



## Guidelines on transboundary consultations, public participation and co-operation

### Introduction

The Regional Baltic Maritime Spatial Planning Roadmap 2013-2020 adopted by the HELCOM Ministerial Meeting in 2013 and welcomed by the VASAB Ministerial Conference in 2014 calls for the development of guidelines regarding: a) Transboundary consultations and cooperation in the field of MSP and b) Public participation for MSP with transboundary dimensions.

In view of the inter-relationship between these two different aspects, it has been decided by the Joint HELCOM-VASAB Maritime Spatial Planning Working Group (HELCOM-VASAB MSP WG), that both topics will be covered by one guideline document.

The guidelines presented in this document have been prepared in order to assist maritime spatial planners and the authorities they work for. They are of a non-binding character.

The guidelines are applicable for transboundary maritime areas without prejudice to the national systems of the spatial planning.

Transboundary cooperation and consultations for maritime spatial planning (MSP) take place in different formats depending on the topics to be consulted or cooperated on.

In general terms consultation and co-operation could be described as follows:

Consultation of more practical topics is arising in the course of elaboration of maritime spatial plans, e.g. transboundary impacts of the plan, or transboundary coherence of the planning provisions. This usually takes place in bilateral or trilateral interactions (cross-border interactions) and refers to the formal process, which takes place between affected Baltic Sea Region (BSR) countries and their authorities on specific provisions foreseen in a given Maritime Spatial Plan.

Cooperation on maritime spatial planning is understood as a more open and preparatory process with focus on information and knowledge exchange as well as development of common understanding.

Co-operation at pan-Baltic level concerns strategic and farsighted decisions on joint directions or joint guidelines and principles for development of marine areas.

Cooperation as well as consultation at transboundary scale relates mainly to the structured and organised interaction between various government bodies.

Stakeholder involvement (including municipalities and non-governmental organisations (NGOs) such as trade associations and other interest groups) is, often part of MSP. This is the process to engage a selected range of targeted stakeholders in the planning activities since clear articulation of sectoral and other interests is essential for MSP and helps planners to draw more qualitative long-term solutions.

Public participation is very similar but broader in scope as it involves methods which engage the general public in MSP.

The purpose of public participation or at least stakeholder involvement is to ensure that stakeholder voices are heard, not only from within the country developing the plan but also across the borders and on pan-Baltic scale.

The guidelines cover the following aspects:

- i) **consultations** between MSP authorities of neighbouring countries and/or those countries directly affected by MSP and the related **public participation** process that should take place concerning transboundary aspects during the process of drafting a maritime spatial plan.
- ii) **cooperation** between MSP authorities at pan-Baltic scale on issues affecting most or all of the Baltic Sea and/or the level involving most or all BSR countries as well as the process foreseen to ensure effective **stakeholder engagement** at a more strategic level.

## Glossary

### Definitions used in this set of guidelines:

**Competent authorities (authorities responsible for MSP):** the authorities preparing and/or approving maritime spatial plans.

**National MSP contact points:** The chosen authority in charge of MSP in each BSR country, which act as the “focal point” for transboundary as well as pan-Baltic MSP cooperation.

**Consultation:** the formal process which takes place between competent national authorities usually from 2-3 BSR countries to discuss practical topics arising in the course of elaboration of maritime spatial plans, e.g. transboundary coherence of the planning provisions.

**Cooperation:** more open, informal and often preparatory process of information and knowledge exchange as well as development of common understanding, which involves a larger number of competent authorities and stakeholders.

**Public participation:** the process by which an organization consults with interested or affected individuals, organizations, and government entities before making a decision. Public participation is two-way communication and collaborative problem solving with the goal of achieving better and more acceptable decisions. Public participation prevents or minimizes disputes by creating a process for resolving issues before they become polarized. Thus, public participation is very broad by engaging general public in addition to the more institutionalised stakeholders. Widespread public participation helps to ensure a wider acceptance for the planning solution.

