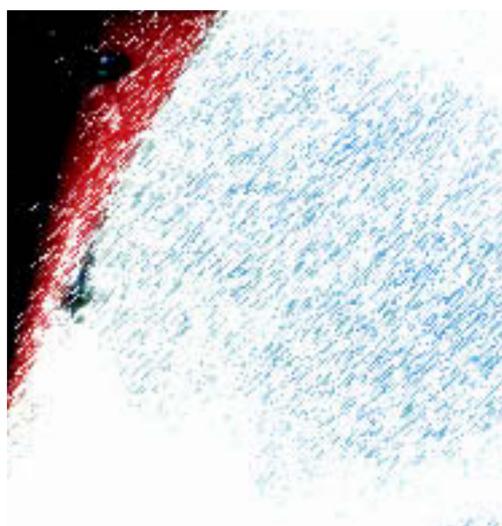
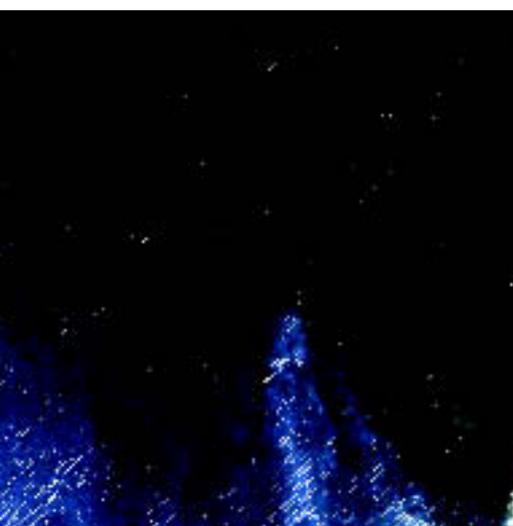
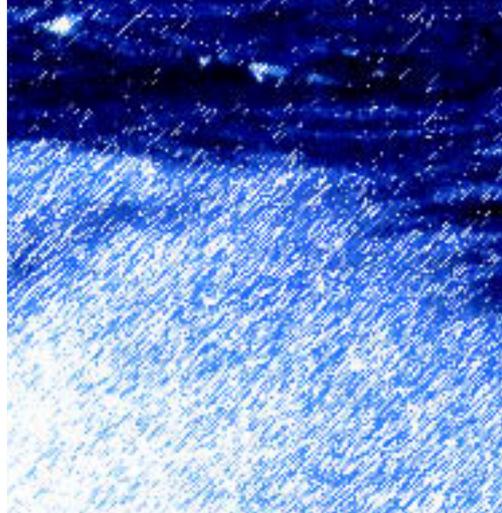
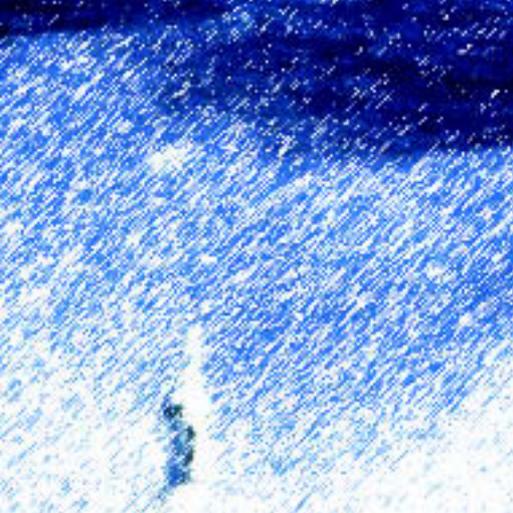


**Annual  
Report 2002**



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# Message by the President

## Introduction

After the political disturbances that upset the world during the second half of 2001, the perspective for 2002 was generally positive. The economy gradually recovered and modest growth has been forecast. The European dredging industry confidently faced the future with order books filled well into 2003.

Indeed, our industry continued a period of relative stability full of business opportunities. The investment level in new vessels equipped with advanced technology reached all times highs over the last few years.

During the reporting year mainly medium-sized hopper dredgers in the range of 5000 to 8000 m<sup>3</sup> were built, but overall capacity of the fleet increased further through lengthening recently constructed jumbo hoppers.

Fortunately this hefty investment - and construction programme has not resulted in structural overcapacity thus far. The current tensions in the Middle-East are already affecting the dredging sector. In particular frictions between Singapore and Indonesia may have serious repercussions.

## Market Aspects

The centre of gravity of the global dredging market remained the Far East. The infrastructure projects in Singapore and Malaysia have required the deployment of a sizeable part of the dredging fleet.

### Indonesia

The dredging industry has been severely impacted by political developments in Indonesia. Dredging vessels working in the area have valid permits to mine sand at Indonesian concessions. This sand is to be used for expansion of the Singapore territory.

In the course of the year serious problems developed concerning these concessions in Indonesian waters. After previously having fired at a dredging vessel, the Indonesian navy in July captured seven other dredging - and support vessels. Indonesia has kept these dredging vessels in custody for more than 6 months in spite of a judicial decree issued by an Indonesian Court that the ships should be released upon paying a small charge.

Apparently there is an internal Indonesian conflict between regional and central government, as well as between judicial and executive powers. Such conflict undermines not only the stability of the country, but it also inflicts enormous economic damage on third parties and puts the credibility of Indonesia as a reliable trading partner in jeopardy. The dredging industry is deeply concerned about this specific case and the wider political context. The developments in Indonesia resulted in project delays in Singapore. Other regions, in particular the Middle East and Europe, initiated important capital dredging projects.

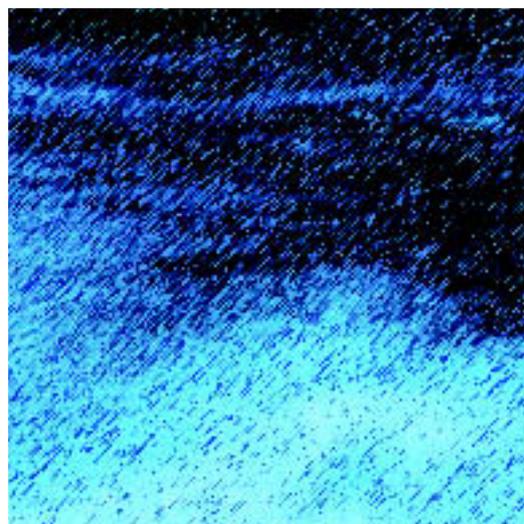
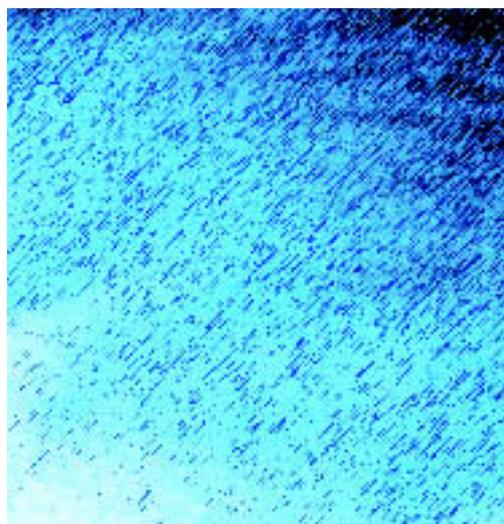
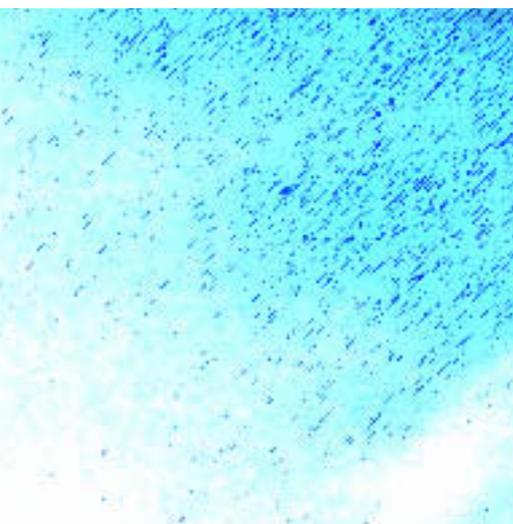
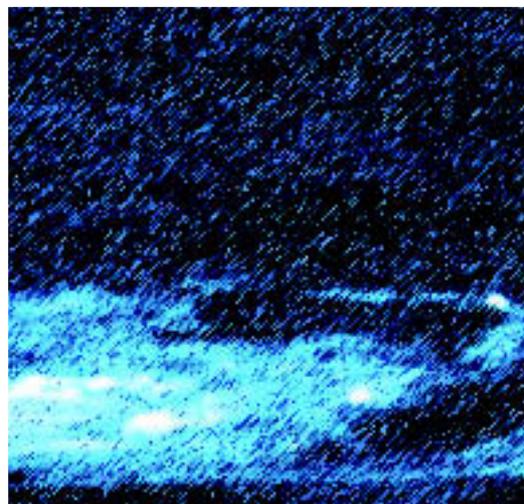
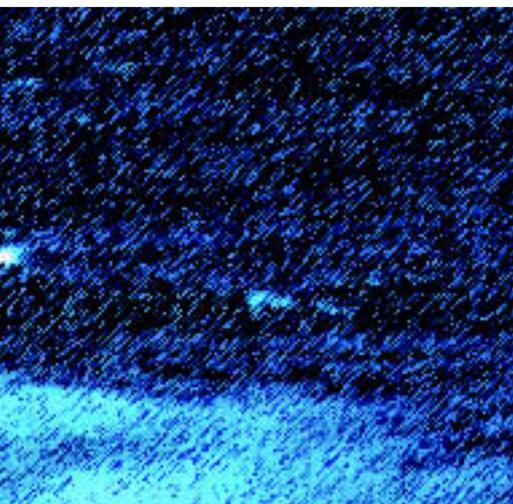
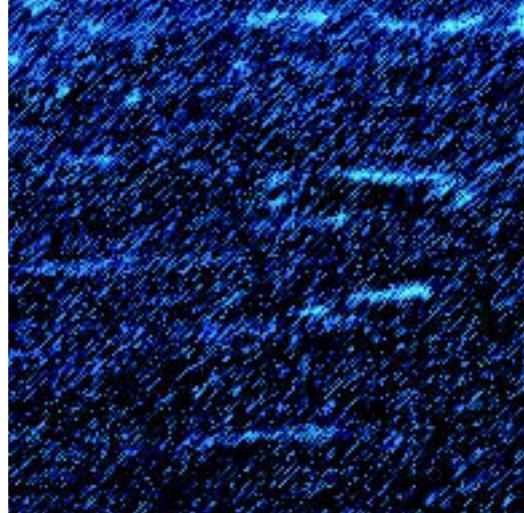
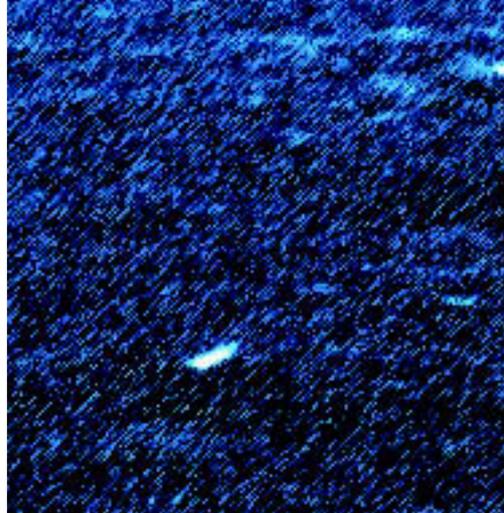
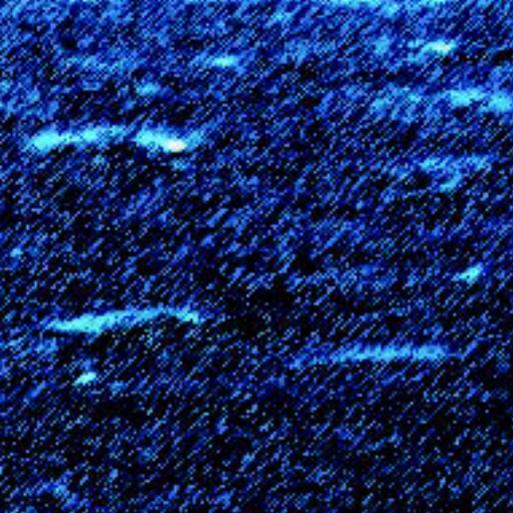
## Other Markets

