or sub-regional cooperation, to determine a time-limit for the first review of their initial assessment and determination of good environmental status in accordance with art. 17, par. 2, letter “a” of Directive 2008/56/EC (i.e. 15 July 2018) (art. 5).

Obligation for these states to send to the Commission, as part of the notification made pursuant to art. 17, par. 3 of Directive 2008/56/EC, those criteria elements, threshold values and methodological standards established through EU, regional or sub-regional cooperation in accordance with this Decision, that it decides to use as part of its set of characteristics for determining good environmental status under art. 9, par. 1 of Directive 2008/56/EC (art. 6).

There is one annex to this decision, entitled “Criteria and methodological standards for good environmental status of marine waters, relevant to the qualitative descriptors in Annex I to Directive 2008/56/EC, and to the indicative lists set out in Annex III to that Directive, and specifications and standardised methods for monitoring and assessment”.

The main purpose of Directive 2014/89/EU is establishment of “a framework for maritime spatial planning²¹ aimed at promoting the sustainable growth of maritime economies, the sustainable development of marine areas and the sustainable use of marine resources” (art. 1, par. 1). It applies to the marine waters of the EU Member States (art. 2, par. 1), but its scope excludes activities related solely to national defense and security, as well as town and country planning (art. 2, par. 2 and 3).

Hereinafter below will be enumerated some more important legal measures for protection of the marine environment under this directive:

Special rules related to establishment and implementation of maritime spatial planning (art. 4).

Some of them are: a) obligation for Member States to establish and implement in their domestic legislation maritime spatial planning (item 1); b) obligation for these countries to take into account “land-sea interactions” in process of maritime spatial planning (item 2); c) obligation for these states, in establishing of maritime spatial planning, to have due regard to “the particularities of the marine regions, relevant existing and future activities and uses and their impacts on the environment, as well as to natural resources, and shall also take into account land-sea interactions” (item 5). For the implementation of this legal measure it is necessary to be taken into account the definition of the legal term “maritime spatial planning” according to art. 3, point 2 of this directive where it is stated that: “maritime spatial planning” means a process by which the relevant Member State’s authorities analyse and

²¹ A definition of the legal notion “maritime spatial planning” is included in art. 3, item 2, where is stated that: “maritime spatial planning” means a process by which the relevant Member State’s authorities analyse and organise human activities in marine areas to achieve ecological, economic and social objectives”.

organise human activities in marine areas to achieve ecological, economic and social objectives”.

Special rules on the objectives of the maritime spatial planning (art. 5).

They are: a) considering of economic, social and environmental aspects to support sustainable development and growth in the maritime sector, applying an ecosystem-based approach, and to promote the coexistence of relevant activities and uses in process of maritime spatial planning (item 1); b) contribution to the sustainable development of energy sectors at sea, of maritime transport, and of the fisheries and aquaculture sectors, and to the preservation, protection and improvement of the environment, including resilience to climate change impacts, and in addition, to pursue other objectives such as the promotion of sustainable tourism and the sustainable extraction of raw materials (item 2).

Special rules related to the minimum requirements for maritime spatial planning (art. 6).

Some of them are: a) enumeration of these minimum requirements, as follows: taking into account land-sea interactions; taking into account environmental, economic and social aspects, as well as safety aspects; promotion of coherence between maritime spatial planning and the resulting plan or plans and other processes, such as integrated coastal management or equivalent formal or informal practices; ensuring the involvement of stakeholders in accordance with art. 9; to be organized the use of the best available data in accordance with art. 10; ensuring the trans-boundary cooperation between Member States in accordance with art. 11; promotion of the cooperation with third countries in accordance with art. 12 (par. 2); b) obligation for Member States to review their maritime spatial plans as decided by them but at least every ten years (par. 3).

Special rules on taking into account of the land-sea interactions (art. 7).

They are: a) legal possibility for Member States to use other formal or informal processes, such as integrated coastal management but with reflection to maritime spatial planning process (par. 1); b) obligation for these countries, through maritime spatial planning, to promote coherence of the resulting maritime spatial plan or plans with other relevant processes (par. 2).

Special rules related to the setting-up of the maritime spatial plans (art. 8).

In this direction could be shown an obligation for Member States to take into account, in setting-up of these plans, the following activities, interests and uses of their marine waters, listed in par. 2, namely: aquaculture areas; fishing areas; installations and infrastructures for the exploration, exploitation and extraction of oil, of gas and other energy resources, of minerals and aggregates, and for the production of energy from renewable sources; maritime transport routes and traffic flows; military training areas; nature and species conservation sites and protected areas; raw material extraction areas; scientific research; submarine cable and pipeline routes; tourism; and underwater cultural heritage.

