



**GOOD GOVERNANCE AND THE COMMON FISHERIES POLICY: AN ENVIRONMENTAL PERSPECTIVE**

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### **1 Introduction**

The debate on EU fisheries management may appear to be dominated by technical discussions on catch limits and gear restrictions needed to maximise ecological, social and/or economic sustainability. With increasing frequency, however, environment as well as industry organisations are calling into question the way in which EU fisheries policy is administered. References to the 'blunt', 'remote', 'highly bureaucratic' or 'top-down' nature of the Common Fisheries Policy (CFP) are common within industry literature. The way the policy is developed, implemented and evaluated is similarly criticised for lacking transparency and accountability, with decisions seen as left to technical or scientific experts, to the exclusion of environmental interests. For these reasons, and in the face of growing evidence of the decline of the marine environment, the EU is viewed as ineffective in its management of the fisheries sector.

Although rarely couched in such terms, these issues are central to the question of 'good governance'. Governance is a broad term used to describe the way governments are formed, how they exercise powers and the extent to which they are accountable to, and allow participation by, the public. Given widespread dissatisfaction with the CFP, it is of little surprise that 'good governance' is also among the list issues in the Commission's Green Paper on the Future of the CFP. Although the CFP review itself will not be able to tackle the fundamental architecture and workings of the EU, it could result in improvements to some of the structures, approaches and practices particular to EU fisheries policy. Discussions on the future of the CFP could also feed into the more wide-ranging debate on 'European governance' that is being launched by the Commission in mid-2001.

This briefing paper is the fourth in a series of five papers being prepared by IEEP as part of a joint IEEP/English Nature project<sup>1</sup>. It provides some context to the debate on governance and the main international and EU instruments in place to promote good governance in relation to the environment. It looks in more detail at arrangements concerning transparency and accountability, participation in decision-making and subsidiarity under the CFP, from an environmental perspective, and identifies ways in which improvements might be secured. The paper is thus intended to provide a constructive contribution to the debate on the 2002 CFP review, in line with the specific requirement for environmental integration in Article 6 of the EC Treaty.

The other briefing papers in this series cover the following:

- Integrating environment into the Common Fisheries Policy;
- Fish stock conservation: a role for strategic fisheries management planning?
- Mediterranean issues: towards effective fisheries management; and
- Socio-economic issues: the use of taxes and charges.

## **2 Background to the good governance debate**

The issue of governance has been of growing interest across a range of policy areas since the 1980s, particularly in the context of international development and cooperation policy. The idea of ‘good government’ can be traced back much further, however, to at least the start of the century. The meaning of ‘good governance’ varies according to the policy area in question but at its heart are issues such as how powers are exercised in managing international, national or even corporate resources. Governance debates therefore potentially touch upon a wide range of questions, including the accountability and transparency of government action, participation of stakeholders in the decision process, administrative levels of government and the overall effectiveness of management policies.

Importantly in the context of this paper, good governance is not simply a means of furthering democratic principles. Rather, accountability, transparency, participation and decentralisation are also central factors underpinning the successful transition to environmentally sustainable development. Accountability is particularly important in sectors such as fisheries where virtually the entire sector is managed by the public sector but where management and exploitation occurs largely out of public view and scrutiny. Access to information and transparency in policy are thus critical as means of ensuring accountability. They are also a precondition for meaningful public participation in decision making. Decentralised management can also improve policy effectiveness by allowing measures to be tailored to local needs, as well as providing opportunities for participation in decision making by local stakeholders. Finally, all of these governance issues can contribute to heightened public awareness of environmental issues.

### ***2.1 Governance in International Environmental Agreements***

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In international environmental agreements, there are remarkably few formal rules that deal with transparency and accountability, public participation, and decentralisation. Some important moves have nevertheless been made, most notably through adoption of the Århus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (1998). The Convention, which the EC and all Members States have signed, is a first step towards developing universally applicable rules in this area. It establishes extensive provisions to ensure the following governance related rights.