The market outlook for the shorter term is uncertain. For the medium and longer term the industry remains reasonably positive about trends in the global market for dredging services, barring further negative political and economical developments.

As for the future in Asia, the strong development of the Chinese economy demands heavy investment in new and existing ports. The European dredging industry could provide valuable services and the fact that China has become a member of the WTO will hopefully be a positive element in providing market access.

## European context

The European dredging industry positions itself as a responsible player in global competition. The com-



panies comply with all applicable EU - and international rules. During the past few years considerable sums have been spent on the introduction of the International Safety Management Code (ISM) as well as other management systems. Compliance with the rules implies additional expense. Unfortunately we find that some competitors from outside the EU do not maintain similar high standards.

The industry is thus under continuous pressure to position itself in a global market and needs all the help it can get to compete successfully.

The support that we expect from the European Union includes :

- Positive measures to reduce labour cost.
- Active support to open-up foreign markets and to remove market access barriers.
- Moderation in introducing further rules and regulations on vessel safety and environmental performance.

## Environmental concerns

The bulk of dredging activities takes place in a marine environment and the industry has always been conscious of the need to exercise its craft with great care for the natural environment. During the last few years the Association has become more aware of the fact that the environmental and ecological impact is not always well understood by other stakeholders, including NGOs.

We have therefore decided to play a **more pro-active role**.

### **EuDA currently supports :**

- A research programme to characterise the maritime biotopes in the North Sea in view of assessing long term impact of dredging.

- A study to locate suitable borrow areas for marine sand in the Mediterranean in order to fight coastal erosion.

EuDA is also co-organiser of seminars and workshops on the assessment of Habitats Directive, Water Framework Directive and Environmental Impact studies.

We investigate the potential to initiate voluntary industry agreements to respect certain sensitive parameters (e.g. emission standards).

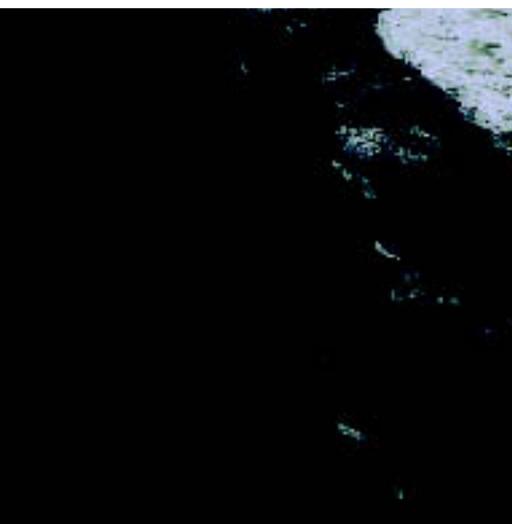
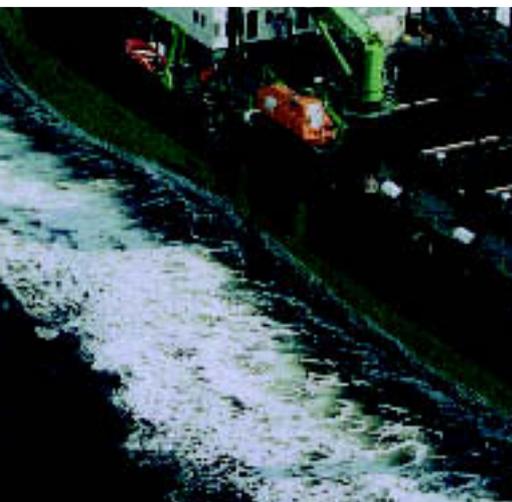
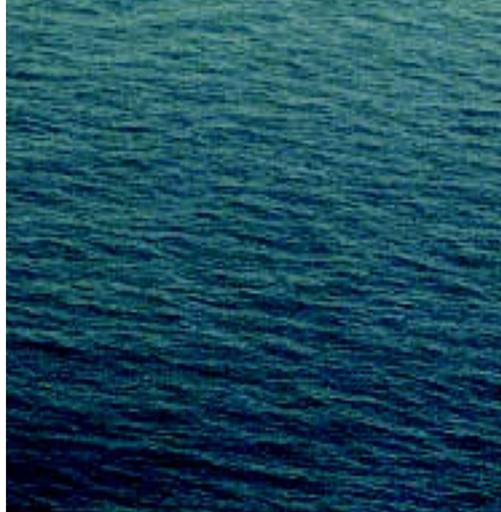
## Outlook

EuDA will exist 10 years in 2003. The EuDA Board, in close cooperation with the member companies, will perform an in-depth evaluation of the accomplishments thus far, but will also assess areas that need further attention.

EuDA was founded to create a link between European policies and regulation and the dredging industry. The continuing development of the European Union necessitates industry cooperation across national borders. In the day-to-day rush we do not always realise the extent to which European legislation affects our business. Nevertheless, the impact of European law has overtaken the importance of national rules in many cases.

We have also noted that the national press coverage of European developments (in Council, Commission and Parliament) limits itself to the highlights. Much of the detailed regulation that affects the (dredging) industry is the result of a complex legislative procedure. The need to monitor and to participate in this process justifies a presence in Brussels. We value the active role that the EuDA Secretariat plays in defending the interests of our industry.

**Jozef Allaert,  
President**



# Building and Maintaining Underwater Motorways

## Waterborne transport

Dredging is not commonly known for the vital role it plays in our transport economy. And yet - some 90% of the EU external trade moves through the sea ports. The global economy relies on fast and efficient transportation of goods to meet customer needs and enhance export and import opportunities.

With a growing world population and newly emerging economies, in particular in Asia, the demand for goods will increase. Growing trade volumes require expansion of the waterborne transportation system. At the same time the pressure on the shipping industry leads to bigger and more efficient ships : ports must be expanded, navigation channels must be deepened, motorways of the sea must be built. Such is the work of the dredging industry.

## Shipping

### Evolution of ships

From the time of the two-masted schooner to today's super container giants, seagoing vessels not only have increased carrying capacity but are also wider, longer and faster and require deeper channels. Improving "productivity" of shipping means more cargo moved faster, safer and more efficiently while consuming less energy and producing less pollution.

### Evolution of shipping

From moving goods in barrels, baskets and sea chests to the container-ship concept implemented in the 1960s was a long process. Containerisation operates under the premise that durable and non-durable goods can be safely and economically shipped worldwide in standardised 20 feet long containers (called twenty-foot equivalent units - TEUs). These containers are intermodal, can be stowed efficiently on container ships and can be placed easily on inland ves-

sels, on rail road cars, in aircraft cargo holds, or on semi-trailer trucks for door-to-door delivery. Other traditional shipping methods include break / bulk carriers, super colliers, and tankers.

