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Shared Natural Resources in the European Economic Community Legislation[†]

INTRODUCTION

This article reviews regulatory legislation adopted by the European Economic Community (EEC) concerning natural resource development, conservation, and use when two or more EEC member states share the resources. The legislation was enacted pursuant to the lawmaking authority of the EEC.

This scope of review depends to a large extent on what meaning is assigned to the term "shared natural resources." A considerable amount of provocative thought was given to the concept of "shared natural resource" by the United Nations Environment Programme (UNEP) Intergovernmental Working Group of Experts on Natural Resources Shared by Two or More States. The group met from 1976 to 1978, and eventually produced a set of Draft Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States.¹ Although the experts could not agree on a definition of the term "shared" natural resource, the considerable preparatory work² identified two basic propositions. One definition, which commanded broad support both within

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[†]The opinions expressed in this article do not reflect or engage the views of the Food & Agriculture Organization.

1. For the text of the Draft Principles, see Report of The Intergovernmental Working Group of Experts on Natural Resources Shared by Two or More States on the Work of its Fifth Session held at Nairobi from 23 January to 7 February 1978, 10, U.N. Doc. UNEP/IG.12/2 (1978). The Governing Council of the United Nations Environment Programme (UNEP) endorsed the draft in May 1978, and forwarded it to the United Nations General Assembly for action. By its resolution 34/186 of 18 December 1979, the General Assembly took note of the Draft Principles above, and requested all states to use the Principles as guidelines and recommendations in the drafting of conventions regarding shared natural resources. (GAOR, 34th Sess., Supp. No. 46 (A/34/46), 128 (1980)).

2. See especially J. Mayda, Definition of Internationally Shared Natural Resources 10 (January 1978) (draft Working Paper prepared for the Group of Experts); and the replies of governments to an official request for views and comments from the Executive Director of UNEP, including views on the very notion of shared natural resources, for the purpose of implementing the United Nations General Assembly resolution which spun the establishment of the Group of Experts (Resolution 3129 (XXVIII)) of 13 December 1973, on Cooperation in the Field of the Environment Concerning Natural Resources Shared by Two or More States. The views of respondent governments on the question of identifying "shared" natural resources are reported in considerable detail in Cooperation in the Field of the Environment Concerning Natural Resources Shared by Two or More States, Report of the Executive Director, U.N. Doc. UNEP/GC/44, para. 7-10 (1975).

and without the group, restricted the concept of "shared" natural resources to those located in the territory of two or more states, and thus shared by a limited number of countries. These shared resources would include river systems (both surface and groundwaters), air sheds, enclosed and semi-enclosed seas, such as the Mediterranean Sea and the North Sea³ and adjacent coastal waters, mountain chains, forests or areas of special conservation interest, and migratory species.⁴ The other proposition included resources shared by all states, the so-called international commons. Foremost among the commons is the open sea, such as the North-East Atlantic Ocean beyond the limits of British, French, and Irish jurisdiction.

A critical evaluation of the two propositions is beyond the scope of this article. However, the likelihood of conflict between states and the need for international regulation are greater when a shared river or an enclosed sea is concerned than if an impingement upon international commons occurs. Accordingly, this article will be devoted to a review of EEC regulatory legislation concerning the conservation, development, and use of shared natural resources *stricto sensu* only, assessing the Community's attentiveness as a supranational lawmaking forum to potential conflicts over inter-community shared natural resources.

EEC REGULATORY LEGISLATION

EEC shared natural resources legislation was enacted mainly, if not exclusively, out of the community concern for the protection and conservation of the environment in the member states and the relevant natural resources at large. Several Council Directives to member states contain relevant legislation.