**The Aarhus Convention** - The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (adopted on 25 June 1998): the Aarhus Convention grants the public rights regarding access to

information, public participation and access to justice, in governmental decision-making processes on environmental matters in the transboundary context at national, regional and other levels.

**The Espoo (EIA) Convention** – United Nations Economic Commission for Europe (UNECE) Convention on Environmental Impact Assessment in a Transboundary Context (signed in 1991, entered into force in 1997) and the its Protocol on Strategic Environmental Assessment (adopted in 2003): the Espoo (EIA) Convention sets out the obligations of Parties —that is States that have agreed to be bound by the Convention— to assess the environmental impact of certain activities at an early stage of planning and lays down the general obligation of States to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries.

**The UNECE Protocol on Strategic Environmental Assessment** to the aforesaid Convention on Environmental Impact Assessment in a Transboundary Context (Kyiv, 2003): the protocol requires its Parties to evaluate the environmental consequences of their official draft plans and programmes also in the transboundary context

**Pan-Baltic scale/level:** affecting most or all of the Baltic Sea countries, and/or the level involving most or all BSR countries. The pan-Baltic level mainly deals with strategic issues, such as achieving coherence or providing general guidelines.

**Relevant Pan-Baltic organisations:** in a transboundary MSP consultation process these are HELCOM and VASAB.

**Cross-border issues:** issues which are relevant for two or more neighbouring countries only.

**Transboundary issues:** issues which are pan-Baltic and cross-border where impacts may extend across boundaries, not necessarily only immediate neighbouring countries.

**Stakeholder:** a person, group or organization that has interest or concern in a given maritime spatial plan, its preparation or any other MSP relevant process.

**Stakeholder involvement:** processes which deals with concerns and issues raised at stakeholder and/or expert level. Unlike **public participation** these processes do not necessarily involve the general public.

**Spatial subsidiarity:** the principle which stipulates that spatial challenges should be dealt with at the lowest most appropriate spatial level.

**Stakeholder consultation steps** in these guidelines are understood in the following way:

- a) **informing** in a targeted way about relevant aspects of the MSP process (e.g. commencement of MSP, entering new phase of MSP, availability of materials for consultations etc.),
- b) **screening** the resources of stakeholders available at public domain (e.g. website, reports, available data and information etc.) in order to use them in the MSP,
- c) **asking stakeholders for inputs** to the MSP process in order to identify existing practice and interests of various stakeholders, e.g. identification of development plans towards a certain sea space, identification of areas of most intensive use of the sea space, identification of an exclusive possession of the stakeholder, etc.,
- d) **asking stakeholders for opinions and reflections** on a draft proposal of the maritime spatial plan (goals, methodology and proposed solutions/preferences),
- e) **preparing jointly with stakeholders new** knowledge, new know-how, tentative solutions of the problems etc.

Consultation forms of each step can vary: sometimes opinions should be extracted and sought actively, and sometimes screening available materials and information is sufficient. For the public participation the steps are similar, whereas the instrument must accommodate a more open way of information, dialogue and exchange of opinions.

## **Recommendations for transboundary consultation and cooperation for a specific MSP process**

Consultation processes should be in line with the common approaches decided in pan-Baltic co-operation. The aim of the processes should ensure that maritime spatial plans are coherent across the Baltic Sea-basin scale to avoid costly misalignments and negative environmental impacts as well as promoting efficiency gains and synergies.

Consultations are facilitated by National MSP contact points if appropriate. National MSP contact points are the gateways able to sort out, discuss and address within each country problems and questions related to MSP raised by the competent MSP authorities from other countries. Ideally this should be one institution (one contact person) only, which in turn will consult with the other authorities in its own country as to provide one national position.

The following recommendation has been proposed in order to facilitate transboundary consultations for coherent MSP across the Baltic Sea basin.