Overtime, container ship design evolved into a standard limited to a size able to pass through the Panama Canal. Today's container ships, however, can be more than 300 m long, carry up to 6000 TEUs, and require at least 13.5 m channel depth. Ships of the future will be bigger yet and will need navigation channels at least 15 m deep. Some ports are already deepening shipping channels to accommodate vessels with 18 m drafts or more.

## Role of Dredging

**"Dredg'ing (drejng) vt. : To enlarge or clean out (a river channel, harbour, etc.) with a dredge."**

With their increased size, ships need improved navigation channels to enter and leave ports efficiently, quickly, and safely. Few rivers or harbours are naturally deep. Many ports in Europe are situated on the mouth of a river or estuary and have natural depths between 3 and 5 m.



Without dredging, the ports of Antwerp, Hamburg or Rotterdam to name a few, would be impassable to passenger lines and cargo ships. Periodic maintenance dredging as well as occasional enlarging and deepening of navigation channels is essential to accommodate shipping.

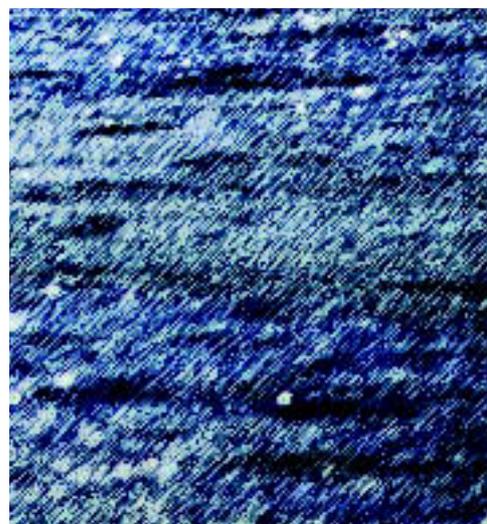
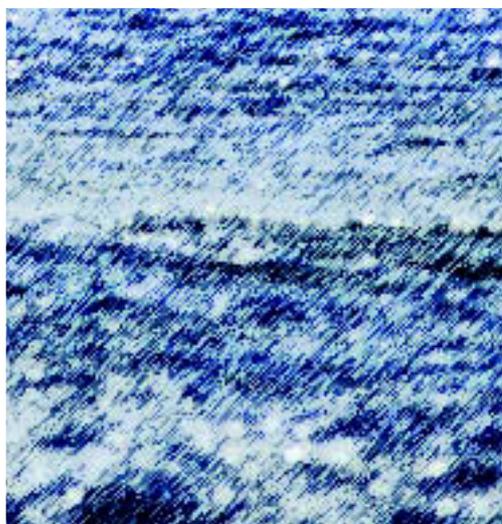
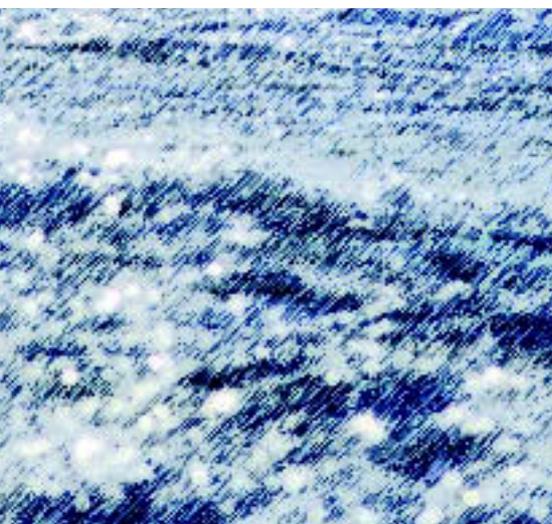
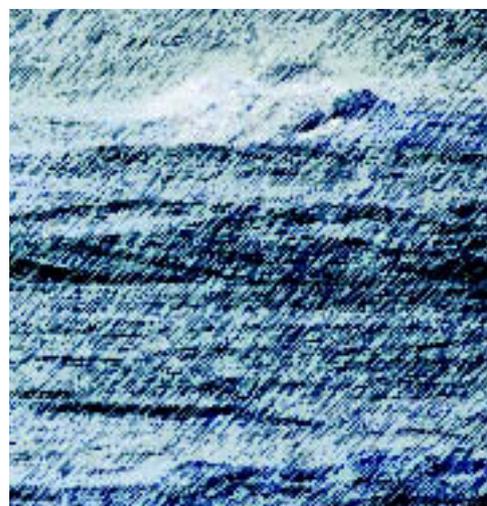
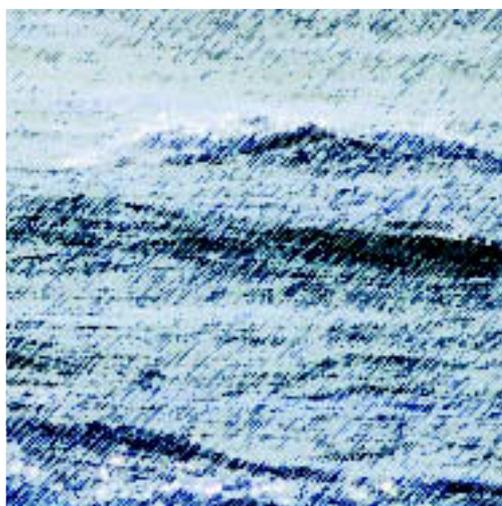
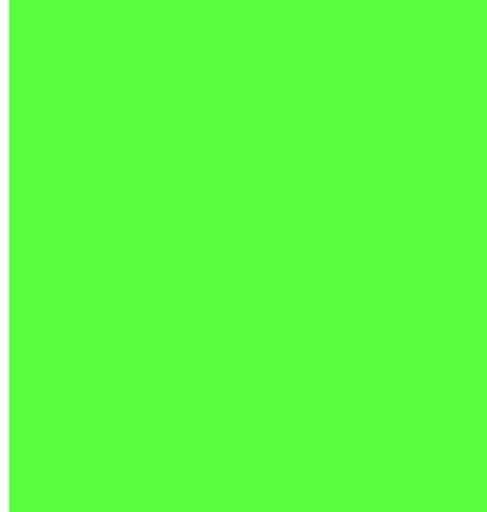
Construction of new navigation channels involves removal of material previously undisturbed ('capital dredging'). The dredged material is clean and may be used for construction purposes if the characteristics are suitable. Maintenance dredging operations involve the repetitive removal of naturally recurring deposited bottom sediment such as sand, silt and clays in existing navigation channels.

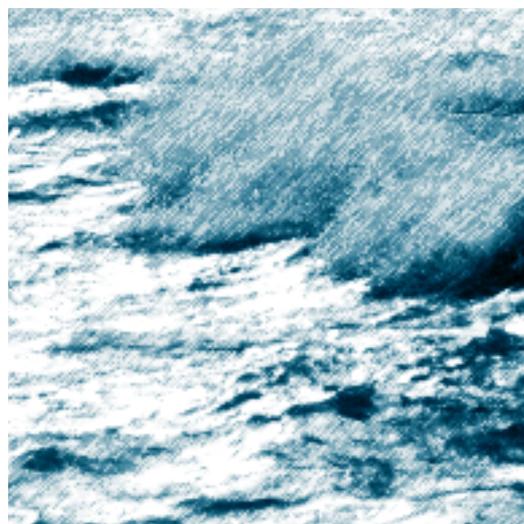
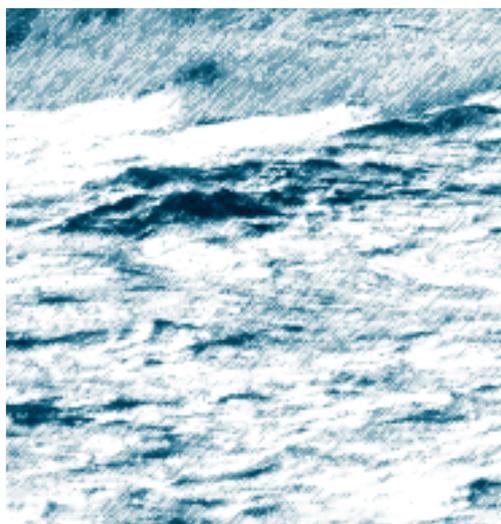
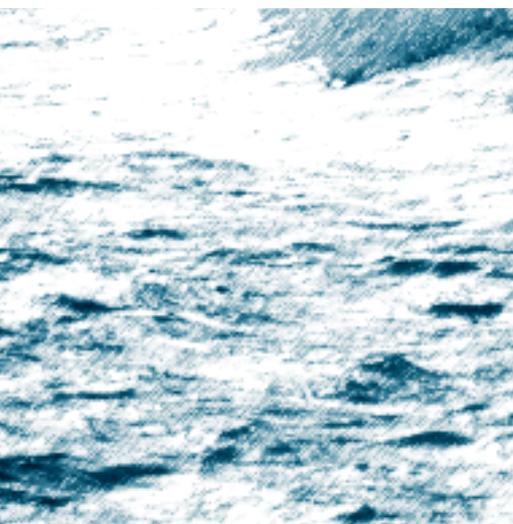
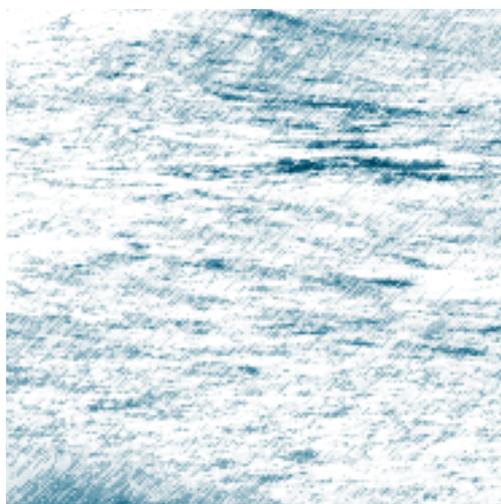
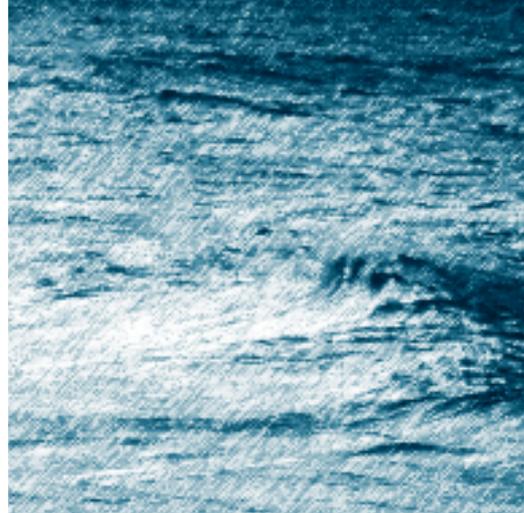
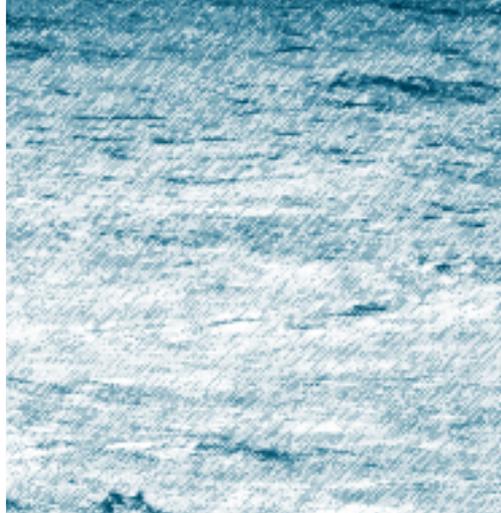


