



**Marine Strategy Framework Directive (MSFD)**

***Common Implementation Strategy***

**Marine Directors**

**Meeting of 5 June 2014, Heraklion**

Agenda Item:	2.1
Document:	Annex to Doc MD 2014-1/1
Title:	Recommendation on Programme of measures
Prepared by:	DG Environment
Date prepared:	27 May 2014
Background:	<p>Following the discussion on a draft Recommendation on Programme of Measures which took place at the MSCG (12 May 2014), it has been agreed:</p> <ul style="list-style-type: none"><li>- to endorse the document v11 in principle after having taken into account comments made during the MSCG meeting together with some drafting suggestion received from RO, SE, ES and IT;</li><li>- to fine tune the document in particular by adding few points such as a foreword, a reference to MSP, a sentence on the specificity of RSC in chap VI and a paragraph on public participation;</li><li>- to let the possibility to MSCG member to provide comments on the new version (v12) by 23 May;</li><li>- that no further discussion is foreseen at the next MD on substance, except if MD do not endorse the MSCG conclusion;</li><li>- that further work should be restricted to the following issues :<ul style="list-style-type: none"><li>- WG DIKE to develop and finalize the reporting part in a more structured</li></ul></li></ul>

	<p>way and in close collaboration with WG ESA -&gt; a drafting group may be necessary before summer,</p> <p>- WG ESA to:</p> <ul style="list-style-type: none"><li>- agree on a best practice document prepared by Arcadis, if appropriate align chap VII on Economic Analysis with the best practice doc,</li><li>- following financing opportunity workshop (13 May), elaborate Annex 2 dealing with Art 22 implementation,</li><li>- further work on Exceptions (Art 14)</li></ul> <p>- to endorse the completed version of the recommendation by next meeting (November) including work described below.</p>
	<p>A version 13 taking into account comments received after the MSCG has been prepared.</p>

**Marine Directors are invited to:**

- Take note of the information and the progress of the MSFD PoM Recommendation (v13).
- Welcome the agreements reached at the MSCG and endorse them.
- Support, in particular, the follow up process.

**Programmes of measures under MSFD**

**Recommendations for establishment / implementation**

**and related reporting**

**27 May 2014    Version 13**

**Status / Revision:**

Version n°	Date	Remarks
0	8-10-2013	Early first draft prepared by ESA co-chairs
1	18-10-2013	Following discussion during WG ESA 16-10-2013
2	28-10-2013	Based on general written comments received on 25-10-2013
3	11-12-2013	Used at the 1 <sup>st</sup> Drafting Group meeting
4	13-12-2013	Outcome of the 1 <sup>st</sup> Drafting Group
5	21-01-2014	Based on contributions received from DE, NL, UK, FR and ES experts
6	30-01-2014	Following 2 <sup>nd</sup> Drafting Group meeting
7	5-03-2014	Taken into consideration written comments from MSCG
8	28-03-2014	Comments received from GES and DIKE
9	03-04-2014	Following discussion during ESA WG 2 & 3 April
10	11-04-2014	Contribution from ESA + Arcadis
11	29-04-2014	Contribution from ESA by 25 April
12	16-05-2014	Following MSCG discussion on 12-05-2014
13	27-05-2014	Comments received from DE

## Foreword

The Marine Directors of the European Union (EU), Acceding Countries, Candidate Countries and EFTA Countries have jointly developed a common strategy for supporting the implementation of the Directive 2008/56/EC, “the Marine Strategy Framework Directive” (MSFD). The main aim of this strategy is to allow a coherent and harmonious implementation of the Directive. Focus is on methodological questions related to a common understanding of the technical and scientific implications of the Marine Strategy Framework Directive. In particular, one of the objectives of the strategy is the development of non-legally binding and practical documents, such as this recommendation, on various technical issues of the Directive. These documents are targeted to those experts who are directly or indirectly implementing the MSFD in the marine regions.

The document has been prepared by a workshop of experts and following consultation of the Working Group on Good Environmental Status. It has been [agreed] by the Marine Strategy Coordination Group (in accordance with Article 6 of its Rules of Procedures).

*This part of the foreword will be discussed and agreed at the Marine Directors’ meeting: [The Marine Directors of the European Union and associated countries to this process have also endorsed this Document during their informal meeting under the Greek Presidency in Heraklion (5 June 2014) and reached the following [draft] conclusions:*

*“We would like to thank the experts who have prepared this high quality document. We strongly believe that this and other documents developed under the Common Implementation Strategy will play a key role in the process of implementing the Marine Strategy Framework Directive. This document is a living document that will need continuous input and improvements as application and experience build up in all countries of the European Union and beyond. We agree, however, that this document will be made publicly available in its current form in order to present it to a wider public as a basis for carrying forward on-going implementation work.”]*

The Marine Strategy Coordination Group will assess and decide upon the necessity for reviewing this document in the light of scientific and technical progress and experiences gained in implementing the Marine Strategy Framework Directive.

<https://circabc.europa.eu/w/browse/f088529c-41a7-4b2e-b92a-e8838a6b3396>

### **Disclaimer:**

*This document has been developed through a collaborative programme involving the European Commission, all EU Member States, the Accession Countries, and Norway, international organisations, including the Regional Sea Conventions and other stakeholders and Non-Governmental Organisations. The document should be regarded as presenting an informal consensus position on best practice agreed by all partners. However, the document does not necessarily represent the official, formal position of any of the partners. Hence, the views expressed in the document do not necessarily represent the views of the European Commission.*

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## I. Introduction

The Marine Strategy Framework Directive (MSFD, 2008/56/EC) enters an important phase of implementation. The next milestone, of major importance in the implementation is the establishment of programmes of measures (PoMs) by 2015 and their entry into operation by 2016.

This draft document aims to help Member States by providing:

- basic principles for the establishment of programmes of measures under the MSFD,
- guidance for their implementation,
- main elements to be considered in the reporting of PoM to the Commission.

This document has been drafted following a discussion within the MSFD Common Implementation Strategy.

Although this document is not legally binding, Member States are recommended to use this document as guidance as much as possible, so as to increase international coherence and comparability at both the level of the EU and the Regional Seas<sup>1</sup>.

The present document takes into account existing Member States guidance on impact assessment (when available), as well as the following relevant existing documents<sup>2</sup>:

- Commission Impact Assessment guidelines  
[http://ec.europa.eu/governance/impact/commission\\_guidelines/commission\\_guidelines\\_en.htm](http://ec.europa.eu/governance/impact/commission_guidelines/commission_guidelines_en.htm)
- Arcadis study Feb 2012: "Economic assessment of policy measures for the implementation of the MSFD" <http://ec.europa.eu/environment/enveco/studies.htm#4>;
- Draft RSC contribution to the EU-MSFD Common Implementation Strategy work programme for 2014 and beyond;
- Marine litter socio economic assessment in NL; and
- Various WFD / MSFD / HBD and other CIS Guidance documents (expl: Monitoring recommendation, Common understanding from GES, Wateco guidance...) and various on-going CIS discussions (MEG discussion);
- The document based on the workshop of 1<sup>st</sup> of April 2014 on Cost Effectiveness of measures.

### Structure of the document

The document is structured as follows:

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<sup>1</sup> A Foreword similar to the one used for the Recommendation on Monitoring will be added in line with MSCG internal rules of procedures

<sup>2</sup> The list of relevant documents will be updated at the end of the exercise.

- Chapter II screens and identifies the relevant requirements from the Directive in a structured manner, aiming to clarify the legal basis;
- Chapter III provides definitions of key terms used;
- Chapter IV provides step by step practical guidance for MS on how to develop their PoM;
- Chapter V focuses on the interlinkages with other policies;
- Chapter VI covers Regional coordination;
- Chapter VII provides guidance on how to address analyses, including cost effectiveness and costs benefits analysis, of the PoM;
- Chapter VIII sets out a framework for reporting;
- Chapter IX includes information on knowledge exchange and gaps; and
- Chapter X is a conclusion.