### **Broadening the scope of transboundary dialogue: Building on the Espoo Convention while strengthening the scope of consultations**

The Protocol on Strategic Environment Assessment (Kiev Protocol) referring to the Espoo (EIA) Convention provides a framework for facilitating formal transboundary consultation between affected states with focus on environmental impacts only. But full-scale consultation should deal with a broader range of MSP issues, in particular socio-economic ones. Consultations should be extended towards encompassing not only potential conflicts but also synergies (in particular socio-economic opportunities) as a result of voluntary compliance of the competent authorities in the BSR. The co-operation should cover general planning approaches, such as overall aims and objectives of maritime spatial plans.

Therefore MSP needs a broader scope, and consultations and co-operation starting earlier than is required by the Kiev Protocol referring to the Espoo (EIA) Convention. At least the broader scope (covering socio-economic concerns) consultations should start together with the Kiev Protocol referring to the Espoo (EIA) Convention consultations. This should be achieved through voluntary compliance of the competent authorities in the BSR, as a result of adoption of these Guidelines. The broadening of scope is in line with the spirit of Directive 2014/89/EU of the European Parliament and of the Council – Article 1, Article 11 and Article 12, as far as it concerns the EU member states.

### **Establishing a formal process of transboundary information exchange and consultation early in the MSP process**

Timing of formal transboundary consultations remains a critical issue. In order to give neighbouring countries a chance to understand the essence of the envisaged plan, and a real chance to contribute not only to the planning provisions/solutions but also to the planning process, it is necessary to start consultations before the maritime spatial plan is fully drafted.

The following steps are proposed:

- a) All Baltic Sea countries should start consulting neighbouring countries at the early stage of preparation of a maritime spatial plan as a part of the routine MSP process. If the impact of the plan is of pan-Baltic nature, all BSR countries and the relevant pan-Baltic organisations should be informed. This applies to all national, but also to sub-national maritime spatial plans if these are expected to have cross-border impacts.
- b) The competent authorities should inform their neighbouring counterparts of their intention to start a MSP process. This should be done in the form of a formal letter/e-mail in English (or national language of the addressees). The information should be sent to the countries affected, as well as to the relevant pan-Baltic organisations.
- c) The competent authorities clearly state the intention and the nature of the maritime spatial plan, so other countries can understand the possible influence and the impacts of the plan.
- d) The competent authorities (preferably via National MSP contact points) ask for relevant documents and any other information, if available (or public sources of such information) from the neighbouring countries. The requested documents and information should have an impact on the development of the envisaged plan, such as environmental data and information on human uses of the sea, in particular with cross-border elements (e.g. issues suggested under Article 8 of Directive 2014/89/EU of the European Parliament and of the Council).
- e) The competent authorities (preferably via National MSP contact points) also inform the neighbouring countries, once the stakeholder process begins in order to give the neighbouring country the option of installing a parallel domestic stakeholder process (or public participation) on issues of cross-border significance. It is suggested that the information is being given in the form of a letter/e-mail in English (or national language of the addressees) describing the location of the plan, its main objectives and possible cross-border impacts.

### Organising stakeholder involvement in the transboundary consultation process

The decision on how to organise the transboundary stakeholder process is the responsibility of the competent authorities of BSR neighbouring countries approached by the competent authorities from the country that is developing the maritime spatial plan. Communication between countries takes place preferably through the established National MSP contact points. Stakeholder involvement is organised best at national level, as each country has a different culture and legislation (regulations) on **public participation** and different settings on how stakeholders are organised. It therefore needs to find its own way of involving stakeholders and general public and engaging them in the MSP process in line with a subsidiarity principle.

Following steps are proposed:

- a) **The authorities of the BSR neighbouring countries (in co-operation with National MSP contact points)** - when requested by the competent authorities from a country which started elaboration of the maritime spatial plan - initiate and run a stakeholder involvement process within the territory of their state immediately after obtaining the request and in line with information received (on the intention and the nature of the plan). The process might vary and should be shaped in line with the nature of the problems to be discussed, ranging from asking selected stakeholders for opinion up to full-scale public participation.