Sediments are often deposited in ports since water velocity decreases. It is not uncommon that sediment is polluted by sources upstream (industrial, domestic, agriculture). Clearly the cause of contamination is not the dredging operation itself; the industry is nevertheless faced with the problem to find suitable solutions for depositing contaminated dredged material.

It is estimated that in Western Europe alone the total volume of maintenance dredging may be as much as 200 million m<sup>3</sup> per year. This is a sizeable volume and it is clear that developing environmentally sound practices to deposit all this material causes the necessary headaches. The challenges are many, but dredging is a necessity if one wants to maintain **the motorways of the sea** and support the ever-growing volume of traded goods transported by ship.







# European Affairs

## Market Matters

### Internal Market

#### Public procurement

The European dredging industry depends for its European market to a very considerable extent on orders obtained via public procurement procedures. It is clear that the industry attaches great importance to the reform of the European directives currently underway.

The Association is mainly interested in the tendering procedures for “works” and we have closely monitored the progress through the legislative procedures. During 2002 the European Parliament has adopted several constructive amendments, but the response of the European Commission has not been encouraging on all points.

It has now been 6 years since the Green Paper on the ‘ Role of Public Procurement in the EU ’ has been published. Some of the underlying problems in public procurement have become more pressing in the meantime.

The Commission stated that the proposals for modernisation of the directives have 3 overall goals :

***“This proposal, which follows on from the debate launched by the Green Paper on Public Procurement, pursues a threefold objective of modernising, simplifying and rendering more flexible the existing legal framework in this field :***

- ***Modernisation is required in order to take account of new technologies and changes in the economic environment.***
- ***The purpose of simplification is to make the current texts more easily comprehensible for users, so that contracts are awarded in complete conformity with the***

***standards and principles governing this area and the companies involved are in a better position to know their rights.***

- ***Procedures need to be rendered more flexible in order to meet the needs of public purchasers and economic operators.”***

**(COM(2002)236**

It seems to us that these objectives lack somewhat in ambition. In the domain of works we see two major issues on which improvements should be made in the current proposals :

- How to correct market failures in the public procurement of works ? *And* -
- How to accommodate a wider use of innovative contract forms in the area of design, construction and financing of infrastructure works ?

#### Market failures

The markets for public procurement of works show certain structural weaknesses that occasionally lead to true market failures. Examples are : oligopolistic position of the contracting entity leading to excessive pressure on prices, oligopolistic behaviour of industry in attempts to recover bid transaction costs, too rigid prescriptive design specifications by the contracting authority resulting in sub-optimal (and too costly) project realisations, too many open tender procedures leading to excessive transaction costs.

While the proposed directive includes options to deal with these problems, they have not been made mandatory and thus lose much of their beneficial effects. **Examples of measures that should be made mandatory in the segment of works contracts are contract award in accordance with most economic offer, extensive use of restricted procedures after preselection and compen-**

**sation for bid preparation cost.** These and other possible measures will undoubtedly improve overall market efficiency.

### Innovative contracts

The proposals cover the option to use procedures for negotiated contracts via a competitive dialogue under certain stringent conditions. It is not apparent that the proposal creates sufficient room for other forms of contracting under which the balance of “power” between contracting authority and bidders shifts towards the latter.

Forms of contracting that leave room for innovation and for a shift in contract risks towards the private sector include Design-Construct, Turnkey, Build-Operate-Transfer (BOT) or Design-Build-Finance-Operate (DBFO). For each of these contract forms a tender procedure is required that deviates from the classical works contract.

Add to this the observation that in principle each of these contracts can be structured as a pure client - contractor relationship at arm's length or as a public-private partnership (PPP) and the fact that certain contracts may require also a concession from the contracting authority - and the situation becomes so complex that extensive use of negotiated procedures may become unavoidable.

The current Commission proposals seem to view this complication as an exception rather than the trend. Amendments by the European Parliament that attempt to open up bid procedures have been rejected by the Commission thus far. The EuDA secretariat monitors the developments as a committed stakeholder.

## World Market

### WTO

The World Trade Organisation has kicked-off the DOHA round of multilateral negotiations, which will concentrate on trade in services. In the WTO definition this covers a broad spectrum, ranging from financial services to construction services; dredging is considered to be a “construction” service.

The European Union, the USA and some 120 other countries submitted preliminary negotiating proposals by July 2002. Initial discussions and negotiations have started, but results are not to be expected before 2004.

The European negotiating position includes dredging services. It is based on the EuDA input concerning market access barriers for dredging work, the most flagrant of which are currently the USA and India.

### Indonesia

The dredging industry has been severely impacted by political developments in Indonesia. Dredging vessels working in the area have valid permits to mine sand at Indonesian concessions. This sand is to be used for expansion of the Singapore territory. Indonesia has kept several dredging vessels in custody for more than 6 months in spite of a judicial decree issued by an Indonesian court that the ships should be released upon paying a small charge.

Apparently there is an internal Indonesian conflict between regional and central government, as well as between judicial and executive powers. Such conflict undermines not only the stability of the country, but it also inflicts enormous economic damage on third parties and puts the credibility of Indonesia as a reliable trading partner in jeopardy.

**The dredging industry is deeply concerned about this non-observance of national law and international rules.**

## USA Jones Act

The Jones Act reserves maritime cabotage trade and supporting services such as dredging exclusively for the US fleet. According to the WTO this law is a barrier to free trade and should be repealed. The law has been under constant attack from the EU, Japan, Canada Mexico and other US trading partners since 1993.

Initial reports from Geneva indicate that the USA will continue to block bargaining over the Jones Act as it is considered a vital instrument to protect defense and security interests. In the separate Box the views of the American Maritime Officer union on this matter are given. They are illustrative of the strongly diverging perceptions. The question remains of course what dredging work, including deepening of access channels to ports, protecting beaches from erosion and clean-up of polluted water-bottoms in rivers and canals, has to do with national defense interests ?

BOX

***Memo to trade negotiators : Jones Act has added value since 9-11-01 by Michael R. McKay (AMO).***

*"The Bush administration - already on record in support of the Jones Act - appears to be upholding the position taken by its predecessors (and by strong bipartisan majorities in every Congress) dating to General Agreement on Tariffs and Trade in 1947 : the Jones Act is not subject to trade agreement negotiating because U.S. shipping markets are already wide open, with foreign-flag ships carrying 98 percent of U.S. commercial imports and exports each year, and because the Jones Act serves legitimate U.S. economic and national security interests." (...)*

*"As home-grown Jones Act repeal advocates have learned since 1995, the law is strong enough to stand on merit, and foreign governments expecting cabotage concessions in the new WTO round have already acknowledged the difficulty of overcoming the U.S. case for the law as written. But there is a new compelling consideration that can only strengthen the U.S. hand in the negotiations : U.S. port and waterway security in the still-turbulent wake of the attacks carried out on New York City and Washington by Saudi Arabian fugitive Osama bin Laden's worldwide al-Qaeda terrorist network last September 11." (...)*

*"Jones Act waiver or outright repeal, accomplished in Congress or at the trade table, would simply make security incidents more common and increase U.S. vulnerability to new terrorist attack. In the context of "homeland security", the Jones Act is more vital than ever. Some U.S. trading partners may not see it that way, but security within U.S. borders must be the higher consideration."*

*American Maritime Officer, July 2002*

## MARITIME AND TRANSPORT

### State Aid Guidelines

The maritime dredging industry, being an integral part of the maritime cluster, has been able to benefit from the 1997 Guidelines for allowable state aid

to the maritime sector and to take advantage of reduction in labour cost for European seafarers. Several Member States have designed structural measures that have been of benefit for seagoing dredgers under an EU flag. Most effective have been the support measures offered in The Netherlands and Belgium.