Special rules related to public participation in the process of the maritime spatial planning (art. 9).

They include: a) obligation for Member States to regulate in their domestic legislation “means of public participation by informing all interested parties and by consulting the relevant stakeholders and authorities, and the public concerned, at an early stage in the development of maritime spatial plans, in accordance with relevant provisions established in Union legislation” (par. 1); b)

obligation for these countries to “ensure that the relevant stakeholders and authorities, and the public concerned, have access to the plans once they are finalised” (par. 2).

Obligation for Member States to use and sharing each other “the best available data” in process of the maritime spatial planning (art. 10).

Special rules on the cooperation among Member States (art. 11).

Special rules related to the cooperation between Member States and third countries (art. 12).

Special rules on the obligations for the Member States to designate their competent authorities for the implementation of the examined directive and on the informing of the Commission about it (art. 13).

Special rules related to the monitoring and reporting about maritime spatial plans (art. 14).

Among them is an obligation for Member States to send copies of the maritime spatial plans, including relevant existing explanatory material on the implementation of this Directive, and all subsequent updates, to the Commission and to any other Member States concerned within three months of their publication (par. 1).

Obligation for Member States to inform the Commission about the adopted national regulations, related to this directive (art. 15, par. 1).

The examined directive includes one annex entitled “Competent authorities”²².

Directive 2014/89/EU EC is transposed in the Bulgarian legislation with an Act to amend and supplement the Marine Areas, Inland Waterways and Ports Act (SG, No. 28 of 2018).

4. Multilateral treaties on protection of the marine environment with the participation of the EU

The EU is a contracting party to some multilateral universal (i.e. on a global scale) and regional treaties in the examined field. They will only be enumerated below. Most of them are related to the protection of the marine environment from pollution.

4.1. Multilateral universal treaties on protection of the marine environment with the participation of the EU

They are:

Convention for the prevention of marine pollution from land-based sources (Paris, 1974) ²³;

²² About some problems on the implementation of this directive, see for example Qui, W., P.G.S. Jones, The emerging policy landscape for marine spatial planning in Europe, in *Marine policy*, Amsterdam, May 2013, Vol. 39, pp. 182–190; Kidd, S., D. Shaw, The social and political realities of marine spatial planning: some land-based reflections, in *ICES Journal of Marine Science*. Oxford, 1 October 2014, Vol. 71, Issue 7, pp. 1535–1541 (NB: “ICES” is abbreviation from “International Council for the Exploration of the Sea” which is international scientific organization with headquarter in Copenhagen, Denmark); Zervaki, A., Introducing Maritime Spatial Planning Legislation in the EU: Fishing in Troubled Waters?, in *Maritime Safety and Security Law Journal*, Roma, 2015, Issue 1, pp. 95–114.

²³ See Council Decision 75/437/EEC of 3 March 1975 concluding the Convention for the prevention of marine pollution from land-based sources (OJ L 194, 25.07.1975); Council Decision 75/438/EEC of 3 March 1975 concerning Community participation in the Interim Commission established on the basis of Resolution No III of the Convention for the prevention of marine pollution from land-based sources (OJ L 194, 25.07.1975); Council Decision 85/613/EEC of 20 December 1985 concerning the adoption, on behalf of the

Protocol amending the Convention for the prevention of marine pollution from land-based sources (Paris, 1986) 24;

United Nations Convention on the Law of the Sea (Montego Bay, 1982)²⁵;
Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (New York, 1994)²⁶;

Protocol of 1992 to Amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (London, 1992)²⁷; International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the HNS Convention) (London, 1996)²⁸; International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention) (London, 2001)²⁹.

4.2. *Multilateral regional treaties on protection of the marine environment with the participation of the EU.* They will be enumerated below in terms of the separate region.

4.2.1. *Atlantic Ocean*

Cooperation Agreement for the Protection of the Coasts and Waters of the North-East Atlantic against Pollution (Lisbon, 1990)³⁰;

Additional Protocol to the Cooperation Agreement for the Protection of the Coasts and Waters of the North-East Atlantic against Pollution (Lisbon, 2008)³¹;

Community, of programmes and measures relating to mercury and cadmium discharges under the convention for the prevention of marine pollution from land-based sources (OJ L 375, 31.12.1985); Council Decision 98/241/EC of 23 March 1998 concerning the approval, on behalf of the Community, of PARCOM Decision 96/1 on the phasing-out of the use of hexachloroethane in the non-ferrous metal industry (OJ L 96, 28.03.1998).