## **II. Requirements of the Directive**

The document intends to guide Member States on how PoMs should be established and tries to point out the requirements which would benefit from a common understanding or exchange of best practices. The requirements have been grouped into themes to better understand how they relate to each other.

The MSFD recitals includes some of the basic principles that Member States should take into account in order to achieve or maintain GES and are therefore relevant to the establishment and implementation of programmes of measures (Article 13). These are:

- recognition of the diverse conditions, problems and needs of marine regions and the need to take this into account (recital 10);
- marine strategies should culminate in the execution of programmes of measures designed to achieve or maintain GES, However, Member States are not required to take specific steps in cases defined under Article 14 on exceptions (recital 11);
- the possibility to receive supportive action by the Commission because of enhanced efforts to improve the marine environment in those areas where the status of the sea is so critical that urgent actions are needed (recital 14)
- the need to base programmes of measures on sound knowledge of the state of the marine environment (recital 23);
- the design of the first steps in the preparation of programmes of measures (i.e. the requirements for the initial assessment, including analysis of characteristics, predominant pressures and impacts, and an economic and social analysis of their use and of the cost of degradation of the marine environment) (recital 24);



- the precautionary principle, the polluter pays principle and the ecosystem approach in line with Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme (recital 27 and 44);
- the adaptativeness of the PoMs and scientific and technological developments to be taken into account (recital 34);
- should be recognized the exceptions which don't allow to achieve or maintain GES in all marine waters by 2020 (recital 29);
- the need to identify instances clearly in its programme of measures where the environmental targets or good environmental status cannot be achieved (recital 31).

The ecosystem approach was developed in 1995 at COP 2 of the Convention on Biological Diversity (CBD) in Jakarta and further specified by the so-called 'Malawi'-principles. In 2003 a joint declaration of the Helsinki and the OSPAR Commissions established a transformation of these principles to European marine waters. Similarly, in 2007 the Contracting Parties of the Barcelona Convention adopted the "Ecosystem Approach process" (ECAP) for achieving good environmental status in the Mediterranean. Article 1(3) MSFD incorporates the ecosystem approach into the MSFD and the definition of GES under Article 3 (5) helps to make it operational. According to Article 16 the Commission has to assess whether in the case of each Member State the Programme of Measures notified constitutes an appropriate framework to meet these and other principles of the Directive.

## ***1) Requirements for the development of measures***

### **a. Aim of the PoM**

#### **Art 13.1**

*Member States shall, in respect of each marine region or subregion concerned, identify the measures which need to be taken in order to achieve or maintain good environmental status, as determined pursuant to Article 9(1), in their marine waters.*

*Those measures shall be devised on the basis of the initial assessment made pursuant to Article 8(1) and by reference to the environmental targets established pursuant to Article 10(1), and taking into consideration the types of measures listed in Annex VI.*

This Article provides the overall framework for the PoM.

First, MS are required to identify measures that contribute to the achievement or maintenance of GES set out in their Marine Strategies (ref to Art 9.1) and that will address the predominant pressures and impacts identified in the initial assessment of their marine waters (ref to initial assessment). There should be a direct link between the proposed measures and the established national targets. Where relevant it is possible that measures may address several descriptors / targets / pressures / economic sectors / activities.

Lastly this Article states that measures should be classified in an indicative typology, which might be helpful, especially for regional cooperation and reporting. Annex VI of the MSFD provides a potential starting point to be considered but is neither a definitive nor an exhaustive way in which measures may be presented, this should be further reflected in the context of the reporting.

## **b. Content / Structure of the PoMs**

### **Art 13.7**

*Member States shall indicate in their programmes of measures how the measures are to be implemented and how they will contribute to the achievement of the environmental targets established pursuant to Article 10(1).*

Based on the initial assessment and determination of good environmental status, each Member State established environmental targets to guide progress towards achieving GES in the marine environment. To reach GES and related environmental targets, measures have to be identified in order to address human activities that have an impact on the marine environment and to enhance or maintain the status of the marine environment. Such measures can be existing under EU regime or new measures under MSFD. To do this, MS need to analyse the contribution that existing measures make to the achievement of each target and - if necessary – supplement this with new measures.

- **Existing measures**

### **Art 13.2**

*Member States shall integrate the measures devised pursuant to paragraph 1 into a programme of measures, taking into account relevant measures required under Community legislation, in particular Directive 2000/60/EC, Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (1) and Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality (2), as well as forthcoming legislation on environmental quality standards in the field of water policy, or international agreements.*

This article makes clear that the PoM shall take into account relevant measures required under EU legislation together with ones resulting from international agreements, including those made under the relevant RSCs.

Prior to the adoption of MSFD, sectoral and environmental legislation at European or international levels led to the establishment of measures protecting the marine environment. When developing the MSFD PoM, it is necessary to take into account their contribution to reaching the MSFD environmental targets.

Since these measures were not designed specifically to support the implementation of the MSFD, it is possible that they are not sufficient. In addition, certain emerging issues addressed in the MSFD are not covered by measures required under existing Community legislation and those resulting from international agreements.

Identifying these gaps will help clarify where new measures might be needed. To help identify and develop possible new measures the following ideas could be used: consultation with stakeholders, information from scientific reports, exchanges between Member States, input from Regional Sea

Convention's, existing measures might also provide some examples or ideas for new measures for example by expanding reinforcing existing measures, expanding their scope of application.

- **New measures**

#### **Art 13.3**

*When drawing up the programme of measures pursuant to paragraph 2, Member States shall give due consideration to sustainable development and, in particular, to the social and economic impacts of the measures envisaged. To assist the competent authority or authorities referred to in Article 7 to pursue their objectives in an integrated manner, Member States may identify or establish administrative frameworks in order to benefit from such interaction.*

*Member States shall ensure that measures are cost-effective and technically feasible, and shall carry out impact assessments, including cost-benefit analyses, prior to the introduction of any new measure.*

This is a crucial requirement of the Directive for new measures, where a common understanding and exchange of best practice is needed to better perform impact assessments of measures, including Cost-effectiveness analysis CEA and, for new measures, Cost-benefit analysis (CBA).

#### **Art 13.4**

*Programmes of measures established pursuant to this Article shall include spatial protection measures, contributing to coherent and representative networks of marine protected areas, adequately covering the diversity of the constituent ecosystems, such as special areas of conservation pursuant to the Habitats Directive, special protection areas pursuant to the Birds Directive, and marine protected areas as agreed by the Community or Member States concerned in the framework of international or regional agreements to which they are parties.*

A spatial protection measure is any spatial restriction or management of all or certain human activities in order to:

1. Protect biodiversity, e.g. marine reserves. Such areas could support MPA networks in terms of coherence and representativeness (Article 13.4) and the overall achievement of MSFD GES.
2. Support certain industrial or leisure activities, e.g. banning of fisheries or gravel extraction within a shipping lane or offshore wind-farm, which may have synergistic effects on biodiversity protection/conservation.

Spatial protection measures contributing to coherent and representative networks of marine protected areas (MPAs) are the only type of measures explicitly mentioned in the Directive.

There is a need for a Common understanding of the different levels of protection of these measures in close cooperation with the Marine Expert Group (MEG) under the Habitats and Birds Directives, taking into account actions in regional sea conventions. This is in order to better understand the difference between MPA networks put in place to protect biodiversity and the additional potential benefits from other spatial protection measures for biodiversity (point 2 above) (in this context, see section V.2 below).

## Art 13.6

*By 2013 at the latest, Member States shall make publicly available, in respect of each marine region or subregion, relevant information on the areas referred to in paragraphs 4 [and 5].*

The Commission has launched a contract study: "Develop and test methodology and criteria for assessing coherence, adequacy and representativity of EU networks of marine protected areas", which should provide an extensive analysis on the methodology(ies) to be applied on the current network. The study will run during 2014 and will produce a final report by the end of the year for the adoption of MSCG. The Marine Experts Group will also be consulted during an *ad hoc* workshop on May 6<sup>th</sup>.

