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*Simultaneous protection of the marine environment and critical infrastructures: a dual challenge for State action at sea.
The Belgian example¹*

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Since the infamous "Torrey Canyon" incident in 1967, public opinion and both public and private decision-makers have gradually recognized the need to protect the marine environment. Unfortunately, this has not prevented new disasters over time, but at the very least, perspectives on this issue have evolved.

In Belgium, a significant step was taken with the adoption of the law of 20 January 1999, "aiming at the protection of the marine environment in marine areas under Belgian jurisdiction"². This law was ambitious: for the first time, it provided a broad definition of this environment, which covers more than two-thirds of the planet's surface, and highlighted the need to safeguard the specific character, biodiversity, and integrity of the marine environment. Since then, this text has been amended several times before the federal legislator adopted, on 11 December 2022³, a law with a title significantly different from the 1999 law. The new text is identified as

¹. *Text of the contribution presented in Marseille on March 25, 2025 during the 1st conference of European Marine Academies at the invitation of our French colleagues of the 'Académie de Marine'.*

². L. le Hardy de Beaulieu, "La loi du 20 janvier 1999 visant la protection du milieu marin dans les espaces marins sous juridiction de la Belgique: entre continuité et innovation", *Aménagement*, 2000, 91-95.

³. Official publication in *Moniteur belge*, 16 december 2022, p. 97470.

"law aiming at the protection of the marine environment and the organisation of the development of Belgian marine areas".

From the outset, the law defines the marine area as: "the abiotic environment and the biota of marine areas, including the fauna, flora, and marine habitats that they occupy, as well as the ecological processes at work in this environment and the interactions between the abiotic and biotic components and the ecosystem services that they provide" (Article 3, 2°).

It also defines the territorial sea, the continental shelf, and the exclusive economic zone as the marine areas under Belgian jurisdiction (Article 3, 1°).

The aim of this contribution is not to delve into the technical details of Belgian legislation on the subject but rather to highlight the major objectives that have been retained, the lines of thought that led to the adoption of the new legislation, as well as some strong points and probably also some weaknesses that remain. In other words, rather than proposing an analysis of Belgian law, it will provide basic materials for initiating a comparative law approach.

As highlighted by the parliamentary work, the 2022 law incorporates several interesting and specific innovations, in substance:

- The notion of damage now also includes the dimension of "environmental disturbances";
- A real obligation of attention is put forward and sanctions are imposed in the event of non-compliance;
- A very general principle appears which, in principle, subjects to authorisation all activities likely to have an effect on the marine environment, including activities linked to the development of marine areas;
- A specific service called the "marine environment service" is explicitly given competence in the management and deployment of pollution control instruments, in accordance with the OPRC and the Bonn Agreement;

- The system of sanctions in the event of infringement is revisited to provide a more adequate balance between administrative sanctions and criminal sanctions;
- Finally, in the event of damage to the marine environment, priority is given to restoring it to its original condition.

Beyond that, the 2022 law aims to strengthen the coherence between different existing regulations, sometimes with slightly disparate accents. It also aims to take into account a series of modifications made necessary by new international or European rules adopted since the 1999 law.

One can think, among other things, of Belgium's ratification in 2014 of the International Convention on Oil Pollution Preparedness, Response and Co-operation of 1990 (known as OPRC) and its Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances (2000). In this context, a clearly identified competence has been entrusted to the Directorate-General for the Environment of the Ministry of Public Health and more specifically to its "Marine Environment Service".

Furthermore, one cannot ignore the driving role of infringement procedure 2020/2344 initiated by the European Commission against Belgium following the transposition deemed incomplete of Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014.

Likewise, the new legislation has taken into account Council Regulation (EC) No 708/2007 of 11 June 2007 on the use of alien and locally absent species in aquaculture and Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species.

The Objective of the Law

The new law aims to present a holistic approach by setting itself the objective of both the protection and planning of the marine environment. It thus aims to (Article 4):

- "protect the marine environment through its preservation, restoration or creation, based on sustainable management

Protection of marine environment and critical infrastructures: a dual challenge

measures, including measures for the prevention, containment, restoration and compensation of damage";

- "organise the spatial planning of marine areas".

As the protection is concerned, seven fundamental principles set the direction of the law. They are mentioned in Article 6.2: "In all their activities in marine areas, anyone must respect the principle of a high level of protection, the principle of preventive action, the precautionary principle, the principle of sustainable management, the polluter pays principle, the principle according to which damage to the environment must be corrected, as a priority at source, and the principle of reparation."

The Scope of Application *Ratione Personae*

The law applies a priori "to anyone carrying out activities with a potential impact on Belgian marine areas" (Article 5 §1), including Belgian and allied armed forces. In the case of military activities, an exception will be made for urgent or essential interventions for the protection of public order and public health "including the defence of the territory".