- b) They should ensure the necessary comprehensive participation of stakeholders in line with information received from the neighbouring country. They sort out which type of input can be obtained via screening available national resources, which information can be extracted via asking stakeholders for inputs or opinions and to what extent involvement of general public is necessary. They prioritise the results of the stakeholder process, if necessary.
- c) They should communicate the results of the stakeholder process to the country, i.e. the country drafting the maritime spatial plan.
- d) The competent authorities inform the relevant **authorities of the BSR neighbouring countries**, who run the consultation process, in due time of how and to what extent their remarks have been taken into consideration in the process of drafting the plan, and, in case the remarks have not been taken into account, provide a justification.

The competent authority, if appropriate, might also consider engaging well organised stakeholder groups existing at pan-Baltic level, and also consulting existing transboundary expert groups (e.g. established by the HELCOM-VASAB MSP WG ) on particular topics (see recommendations below) in line with the subsidiarity principle.

### Developing a transboundary consultation strategy

Apart from the step-by-step approach, appropriate consultation and communication formats have to be found within a transboundary consultation process. Whereas each approach should depend on the specificities of an individual maritime spatial plan, as a minimum the following features of the consultations format should be taken care of in the early planning phases:

- a) Direct communication at the level of the competent authorities is essential for building up a capital of trust, so networking between the competent authorities and MSP practitioners should be encouraged.
- b) Written information alone is often not sufficient; face to face meetings with the neighbouring countries are encouraged, to present and discuss the planned MSP process.
- c) Direct communication to stakeholders on the planned undertaking is also important both in the country itself and in the neighbouring countries. The competent authorities should therefore be prepared to travel to the neighbouring countries in the early stages of elaboration of a maritime spatial plan and explain their plans and intentions, if asked by the National MSP contact points of the countries influenced by the plan. Alternatively National MSP contact points from neighbouring countries are invited to the country which prepares the plan. The outcomes of bi-lateral and multilateral discussions should be distributed to all neighbouring countries by the competent authorities.
- d) Language is a critical issue in this process:
  - a. The MSP technical language needs to be explained. To avoid misunderstanding the different stages of MSP, the respective aims, outputs and tools need to be clearly explained.
  - b. The competent authorities should be ready to make available relevant information in English. As a minimum a translation should be provided of the nontechnical summary of the draft MSP and maps with legends.

## Strengthening informal transboundary cooperation processes

In parallel with the processes of informing neighbouring countries described above, informal processes of co-operation i.e. exchanging information and experience can be strengthened:

- a) Informal routes of communication should be established between the relevant authorities before a maritime spatial plan is drafted, as this can facilitate the informal supply of information outside the narrow confines of (potentially restrictive) formal channels.
- b) Informal discussions can be initiated as a useful vehicle for brokering common solutions.
- c) Informally agreed solutions then need to be endorsed through formal channels, e.g. to the extent that remarks and suggestions raised in the consultation process should be taken into consideration.
- d) Authorities responsible for MSP should be in regular contact with each other, in order to build trust, and also to know who to communicate with during formal processes.

The existing networks and fora, such as Polish-German Intergovernmental Commission on Regional and Cross-border co-operation, can also be used as proper fora for bi- and multilateral co-operation in the field of MSP in order to secure synergies of key transboundary policies affecting MSP.

## Recommendations for transboundary pan-Baltic cooperation on MSP

### Continuing policy guiding at pan-Baltic level

It is recommended that VASAB CSPD/BSR and HELCOM HOD should continue their role as a facilitator of pan-Baltic MSP development by providing a forum for:

- exchange on MSP strategies and policies of their Member States/Contracting Parties,
- provide the decisions on transboundary consultation in the BSR.