### c. Financing issue

#### Article 22 Community financing

- 1. Given the priority inherently attached to the establishment of marine strategies, the implementation of this Directive shall be supported by existing Community financial instruments in accordance with applicable rules and conditions.*
- 2. The programmes drawn up by the Member States shall be co-financed by the EU in accordance with existing financial instruments.*

The new Multiannual Financial Framework (MFF) has introduced a number of co-financing possibilities which are summarised in Annex 2.

## 2) Requirements for regional cooperation

### Art 5.2

*Member States sharing a marine region or subregion shall cooperate to ensure that, within each marine region or subregion, the measures required to achieve the objectives of this Directive, in particular the different elements of the marine strategies referred to in points (a) and (b), are coherent and coordinated across the marine region or subregion concerned, in accordance with the following plan of action for which Member States concerned endeavour to follow a common approach:*

*(b) programme of measures:*

*(i) development, by 2015 at the latest, of a programme of measures designed to achieve or maintain good environmental status, in accordance with Article 13(1), (2) and (3);*

*(ii) entry into operation of the programme provided for in point (i), by 2016 at the latest, in accordance with Article 13(10).*

This requirement highlights the need for PoMs to be coherent and coordinated across the relevant marine region. This is the main rationale for the elaboration of the recommendations and common understanding set out in this paper. In addition, Regional Seas Conventions will play an important role in

this respect, and their experience should be used and good examples highlighted. It also stress the added value of joint PoMs.

#### **Art 13.8**

*Member States shall consider the implications of their programmes of measures on waters beyond their marine waters in order to minimise the risk of damage to, and if possible have a positive impact on, those waters.*

The implications of a PoM on other MS's waters and in areas beyond national jurisdiction have to be considered when establishing the PoM by checking if there are any significant positive or negative effects, which might change the prioritization of measures to be taken. Regional Seas Conventions will have an important role to play with respect to identifying these opportunities and/or risks. Subject to provision of SEA Directive, if carried out, this could help in this context.

### ***3) Requirements in relation to other policy frameworks***

#### **Art 13.5**

*Where Member States consider that the management of a human activity at Community or international level is likely to have a significant impact on the marine environment, particularly in the areas addressed in paragraph 4, they shall, individually or jointly, address the competent authority or international organisation concerned with a view to the consideration and possible adoption of measures that may be necessary in order to achieve the objectives of this Directive, so as to enable the integrity, structure and functioning of ecosystems to be maintained or, where appropriate, restored.*

Some of the descriptors, pressures and impacts according to Annex I and III of the MSFD definitely require action at a EU level, particularly where fishing (CFP) and shipping (IMO) are concerned (but also hazardous substances (REACH), market regulation related to plant protection products, etc.).

The joint implementation of Marine Litter Regional Plans, such as the one already agreed by the Barcelona Convention, could be considered as a good example of this requirement.

#### **Art 15 Recommendations for Community action**

*Where a Member State identifies an issue which has an impact on the environmental status of its marine waters and which cannot be tackled by measures adopted at national level, or which is linked to another Community policy or international agreement, it shall inform the Commission accordingly and provide a justification to substantiate its view.*

*The Commission shall respond within a period of six months.*

*Where action by Community institutions is needed, Member States shall make appropriate recommendations to the Commission and the Council for measures regarding the issues referred to in paragraph 1. Unless otherwise specified in relevant Community legislation, the Commission shall respond to any such recommendation within a period of six months and, as appropriate, reflect the recommendations when presenting related proposals to the European Parliament and to the Council.*

For the time being, the Commission has not been informed of any such issues. Consideration for MSCG should be given to the need to identify and agree on a list of potential issues where EU action would be useful or necessary. Whilst such an issue can be identified and communicated to COM by an individual MS, it is more meaningful that Regional coordination, e.g. through the RSC, is taking place before submitting any such recommendation.

#### **4) Exceptions**

As foreseen in the CIS work programme, a common understanding on exceptions (Article 14) would be tackled through ad-hoc activity led by the Commission. The results of subsequent discussions at MSCG (12/13 May 2014) will be added in a revised version of this document at a later stage.

#### **5) Timeline and reporting**

##### **Art 13.9**

*Member States shall notify the Commission and any other Member State concerned of their programmes of measures, within three months of their establishment.*

##### **Art 13.10**

*Subject to Article 16, Member States shall ensure that the programmes are made operational within one year of their establishment.*

##### **Art 16 Notifications and Commission's assessment**

*On the basis of the notifications of programmes of measures made pursuant to Article 13(9), the Commission shall assess whether, in the case of each Member State, the programmes notified constitute an appropriate framework to meet the requirements of this Directive, and may ask the Member State concerned to provide any additional information that is available and necessary.*

*In drawing up those assessments, the Commission shall consider the coherence of programmes of measures within the different marine regions or subregions and across the Community.*

*Within six months of receiving all those notifications, the Commission informs Member States concerned whether, in its opinion, the programmes of measures notified are consistent with this Directive and provides guidance on any modifications it considers necessary.*

PoMs shall be notified to the Commission by 31 March 2016. The methodology of the assessment will be similar to, but taking into account lessons learnt from the approach used for the Article 12 assessment, and will be further defined under the CIS.

#### **Art 18 Interim reports**

*Member States shall, within three years of the publication of each programme of measures or update thereof in accordance with Article 19(2), submit to the Commission a brief interim report describing progress in the implementation of that programme.*

## **6) Public consultation and information**

### **Article 19.2**

Member States shall publish, and make available to the public for comment, summaries of the following elements of their marine strategies, or the related updates, as follows:

[...]

(d) the programmes of measures established pursuant to Article 13(2).

An important notion is the need for MS to undertake a public consultation on their proposed PoM (see art 19.2.d). So, before sending PoM to the Commission, Member States have to reserve some time to be able to not only consult the public, but also to take account of the reactions from the public and on the one hand give feed back to the public on how their reactions have been taken on board (and maybe altered the PoM), and on the other hand send the adjusted PoM to National Parliaments, if required, for final approval.

### **III. ‘Measures’ and ‘programmes of measures’ – definitions**

“*Measure*” in the MSFD should be considered as any action on a national, European or international level with a view to achieving or maintaining GES and with reference to the environmental targets.

While MSFD measures will primarily focus on changing the intensities of predominant pressures, activities to improve environmental status directly, such as restoration of habitats and reintroductions of species, can also be defined as measures under the MSFD.

It is not proposed here to further classify measures by typology, however it is recognised that they may have different modes of action, including:

- ‘technical’: an actual action that one can see (and measure) in the field. In principle a wide range of measures have a primarily technical mode of action.

- 'legislative': Adapting or supplementing national environmental law and other national legislation influencing the marine environment to implement environmental targets and to achieve/maintain GES.
- 'economic', such as economic incentives that provide financial motives to stimulate a desired behaviour or discouraging an unwanted behaviour. Financial instruments are often aimed at the uptake of technical measures. For example, a subsidy for beach resorts of 20 Euros for each additional garbage bin they place.
- 'policy driven': Policy instruments can be economic incentives, but also other instruments, such as voluntary agreements with stakeholders communication strategies, awareness raising, and education. For example, the government launches an information campaign to make the beach resorts aware of the new subsidy they can get for placing more garbage bins, or beach resorts informing their customers where the litter bins are located, or teachers telling children it is fun to collect waste and put it in a litter bin and gives you a clean beach as well.

Research activities/ research references could be submitted as a supplementary list to the PoM but do not need to be aligned to specific environmental targets. Therefore, for such activities there is no need to carry out cost-benefits and/or cost-effectiveness assessment

Activities to fill gaps for other parts of the Directive (eg Art 8, 9, 10, 11) are by definition not measures.

A *Programme of Measures* (PoM) is a set of measures that the MS is responsible for implementing, put into context with each other, referring to the environmental targets they address. The Programme of Measures includes existing and new measures.