Planning Regulations

The Council of the European Communities has been considering a draft Directive which mandates the performance of an environmental impact assessment for designated classes of projects, and provides the outlines of the assessment process for all member states of the community.⁵ The

3. The third Action Programme of the European Communities on the Environment (1982 to 1986) calls for an active Community participation in the protection of the "Mediterranean basin" within the framework of the existing conventional arrangements for the protection of the Mediterranean Sea against pollution; and "a more coordinated policy" for the protection of the North Sea, which is regarded as the "Community's second international waterway." 26 O.J. EUR. COMM. (No. C 169) 1, 5 (1983).

4. These are "among the most obvious examples" of shared natural resources listed by the Executive Director of UNEP in his Report on Cooperation in the Field of the Environment Concerning Natural Resources Shared by Two or More States, U.N. Doc. UNEP/GC/44, para. 86 (1975).

5. Commission of the European Communities, Proposal for a Council Directive Concerning the Assessment of the Environmental Effects of Certain Public and Private Projects, of 16 June 1980, 23 O.J. EUR. COMM. (No. C 169) 14 (1980).

draft Directive provides, *inter alia*, that, when the environment of a member state is likely to be "significantly" affected by a proposed project in another member state, the relevant assessment should be expanded accordingly.⁶ In addition, all of the pertinent information gathered must be sent for comment to the authorities of the other member state affected, and the comments must be returned within the time limit fixed by the member state in which the project originated.⁷ Recent amendments to the draft Directive further call for the local population of the affected member state to participate in the review of the proposed development.⁸

While the above provisions are aimed at transboundary impacts of domestic developments, the development of natural resources straddling the border between two or more EEC member states is surely within the purview of the draft Directive. For example, the EEC requires that the quantities of water intended for use as part of a proposed industrial development project be assessed and disclosed in the environmental impact assessment process.⁹ This requirement is intended to safeguard the interests of water users from the same watercourse further downstream, across the border, or on the opposite side of the boundary of a contiguous watercourse. The enumeration of river training works, dams and impoundment works, irrigation and drainage projects, and management of large forestry areas are among the kinds of projects requiring a transboundary environmental impact assessment.¹⁰ Thus, the drafters also intended that natural resources such as fresh water bodies forming, or bisected by, a frontier line be within the purview of the legislation.¹¹

Designation of Environments Subject to Protection Measures

Two Council Directives, one on the protection of fresh waters supporting fish life,¹² and another on the protection of marine and brackish shellfish waters,¹³ contain specific provisions respectively for fresh waters

6. *Id.* art. 6(1).

7. *Id.* art. 7(2). This requirement, however, has been made subject to the restrictions which may be in effect in the member concerned under a new art. 9(2) added to the original draft by a European Communities Commission Proposal to amend the proposal for a Council Directive concerning the assessment of the environmental effects of certain public and private projects, in 25 O.J. EUR. COMM. (No. C 110) 5 (1982).

8. Proposed Council Directive, concerning the assessment of the environmental effects of certain public and private projects, art. 8(2) as amended. The relevant provision, however, is cast in exhortatory, as opposed to obligatory, terms.

9. *Id.* Annex 3, No. 1, second indent.

10. *Id.* Annex 2, No. 1 and 10.

11. *See, in particular*, article 6 of the draft Directive requiring that the transboundary impacts of proposed projects be studied and assessed.

12. Council Directive 78/659/EEC on the quality of fresh waters needing protection or improvement in order to support fish life, 21 O.J. EUR.COMM (No. L 222) 1 (1978).