Practical cooperation in this field could continue to be steered by HELCOM and VASAB on MSP. The joint cooperation set up so far has provided a platform for transboundary information exchange and cooperation in the MSP process and concentrated mainly on practical issues and preparation of decision-making of pan-Baltic scope and relevance.

### Creating and facilitating expert groups for pertinent MSP topics and issues and implementing their results

It is recommended that the main focus of pan-Baltic co-operation should be on actual MSP plans (or outcomes from the practitioners forum/projects), in order to develop and present ways of solving different planning issues. The issues requiring policy support should be brought to VASAB CSPD/BSR and HELCOM HOD.

If the need to support the work of HELCOM and VASAB in MSP arises, it is recommended that expert groups are established by decision of HELCOM and VASAB with concrete mandate to deal with pertinent specific topics and issues related to MSP development within the BSR. The expert groups are expected to work within a given timeframe towards clearly defined outputs to be presented for decision-making to HELCOM and VASAB. They should work on issues that need expert support to become solved (using existing HELCOM-VASAB framework).

The expert groups should meet following requirements:

- a) They should represent a broad range of relevant perspectives for a given topic.
- b) The BSR countries shall be consulted on the nomination of relevant experts. National MSP contact points in each country (if existing) should be involved in such consultations.
- c) Nominees should not be seen as political representatives.
- d) Expert group topics could be selected based on the following criteria:
  - the urgency of the issue for all BSR countries,
  - manageability of the task and achievement of a clear output,
  - inability of being solved under existing frameworks,
  - willingness of sectors and stakeholders to become involved.
- e) A close liaison should be provided of the groups' work with other important pan-Baltic processes such as actions of the EU Strategy for the Baltic Sea Region (in particular Horizontal Action Spatial Planning), and with the work of the EU Member States Expert Groups on ICM and MSP.
- f) It should be taken into account that in the HELCOM-VASAB cooperation there are non-EU countries represented as well.

Before establishment of an expert group a possibility of making use of the results of the relevant completed or on-going projects and projects under preparation should be analysed in order to avoid duplication of the work and ensure sparing use of the expert resources.

### **Engaging and cooperating with other pan-Baltic organisations on a continuous basis**

Cooperation with industrial and other interests' sectors is a prerequisite of proper and successful MSP. Their stakeholders/representatives may become increasingly involved in transboundary as well as pan-Baltic MSP processes in future, through active co-operation at national and pan-Baltic level. Furthermore they may also be represented within expert groups.

Therefore it is recommended that HELCOM and VASAB, without prejudice of their mandates:

- a) prepare and ensure an update of the list of relevant sectors that might be involved in pan-Baltic co-operation on MSP, and identify their formal roles, responsibilities and mandates in concrete MSP relevant fields/policies,
- b) run the process of recognition of each other's competences (sectors and within HELCOM-VASAB framework) and concrete cases/issues to be jointly discussed (identification of common goals/interests),
- c) monitor on a regular basis major changes in the work of those sectors relevant for Baltic MSP,
- d) develop and implement the communication policy regarding the engagement of different types of sectors in MSP at pan-Baltic level,
- e) co-operate, discuss and develop solutions for concrete issues with sectors at pan-Baltic level.



### Promoting informal pan-Baltic co-operation of MSP practitioners

In parallel to the existing working groups/expert groups, it is suggested to promote an informal discussion platform on MSP issues for those responsible for developing and implementing maritime spatial plans in their countries (practitioners' level).

VASAB will use this platform, as well as given projects and other MSP initiatives on MSP at various levels: regional, national, transboundary, and even outside the BSR if appropriate.

In order to promote pan-Baltic co-operation on MSP, VASAB will facilitate an ongoing, structured process of conducting regular events, targeting at fostering information and knowledge exchange and creating trust among Baltic Sea MSP practitioners across different initiatives, thereby enhancing future transboundary MSP processes.