Existing measures (Art 13.1 & 13.2) are:

- **Category 1.a:** Measures relevant for the maintenance and achievement of GES under the MSFD, that have been *adopted under other policies and implemented*;
- **Category 1.b:** Measures relevant for the maintenance and achievement of GES under the MSFD that have been adopted under other policies but that have *not yet been implemented or fully implemented*;

New measures (Art 13.3) are:

- **Category 2.a:** Additional measures to maintain and achieve GES which build on existing implementation processes regarding other EU legislation and international agreements but go beyond what is already required under these;
- **Category 2.b:** Additional measures to maintain and achieve GES which do not build on existing EU legislation or international agreements.



#### **IV. Logic of the directive and streamlined procedures for the development of programmes of measures**

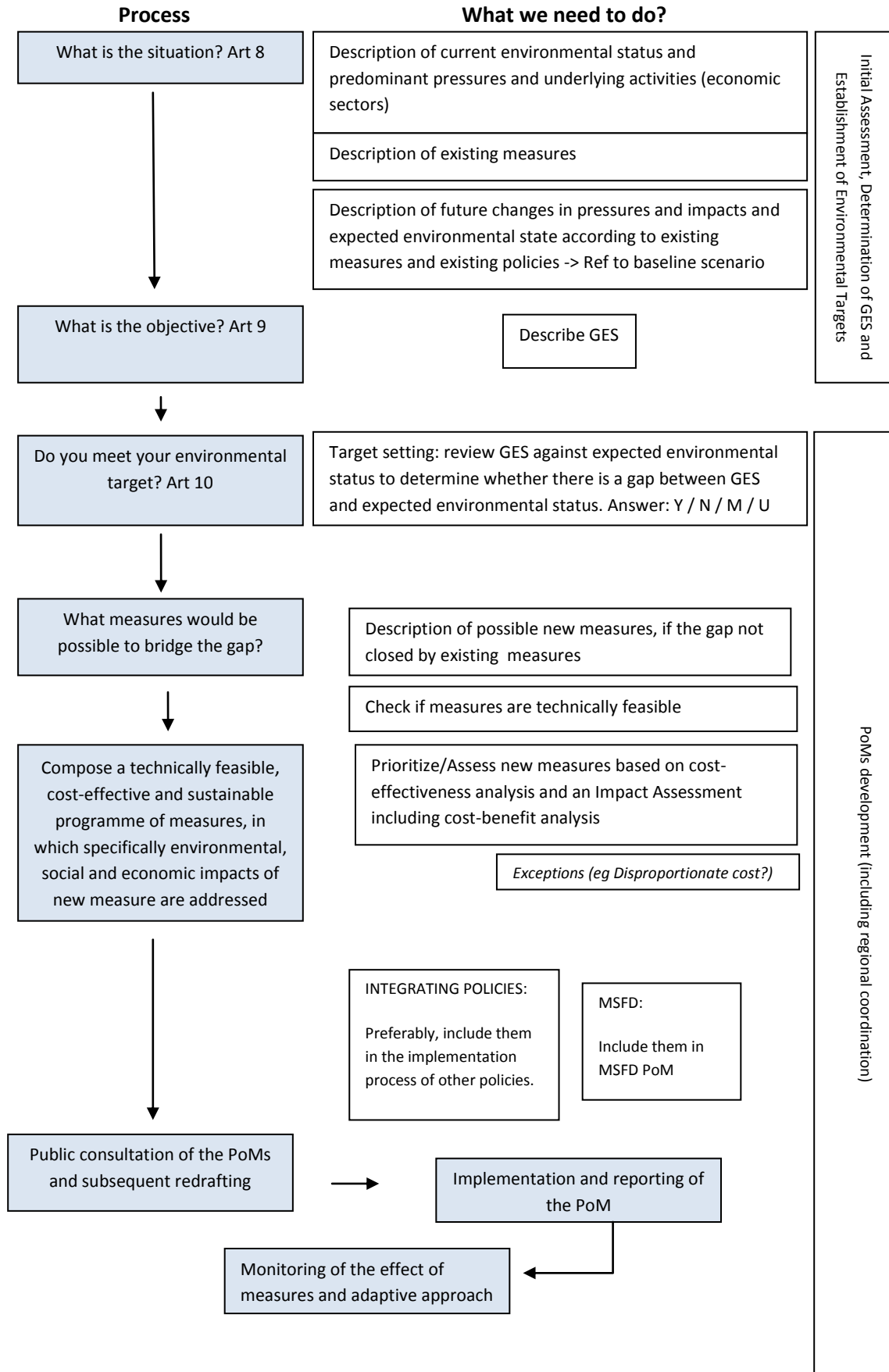
The objective of the MSFD is that ‘... Member States shall take the necessary measures to achieve or maintain good environmental status in the marine environment...’. Good environmental status and environmental targets, supported by monitoring programmes, as reference points are pivotal in order to allow for the establishment and implementation of programmes of measures.

The 2012 initial assessment (Art. 8 MSFD) was intended to provide the baseline for assessing if GES (Art. 9 MSFD) is being achieved or maintained. To achieve and maintain GES, environmental targets (Art. 10 MSFD) were developed to guide progress from the present state to GES. Environmental targets form the main basis for devising national, regional and EU measures that are required under Article 13 MSFD to achieve or maintain GES.

Monitoring programmes under Art. 11 MSFD relate to relevant GES criteria, targets, indicators and measures to support regular assessments under Article 8 MSFD of environmental status, progress towards GES and the effectiveness of measures.

It follows from the logic of the Directive that the starting point for programmes of measures are the environmental targets provided they are set in an adequate and coherent way (see Art 12 report) and an appraisal of relevant existing measures in order to identify the need for new measures to achieve or maintain GES. Art. 13 MSFD spells out some requirements for identifying and selecting individual measures and for establishing programmes of measures.

The logical context of Article 13 with the various other MSFD elements can be visualized in the following diagram (please note that this chart does not imply any documentation needs under Art. 13 and that it may need to be revised in accordance to the developing Common Understanding document):



The requirements for the development of measures and programmes of measures are addressed in the following step-wise approach, which should assist in linking the development of the programme of measures to the other steps to be taken as part of the MSFD implementation (Initial Assessment, GES and establishment of environmental targets, exceptions) and includes the different steps for finally obtaining a cost-effective programme of measures.

## ***1) Technical specification of environmental targets as a basis for measures***

According to MSFD Article 10, Member States set environmental targets to guide progress towards achieving good environmental status, i.e. to bridge the gap between baseline scenario and the desired status of the marine environment (GES) provided they are set in an adequate and coherent way (see Art 12 report). These targets are to be achieved through the development and implementation of measures. For the development of a specific set of measures the underlying environmental targets should wherever possible be clearly specified and/or quantified.

Where it is not possible to develop quantified environmental targets, a set of pragmatic solutions can be applied e.g.:

- Politically determined;
- Agreement through technical conventions; and
- Expert judgment (e.g. interim targets or trends).

Additional to the specification of environmental targets, the development of measures can be substantiated on the basis of the following principles mentioned in Chap I.

## ***2) Gap analysis***

The first step should consist of identifying measures already in place (existing measures) that contribute to addressing predominant pressures and reaching MSFD environmental targets. Annex I of this document provides, for each GES descriptor, an indicative list of relevant EU legislation.

The next step consists of conducting a gap analysis: assessing how far existing measures, not necessarily specifically designed with MSFD in mind, are sufficient to reach MSFD environmental targets. It is important to distinguish between measures which are adopted and already implemented, and measures adopted but not yet implemented to ensure the robustness of this analysis. Both of these measures will be part of the baseline scenario and not subjected to additional analysis.

A summary of the existing measures including their relevance for the MSFD should be in the PoM and subject to public participation.