13. Council Directive 79/923 EEC on the quality required of shellfish waters, 22 O.J. EUR. COMM. (No. L 281) 47 (1979). *See also* Programme 'action des Communautés européennes en matière d'environnement, 16 O.J. EUR. COMM. (No. C 112) 1, 28 (1973).

forming or bisected by the frontier between member states, and for coastal and brackish waters "in the immediate vicinity" of the frontier between member states. The above provisions direct member governments to hold formal mutual consultation in which the Commission of the European Communities may participate. The consultations' objectives should include the identification of the designated area and the assessment of possible consequences across the border from proposed actions. Coordinated action on both sides of the border is an eventual goal of the Directive.¹⁴ Pursuant to the Directive, such action will include, in particular, setting ambient water quality standards within the value range laid down in the Directive,¹⁵ and establishing pollution abatement programs to achieve the adopted standards within a given time frame.¹⁶

Setting of Standards

Member states are directed to hold, and to inform the Commission of the European Communities of, mutual consultations prior to setting ambient air quality standards in border regions. The Commission of the European Communities may attend those consultations.¹⁷ Member states are to adopt measures conducive to the attainment of ambient air quality standards for sulphur dioxide and suspended particulates in conformity with the limit-values laid down in the Directive.¹⁸ Comparable requirements and provisions are contained in a recent draft Council Directive on the control of air pollution from nitrogen dioxide.¹⁹

14. Council Directive 78/659/EEC, art. 10; Council Directive 79/923/EEC, art. 10.

15. Council Directive 78/659/EEC, art. 3; Council Directive 79/923/EEC, art. 3.

16. Council Directive 78/659/EEC, art. 5; Council Directive 79/923/EEC, art. 5. Under these Directives, the time frame for compliance is, respectively, five and six years following designation of waters for quality control.

17. Council Directive 80/779/EEC on air quality limit values and guide values for sulphur dioxide and suspended particulates, art. 11(1), in 23 O.J. EUR. COMM. (No. L 229) 30 (1980). The language of the Directive clearly implies that member states are to consult with each other *prior* to fixing air quality standards in border regions. In addition, it may be noted that the Commission is empowered by the Directive to "attend" the above interstate consultations. This language is contrasted by the language of Directives of comparable scope, such as No. 78/659/EEC on the protection of fresh waters supporting fish life, *supra* note 12, and 79/923/EEC on the protection of shellfish waters, *supra* note 13. The relevant provisions of both Directives empower the Commission to "participate" in the required interstate consultations. Irrespective of whether the shift in emphasis from the "participation" called for by the two earlier Council Directives to the "attendance" called for by the later Directive is intentional or not, the reader is under the impression that the former Directives imply a more active role for the community in the consultative process than the latter. See also comments made in *Critical Review, infra*.

18. Council Directive 80/779/EEC, art. 3(1), 4(1), 5.

19. Commission of the European Communities, Proposal for a Council Directive on air quality standards for nitrogen dioxide, of 13 September 1983, art. 10(1), in 26 O.J. EUR. COMM. (No. C 258) 3 (1983). Compared to Art. 11(1) of Council Directive 80/779/EEC, the obligations of member states under art. 10(1) of the above draft Directive are couched in more precise terms. Furthermore, whereas under Directive 80/779/EEC the Community may attend the interstate consultations, under the draft Directive on air pollution from nitrogen dioxide the Community is seemingly under an

Although neither the Directive nor the draft Directive explicitly states it, the objective of the consultations required therein is the assessment of the foreseeable impact on the multinational airshed of measures planned on either side of the boundary pursuant to the Directive or the draft Directive. Eventually the consultations should lead to concerted action on both sides of the border concerning shared air masses. In contrast, another Directive on surface water quality of intended drinking water unequivocally directs member states to adopt water quality standards consistent with the values laid down in the Directive, "without distinction to national waters and waters crossing . . . frontiers."²⁰

Licensing of Controlled Activities

A Council Directive on groundwater pollution protection provides what probably amounts to the most articulate set of rules found in any EEC Directive with specific regard to shared natural resources *stricto sensu*. In broad outline, the regulatory system laid down by the Directive for the protection of groundwater resources at large provides for severe restrictions on the direct discharge of designated very dangerous substances into groundwater and the licensing of discharges of designated less dangerous substances directly or indirectly into groundwaters.²¹