²⁴ See Council Decision 87/57/EEC of 22 December 1986 concluding the Protocol amending the Convention for the prevention of marine pollution from land-based sources (OJ L 24, 27.01.1987).

²⁵ See Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof (OJ L 179, 23.06.1998). This convention has general meaning in the examined field.

²⁶ See the same Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof (OJ L 179, 23.06.1998).

²⁷ See Council Decision 2004/246/EC of 2 March 2004 authorising the Member States to sign, ratify or accede to, in the interest of the European Community, the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, and authorising Austria and Luxembourg, in the interest of the European Community, to accede to the underlying instruments (OJ L 78, 16.03.2004).

²⁸ See Council Decision 2002/971/EC of 18 November 2002 authorising the Member States, in the interest of the Community, to ratify or accede to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the HNS Convention) (OJ L 337, 13.12.2002).

²⁹ See Council Decision 2002/762/EC of 19 September 2002 authorising the Member States, in the interest of the Community, to sign, ratify or accede to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention) (OJ L 256, 25.09.2002).

³⁰ See Council Decision 93/550/EEC of 20 October 1993 concerning the conclusion of the Cooperation Agreement for the Protection of the Coasts and Waters of the North-East Atlantic against Pollution (OJ L 267, 28.10.1993).

³¹ See Council Decision 2010/655/EC of 19 October 2010 concerning the conclusion, on behalf of the European Union, of the Additional Protocol to the Cooperation Agreement for the Protection of the Coasts and Waters of the North-East Atlantic against Pollution (OJ L 285,

Convention for the Protection of the Marine Environment of the North-East Atlantic (Paris, 1992)³².

4.2.2. *Baltic Sea*

Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki, 1974)³³;

Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki, 1992)³⁴.

4.2.3. *North Sea*

Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances (Bonn, 1983)³⁵;

Amendments to the Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances (Bonn, 1989)³⁶.

4.2.4. *Mediterranean Sea*

Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona, 1976)³⁷;

Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft (Barcelona, 1976)³⁸;

Protocol concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency (Barcelona, 1976)³⁹;

Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources (Athens, 1980)⁴⁰;

30.10.2010).

³² See Council Decision 98/249/EEC of 7 October 1997 on the conclusion of the Convention for the Protection of the Marine Environment of the North-East Atlantic (OJ L 104, 03.04.1998); Council Decision 2000/340/EC of 8 May 2000 concerning the approval, on behalf of the Community, of the new Annex V to the Convention for the Protection of the Marine Environment of the North-East Atlantic on the Protection and Conservation of the Ecosystems and Biological Diversity of the Maritime Area and the corresponding Appendix 3 (OJ L 118, 19.05.2000).

³³ See Council Decision 94/156/EEC of 21 February 1994 on the accession of the Community to the Convention on the Protection of the Marine Environment of the Baltic Sea Area 1974 (Helsinki Convention) (OJ L 73, 16.03.1994).

³⁴ See Council Decision 94/157/EEC of 21 February 1994 on the conclusion, on behalf of the Community, of the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention as revised in 1992) (OJ L 73, 16.03.1994).

³⁵ See Council Decision 84/358/EEC of 28 June 1984 concerning the conclusion of the Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances (OJ L 188, 16.07.1984).

³⁶ See Council Decision 93/540/EC of 18 October 1993 approving certain amendments to the Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances (Bonn Agreement) (OJ L 263, 22.10.1993).

³⁷ See Council Decision 77/585/EEC of 25 July 1977 concluding the Convention for the Protection of the Mediterranean Sea against Pollution and the Protocol for the Prevention of the Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft (OJ L 240, 19.09.1977).

³⁸ See also Council Decision 77/585/EEC of 25 July 1977 concluding the Convention for the Protection of the Mediterranean Sea against Pollution and the Protocol for the Prevention of the Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft (OJ L 240, 19.09.1977).

³⁹ See Council Decision 81/420/EEC of 19 May 1981 on the conclusion of the Protocol concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency (OJ L 162, 19.06.1981).

Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (Barcelona, 1995)⁴¹.

5. Conclusions

Finally, some general conclusions and recommendations can be given from the examined regulation.