### ***3) Identification and description of possible new measures***

If gaps are identified, the next step consists of identifying possible new measures to meet the MSFD environmental targets. To verify that these measures are feasible (for example that existing measures adopted at a small scale or in the context of a pilot project could be applied at a larger scale or generalized), expert judgement, inputs from RSCs or consultation with stakeholders can provide useful information.

For the new measures which are technically feasible, the next step would consist of identifying how to develop and adopt them:

- if action is needed at community or international level, a recommendation could be developed either individually or by several Member States (cf. art 15 of the directive),
- if the identified measure is related to the implementation of a sectoral or environmental policy and in line with the “integrative” approach of MSFD, it would need to be addressed and assessed in the context of the specific policy concerned. To provide a clear picture of all measures contributing to achieve GES, it would be useful to provide a short summary of these measures (cat 2.a) and identify in the MSFD PoM where further information on them can be found.
- If this is not possible (no existing policy or no window of opportunity to consider and adopt the possible measure), full details of the measure (cat 2 b) would be included in the MSFD PoM.

New measures (Category 2.b) to be implemented as part of the MSFD programme will be subject to an impact assessment including a cost-benefit analysis. This is further explained as part of Chapter 7.

Concerning Category 2.a measures, MS should determine on a case by case basis, the methods and responsibility to perform the impact assessment in order to avoid using different methods.

If private companies are implementing measures by themselves, paid for by themselves, because they think it is a good thing to do, and those measures can be enforced, the impacts of those measures should be assessed and these measures can be included as new measures, but since they are paid for by the sectors themselves, no economic analysis needs to be performed for this type of measures.

Possible set of new measures can be described taking into account the following indicative list of useful information:

- Link to descriptor
- Link to GES and environmental targets (local and (sub)regional)
- Link to pressure
- Geographic scale of application (e.g. local, national, (sub)regional)
- Expected effects

- Implementation (e.g. by legal, policy, or financial instrument) including responsibilities, timing and financing
- Coordination with the implementation of other EU legislation
- Costs and benefits
- Regional coordination

#### ***4) Selection of new measures***

Selecting cost-effective measures that are technically feasible and applying an impact assessment (including cost-benefit analysis) for new measures is required under Article 13.3. Further on, the PoM has to give due consideration to sustainable development (Article 13.3) and Member States should consider the implications of their PoMs on water beyond their marine waters (Article 13.8). These requirements should be fulfilled by the Member States when composing their PoMs, and some guidance is given below on how this can be done.

New measures can be ranked in accordance with their contribution to goal attainment and costs, starting with measures that bring the largest contribution at least cost. By combining cost-effective measures, the least cost PoMs is found that will bridge the gap. For any new measures, an impact assessment (including a cost-benefit analysis) is required. These tools can have different functionalities in the PoM development process and further information on the tools and their use is given in Chapter VII.

MS also have to give due consideration to sustainable development in particular, to the social and economic impacts of the measures envisaged. Sustainability can be assessed at a national level through existing legislation (e.g. through a Strategic Environmental Assessment (SEA)) where considered necessary. Further on, the Impact Assessment should evaluate the environmental, social and economic impact of any new measures introduced. By considering both the Impact Assessment and the Strategic Environmental Assessment results, the overall impacts on the wider environment and cumulative impacts of measures are assessed and should be taken into consideration when composing a PoM.

Member States shall consider the implications of their programmes of measures on waters beyond their marine waters in order to minimise the risk of damage to, and if possible have a positive impact on, those waters. Transboundary impacts of measures are also included in the scope of an SEA assessment. Further on, certain funding sources (eg EMFF) also require an SEA to be done as part of the ex-ante evaluation. The SEA applies on its own merits, as confirmed by the Court of Justice, provided that its conditions are met, in particular if the plan or programme in question sets the framework for future development of projects. Depending on their content, relevant parts of marine strategies may have to be made subject to an SEA which may have to be combined with other processes.

In summary, considering sustainable development means performing an Impact Assessment including CBA and where necessary SEA for the MSFD PoMs.

As measures in the MSFD PoMs may either affect the wider environment, or either needs to be taken outside the marine environment / marine policy area, interlinkage with other policy areas is key to assessing the full range of impacts of measures and ensuring the success of implementation of these measures. This may be done by establishing specific administrative frameworks in order to ensure the benefits of the PoMs in its wider context (Article 13.3).

Depending on the Member States decision-making process, each Member State can consider additional criteria for prioritization of measures and determining overall sustainability of the programme such as for example the proven concept of measures, the availability of funding, the existence of institutional framework, regional cooperation, stakeholders views ....

### ***5) Content of the PoM***

The Programme of Measures shall contain:

- 1 – An overview of the existing measures with reference to their original publication;
- 2 – A short analysis of the contribution of existing measures towards GES (baseline) and the gap that needs to be addressed (gap analysis);
- 3 – A List of new measures including a summary :
  - Category 2.a: if described elsewhere, brief details with reference to document containing exhaustive description (eg WFD PoM...) , if not full description (ref chap IV.3)
  - Category 2.b: full description (ref chap IV.3)
- 4 – justification for exceptions where no measures will be taken .

The summary for the new measures shall contain:

- Method for selecting measures,
- Implementation (e.g. by legal, policy, socio-economic and financial instrument), including overview of co-financed measures (art 22) where relevant,
- Identification of spatial protection measures and the purpose for which they are put in place (e.g. contributing to coherent and representative networks of marine protected areas art 13.4),
- Cost-effectiveness and/or cost benefits of the measures (how it has been taken into account?) and sustainability (art 13.3),
- Overall coordination or input to other EU legislation and policies (including international agreements),
- Overall regional coordination including possible impacts on the waters of other countries (art 13.8),
- Public consultation information.

## **6) Implementation planning**

The planning of the implementation of the national programme of measures will depend on each member state's internal organizational structure and processes. It will include an organization and timing of work plans, assignments to national (and subnational) responsibilities and integration into existing national policy and jurisdictional processes.

## **7) Public consultation**

When implementing MSFD requirements, MS should apply the requirements of the Aarhus convention, the Directive 2003/4/EC on public access to environmental information, the Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and if applicable the SEA Directive.

Further discussion need to take place.

# **V. Interlinkages to other policy frameworks (including other EU directives)**

## **1) Measures under the Water Framework Directive (WFD)**

WFD and MSFD have a common objective of reaching the good status of the waters to which they apply. These waters are partially overlapping. The MSFD's good environmental status is defined by taking into account some characteristics of the WFD which are partially identical in both directives.

Both directives foresee an update every six years: the first cycle of the MSFD is implemented simultaneously with the second implementation cycle of the WFD. Programmes of measures will have to be adopted and implemented for both directives in Dec 2015: the existing WFD PoM will be updated while MSFD PoM will be developed for the first time.

In its 2012 Communication "A Blueprint to Safeguard Europe's Water Resources", the Commission stated that "As a land-based pressure also influences to a large extent the status of the marine environment, the Blueprint will contribute to achieving good environmental status under the Marine Strategy Framework Directive, provided that there is adequate coordination with programmes of measures under the Marine Strategies due by 2015".

In order to adequately coordinate the implementation of the two directives, Member States may wish to clarify who does what: i.e. which measures will be developed in which PoM. One way of clarifying this might be to identify for each measure related to a pressure:

- where the pressure applies (land-based or upstream from coastal waters, to coastal waters, to marine waters) ?
- which water is impacted by the pressure.

To facilitate the coordination between the two PoM, the governance bodies could be adapted for example by designating in the WFD governance bodies “marine” members and in the MSFD governance bodies stakeholders which are involved or aware of the WFD governance.

Technically, it would be useful to ensure that the methodologies used to assess at least the environmental impacts of measures are coordinated, for example, by ensuring that the impact of WFD PoM on marine waters is taken into account. In addition, exchange of experiences might be very relevant in order to learn lessons from WFD implementation for MSFD and vice versa.

The consultation processes for the two PoM could also be streamlined. For the sake of clarity, simultaneous public consultations could be conducted on the MSFD and WFD PoM. Stakeholders, when consulted about one PoM, could systematically be provided with summarized information about the other PoM. Ideally, it is possible to join up the PoM which could be the aim in the long term.