- *Access to information on environmental matters* - officials and authorities are to assist and provide guidance to the public in seeking access to ‘environmental information’ which includes any information on the state of the environment (including biodiversity and its components), and factors affecting or likely to affect this. The Convention also requires authorities to disseminate information, or at least to inform the public about the type and scope of environmental information that is being held.
- *Public participation in decision making* – this includes a requirement for early and effective participation in a wide range of decisions, from local project related decisions through to the development of statutory rules. Not only does participation have to be supported, but the results of consultations also have to be taken into account in final decision making.
- *Access to justice* - provisions ensure that the public has appropriate access to justice for alleged impairment to its rights of access to information and public participation. The public is also to have access to justice to challenge acts or omissions by private persons and public authorities that contravene the provisions of national environmental law.

The Convention thus establishes relatively comprehensive and far reaching provisions that are directly relevant to fisheries governance issues. In addition to this, the FAO Code of Conduct on Responsible Fisheries, a non-binding instrument adopted in Rome in 1995, refers to the need to make decision-making processes transparent and to ensure that they achieve timely solutions to urgent matters. States are also called upon to facilitate consultation and effective participation in decision-making (Article 6). Other international instruments relating to biodiversity conservation<sup>2</sup> and fisheries management<sup>3</sup> also refer to issues of good governance, but on a more limited scale.

## **2.2 The governance framework in the EU**

The EU has developed numerous formal and informal procedures in support of good governance, including in environmental matters, as follows.

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<sup>2</sup> 1992 UN Convention on Biological Convention (Article 14) - public participation in environmental impact assessment of projects likely to have significant adverse impacts on biological diversity.

<sup>3</sup> 1995 UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks (Article 12) - transparency and participation of non-governmental organisations (NGOs) in decision-making processes.

- *Transparency and accountability* – there are currently two main instruments governing access to information, one concerning access to information on the environment and measures likely to affect the environment that is held by the Member States (Directive 90/313).<sup>4</sup> Another set of rules establishes provisions on access to documents held by the EU institutions, largely based on a Code of Conduct on public access to documents. The Code aims to ensure the widest possible access to documents held by the Commission and Council. ‘Documents’ are defined as any written text that contains existing data. The right of access to European Parliament, Council and Commission documents was also enshrined in the EC Treaty in 1999 and secondary legislation to implement these provisions is currently under development (COM(2000)30).
- *Participation in decision making* – unlike access to information, this is not covered by a single piece of ‘horizontal’ EC legislation. Within the three EU institutions (Commission, Parliament and Council), practices are highly variable. The European Parliament, apart from being directly elected, also has a strong tradition of close working with public interest groups, including open hearings. There is also a range of formal and informal ways of involving interest groups in Commission work, including the setting up of advisory committees or specific working groups, as well as financially supporting NGOs, although many DGs do not adopt such practices. There is also an increasing tendency to issue discussion documents and to organise hearings, at least in relation to major reforms. By contrast, public participation in Council decision making is virtually non-existent.

Several EC laws include provisions to ensure Member States allow public participation in the policy *implementation* process, including the environmental impact assessment Directive. Proposals for extending public participation in implementing EU environmental legislation are currently before the Council (COM(2000)331).

- *Decentralisation of decision making to the lowest appropriate level* – This has found expression in the EU largely through the principle of ‘subsidiarity’. The principle was given legal force in relation to most Community policies in the 1992 Maastricht Treaty. The Treaty definition of the principle is very narrow, effectively setting out when national action is preferable to Community action. Thus Community action is to be taken ‘only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community’ (Article 5). An important proviso, however, is that the principle does not apply to areas such as fisheries which fall under exclusive community ‘competence’.

Despite the narrow approach under Article 5 of the EC Treaty, the concept of subsidiarity potentially has much broader implications, as reflected in a new Protocol to the EC Treaty<sup>5</sup> on subsidiarity and proportionality, introduced in 1997.

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<sup>4</sup> See also Haigh, 2000; in relation to the CFP, see Lasén Diaz, 2000

<sup>5</sup> Protocol to the Treaty establishing the EC on the application of the principles of subsidiarity and proportionality. As far as the principle of proportionality, Article 5 of the EC Treaty states that ‘Any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty.’