When affected groundwater resources underlie the border between two or more member states, or move from one side of the border to the other, the member state which plans to authorize a restricted discharge is directed to inform the other affected member state(s) prior to the grant of the authorization. Any one of the concerned states may then request that consultations be held to explore the transnational consequences of the proposed action pursuant to the Directive, and to eventually coordinate action on both sides of the border. If the request for consultations is made before the grant of an authorization, the member state concerned is obligated to consult²² and, by implication, to refrain, at least temporarily, from granting the requested authorization. *A contrario*, if the request for consultations is made after the grant of an authorization, the granting member state is arguably free to accede to the request or not. Regardless whether the granting member state accedes to the request, it could be

obligation to attend the interstate consultations if it requests to do so. With a view to enabling the Community to decide whether to request its attendance or not, the draft Directive further places member states under a specific duty to inform the Commission of the consultations, arguably before their inception.

20. Council Directive 75/440/EEC concerning the quality required of surface water intended for the abstraction of drinking water in the member states, art. 4(1), 18 O.J. EUR. COMM. (No. L 194) 26 (1975).

21. Council Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances, art. 4, 5, 23 O.J. EUR. COMM. (No. L 20) 43 (1980).

22. *Id.*, art. 17.

liable to the late-complaining member state for damage across the frontier resulting from the grant of an authorization, under general principles of international law,

Monitoring of Controlled Activities

Several Directives and draft Directives provide effluent quality standards and ambient quality objectives for industrial discharges of harmful substances.²³ The Directives and the draft Directives address the discharge of restricted substances into shared water media from the viewpoint of monitoring the affected aquatic environment for compliance with community water quality objectives. Concerned member states are placed under a specific obligation to cooperate in order to harmonize monitoring operations.²⁴

A Council Directive aimed at the control of waste discharged by the titanium dioxide industry also requires member states to cooperate in the monitoring of operations to control pollution of a shared aquatic or atmospheric environment. Cooperation will be achieved through the joint appointment, by all affected member states, of a body responsible for monitoring operations.²⁵ As a consequence, the obligation to cooperate in monitoring activities under the Directive is *ad hoc* in nature, because the obligation arises only upon occurrence of a pollution incident and is limited in time to dealing with the consequences of such an incident.

Remedial Action Regulations

A Council Directive on the control of air pollution from sulphur dioxide and suspended particulates sets forth, *inter alia*, procedural guidelines in

23. Council Directive 76/464/EEC on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community, 19 O.J. EUR. COMM. (No. L 129) 23 (1976); Council Directive 82/176/EEC on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry, 25 O.J. EUR. COMM. (No. L 81) 29 (1982); Council Directive 83/513/EEC on limit values and quality objectives for cadmium discharges, 26 O.J. EUR. COMM. (No. L 291) 1 (1983); Council Directive 84/156/EEC on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis industry, 27 O.J. EUR. COMM. (No. L 74) 49 (1984); and Commission of the European Communities, Proposal for a Council Directive on limit values and quality objectives for discharges of hexachlorocyclohexane, and in particular lindane, of 19 July 1983, 26 O.J. EUR. COMM. (No. C 215) 3 (1983). It should be noted that the draft of what later became Council Directive 83/513/EEC did not contain provisions with respect to cooperation in the conduct of monitoring operations. The (then) draft Directive provided instead that, in case of transfrontier pollution of fresh waters or territorial sea waters from waste discharge operations, all the concerned member states would be under obligation to take coordinated remedial action, and to inform the European Communities Commission. Commission of the European Communities, Proposal for a Council Directive concerning the limit values for discharges of cadmium into the aquatic environment and quality objectives for cadmium in the aquatic environment, of 17 February 1981, Art 4, 24 O.J. EUR. COMM. (No. C 118) 3 (1981). (The reasons for the drastic changes which the draft Directive underwent are not known to the author).

24. Council Directive 82/176/EEC, art 4; Council Directive 83/513/EEC, art 4; Council Directive 84/156/EEC, art. 5; Proposed Council Directive of 19 July 1983, art. 4.