Finally reporting processes could be streamlined so that data is reported once and used for several policies.

## ***2) Spatial protection measures***

A spatial protection measure is any spatial restriction or management of all or certain human activities in order to:

1. Protect biodiversity, e.g. marine reserves. Such areas could support MPA networks in terms of coherence and representativity (Article 13.4) and the overall achievement of MSFD GES
2. Support certain industrial or leisure activities, e.g. banning of fisheries or gravel extraction within a shipping lane or offshore wind-farm, which may have synergistic effects on biodiversity protection/conservation

### **2.1 Improving Marine Protected Area (MPA) networks**

One of the tools that can be used to ensure the sustainable protection and conservation of marine biological diversity and its ecosystems is the designation and management of marine protected areas. The MSFD PoM, in accordance with Article 13.4, shall include new spatial protection measures, contributing to coherent and representative networks of marine protected areas, adequately covering the diversity of the constituent ecosystems.

The existing network of Marine Protected Areas is constituted by:

1. the Natura 2000 network consisting of Special Areas of Conservation (SACs) designated to implement the Habitat Directive and Special Protection Areas (SPAs) designated to implement the Bird Directive,
2. Marine Protected Areas (MPA) designated to implement international or regional agreements to which Member States are Parties:
  - the network of MPAs designated under the Regional Sea Conventions including MPAs in High Seas: the Baltic Sea Protected Areas (BSPA) for HELCOM, OSPAR MPA, the List of Specially Protected Areas for Mediterranean Importance (SPAs and SPAMI) in the



- Barcelona Convention framework, Projects launched by the Commission for the Protection of the Black Sea against Pollution on Specially Protected Areas and MPAs,
- other networks such as, in the Mediterranean Region, the Emerald Network, Ramsar sites, Man and the Biosphere Reserves, the Agreement on the Conservation of Cetaceans in the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS) and Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas (, ASCOBANS)
3. Additional nationally designated MPAs.

## **a Identifying the existing MPA network:**

The identification of the existing network had to be conducted in 2013 and information had to be made publicly available by Member States in respect of each marine region or subregion.

In relation to the Natura 2000 network, Member States can use:

- Their article 17 report on evaluation of impacts of measures on conservation status and main surveillance results;
- The Common Database on Designated Areas (CDDA)<sup>3</sup>,
- Biogeographic seminars which took place in the context of the Habitats and Birds directives.

If they exist, national strategies or plans related either specifically to Marine Protected Areas or to the strategic planning of their marine waters including the protection of the environment through MPA should be used. These strategies usually are based on an assessment of the existing network. Based on this assessment, they usually identify the need to create new MPAs or establish priorities in the management of existing MPAs. They therefore provide for an important input in the development of the spatial protection measures of the MSFD programmes of measures.

Based on all the above information, the Commission is required by the MSFD to publish a report by 2014. This EEA report will deal with the baseline on the establishment of MPAs, having regard to existing obligations under applicable EU law and international commitments of the EU and the Member States.

## **b Assessing the coherence and representativeness of the existing MPA network and identifying possible gaps**

Different sources of information can be mobilized to assess the coherence and the representativeness of the existing network.

A specific study will be undertaken in 2014 by the COM and discussed in the context of the Marine Expert Group in order to assess the coherence and representativeness of the existing network based on information provided by Member States in 2013..

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<sup>3</sup> <http://rod.eionet.europa.eu/obligations/32/overview>

Some Regional Sea Conventions such as HELCOM, OSPAR<sup>4</sup> and Barcelona Convention have or are going to publish assessments of representativeness and coherence of MPA networks. The main findings of these assessments as well as references can be found in the EEA's report "Protected areas in Europe - an overview"<sup>5</sup>. Regarding the issue of coherence, some key findings of this report are that:

- inshore coastal waters have a better coverage of MPAs than further offshore,
- distributional gaps are found in certain sub-regions (e.g. Areas Beyond National Jurisdictions; Arctic; Iberian peninsula) and bathymetric zones (e.g. depths greater than 75 m)
- habitats and species which are not recognised in annex I and II of the Habitat Directive are significantly less well-protected than other habitats.

As for other measures, it is important to assess how far the existing spatial protection measures solely or in combination with other non-spatial measures applicable inside and outside of MPAs and targeting, for example, certain pressures, are sufficient to meet the MSFD environmental targets.

### **c Identifying possible measures to improve MPA network:**

On the basis of the analysis undertaken above, different types of spatial protection measures to contribute to the coherence and representativeness of MPA networks (as well to adequately cover the diversity of the constituent ecosystems) are possible:

- Designating new MPAs:
  - o On, e.g., the basis of national or regional lists of habitats and species (*stressing that this is a separate process from the completion of the marine Natura2000 network under the Birds and Habitats directives*)
  - o Including the MSFD predominant habitat types and species not covered by other protection schemes.
- In existing MPAs:
  - o Updating/revising existing management measures to:
    - Streamline them with the MSFD environmental targets (policy integration),
    - Establish zoning schemes with stricter levels of protection ("reserves" or "no-take") granted to an existing MPA,
  - o Adopting new management measures to meet the MSFD environmental targets. These measures could, for example, target species and habitats not covered by the Habitats and Birds directives but that are important to reach GES of the marine waters by 2020 (i.e. the MSFD predominant habitat types). The adopted list of endangered species by the OSPAR convention and the associated programme of measures for their conservation including Recommendation 2010/5 on the assessment of environmental impacts on threatened and/or declining species could for example be used in this respect.

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<sup>4</sup> [http://www.ospar.org/documents/dbase/publications/p00619/p00619\\_ecological\\_coherence\\_report.pdf](http://www.ospar.org/documents/dbase/publications/p00619/p00619_ecological_coherence_report.pdf)

<sup>5</sup> <http://www.eea.europa.eu/publications/protected-areas-in-europe-2012>

As for other measures, it is important to assess how far the existing spatial protection measures solely or in combination with other non-spatial measures applicable inside and outside of MPAs and targeting, for example, certain pressures, are sufficient to meet the MSFD Article 13.4 requirements.

## **2.2 Other spatial protection measures**

Spatial protection measures to manage industrial or leisure activities in the marine environment can, through their synergistic effects, support marine biodiversity conservation/protection even if they are not specifically designed to do so. These include:

- 
- The protection of essential fish habitats or stock recovery areas (spawning aggregation area);
- Real time closure areas if by-catch rates are above certain threshold;
- Requirement of fishing impacts assessments in new fishing grounds with special fishing licenses in sensible/vulnerable areas;
- Banning of gravel extraction or fisheries inside a wind farm or shipping lane;
- Regulation of recreational fisheries within MPAs; etc.

It follows that these measures could support meeting the MSFD environmental targets generally, including adequately covering the diversity of the constituent ecosystems of MPA networks (a requirement of Article 13.4). However, in order to maximise their synergistic effects towards that goal, they should be developed in conjunction with:

- either spatial measures targeting certain pressures at a larger scale than individual MPAs,
- non-spatial measures targeting certain pressures impacting biodiversity.

There is no European database for these spatial protection measures available yet.

### ***3) Other relevant regulations***

There is also a need to have a more descriptive list of other relevant legislation or international agreements which elaborated in Annex I.

Moreover, maritime spatial planning is an instrument to influence where and when an activity is allowed to occur and therefore can support the achievement of Good Environmental Status. Member States will consider land/sea interactions as part of their Programmes of Measures, thus enabling an integrated approach between policies, and across sectors, to the use and the protection of Europe's marine resources.

## VI. Coordination within marine regions

Measures should be coordinated with marine regions and/or subregions (Art 5.2 and Annex VI.4)). The Regional Seas Conventions (RSCs) can and should play a key role in this process taking into account their specificity.