Directives 2008/56/EC and 2014/89/EU have been transposed relatively well in the Bulgarian legislation, but their implementation requires effective collaboration between scientists and practitioners from different fields of science and social practice.

It is necessary for the competent authorities in Bulgaria to take additional measures for improving the state of the marine environment and to assess the significance of the limit values for the quality of the marine waters as a component of the environment. These limit values are, from the point of view of their legal nature, a special kind of legal norms with organizational and technical content. They are important indicator for the favourable state of the environment⁴², including marine environment.

The observance of the limit values for quality of the marine waters is one of guarantees for realization of the basic right of Bulgarian citizens to a healthy and favorable environment under art. 55, sent. first of the Constitution of the Republic of Bulgaria (SG, No. 56 of 1991, as amended).

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⁴⁰ See Council Decision 83/101/EEC of 28 February 1983 concluding the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources (OJ L 67, 12.03.1983).

⁴¹ See Council Decision 1999/800/EC of 22 October 1999 on concluding the Protocol concerning specially protected areas and biological diversity in the Mediterranean, and on accepting the annexes to that Protocol (Barcelona Convention) (OJ L 322, 14.12.1999).

⁴² According to Russian scientist, lawyer-ecologist, M. Brinchuk, the “favourable environment” is the most significant category of the law, taking into account the environmental law. See Бринчук, М., Благоприятная окружающая среда – важнейшая категория права, в *Журнал российского права*. Москва, 2008, № 9, с. 37–52.

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EL DERECHO DEL TRABAJO, UN PRIMIGENIO Y ALTERNATIVO PROYECTO DE ESTADO SOCIAL. ANOTACIONES SOBRE EL PENSAMIENTO SOCIAL DE FRANCISCO VIGO SERRALVO

Manuel J. PELÁEZ

El objeto de la obra quizás quede bien recogido en la hipótesis de partida que se anuncia en la introducción y que sostiene que el derecho al trabajo, durante un determinado periodo de la historia, fue el vector de un prototipo de Estado social, que a través del mismo se pretendió articular un completo sistema de protección social que sería, además, alternativo a los que hoy conocemos. Dar soporte a esa hipótesis constituirá la finalidad de la investigación. En el trámite introductorio se introducen varios epígrafes diferenciados. En el primero de ellos se reivindica la pertinencia de los estudios históricos para alcanzar consideraciones reflexivas, a la vez que coherentes sobre los grandes pensadores sociales en la valoración que pudieron hacer en torno al trabajo, tales son los casos de Charles Louis de Secondat, Baron de Montesquieu y de la Brède, John Locke, François Marie Arouet Voltaire (quien había escrito que "el trabajo aleja de nosotros tres grandes males: el aburrimiento, el vicio y la necesidad", a la vez que no se privó también de escribir que "destino del hombre es vivir en las convulsiones de las angustias o en el paroxismo del fastidio", para concluir con una idea no menos brillante: "trabajemos sin pensar: es el único medio para hacer soportable la vida", Constantin François Volney, Hans Welzel, Auguste Comte, Diderot, Helvetius, Jean Jacques Rousseau, Jefferson, Saint-Just, etc.

Ya se anuncia en esta sede que la obra pretende hacer un escrutinio de los hechos históricos sin perder la perspectiva contemporánea, es decir, el interés por estos hechos pasados radica en las reflexiones actuales que aquellos pueden excitar. En segundo lugar se hace un recorrido por el estado de la cuestión afirmando que si bien existen muy pocos estudios dedicados monográficamente al derecho al trabajo, menos aún existirían sobre la dimensión histórica de este derecho. Lo más relevante quizás sea la existencia de algunos pronunciamientos, provenientes sobre todo de las doctrinas francesas, en las que ya se señala este ámbito de estudio como una cuestión sumamente sugerente y, sin embargo, olvidada por la literatura especializada. También en esta introducción se limita cuál será el ámbito temporal y geográfico de estudio, justificando que un estudio sobre los orígenes de este derecho abarcará esencialmente un periodo de la historia política y social francesa, concretamente el que transcurre entre finales del siglo XIX y 1848.

En el primer capítulo, de naturaleza propedéutica, se introducen una serie de ideas que, si bien como el mismo autor afirma, en ese momento de la exposición no parecen tener una vinculación inmediata con el objeto de estudio, sí que se revelarán, en estadios más avanzados de las lecturas, ineludibles para una comprensión íntegra del tema propuesto. Así, la primera de las ideas que se incorporan es la que define al Estado social como un ente