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Other Member States have put more emphasis on fiscal incentives to support fleet operation. Under the current guidelines there exists some difficulty to determine whether or not dredging vessels can take advantage of the fiscal part. Several requests to apply tonnage tax to dredging vessels have been turned down, either by the European Commission or by the Member State itself (UK, Denmark). The issue at stake is invariably to what extent seagoing dredgers perform a role in the transport chain.

Within the industry several analyses have been made to determine if and how a tonnage tax regime could be applied to dredging vessels. The conclusion has been that it is more problematic for the dredging fleet than for pure transport vessels. The reason is that the income resulting from operating a particular vessel must be singled out in the company accounts (ring fencing). For a vessel involved in project execution this is not always an easy matter.

The industry nevertheless looks forward to a renewal - and possibly an extension - of the guidelines that will provide also the seagoing dredging fleet with clear rules in order to take full advantage of the stimulating measures. The underlying issue remains the fact that qualified EU seafarers are short in supply and that labour cost of non-EU seafarers is considerably lower, thus distorting global competition. Any structural help to stimulate an interest in the profession is more than welcome.

EuDA has submitted a file with details on the needs of the sector and the trends in manning of the dredging fleet. The European Dredging Association awaits with confidence the revision and upgrading of the guidelines as they are currently being drafted by the European Commission.

## Training and Certification

EuDA has prepared a European wide pilot project for professional training of crew with the support of



advanced simulators. We requested European funds to get the project off the ground and thus pioneer a truly cross-European approach to training. Unfortunately there are not sufficient dedicated funds allocated in the EU budgets to stimulate the specific training of seafarers and we had to abandon this project.

During 2002 the upgraded certification of seafarers as foreseen under STCW 95 became compulsory. Regrettably the administrative procedure to issue proper certificates to well trained and / or experienced seafarers have not been finalised in time in several Member States, thus causing inefficiencies in manning the fleet.

## International Safety Management Code

As of 1 July 2002, ISM certification became compulsory for all seagoing vessels over 500GT, including the dredging fleet. All member companies have duly complied with this obligation for the vessels concerned. The European dredging fleet being a rather homogeneous group, EuDA took the initiative to collect feedback on the experiences obtained in developing a Safety Management System as required

by ISM. The results appeared to be rather unanimous and can be summarised as follows :

- The ISM Code has been written specifically for the fleet providing maritime transport services. Work vessels, such as dredgers, typically encounter different conditions. A case in point is that dredgers preferably work in shallow waters to carry out their tasks; this means that the crew needs special skills in navigation, but does not need the help of pilots. It also means that certain exercises and drills can be performed less frequently.
- The ISM Code introduces administrative burdens in the case of flag change. However, some dredgers occasionally change flag on the request of prospective clients. This has caused (unnecessary) delays in a number of cases, since the ISM Code specifically aims to avoid flag-change and has made the procedure more complex.
- It has become apparent that the classification societies play a key role in the certification procedure. There are two situations that occasionally lead to frictions :
  - a) If the shipowner decides to use different classification societies for class approval and for ISM, this may result in demands for more frequent audits by the ISM certifier for reasons that are not apparent.
  - b) If the vessel has to flag out to another state where the original ISM classification society is not recognised, the whole approval process needs to be repeated.

The EuDA secretariat has brought these concerns to the attention of the International Chamber of Shipping, which represents the maritime industry at

IMO, the International Maritime Organisation that introduced ISM. We are currently considering the need to bring our concerns also to the attention of IMO.

## Flag and residence

Another issue that was reviewed in some depth by EuDA members relates to the particular status of vessels under EU flag. According to international law the vessel is territory of the flag state. However, the non-EU crew members aboard do not qualify for EU resident status as a consequence of them working in EU "territory". The question has been raised whether any EU social legislation concerning the rights of non-EU workers could be construed to imply, directly or indirectly, a form of EU resident status for non-EU crew.

The conclusion is that such is not the case. Any other conclusion would obviously lead to unacceptable consequences for the maritime fleet in terms of increased labour cost. The complexity of this question is compounded by the fact that "workers" aboard a dredging vessel fall in some EU Member States under the collective labour agreements of construction workers rather than seafarers. The EuDA secretariat will continue to monitor this issue with a certain amount of zeal.

## Port's package

The package of draft legislation on competition in and between ports is not of direct relevance to the dredging industry. The item of concern is rather the status of navigational access to ports and possible cost charging for deepening channels. The legislative text in the proposed directive has been amended to state "This Directive applies to those port service operations (...) which are provided for users of the port, either inside the port area or on waterway access to and from the port or port system covered by this Directive".

The annex to the Directive specifies clearly that services such as dredging, which are provided as part of the infrastructure development, are not covered by the provisions of the Directive as they are not provided to the users of the port, but to the owners.

A more general observation is that we do not see the need to issue a separate Directive for the application of accounting transparency rules in ports. Such a matter is in principle embedded in the Treaty and can be clarified by simpler legislative means.

### White Book on Transport Policy

The Commission White Book on Transport Policy has been discussed and amended at length in the European Parliament. Not surprisingly, many sector organisations representing different transport modes have provided their remarks to the members of Parliament. Amendments that have been included in the Parliament's opinion cover the importance of investing in a viable network of inland waterways and some conditions to be imposed on full cost charging for the use of infrastructure. One condition would be that a similar charging structure framework must be imposed on all transport modes at the same time.

The Commission has not yet published its views on the structure of cost charging and there is considerable scepticism in the transport world whether a reasonably balanced solution to charge "external costs" to all users and all transport modes can be found.

The European Dredging Association supports the inland waterborne transport sector in this respect. Our fundamental concerns have already been raised in the 2001 Annual Report and are summarised for convenience :

**- An equitable full cost charging system can only be realised if the function of transport and infrastructure construction and main-**

**tenance are clearly separated for all transport modes, including rail.**

**- Infrastructure investment is a public responsibility. Recovery of cost can be (partly) realised by charging for use of infrastructure.**

**- It is hardly feasible to introduce full cost charging, while at the same time seeking to promote a modal shift from road to rail and water. In our view this will result in a flawed policy.**

**- The investment in infrastructure and maintenance of inland waterways in the EU Member States has been grossly inadequate for many years. A further significant shift to waterborne shipping can only be realised if important bottlenecks in the network infrastructure will be removed. Such requires a national as well as a EU commitment.**

## ENVIRONMENTAL MATTERS

The need for dredging arises as a result of the natural process of sedimentation. Sediments settle in the mouth of rivers and estuaries, where the velocity of the water reduces. Many ports in Europe are located at these sites and have to deal with the problem of maintaining or creating sufficient navigable water depth. Dredged material is a natural resource material that should preferably be kept in the natural system and should be managed responsibly.

EuDA resents the notion that in several cases dredged material is seen as rather a nuisance and a product that appears in the European listing of “wastes”. The problem in regulatory terms appears to be that the sediment of concern is located at the interface between soil and water column and often at the transition zone between fresh and salt water. The result is that different rules and regulations touch upon the issues, but none fully applies.

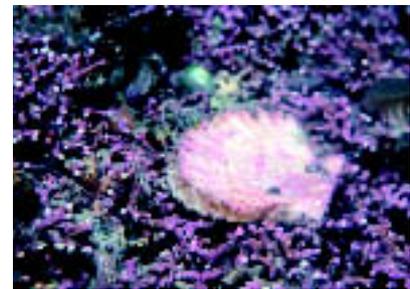
Not surprisingly, the European Dredging Association follows closely the impact that several directives could have on dredging operations.

## Water Framework Directive (2000/60/EC)

The Directive prepared to achieve consistent improvement of the quality of European waters has been structured as a framework directive. The idea behind this is that a framework approach provides maximum opportunity for Member States to contribute to the detailed regulations. Working parties are developing such detail as a basis for the preparation of river basin management plans.

Issues to be dealt with concern definitions of classification schemes and water quality, but also guidance on sampling and monitoring. EuDA has raised some questions, the answers to which could affect the specific applicability of the WFD for dredging activities.

- 1) The WFD has territorial competence up to 1 mile outside the coastline. Dredging, while often taking place in ports, uses disposal sites at sea. The regulatory competence for marine disposal sites has been established under the OSPAR Convention, while the implementation remains with national authorities. Which regulatory system applies if one dredges in ports and disposes at sea ?



**BOX**

*Species from a benthic community on the seabed. Disposal of dredged material will only affect benthos for relatively short periods and has no lasting harmful effect.* with special thanks to : CEFAS, Burnham Laboratory, UK, English Nature, UK

2) Annex VIII of the WFD lists as contaminants 'materials in suspension'. The dredging community wonders what this could possibly mean since suspended solids are just about the most natural phenomenon around in rivers and waterways.

And, since materials in suspension settle eventually as sediment and silt, the issue is of concern to the dredging community. Should one read 'contaminated solids' instead? If so, there would be a need to define contamination with all the tricky points that this implies.

3) Sediment that needs to be dredged contains indeed sometimes contaminants that have been produced by industries upstream of the watercourse. Organic compounds in particular tend to adsorb on particles containing organic material, and one could put forward the notion that sediment could release some of its contaminant burden during the dredging cycle and in turn become a (secondary) diffuse source of pollution for the water body. The total amount of contaminants in the environment does not change; there is only transfer between compartments. Does the WFD apply?