The Protocol outlines not only when the Community should and should not act, but also what form action should take. Thus, Community action should be 'as simple as possible'; directives – binding as to the result to be achieved but leaving Member States the choice of how to deliver the results - are to be preferred, in principle, over regulations; and framework Directives preferred over detailed measures. Community measures should also leave as much scope for national decisions as possible, as long as this is consistent with the aims of the policy and objectives in the Treaty. Last but not least, the Commission should consult widely before proposing legislation and where appropriate publish consultation documents.

This broader approach to subsidiarity is to some extent already visible in EU environmental policy making, the most recent example being the water framework Directive (2000/60). This establishes broad EU level objectives while leaving Member States considerable discretion in their implementation. However, other policy areas make little or no use of Directives, instead using very detailed regulations that leave little or no scope to adjust measures to national circumstances.

### **2.3 *Future directions in EU governance***

Today, 'good governance' has never been higher on the EU's agenda. The crisis of the previous European Commission and its forced resignation in March 1999, as well as the prospect of EU enlargement, have reinforced calls for reform of EU institutions and procedures. Ratification of the Århus Convention is demanding a new approach towards governance in relation to environmental matters. The impacts of this Convention are likely to be felt far beyond the limits of core environmental policy, potentially extending to all areas of EU policy. The new Protocol on subsidiarity and proportionality could similarly have significant ramifications for governance in the EU.

A significant additional, but clearly related, driver for reform is the general level of public dissatisfaction about the way in which Europe is being governed and how effective, ultimately, policies are seen to be. Although, according to successive Eurobarometer surveys, European citizens generally support further EU intervention on environmental matters, many EU policies and the EU institutions continue to suffer from a widespread lack of public support and trust. The fact that the EU impinges on everyday life is particularly apparent in sectors such as fisheries, where the EU has 'exclusive competence' and where the CFP thus tends to dominate national policy discussions.

## **3 Improving governance under the CFP**

The lack of confidence in EU governance has led the Commission to launch a major debate on European Governance, with a White Paper due to be published in July 2001<sup>6</sup>. While that debate can be expected to have ramifications for all areas of the EU, particular disillusionment with the existing CFP has also forced a more specific debate on governance as part of the discussions on the 2002 CFP review. Both the

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<sup>6</sup> Additional information on the White Paper can be found at: <http://europa.eu.int/comm/governance>.

White Paper and the CFP review should thus identify the reforms necessary to contribute to delivering sustainable fisheries. These could subsequently be reflected in revisions to EU Treaties, policies and working practices.

This section identifies some of the key weaknesses in transparency and accountability in relation to the CFP, from an environmental perspective, and explores options for improvement.

### **3.1 Transparency and accountability**

The CFP, like many areas of EU policy, is made up of a complex set of measures. There is limited public information on what policies exist, how they are developed and adopted, and how they interrelate. Although there have been attempts at improved dissemination of information, notably including a new Regulation on 'closer dialogue' (see box), greater resources are needed to fully engage and inform stakeholders and the public about CFP and related issues.

#### **Closer dialogue with industry and relevant groups**

In 1999, DG Fisheries issued a paper (XIV/859/99) entitled *Action Plan for closer dialogue with the fishing industry and groups affected by the Common Fisheries Policy*. The Plan suggested key areas where improved dialogue was being sought, including proposals to open up the ACFA (Advisory Committee on Fisheries and Aquaculture) to environment and development organisations. In general, according to the Commission, it has 'become abundantly clear that relations between the commission and the fishing industry... are no longer satisfactory to either party'.

One result of the proposals for improved dialogue was a Regulation (657/2000) on closer dialogue adopted in March 2000. The preamble to the Regulation highlights the need to give 'representatives of the fishery products and aquaculture industry together with the other groups concerned' a greater role in the design, drafting and implementation of the CFP. This is to be achieved by improving dialogue and by making the whole decision process more transparent, especially in the preparatory stages.

In practice, the Regulation requires the Commission to bear the costs of meetings arranged by 'European trade organisations' aimed at preparing for ACFA meetings. The wording of the Regulation suggests that preparatory costs incurred by environment, development or consumer groups would not be covered. However, the Regulation also requires the Commission to pay for the preparation and dissemination of material explaining the CFP, and to maintain regular contact with the organisations and groups concerned. This includes costs of providing 'very wide' access to data and explanatory material on Commission proposals, through the internet and a regular publication, as well as organising information and training seminars for 'opinion formers'.