The potential contribution of RSCs to the development of coordinated Programmes of Measures has been suggested according to the request by the EU COM in the 'RSC CIS contribution documents. Three principal roles of RSCs in coordinating for the implementation of Article 13 have been identified:

- 1) the exchange of information and coordination of measures that are primarily of national concern and responsibility;
- 2) the development of measures at regional level (e.g. through decisions or recommendations) with a focus on transboundary issues;
- 3) the development of joint proposals for measures that are required to achieve GES but are in the competence of the EU or international authorities (such as river basins and/or shipping) and agreement of concerted actions of CPs to approach those bodies/authorities through RSC.

A focus of cooperation should be on measures of a transboundary nature, targeting ecosystems and/or pressures that transcend the national scale (e.g. management of MPAs; gas/oil exploitation in open seas; chemical contamination and nutrient enrichment, in particular through long-distance transport; seafloor protection, litter, underwater noise).

## VII. Costs & benefits of the programmes of measures

In Article 13.3 and as referred to in the step-wise approach of chapter 4, it is indicated that Member States shall ensure that measures are cost-effective, and shall carry out impact assessments, including cost-benefit analyses, prior to the introduction of any new measure. In this chapter, we first go through the definition of impact assessment (ImA), cost-effectiveness analysis (CEA), and cost-benefit analysis (CBA), and will then illustrate the relevance of CEA, IA and CBA to the MSFD.

### **Definitions**

**Impact Assessment (ImA):** Before a decision-maker proposes a new initiative, it can evaluate the potential economic, social and environmental consequences. An ImA gives decision-makers evidence regarding the advantages and disadvantages of a policy choice. It explains why action should be taken and why the proposed response is appropriate. It may also find that no action should be taken as part of a specific programme of measures. The Commission has published an Impact Assessment Guidelines<sup>6</sup> on

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<sup>6</sup> [http://ec.europa.eu/smart-regulation/impact/commission\\_guidelines/commission\\_guidelines\\_en.htm](http://ec.europa.eu/smart-regulation/impact/commission_guidelines/commission_guidelines_en.htm)

how to perform an IMA. An IMA compares all the relevant positive and negative impacts of the various options (including the 'no action' option) alongside each other, regardless of whether they are expressed in qualitative, quantitative or monetary terms. The three most relevant tools for comparing options that can be used in this respect are cost-effectiveness analysis, cost-benefit analysis and multi-criteria analysis.

Cost-effectiveness analysis (CEA) is used to establish the "cheapest solution" for solving a specific issue at hand. A CEA is an analysis of the costs of alternative (groups or programmes of) measures designed to meet a single objective. The programme which costs least will be the most cost effective.<sup>7</sup> It can be used to identify the highest level of a physical benefit given available resources (e.g. delivering the maximum reduction in risk exposure subject to a budget constraint), as well as the least-cost method of reaching a prescribed target (e.g. a given concentration level of nitrogen in coastal waters).

Cost-benefit analysis (CBA) is a method for comparing policy measures against the baseline situation in terms of their advantages and disadvantages. It is designed to show whether the total advantages (benefits) of a project, a programme or policy intervention – e.g. reducing nitrogen emissions to coastal waters – exceed the disadvantages (costs) – e.g. the costs to agriculture of reduced fertiliser use. This essentially involves estimating all of the negative impacts and positive impacts, including items for which the market does not provide an observable measure of value, accruing to all affected parties. To best support policy making, the presentation of those negative impacts and positive impacts can, but does not necessarily have to be in quantitative or monetary terms. According to the EC Impact Assessment Guidelines<sup>8</sup>, a CBA can be done at various levels: it can be either a full CBA, in cases where the most significant part of both costs and benefits can be quantified and monetized, or a partial CBA in cases where only a part of the costs and benefits can be quantified and monetised. A CBA can also cover a specific type of costs and benefits, e.g. a financial CBA will be limited to financial costs and benefits without considering other economic or intangible costs and benefits.

The added value of CBA is not limited to the result of the analysis. The process also allows trade-offs to be considered and to facilitate the understanding of the impacts (benefits and costs) of (sets of) new measures. In this way, CBA provides valuable information to help inform potential policy choices.

In case more information is needed on the definitions of the economic tools included, one could refer to the CIS WATECO guidance.<sup>9</sup>

## **Relevance to the MSFD**

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<sup>7</sup> Based on

<http://www.waterframeworkdirective.wdd.moa.gov.cy/docs/GuidanceDocuments/Guidancedoc1WATECO.pdf>

<sup>8</sup> [http://ec.europa.eu/smart-regulation/impact/commission\\_guidelines/docs/iag\\_2009\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/iag_2009_en.pdf)

<sup>9</sup> Guidance document 1: Economics and the environment - The implementation challenge of the Water Framework Directive

When drawing up the programme of measures, Member States need to give due consideration to sustainable development and, in particular, to the social and economic impacts of the measures envisaged. In doing so, Member States shall ensure that measures are cost-effective and technically feasible (Art 13.3). Carrying out CEA will be facilitated by clear environmental targets and a good knowledge of the functional relationships between measure-pressure-descriptor-environmental targets. Close cooperation with WG GES to help defining these relationships will be essential. Questions that are relevant in the implementation of a CEA are the following:

- Have functional relationships between measures-pressures-descriptors been described? Are all descriptors equally important?
- To what extent MS need to review the effectiveness of existing measures in meeting MSFD targets?
- Is this feasible based on the available information of the Initial Assessment?
- What are the gaps in information and what actions are needed to fill the gap?

CEA can help to prioritise measures, and can also be supported by an Impact Assessment, including a cost-benefit analysis. In a CEA, the cost considered does not consider the full socio-economic and environmental impacts. The effectiveness assessment is based on the contribution of a measure to a specific target, not including the full range of benefits. Other limitations that apply in a CEA are the effectiveness of combinations of measures and how we deal with co-benefits. This reflects the more “narrow” scope of a CEA in contrast to an impact assessment including a cost-benefit analysis as is required for the introduction of any new measure.

### **Impact Assessment including CBA**

Article 13.3 further obliges that the introduction of new policy measures requires “impact assessments, including cost-benefit analyses”. Given the spirit of the Article 13.3 which requires that consideration should be given to sustainable development, the term ‘impact assessment’ refers to the analysis of positive and negative social, economic and environmental impacts policy measures may incur.

If not all costs and benefits are presented in monetary terms, the resulting net benefits should be confronted with the qualitative assessment of the other costs and benefits.

Besides CBA, multi-criteria analysis (MCA) can also be of high relevance for the economic analysis in the framework of Art 13.3 implementation. The term MCA covers a wide range of techniques that share the goal of combining positive and negative impacts into a single framework to allow easier comparison. Essentially, MCA applies cost-benefit thinking to cases where there is a need to present impacts that are a mixture of qualitative, quantitative and monetary data, and where there are varying degrees of certainty. This mixture of units in which impacts are expressed is a typical feature in an MSFD context.

Specifically in relation to the MSFD, the impact assessment would consider the scenario with new measures implemented versus the baseline (as defined in the Initial Assessment including future scenario's as determined by ongoing policy and implemented measures – see WG ESA guidelines<sup>10</sup> ).

When looking into the impacts of a measure in a societal context, it may become clear that it is beneficial for society as a whole but has positive and negative impacts that are spread unevenly across society (and over time). The assessor needs to identify who is affected by the impacts (and when): who implements the measures/who bears the costs/who incurs the burdens/who benefits?

Attributing the costs and benefits to these sectors may help **structuring the stakeholder consultation process** (e.g. negotiations on future implementation of measures) and identifying the need for introducing economic instruments such as financing to address e.g. affordability issues.

**Some considerations,**<sup>11</sup>:

Due to limited knowledge of the functioning of the marine environment, the inability, in some cases, to set quantified targets, and the difficulty of quantifying the potential effects of measures and their impacts on the marine environment it may not always be possible to properly estimate potential benefits/effectiveness. However, a CBA does not necessarily have to be (fully) monetised and both CEA and CBA are possible even when no quantified target is set. In relation to improving knowledge and quantification of the effectiveness of measures, in time, monitoring will enable Member States to evaluate the “extent of success” of (sets of) measures. This also supports very much the idea of adaptive management.