25. Council Directive 78/176/EEC on waste from the titanium dioxide industry, art. 7(2), 21 O.J. EUR. COMM. (No. L 54) 19 (1978).

case of transfrontier pollution. These guidelines provide that when two or more member states have adopted ambient air quality standards with respect to their common frontier regions, and if compliance with the agreed standards is or may be jeopardized by pollution originating in "another" member state, then all affected member states are obligated to formulate appropriate remedial action. The Commission of the European Communities may attend the interstate consultations.²⁶ A draft Council Directive contains similar provisions controlling air pollution caused by nitrogen dioxide emissions. The draft Directive provides that the Commission of the European Communities must be informed of and attend consultations.²⁷

The Directive and draft Directive above refer first to wide-range transboundary air pollution, in which the obligation to consult arises regardless of the proximity of the originating area to the affected area of one, or more, member state(s) across the border. The Directives, however, also refer to the pollution of an air mass shared across the common frontier, whether or not the member state where pollution originated was a party to the consultations for the adoption of agreed frontier standards.

The Council Directive regulating the disposal of waste from the titanium dioxide industry, *inter alia*, directs member states to remedy a number of specific situations which are at variance with the regulatory thrust of the Directive.²⁸ When several member states are concerned, those states must consult each other prior to taking remedial action.²⁹ This obligation arises in situations affecting shared natural environments and the relevant resources. Inland waters flowing from one member state into another or forming the border between two or more member states, or the territorial waters of the sea adjacent to two coastal member states with respect to an enclosed or semi-enclosed sea, such as the Mediterranean Sea or the North Sea, would arguably be included within the Council's Directive.

Other Regulations

The Council Directive concerning protection of bathing inland and marine waters directs member states to adopt and enforce water quality requirements consistent with the mandatory minimal requirements laid down in the Directive. When the inland or marine bathing waters are "shared" either because they straddle the frontier line between two or more member states or because they are located close enough to the frontier to be sensitive to action originating in either bordering member

26. Council Directive 80/779/EEC, art. 11.

27. Commission of the European Communities, Proposal for a Council Directive on air quality standards for nitrogen dioxide, of 13 September 1983, art. 10(2).

28. Council Directive 78/176/EEC, Art 8(1).

29. *Id.*, art. 8(2).

state, the relevant member states are obligated under the Directive to seek an accommodation of their respective interests and obligations through mutual cooperation.³⁰

A Council Directive on the control of industrial air pollution directs member states, for the purpose of bilateral consultations, to supply each other with all of the information disclosed to respective nationals in the industrial licensing process.³¹ The information exchange serves the purpose of controlling air pollution in one state originating from industrial plants located near the border in either state.

More specific language in the two Directives above would have helped to pin down specific obligations of member states when dealing with shared natural resources. Nevertheless, the two Directives do reflect an awareness of the special needs which may arise in regulating a shared natural resource.

CRITICAL REVIEW

An analytical review of the EEC lawmaking activity as reflected in Directives either in force or in draft form reveals, first, that the Community has focused its concern primarily on natural resources protection from qualitative degradation, as opposed to natural resources development and use, and related protection from resource over-exploitation and depletion. This emphasis may be due to the fact that the lawmaking authority of the Community in the field of natural resources and, more broadly, the environment, is only implied in the EEC treaty.³² Subject to the limitations outlined above and the additional comments below, the Community apparently is aware of the potential for conflict between member states when the quality of shared natural resources or shared environments is con-

30. Council Directive 76/160/EEC concerning the quality of bathing water, art. 4(4), 19 O.J. EUR. COMM. (No. L 31) 1 (1976). In view of the express reference to the commonality of bathing water quality objectives, it is doubtful whether the above Directive provision could be applied also in respect to two member states one of which had a bathing area close enough to a freshwater or marine water border to be exposed to action originating in the other member state. The natural resource in question, i.e., the freshwater course or the coastal water where the bathing area is located would still be a shared resource, but the bathing area itself would not but indirectly, i.e., through exposure to action originating across the border and conveyed on this side of it by a shared medium.