#### *Access to documents*

For those seeking to access more detailed information on fisheries policies or projects, there have been some improvements notably in the official information available on DG Fisheries and other Commission web sites. However, access to internal or draft documents is still relatively limited, despite the existence of legislation on access to EU documents. All too often there is still a tendency to apply a restrictive approach to

the access rules (see box), rather than adopting a proactive and open policy towards access, assuming that information should be in the public domain unless proven otherwise.

#### **Accessing information on fisheries subsidies**

The issue of transparency and accountability in relation to fisheries subsidies was discussed at length at a WWF Conference in November 2000 entitled *Fishing in the Dark*. A background report prepared for the conference (Lasén Diaz 2000) identified a number of factors limiting transparency and accountability in EU fisheries subsidies. The number, size and complexity of EU and national institutions, and the lack of a consistent legal framework governing access rules, made accessing EU information more challenging.

However, perhaps the greatest limitation on the effectiveness of the access to information rules is their essentially passive nature. The existing rules, if properly implemented, only require civil servants to pass information to the public if specifically asked to by an individual. This places a considerable burden on civil society to have prior knowledge of the existence of information and of the institution or agency holding it. It also requires civil society to understand the relevance of such information to their particular interests.

Source Lasén Diaz 2000

#### *Transparency in decision-making*

Transparency in decision making continues to be inadequate, particularly in relation to the work of the fisheries Council and its working parties, although practice will generally be influenced by the Presidency of the day. Thus the agendas of fisheries Council working groups have been made available under the Swedish Presidency in the first half of 2001; a similar level of transparency has not been standard practice in the past. Access to EU related documents drafted at national level is also often very variable, in some cases even more restrictive than access to non-EU related documents.

The practices of the Commission and DG Fisheries compare favourably to those of the Council, with considerable improvements having been made in the last few years as a result of the drive to promote 'closer dialogue' (see above). As well as improving information on the internet, this has also led to the inclusion, since 2000, of a representative of environment NGOs on the ACFA<sup>7</sup>. This has effectively improved transparency, at least for the organisations represented at ACFA. However, it has not improved transparency for other organisations, for example, local, regional or environmental authorities.

DG Fisheries currently has no dedicated forum for regular meetings to discuss environmental issues related to fisheries. This contrasts with Agriculture, Employment and Social Affairs, Environment and Development Directorates-General that have a large number of ad hoc meetings with environmental interests (both European and non-European) on a range of issues. A DG Fisheries/NGO contact group does officially exist, but it is convened by the Commission only rarely and on an *ad hoc* basis. Furthermore, membership of the Contact Group is limited to a number of European level NGOs which are also responsible for selecting the

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<sup>7</sup> Commission Decision 1999/478 renewing the Advisory Committee on Fisheries and Aquaculture



respective ACFA members. Environmental agencies, for example, are not members of the group.

### *Information on the impacts of policies*

Little information is available on how policies are implemented, their environmental effects, and whether they are meeting stated objectives. These issues are also central to transparency and accountability and require policies to be formulated on the basis of clear objectives. They also require Member States to undertake baseline environmental monitoring before EU legislation comes into effect, as well as developing appropriate environmental indicators, monitoring systems and reporting regimes. Monitoring and reporting requirements are also needed to provide information on the policies themselves. These requirements are not present in most, if any, EU fisheries legislation. There is consequently little transparency about the effectiveness or environmental impacts of CFP measures.

### **3.2 Public participation in decision making**

There is a common perception that fisheries policy is managed by ‘Brussels’ without adequately involving environmental, local and national fisheries interests in the decision making process. The benefits of such participation are that policy-makers gain access to valuable local knowledge of fisheries and ecosystems, which can potentially be used to help define regional and local problems more clearly and to design regionally or locally appropriate solutions. Increased participation by stakeholders in the design and implementation of policies should also enhance the legitimacy of the fisheries management system among the wider public. Stakeholders, particularly NGOs, can also provide feedback on the success or otherwise of specific policies. Participation is also thought to improve the likelihood of compliance by fishermen, which is a key challenge in fisheries management.

In practice, there is often some level of public participation in the development of EU fisheries policies but its extent and quality is variable. It generally falls short of the standards set by the Århus Convention, as follows.