The Scope of Application *Ratione Loci*

As mentioned above, the natural scope of application of the 2022 law concerns Belgian marine areas, i.e. the territorial sea, the continental shelf, and the exclusive economic zone of Belgium (Articles 3, 1° and 5 §1). However, it should be noted that the law is stricter with regard to Belgian nationals and vessels in that it prohibits them from any incineration or dumping operations "and not only in the marine areas specifically covered by the law". This double prohibition therefore has an extremely general spatial scope. It is intended to send a strong signal to all those over whom Belgium has jurisdiction, including on the high seas (Articles 28 §2 and 29 §2).

The Scope of Application *Ratione Materiae*

The new legislation aims to protect both certain species and certain marine areas.

Regarding **protected species**, their list is also established by royal decree. Their populations are subject to strict protection prohibiting their capture, injury, the collection of eggs, or for flora, their picking or collection. More broadly, it also prohibits holding, transporting, or trading them. Similarly, any form of intentional disturbance of animals during periods of reproduction, dependence of young, hibernation, or migration is prohibited (Article 13). Hunting of birds and marine mammals is prohibited in marine areas (Article 14). The introduction of exotic species into marine areas is prohibited, unless a permit has been granted under fairly strict conditions (Article 15).

Regarding **marine areas**, we observe the creation of marine reserves and Natura 2000 zones. Unless expressly authorized, all activities are prohibited in marine reserves. These reserves are created by the King who, for each of them, sets the desired protection objectives as well as their modalities (Article 10).

Concerning **Natura 2000 areas**, they are established on the basis of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, or on the basis of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds. The conservation objectives necessary for their preservation or restoration are defined, on a case-by-case basis, by royal decree (Article 11).

It is with this in mind that the 2022 law has devoted particular attention to the development of marine areas under Belgian jurisdiction. The King has been entrusted with adopting, by decree deliberated in the Council of Ministers, the procedures for adopting a development plan for these areas¹. This plan is binding and will be subject to evaluation every eight years. If necessary, it will be subject to the desired modifications. The decree intended to implement it highlights:

- a spatial analysis of Belgian marine areas;

¹. Royal Decree (26 April 2024) relating to the procedure for creating marine protected areas, Natura 2000 authorisation, Natura 2000 approval, and environmental permits in Belgian marine area. Official publication in *Moniteur belge*, 6 June 2024, p. 70734.

Protection of marine environment and critical infrastructures: a dual challenge

- the explanation of the choices made, it being understood that these choices must be justified on the basis of economic, social, and environmental objectives;
- the measures for implementing the development plan;
- an accurate cartographic representation of this plan.

It is obviously not enough to establish rules concerning the authorisations to be obtained, setting certain prohibitions or developments in areas; it is also necessary to establish emergency measures for the protection and safeguarding of the marine environment.

The new law determines that it is the marine environment service.

In the same way, an obligation to cooperate with the public authority applies to everyone: other public services, but also any public or private legal entity or even any natural person who would then be the source of pollution or imminent or actual damage. They have the obligation to notify the event to the "maritime information hub". They also have the obligation to collaborate with the public authority in operations to protect and limit pollution (Articles 36 and 59).

As indicated above in terms of compensation, the basic principle is that priority is given to restoring the situation to its initial state. Failing this, the polluter-pays principle applies at the civil level. But a system of administrative and criminal fines is also envisaged. Concerning the latter, the sanctions can be severe, including a prison sentence of one month to five years and a fine of €200 to €2,000,000 increased by judicial interest (Articles 43 to 51). However, we know that, regarding administrative sanctions, certain fears may exist. Indeed, they are derogatory to the common legal principles of civil liability and both their framework and their implementation depend on the executive power and not on the judiciary. Therefore, if the State or one of its organs is responsible for the offence, the effectiveness of the sanction system may appear questionable¹.

¹. See also Ch-H. Born, « Propos sur la réparation du préjudice écologique en droit belge de la responsabilité civile », *Forum de l'Assurance*, Vol. 1, no.244, p. 75-83 (2024) (sp. p. 80).

In recent years, Belgium has installed offshore wind farms covering approximately 238 km². The roughly 400 wind turbines already in place enable the development of 2.2 GW, equivalent to a nuclear reactor. Plans are underway to increase production capacity to 6 GW. Consequently, it was deemed important for legislation to organize the development of areas under State jurisdiction in the territorial sea and the exclusive economic zone. In this context, the 2022 law outlined the marine spatial planning plan. It entrusted the King, by decree deliberated in the Council of Ministers, with determining the terms for adopting this plan. This plan must include a spatial analysis of the areas concerned and make reasoned choices regarding the economic, social, and environmental objectives to be retained. Logically, the plan must also design implementation actions and provide a precise cartographic representation¹.