31. Council Directive on the combating of air pollution from industrial plants, art. 10, 27 O.J. EUR. COMM. (No. L 188) 20 (1984).

32. Arts. 100-102 of the EEC Treaty grant the council authority to harmonize by means of directives member states' domestic legislation, with a view to avoiding distorting competition in the Common Market. Art. 235 of the EEC Treaty grants implied powers "if action by the Community, appears necessary to achieve . . . one of the objectives of the Community, in cases where [the] Treaty has not provided for the requisite powers of action." See, on the foundations of EEC lawmaking authority in the field of the protection of the environment, I. Seidl-Hohenveldern, *Community Law Procedures Against Transfrontier Environmental Hazards and Damages*, in VIII LAW OF THE EUROPEAN COMMUNITIES AND GREECE, THESAURUS ACROASUM 336, 340-344.

cerned. Since conflict prevention is the purpose of Directives' provisions regulating member state's actions affecting the quality of intracommunity shared natural resources, concern for these resources is incidental to the thrust of relevant Directives, and is only procedural in contents. In seeking to adjust their substantive provisions to the specific needs of shared resources, the Directives tend to require consultation and cooperation of concerned member states. By requiring consultation and cooperation, the Directives provide further evidence of the accepted principles of customary international law of natural resources whereby states are required to notify each other and to consult prior to taking action which might work appreciable harm to the territory of another state.³³

There are, however, a few noteworthy exceptions to the trend toward making specific provisions for shared resources in the framework of Directives protecting the quality of natural resources. Concern for shared water resources is conspicuously absent from the Directive on water pollution control and prevention.³⁴ Similarly, the regulatory mechanisms provided in the draft Council Directive on industrial air pollution control fail to consider the potential transboundary impact of action planned or taken in pursuance of the Directive, or inaction, on either side of a shared airshed frontier.³⁵ Furthermore, the Directive which provides surface water quality requirements for water used as drinking water expressly directs member states to adopt water quality standards consistent with the values laid down in the Directive "without distinction to national waters and waters crossing . . . frontiers."³⁶ This provision lacks the flexibility to account for noncompliance with the Directive's provisions, in particular under the the extenuating circumstances designated in the Directive.

In addition, there may be room for improvement in the Directives and draft Directives which make provisions for shared natural resources. Seldom does one Directive or draft Directive cover more than one of the regulatory items reviewed in this document. Thus, for example, the Directive concerning air pollution from sulphur dioxide and suspended particulates requires interstate consultation in the setting of air quality standards

33. See International Law Association, *Helsinki Rules on the Uses of the Waters of International Rivers*, Art. XXIX(2), in REPORT OF THE FIFTY-SECOND CONFERENCE 518 (1967); Institut de Droit International, *Resolution on the Utilization of nonmaritime international waters (except for navigation)*, Art. 5, in 49 ANNUAIRE DE L'INSTITUTE DE DROIT INTERNATIONAL, TOME II 383 (1961); United Nations International Law Commission, Third Report on the Law of the Nonnavigational Uses of International Watercourses, U.N. Doc. A/CN.4/348 para 154 (S. Schwebel, Special Rapporteur 1981); First Report on the Law of the Nonnavigational Uses of International Watercourses, U.N. doc. A/CN.4/367 paras. 111-115 (J. Evensen, Special Rapporteur 1983).

34. Council Directive 76/464/EEC. However, the implementing Council Directive 82/176/EEC provides for interstate cooperation in monitoring of compliance with the Directive with respect to controlled discharges affecting shared inland or marine waters (art. 4(2)).