- The *Commission* formulates fisheries policy proposals based on ‘official’ input from a range of national, scientific, technical, industry and environmental interests. The formal forum for participation by environmental non-governmental organisations (NGOs) is ACFA where opportunities are provided to comment and contribute views on CFP related issues. Despite the significant external impacts of EU fisheries policies, access to ACFA meetings has in the past been restricted to EU residents. Further opportunities for industry, but not environmental participation, is provided by the series of regional fisheries management meetings that have been convened by the Commission over the last few years.

Apart from ACFA and the regional meetings, there has also been an increased tendency for DG Fisheries to organise ‘hearings’ on key policy developments, for example, to gather views on the 2002 CFP review and EU fishing fleet policy. Where participation in Commission work is encouraged, it is generally supported by a limited budget to cover travel costs. For environmental interests, additional

expenses such as preparatory work or experts' fees are not normally reimbursable, thus limiting their actual ability to contribute meaningfully to the debate. This contrasts with arrangements for industry organisations whose preparatory costs are eligible for reimbursement (see above).

- The *Council* is very poor at securing public participation in decision making, with no known attempts at consultation by fisheries working groups or in Council meetings. It is up to individual Member States to decide whether or not to consult nationally on proposals, in advance of Council or working group meetings, and practice varies, particularly in terms of participation by environmental interests. However, Member States are now required to reflect 'partnerships', including environment and sustainable development interests, in the development and implementation of fisheries programmes under the Structural Funds.

#### **Improving Participation in Regional Fisheries Organisations**

The importance of regional fisheries organisations (RFOs) has grown over the last decade due to increasing pressure on high seas fisheries and on fisheries straddling national boundaries. There are now in excess of 35 RFOs in existence; the EC is a member of ten of these, ranging from the North East Atlantic to the Indian Ocean, as well as covering stocks of tuna and salmon.

The 1995 UN Agreement on Straddling and Highly Migratory Fish Stocks provides the legal basis for a stronger role for RFOs, and also establishes basic rules on their transparency in decision-making processes and other activities (Article 12). Representatives from NGOs are to be given the opportunity to participate in meetings and arrangements, as observers or otherwise. Although participation need only be 'in accordance with procedures', RFOs should 'not be unduly restrictive in this respect'. Such NGOs are also to be given 'timely access' to RFO records and reports, subject to procedural rules on access.

The Commission considers that the EC should play a 'greater role in establishing and determining the framework to govern fishery resources.' (CEC, 1999) In so doing, the EC needs to secure improvements in transparency and public participation in RFOs, not least as a means of demonstrating a progressive leadership role on the international stage. However, in order to be credible, such a policy should be based on sound practices at home, including participation and transparency in the process of developing and agreeing EC positions on external matters.

- The role of the directly elected *European Parliament* is still very limited in relation to the CFP, in stark contrast to many areas of EU policy where the Council and Parliament now have equal powers in the decision making process. Nevertheless, the fisheries committee organises public hearings from time to time as a means of consulting stakeholders in the process of drafting reports or opinions.

In comparison with standards set by the Århus Convention, there is scope for strengthening stakeholder participation at EU level, as well as promoting public participation in international and national fora, as appropriate. It will be important to address financial and human resource constraints in order to secure a proper and balanced participation of the various interest groups in the decision making process. Perhaps most significantly, the Community institutions will need to be able,

ultimately, to demonstrate that stakeholder views have been taken into consideration, in the process of decision making.

### **3.3 *Subsidiarity - devolving fisheries policies***

The CFP is characterised by its very top-down approach, particularly in relation to fisheries management which is an area of exclusive EU competence. The CFP now consists of over three hundred pieces of legislation covering most aspects of the fisheries sector. Monitoring and reporting is one of the few areas which remains largely the responsibility of the Member States. Within the CFP, there has traditionally also been a reliance on EU regulations, as opposed to directives. This means that the CFP has sought to intervene directly in the activities of the sector, rather than setting broad objectives that are then left to the Member States to implement.