A more general concern is that not all Member States are familiar with the concept of a framework directive and are seeking detailed guidance rather than to contribute to a workable management scheme. This may ultimately result in too strict and too detailed implementation rules.

## Waste Directives

The European legislation has defined "waste" in the broadest possible sense as any material that one wishes to discard. In the annexes of potential "waste" material dredged soil is included in the list. This



**BOX**

**Clean-up operations :** Specially equipped dredging vessels are also used for the clean-up of oil pollution at sea

leads to several anomalies. For ex. the spreading of dredged material alongside waterways has for centuries been standard practice which has also environmental benefits. Under the Landfill Directive (1999/31/EC) such practice would not be allowable. Fortunately dredged material has been exempted,

but the remaining rules for depositing dredged material on land are far from clear.

As long as dredged material is displaced from one location in a water body to another, dredged material does not fall under any waste directive.

A third anomaly, which has potentially harmful effects, concerns the shipment of “waste”. Shipment of waste within and outside the European Community is controlled by OECD rules and the Basle Convention. These have been translated into European Regulations. It appears that there are inconsistencies between the regime for waste shipment and waste disposal. While the European Waste Catalogue covers the possibility that dredged material becomes waste, the “green”, “amber” and “red” lists that regulate shipment licensing do not refer to soils or dredging at all.

Not surprisingly the inconsistency between the two regulatory systems creates confusion with administrations. There have been cases where permission to import clean soil from a neighbouring Member State has been refused on the ground that the material was “hazardous”.

One could argue that under the Treaty the free movement of goods and products must be possible,

including natural soil. Not only is such refusal therefore cause for economic damage and frustration, it also undermines confidence in European environmental legislation in general.

## Habitat Directives

**The Birds Directive** dates from 1979 (79/409/EEC) and calls for special protection of rare birds under threat. This Directive has long been a ‘lame duck’, but the provisions of the Directive have largely been enveloped by **the Habitats Directive (92/46/EEC)** which has broader implications for the conservation of nature sites.

Many protected areas are to be found along the coastal zones and around estuaries. As such a fair number of ports have to deal with the question how port activities and coastal development can co-exist with nature conservation. These issues will be addressed in more detail in the near future.

During the reporting year attention was given to 3 specific issues connected with the Habitats Directive :

- 1) **The designation of protected sites** (‘Special Protection Areas’, ‘Special Areas of Conservation’)

BOX

### **Habitats Directive (92/43/EEC), Art. 6.4**

*‘If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.*

*Where the site concerned hosts a priority natural habitat type and / or priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.’*

is the responsibility of Member States. Under the provisions of the Directive there are no clear rules on how to deal with established rights of property and use, or with existing concessions. In a number of cases the protection status has been given to areas previously designated for economic use. This results in conflicting requirements on the habitat zone and violation of established user's rights.

- 2) The potential for conflict in the use of designated areas is particularly apparent in and around **estuaries**. These valuable habitat zones are also home to (dredged) access channels and newly constructed port developments. The interpretation of what constitutes the protected area and what means protection in an estuary varies widely from one Member State to the next. This was made apparent in a study done by English Nature\*. Such differences tend to result in irritation between the Member States and friction with the European Commission.
- 3) The Habitats Directive has a number of provisions to cope with potential conflicts between nature protection and economic use. Art. 6.4. is particularly interesting in that it foresees the possibility of **compensatory measures** (see box) in case protected sites are needed for other purposes involving reasons of public interest.

Several projects have been proposed to provide such compensation for port development in or around estuaries. This may take the form of designating other valuable areas, of developing similar habitats at a suitable location, or even of "constructing" new habitat zones along the coastline or in the estuary. (Details on this subject will be reported next year.)

\* Boundaries of proposed sites of Community importance for estuaries in the Atlantic bio-geographic region - Project 1130 - English Nature - January 2002.

Our current concern is that Art. 6.4. is extremely vague on the determination of 'overriding public interest'.

A second issue is that the Directive states that compensatory measures adopted by the Member States must be reported to the Commission. This poses the risk that the Commission acts as if it has approval rights in such a matter. While such is not the case, practical experience thus far suggests otherwise.

**But why would the dredging industry mind ? The concern is that many infrastructure projects that are urgently needed to accommodate the demand for maritime transport are delayed by administrative burdens rather than by reasonable concerns while there are practical and feasible alternatives for which the dredging companies have already valuable expertise.**

## COMMUNITY LEGISLATION

The body of Community Law to date runs to over 80.000 pages\*. Some of this is very detailed and unwieldy; at the same time regulatory uncertainty exists in other domains. The Council and the Commission have both clearly stated that the quality of legislation must be improved and the quantity diminish\*\*. Several action programmes have been published by the Commission during the reporting period.

A number of specific examples as encountered by the dredging industry will be quoted to illustrate that EU legislation is indeed causing problems. The initiatives from Council and Commission to address these problems is very welcome.

\* COM(2002)278 Action plan : Simplifying and improving the regulatory environment.

\*\* COM(2001)428 European governance : A White Paper

**Table 1 : En route towards Alternative Regulation**

<p><b>EU legislation</b> →</p> <p>Legislative Acts by the Community in accordance with the powers granted by the Treaty.</p>	<p><b>Co-regulation</b> →</p> <p>Co-regulation implies a role for stakeholders such as business and representative consumer organisations in agreeing the detail of regulatory rules under the umbrella of a framework previously laid down by the Community. Bottom-up approach co-regulation would allow private parties some sort of regulatory benefit or preferential treatment (such as presumption of conformity) in exchange for their compliance with voluntarily (and not binding) rules.</p>	<p><b>Self-regulation</b></p> <p>Control of activities by private entities without any direct involvement of public authorities such as the European Commission (e.g. a sector-specific code of conduct).</p>
<p><b>Directives (Art. 249 EC Treaty)</b></p> <p>The first of the three forms of binding legislation that the Community may adopt. These are adopted by the Council and European Parliament, where co-decision is used otherwise by the Council alone, or, in certain cases, by the Commission. Addressed to the Member States and binding as to their effect while leaving Member States free to decide on how those effects are to be achieved. In other words, unlike Regulations (see below) directives must always be transposed into national law. A special category is formed by the “framework” directives, which define the legal constraints, but the development of technical Annexes is done in concertation with and input from Member States.</p>	<p><b>Co-regulatory Environmental Agreements</b></p> <p>Where Community Environmental Agreements (CEAs) appear as part of a legislative act, they can be described as ‘co-regulatory’. While the legislation (i.e. typically a directive) specifies the essential requirements, and objectives (and within what deadlines) and necessary sanctions, the CEA will create flexibility as to how the objectives are to be achieved. These CEAs will usually be initiated by the Commission, either on its own or in response to an industry voluntary action.</p>	<p><b>Voluntary Environmental Agreement</b></p> <p>A commitment made by industry on a spontaneous basis or in response to expected rule-making to respect certain limitations in environmental impact. They may or may not be recognised by the Commission through recommendations or exchange of letters.</p>
<p><b>Regulations (Art. 249 EC Treaty)</b></p> <p>The second of three kinds of binding acts of the Community. These are adopted by the Council and European Parliament (where co-decision is used), otherwise by the Council alone. In certain circumstances the Commission is also entitled to adopt decisions. Regulations are binding on everyone, including Member States.</p>		<p><b>Standardisation (new approach)</b></p> <p>The practice of adopting harmonised, pan-European level voluntary standards dealing with technical and safety issues (primarily for products rather than services) on the basis of a mandate received from the European Commission. Compliance is in practice made visible by affixing the CE Marking to products.</p>
<p><b>Decisions (Art. 249 EC Treaty)</b></p> <p>The third kind of binding legislation that the Community may adopt. These are adopted by the Council and European Parliament, where co-decision is used (see above), other wise by the Council alone. In certain circumstances the Commission is also entitled to adopt decisions. Decisions are legally binding.</p>		<p><b>Code of Conduct</b></p> <p>Set of rules of principle and conduct adopted by a private organisation and to which it (or its members) may be held accountable.</p>

## Public Procurement

These directives are at the heart of the internal market. The European institutions aim to create a “level playing field” in the public markets. The current directives did not follow new developments in markets, tendering practices and contract forms. Revised directives are intended to correct the situation. After 5 years of debate and legislative procedure, the directives are still not final. In the meantime the markets have evolved further and the new rules may be in part insufficient. It will take several more years before these new directives will be transposed at national level.

### **Problem :**

- The legislative procedure is too heavy, takes too long and attempts to fix too many details .

## Contractor Qualification

The European Commission made an attempt to provide further structure to the market for public works via a system of contractor prequalification. This is already a matter of considerable detail, for which there exist different approaches in various Member States. The Commission therefore tried to achieve harmonisation via a semi-voluntary scheme, through a mandate to the European standardisation body CEN.

The painful procedure to prepare acceptable draft standards (TC330) finally came to a grinding halt in 2002, after 9 years of trying, not to mention the important funds wasted.

### **Problems :**

- There apparently was no basis for harmonisation, mainly because contracts are viewed very differently under national laws in Northern and Southern Europe.
- It is very questionable whether a body like CEN should act like a private sector extension of the

Commission and move outside the domain of product marking and mutual recognition of national standards at all.

## Environment / Waste

There is considerable difference in the nature of rules and regulations for an internal market compared to environmental laws. While for the markets one can attempt to introduce ‘command and control’ legislation that regulates these markets, for the environmental problems it is much more effective to involve stakeholders in the process and create win-win situations, where all parties can gain from taking responsibility.