Here, we see the conjunction of several important issues: energy production, environmental protection, and the safeguarding of critical infrastructures. Protecting gas and oil pipelines, as well as energy installations, helps reduce the risks of collision, sabotage, or leaks that could have a devastating effect on marine fauna and flora. It is therefore easy to understand that environmental monitoring programs and critical maritime infrastructures are likely to generate cross-effects.

In this spirit, at the "North Sea Summit" held in Ostend on 24 April 2023, Belgium initiated the signing of a joint declaration on cooperation in the protection of offshore infrastructure, together with the governments of the Netherlands, the Federal Republic of Germany, Norway, the United Kingdom, and Denmark. Considering the often interconnected nature of submarine infrastructures, this declaration highlights the need for a common approach to the security and protection of critical infrastructures. It aims to promote better information exchange and the notification of possible incidents through a secure platform. All this is intended to be achieved in cooperation with both NATO and the European Union.

¹. S. Vanhove, "De nieuwe Wet Marien Milieu van 11 december 2022: blijft België een pionier?", *T.M.R.* 2024, liv. 3, 252-258. Voir aussi K. Willaert, "De nieuwe Belgische diepzeemijnbouwwet: vaststellingen en bedenkingen", *T.M.R.* 2024, liv. 5, 500-509.

The creation of this platform, called "North Seal," is the responsibility of Belgium, which has allocated 1 million euros for this purpose. It is also interesting to observe how seemingly distant concerns can converge. As mentioned, environmental and security concerns have become linked. It is still necessary to find appropriate and available means.

To this end, the North Sea security pact emphasises that future infrastructure development should consider threats and risks. Possible instruments include security cameras, underwater acoustic detection shields, landing platforms for aerial drones, and the operation of underwater drones in the area. Additionally, for several years, Belgium has introduced legislation allowing it to use sovereignty vessels, one of whose missions is to monitor suspicious movements in the North Sea. These vessels are not strictly warships but are placed under the operational command of the defence and can be assigned mixed civilian-military crews¹.

The experience of recent years shows a convergence of concerns that must guide State action at sea, not only within a national framework but also in collaboration with other States in the region, as risks and threats clearly extend beyond the maritime borders of a single State. These threats are multifactorial and multidimensional. This development also demonstrates that environmental protection cannot be decoupled from the analysis of other types of risks, even if they are geopolitical in nature.

Let's get creative for the Future: We can suggest some proposals for the future to enhance the protection of the marine environment and critical infrastructures taking in account that if sabotage or other illegal actions may have impact e.g. on the energy production, it may also cause serious damages to environment. In this sense, environment could also be regarded as a critical infrastructure. Just to take one single example, if oil spill may have an impact on the environment, it has also, at the one hand, consequences for our fishermen and fir their means of subsistence and, at

¹. L. le Hardÿ de Beaulieu, « Les navires de souveraineté dans le droit belge », *Revue internationale de Droit comparé*, 2024-1, p. 225-232.

the other hand, it implies the deployment of expensive capacities to counter environmental damages.

1. Enhanced International Cooperation:

- Strengthen international agreements and cooperation frameworks, such as the North Sea Summit declaration, to ensure a unified approach to protecting offshore infrastructure and the marine environment. A better international synchronized approach concerning EEZ's would be looked forward.
- Promote better information exchange and incident notification through secure platforms like "North Seal," involving NATO and the European Union. From this point of view, the Joint Communication of the EU Commission to the European Parliament and the Council "to strengthen the security and resilience of submarine cables" (21 February 2025) is a good step forward, but it has to be implemented by a close cooperation between Member States at policy level and at operational level.

2. Advanced Monitoring and Surveillance:

- Invest in advanced monitoring technologies, including security cameras, underwater acoustic detection shields, and drones (both aerial and underwater) to detect and respond to potential threats to critical infrastructures.
- Expand the use of sovereignty vessels with mixed civilian-military crews to monitor suspicious activities at sea.
- More international/European training.

3. Integrated Environmental and Security Policies:

- Develop integrated policies that address both environmental protection and security concerns, recognizing their interconnected nature.

Protection of marine environment and critical infrastructures: a dual challenge

- Ensure that future infrastructure development considers environmental threats and risks, incorporating preventive measures into planning and implementation.

4. **Strengthening Legal Frameworks:**

- Continuously update and harmonize national laws with international and European regulations to address emerging environmental and security challenges.
- Enhance the enforcement of environmental laws by balancing administrative and criminal sanctions, ensuring accountability for non-compliance.

By implementing such proposals, European countries could enhance the protection of the marine environment and critical infrastructures, ensuring a sustainable and secure future for marine areas.

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