Having said that, subsidiarity is already a feature of some areas of the CFP and there are examples where Member States are required to decide how measures are implemented on the ground. Thus, Member States are largely responsible for managing inshore fisheries (as these are considered to be predominantly of national interest) and while overall limits on permissible catches and fishing fleets are set at EU level, decisions over the appropriate management of fishing quotas and fleets are left to the Member States. Most significantly, the basic objectives of fisheries structural funding under the Financial Instrument for Fisheries Guidance are agreed centrally by the EU but leave extensive scope for the Member States and regional authorities to decide how and where funds will be targeted.

There are strong arguments in favour of further devolution within the CFP, allowing management measures to be tailored more closely to the specific needs of ecosystems or regions, while simultaneously bringing decisions 'closer' to EU citizens. The new Protocol on subsidiarity and proportionality, described under Section 2.2, also advocates such an approach. In practice this could lead to a greater emphasis on setting basic environmental/fisheries objectives at EU level, and agreeing national quotas, but leaving Member States to design and implement these objectives in ways that best suit their particular circumstances. So, for example, Member States could be required to draw up and implement fisheries management plans, where necessary in cooperation with other relevant Member States. This approach is already applied to the management of other natural resources, notably under the birds and habitats Directives, as well as under the new water framework Directive. The series of regional fisheries workshops (see below) that have been convened by the Commission over the last few years may provide a suitable forum for developing and implementing such regional plans or activities<sup>8</sup>.

At the same time, in line with the subsidiarity principle, the EU's role in some aspects of fisheries management might actually be increased. One obvious area for consideration would be monitoring and enforcement activities that could benefit from stronger (but not exclusive) EU-level coordination, thereby improving the efficiency and effectiveness of monitoring and enforcement throughout EU waters.

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<sup>8</sup> For more detailed information on the regional workshops, see also COM(1998)145 and COM(1999)747

From an environmental perspective, a critical precondition for greater subsidiarity is that EU level objectives are both sufficiently strict and clear: subsidiarity should not be used as a means of avoiding or diluting existing standards. It is also critical that strong provisions regarding transparency and participation by environmental interests accompany any move towards devolution (see Hey 2000). Importantly, that includes ensuring adequate scope and capacity for local, regional or national public participation. The series of CFP regional fisheries meetings, which currently do not include environmental interests, illustrate the potential for decentralisation or regionalisation to dilute EU standards of public participation (see box).

#### **Subsidiarity and participation: experience in regional fisheries workshops**

Since 1997, the Commission has arranged a series of regional workshops to explore ways of improving the conditions in which single-species fisheries are managed in maritime regions. The regional meetings have a number of advantages: they provide an opportunity to develop policies and promote implementation at the appropriate regional seas level, but do not require fundamental changes to the EU institutions. They also support transparency and participation by industry representatives in developing appropriate policy responses and in implementation.

However, apart from the Baltic Sea workshops, they have failed thus far to involve environmental groups or other stakeholders in the process. This is despite recent changes to EU level consultation within the ACFA which since 2000 includes an environmental representative. In effect, the positive opportunities presented by the regional workshops are cancelled out by the failure to involve environmental stakeholders in the process.

A further prerequisite to decentralisation would be the establishment of strong monitoring and evaluation systems, including appropriate environmental indicators, to enable EU-level scrutiny of Member State performance in fisheries management.

#### **4 Conclusions**

For the reasons outlined in this paper, there is increasing pressure to improve the legitimacy of the EU, particularly in relation to the fisheries sector. There are growing concerns over the effectiveness of existing fisheries management policies, as well as their wider environmental impacts. Arguments in favour of improved governance are considerably strengthened by the 1998 Århus Convention and the 1997 Amsterdam Treaty which call for a more fundamental reform of the way the EU manages its resources, in terms of access to information, public participation and subsidiarity.

The recent push by DG Fisheries to improve dialogue and transparency has resulted in important steps to improve governance of the CFP, for the first time involving some environmental interests in an official advisory capacity. Renewed efforts are now needed to improve the application and effectiveness of these and other rules and, in several cases, to introduce new measures and approaches. Importantly, decisions to enable further subsidiarity within the CFP are encouraged, but only after stringent provisions are in place to secure good governance at whatever level CFP related decisions are taken. The CFP Green Paper and the debate that follows provide a golden opportunity to consider all of these issues in a comprehensive way, which hopefully will provide the basis for the reform in 2002.

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