In the traditional environmental legislation this has hardly been the case. European directives on waste management are very specific and rather dogmatic. For example, dredged material is included in the European Waste Catalogue. This causes practical problems in obtaining permits for cross-border transport, but also in finding suitable deposit areas.

### **Problems :**

- As a consequence of the technical detail in the directives (and their annexes !) it is difficult to anticipate all possible implications of the legislation. Unintended results lead to scepticism among “end users”.
- In the process of developing legislation, transposing and implementing it, the original nuance and intent are easily lost. This may lead to interpretations by regional authorities that were never anticipated.

## Maritime law

Maritime law is an international matter which is administered by the International Maritime Organisation (IMO). EU Member States with maritime activities are all members of IMO. They are directly responsible to ratify new codification and implement it as national law.

During the last several years the Commission has taken the initiative to impose IMO rules via EU directives (STCW 95, ISM, ...). There is usually no imperative reason to do so. The EU itself is not a member of IMO. Member States are capable to handle the necessary international rules. It would therefore be appropriate not to formalise proposed directives for which there is no judicial need and thus limit the quantity of legislation.

### **Problem :**

- The European Commission seems to use IMO rules for political purposes by creating the idea that EU should become a member in its own right of IMO. This idea is not supported by the Member States or the Council.

## Perspective

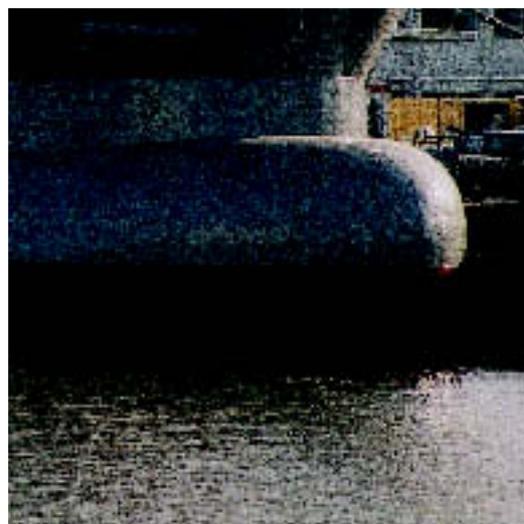
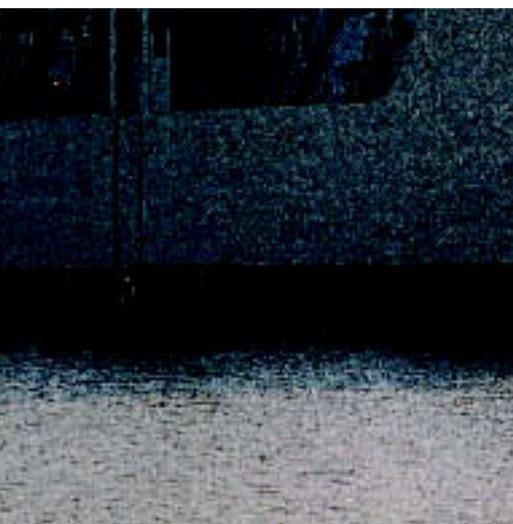
It has become widely accepted that the legislative procedure and scope must be revisited.

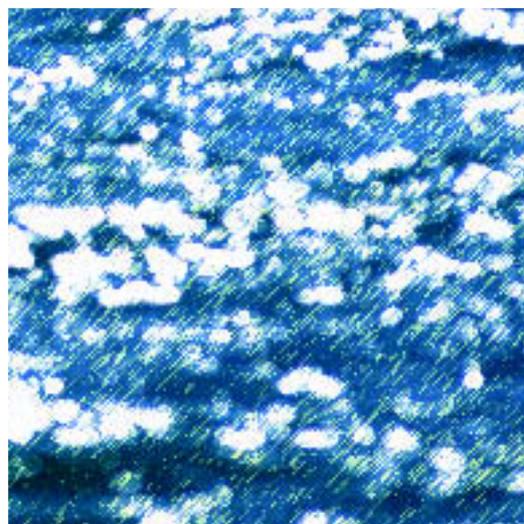
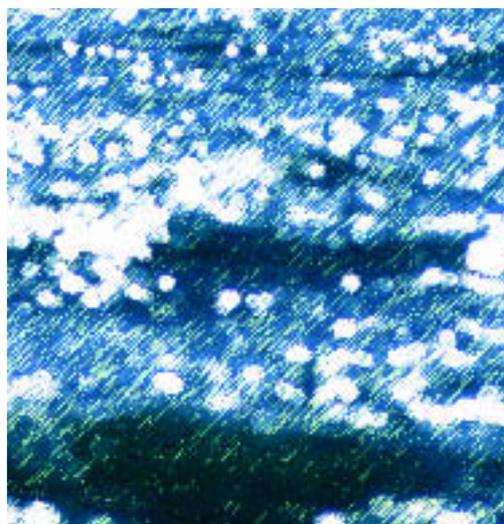
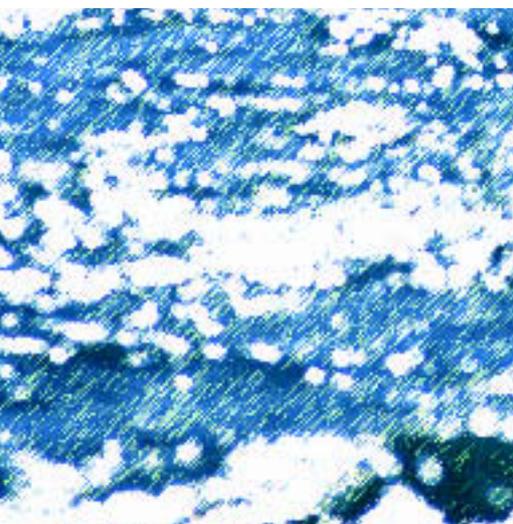
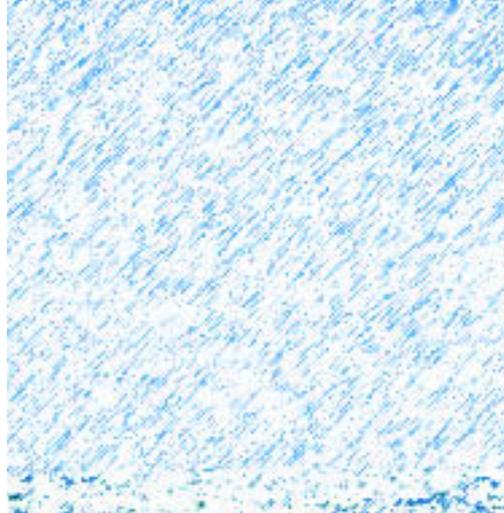
The European Commission proposes a detailed action plan which amounts in essence to using a diversified and variable approach to ‘**governance**’. The goal would be to produce less but better legislation and promote other instruments to achieve broader policy objectives (COM(2002)278).

Without going into further detail, the Table 1 illustrates the philosophy, the possible tools and how they relate to each other. The overall idea is to make more use of “soft” or “alternative” regulation by involving the private sector and civil society.

This approach seems to be promising and pragmatic in the area of environmental rulemaking or consumer issues. Many questions will have to be debated during the implementation phase, e.g. concerning monitoring, implementation, democratic control, role of other European institutions, etc.

**EuDA warmly welcomes this Commission initiative and expects to support it in the future by proposing one or more voluntary agreements in the area of environmental management. Especially in the field of environmental policy, co-regulation and self-regulation are strongly preferred options.**





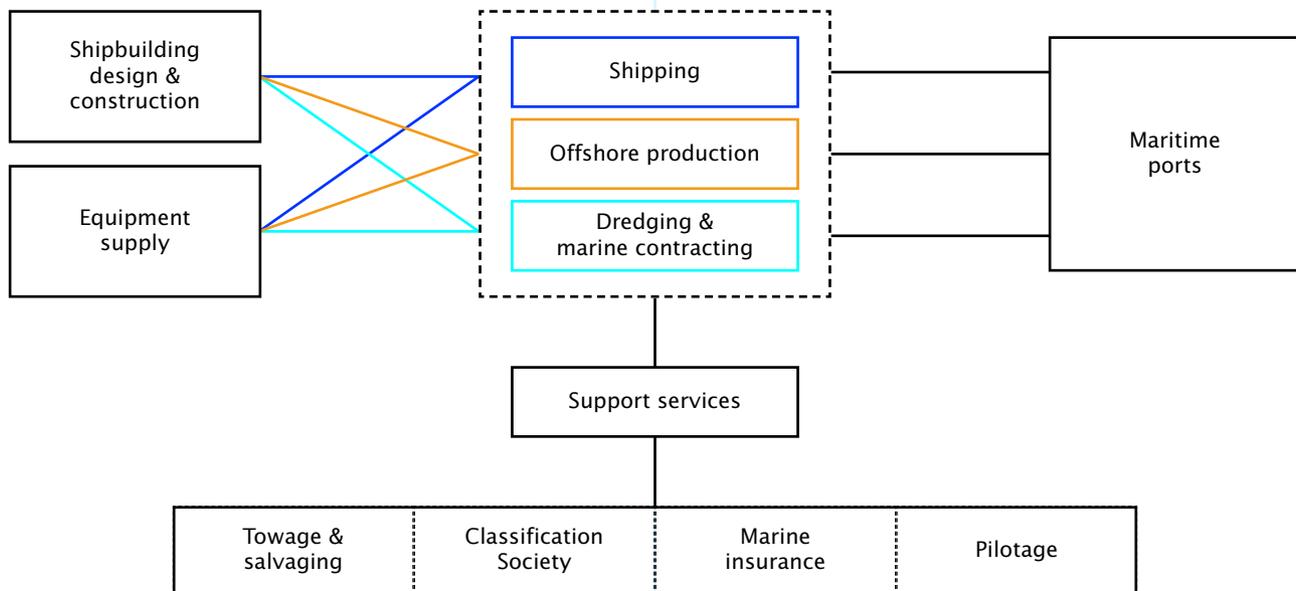
# Association Activities

## Maritime Industries Forum

The Association continued to emphasise its role as a maritime industry within the **MIF**. We contributed in particular to a new edition of the R&D Masterplan.