35. Council Directive, 84/360/EEC, art. 10.

36. Council Directive, 75/440/EEC, art. 4(1).

for border regions,³⁷ but not with respect to the subsequent monitoring or the remedying of transborder pollution occurrences. The same observations can be made in respect to Directives on fresh waters supporting fish life, and on marine and brackish shellfish waters, respectively. Interstate consultations are required in the process of designating protected stretches of water under either Directive.³⁸ Consultations are not required in the monitoring of the conditions of affected waters or in the conduct of remedial operations in response to transfrontier pollution.

Interstate consultation requirements in monitoring and remedial operations are also absent from the Directive on groundwater pollution control.³⁹ They are both provided for, instead, in the Directive on control of pollution from the titanium dioxide industry.⁴⁰ The same Directive, however, does not extend interstate consultation requirements to the licensing of controlled waste disposal activities. Cooperation in monitoring operation, but not in the conduct of remedial operations following a transfrontier pollution incident, is provided for by the Directive on mercury discharges into waters,⁴¹ and on cadmium discharges into waters.⁴²

Each and every Directive concerning the protection of the environment and the relevant natural resources need not necessarily provide for interstate consultation and cooperation mechanisms for all aspects of environmental protection regulation reviewed in this article. Taking into account, however, the scope of the Directives reviewed, mechanisms for interstate consultation and cooperation are needed to achieve several purposes: (1) to adjust the substantive provisions of a Directive to the peculiar requirements of shared natural resources; (2) to monitor effectively the state of shared natural resources, and compliance with substantive Directive provisions affecting them; and (3) to take necessary, effective action to remedy transboundary pollution incidents, whatever the cause.

It is also useful to elaborate on the mechanics of the member states' obligations to consult. Special regard must be given to the consequences of the formal request for consultations under a Directive from the standpoint of actions taken or planned pursuant to the Directive by the recipient member state.

One last observation concerns the role of the Community within the framework of the interstate consultation process. Under the Directives or draft Directives, the European Communities Commission is generally, but not always, granted authority to either participate in, or attend the

37. Council Directive, 80/779/EEC, art. 11(1).

38. Council Directive, 78/659/EEC, art. 10; Council Directive 79/923/EEC, art. 10.

39. Council Directive, 80/68/EEC.

40. Council Directive, 78/176/EEC, art. 7(2).

41. Council Directive, 82/176/EEC.

42. Council Directive, 83/513/EEC.

required consultations among member states. In broad outline, Community participation or attendance is sought in order to adjust substantive regulatory mechanisms, such as the licensing of controlled activities or the designation of protected environments, to situations involving shared natural resources. Community involvement is not called for in the cooperation and coordination of monitoring and remedial operations. This dichotomy has no apparent compelling justification; the consultation, cooperation, and coordination mechanisms envisaged may all equally benefit from the catalytic role the Community can play through its Commission. By the same token, while "attendance" may imply a reductive role, active participation by the Community may provide the impetus for a fruitful and speedy conclusion of the consultation or cooperation process. Most of the relevant Directive's or draft Directive's provisions, however, do not elaborate on such ancillary obligations of the member states to inform the Communities' Commission of scheduled consultations or meetings with due dispatch. Without timely information, the Commission's authority to take part in the consultation process may be frustrated.

CONCLUSION

An awareness of the peculiar needs of sharing natural resources or sharing environments can be detected in the EEC lawmaking activity in the protection and conservation of the environment and of natural resources. Subject to a few noteworthy exceptions, the trend is toward establishing consultation and active cooperation requirements whenever action under a Directive may affect a shared natural resource or a shared environment. While commendable, the trend could be strengthened by the following suggestions: (1) more articulate and specific drafting of member states' obligations which require information and data exchange and the obligation to consult; (2) ensuring that interstate consultation and cooperation mechanisms are commensurate in scope with the substantive scope of the relevant Directive; and (3) securing the active involvement of the Community in the interstate consultation and cooperation process.