The MIF Masterplan is intended as input for the European R&D Framework Programme (FP). In practice the lobbying effort of the MIF members went much further. In cooperation with the European Parliament, the industry restated that transport will pose major problems in the future EU. These problems need innovative solutions and continued European R&D funding is essential. The role of maritime and waterborne transport was confirmed. Without this amendment the 6th R&D FP would not have foreseen a budget allocation for transport research.

### ***Functional relationship within maritime industries***



## Eramar

The acronym **Eramar** stands for *European Research Area - Maritime*. It is a grouping of more than 20 organisations with interest in maritime related R&D that together provide the resources to map out the (future) innovation needs of the industry. EuDA was invited to become a member of the network and contributed accordingly.

In mapping the innovation aspects, the structure of the European maritime cluster was reviewed again. The result is shown in Fig. 1. The benefit of such analysis is that it clearly shows that, while maritime transport and shipping is an essential part of the maritime cluster, the other sectors also contribute significantly to the industrial economy.

## Inland waterborne transport

EuDA takes an interest in developments for waterborne transport in general because its members play a key role in constructing and maintaining the necessary infrastructure (ports, waterways, etc.). EuDA is also on the side of those who promote waterborne transport as an efficient, cost-effective and environmentally friendly transport mode. The Secretariat has therefore welcomed the founding of a European sector organisation, the **European Barge Union (EBU)**, and has offered its services in order to establish an effective presence in "Brussels".

## International Safety Management (ISM)

The maritime sector of the dredging industry is subject to the requirements of the **ISM Code**; this has been reviewed elsewhere in the report. The fact that the seagoing dredging fleet represents close to 400 vessels, many of which under European flag, is not widely known outside the industry. Even within the European Commission the serious impact of - and the strong commitment imposed by - the ISM Code is not realised.

The introduction of Safety Management Systems as per July 1, 2002 for all seagoing vessels provided the member companies of EuDA the opportunity to give feedback on their experiences and see whether fundamental issues had come up.

The industry experience has generally been positive and the majority opinion is that **ISM helps to focus on safety issues, emergency planning and clear communication lines**. Exchange of views between companies and dialogue with the International Chamber of Shipping were instrumental in resolving minor interpretation problems.

## Management Systems

The dredging industry is faced with a proliferation of management systems. Besides ISM this may cover ISO 9000 on quality management, ISO 14000 (or EMAS) on environmental management, the draft series OSHA 18000 on occupational health and safety and / or a local Dutch / Belgian Code VCA, which stipulates safe working practices.

On the other hand, the analysis of these management systems shows that approach and methodology followed by the codes have become very similar. It is usually based on a systematic analysis of the working process reflected in a number of procedures or plans; this is complemented with the demand for continuous improvement, to be verified by a system of regular auditing.

In view of this finding, namely that the subject of the various codes appears of lesser importance than the implementation aspects, **several dredging companies have chosen to develop an integrated documentation and management system to cover the whole spectrum**. Specific audits are defined in view of the goals and they should only deal with that specific part of the management system. Experience thus far tends to confirm that it works well, saves on paperwork and procedures and supports the overall objectives of efficient, safe and responsible working practices.

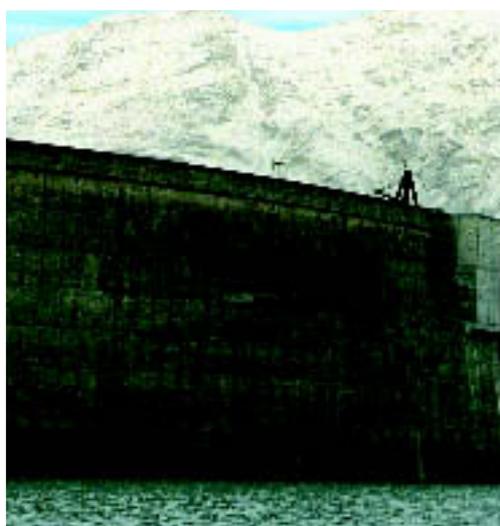
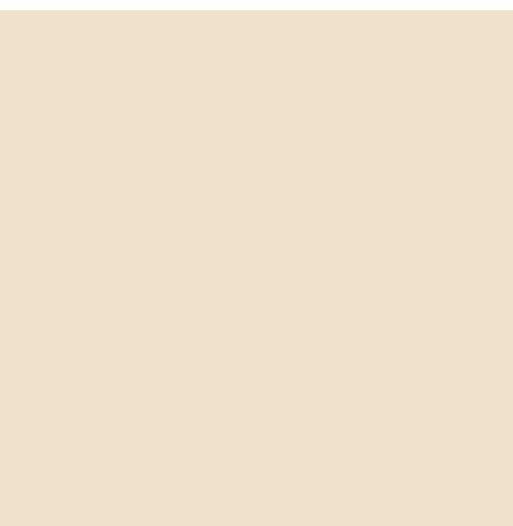
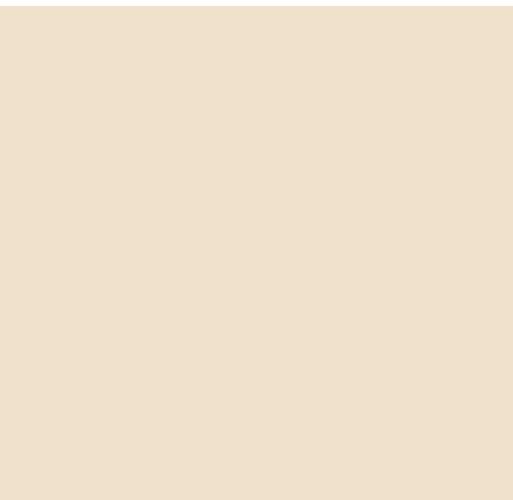
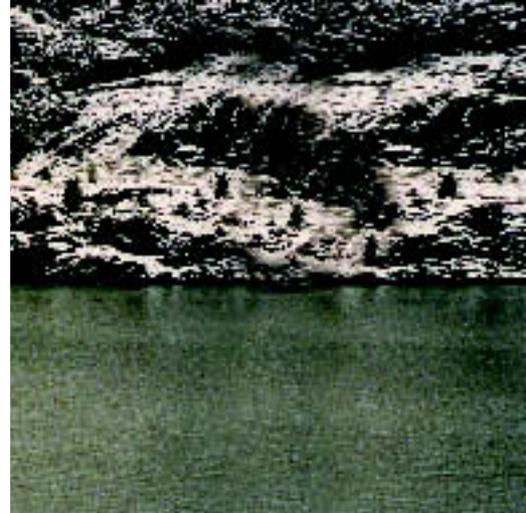
## Aggregates

The seabed of the North Sea contains large quantities of gravel and of course enormous amounts of sand of different quality and composition. With dwindling reserves on land and environmental constraints on granting new concessions, the marine aggregates become ever more important as a supply source for construction material. The largest producer, the UK, wins annually some 20 million m<sup>3</sup> of gravel.

Marine aggregates are mined with hopper dredgers that are very similar to those used in maintenance dredging. EuDA held talks with the largest branch organisation, the **British Marine Aggregate Producers Association (BMAPA)** in order to explore the common interests between both sectors. It became soon apparent that all issues related to maritime **shipping (ISM, STCW 95, classification, state aid guidelines, working hours, etc.)** are shared between us. There is also considerable overlap in environmental issues related to use of the seabed.

During the course of the reporting year both Associations came to the conclusion that BMAPA should join EuDA as Associate Member.





# EuDA Organisation

EuDA welcomed BMAPA, the British Marine Aggregate Producers Association as an Associate Member.

The EuDA Board of Directors was until October 2002 composed as follows :

- Mr. J. Allaert, President
- Mr. J. Rohde Nielsen, Vice-Chairman
- Mr. K.G. van Nes, Treasurer
- Mr. J.H.M. Rovers

The mandate of Mr. Rohde Nielsen expired and he was not available for a new term in office. The General Assembly expressed warm appreciation for the commitment with which Mr. Rohde Nielsen served on the Board and his many enlightened contributions.

Mr. J.E. Hewicker was elected as member of the Board during the 2002 AGM.

The Secretariat was manned by Mr. F.J. Mink and Mrs. A.C.F. de Meester and administrative assistance was provided by Miss S. Van Hende.

The Social Committee follows the developments around the package of support measures for the industry and provided guidance within the Association on questions of vocational training and promotion of employment in the industry. Questions on posting of workers and residence status of non-EU workers were reviewed in detail.

Separate meetings took place with the Quality, Health and Safety departments of member companies with seagoing vessels in order to discuss implementation of the ISM Code.

EuDA kept close contacts with the European Barge Union (EBU) and concluded a cooperation agreement.

## BOX

*Dredging is not only a necessity in ports and navigations channels. The picture shows a dredge at work near a hydrodam in the ALPS.*