Cost-effectiveness and cost-benefit analysis can have different functions in the PoM development process, and this also depends on each individual Member State decision-making process. Both CEA and CBA can be part of the prioritisation of measures process, in collaboration with stakeholders at various stages. Further on, the impact assessment including cost-benefit analysis ensures that all economic, social and environmental impacts of a measure are looked at in advance of taking a decision on implementing a measures, ensuring that the PoM is overall sustainable. It should be clear from the stepwise approach (see Section IV), that, next to the cost-effectiveness and cost-benefit considerations for PoM development, also other criteria are of importance such as technical feasibility, stakeholder support, the precautionary approach, availability of funding, etc.

In order to fulfil the requirement of Art 13.3 on obtaining cost-effective measures and applying an impact assessment (including cost-benefit analysis), a pragmatic approach is proposed. First of all, CEA and Impact Assessment (including CBA) need to have a well-considered role in the decision-making process as described above. Secondly, for existing measures, adopted or planned under other policies,

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<sup>10</sup> Working Group on Economic and Social Assessment. ECONOMIC AND SOCIAL ANALYSIS FOR THE INITIAL ASSESSMENT FOR THE MARINE STRATEGY FRAMEWORK DIRECTIVE: A GUIDANCE DOCUMENT A NON-LEGALLY BINDING DOCUMENT, 21 December 2010

<sup>11</sup> From MSFD PoMs workshop on CEA/CBA, 1 April 2014.

no specific need for a CEA or CBA is defined under the MSFD specifically (see Table below). For new measures, both CEA and Impact Assessment including CBA are required under the MSFD. When relevant, Impact Assessment, including CBA, could also be conducted at regional or subregional level.



Measures	Measure category	CEA	CBA
Article 13.1 & 13.2  <i>Measures relevant for the maintenance and achievement of GES under the MSFD that <u>have been adopted under other policies and implemented</u></i>	EXISTING  1.a	No	No
Article 13.1 & 13.2  <i>Measures relevant for the maintenance and achievement of GES under the MSFD that <u>have been adopted under other policies but that have not yet been implemented or fully implemented</u></i>	EXISTING  1.b	No	No
Art 13.3  <i>Additional measures to achieve GES which build on existing Community legislation and international agreements but go beyond what is already required under these;</i>	NEW  2.a	Yes*  Case by case	Yes*  Case by case
Art 13.3  <i>Additional measures to achieve GES which do not build on existing Community legislation or international agreements</i>	NEW  2.b	Yes	Yes

"No" means that the assessment doesn't need to be done under MSFD

The "Yes\*" under category 2.a means that, depending on the existing legislation in question and if necessary, the scope of CEA / CBA is focused mainly on the additional contribution to the marine environment.

### **Further work**

Exchange of experiences regarding the application of Impact Assessment, CEA/CBA methodologies as part of the MSFD PoMs development should take place, aiming at a strong/stronger coordination of these assessments for the second implementation cycle and at the RCS/international level. The contract "Exchange of best practices for cost-effective "marine" measures" will support further work on this and has co-chaired a workshop in collaboration with WG ESA on best practices of application of CBA and

CEA. This will result in a guidance document (reference to be included in this PoMs recommendations paper).

## VIII. Reporting

Article 13 (9) provides that Member States shall notify the Commission and other relevant Member States of their programmes of measures within 3 months of their establishment (i.e. by 31 March 2016)

The reporting will give the opportunity to the Commission under Article 16 to assess whether the PoMs constitute an appropriate framework to meet the requirements of the MSFD. Reporting is meant for compliance checking (need to have) and is not meant to deliver detailed information.

The Directive assumes that Member States base their programme of measures on the measures needed to be taken to achieve or maintain good environmental status as determined in their Marine Strategies. If Member States update their Marine Strategies and accordingly their Programme of Measures, an update needs to be reported to the Commission.

It is important to recall the main purpose of reporting and the joint objectives and interest that the European Commission and the Member States, together with the Regional Sea Conventions (RSC) and the European Environment Agency (EEA), should have in making reporting a success and an important exercise which is worthwhile investing in. The uses and benefits of reporting at national, regional, European and global levels are outlined in *Approach to reporting for the Marine Strategy Framework Directive (2012)*<sup>12</sup>.

The requirement in EU legislation to report is a result of the legal system of the EU and the special role of the European Commission in this system, namely its role as "Guardian of the Treaty". However, this role has to be seen increasingly in the wider context of accountability and good governance of EU action and the responsibility for the European Commission and the Member States together to demonstrate that:

- EU legislation achieves its results in an effective and efficient manner;
- The level of ambition, efforts and level playing field for the internal market are comparable, if not harmonised, between the Member States;
- Member States respect the letter and the spirit of the law;
- Effective policy implementation leads to the envisaged policy objective, which in this case is the improvement of the state of the marine environment leading to GES.

For these purposes, comparable reporting information is a prerequisite. Any flexibility that is introduced in the reporting system (e.g. text fields, options) needs to be carefully considered and included only where it adds value and understanding. The reporting system needs to acknowledge that Member States should have flexibility in developing their programmes of measures and that programmes may

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<sup>12</sup> [http://ec.europa.eu/environment/marine/publications/index\\_en.htm](http://ec.europa.eu/environment/marine/publications/index_en.htm)

need to be further improved and refined in the future. However to assess programmes of measures, the information needs to be made available in a consistent, comparable format.

In summary, when setting up the PoMs, it is important that the Member States consult the public and demonstrate to the Commission the extent to which they have set up their MSFD programmes of measures in a way which is "complete, adequate, consistent, coherent and coordinated".

The outline in Annexe III represents the discussion of the WGs and drafting group and should be used as a basis for further work.

## Annex 1: Indicative list of relevant EU legislation that contribute to achieving MSFD GES

The Annex 1 aims to identify per Descriptor where measures under other legislation contribute to the delivery of MSFD objectives.

Descr No	Topic	Indicative list of related EU legislation
D1	Biological diversity	Habitat Directive (directive 92/42/EEC) and Bird Directive (directive 2009/147/EC)
D2	Non-indigenous species	Regulation 708/2007 concerning use of alien and locally absent species in aquaculture Commission proposal for EU legislation to address invasive alien species and protect biodiversity COM/2013/0620 final (1st reading agreement foreseen in 2014)
D3	Commercial fish & shellfish	CFP (Regulation (EU) 1380/2013) and its related legislations (e.g. Regulation 1967/2006, all technical measures, on fishing efforts)
D4	Food-webs	See D1
D5	Eutrophication	Water Framework Directive (directive 2000/60/EC), Urban Waste Water Directive (directive 91/27/EEC), Nitrate Directive , Nitrate Directive (91/676/EEC), National Emission Ceilings Directive (2001/81/EC)
D6	Sea-floor integrity	Water Framework Directive (directive 2000/60/EC), Habitat Directive (directive 92/42/EEC) and Bird Directive (directive 2009/147/EC), SEA directive (2001/42/EC), EIA Directive (85/337/EEC) ? Renewable energy directive (85/337/EEC)
D7	Hydrography	Water Framework Directive (directive 2000/60/EC), SEA directive (2001/42/EC), EIA Directive (85/337/EEC)
D8	Contaminants	Water Framework Directive (directive 2000/60/EC), Directive on Environmental Quality Standards (directive 2008/105/EC) as amended by directive 2013/39/EU, Directive on industrial emissions ( Directive 2010/75/EU), Chemical legislation including Reach Regulation (Regulation 1907/2006) and biocides Regulation (528/2012), Directive on ship-source pollutions (directive 2009/123/EC), sulphur directive 2012/33, Directive on alternative fuel infrastructure (adoption any day now)
D9	Contaminants in seafood	Seafood legislation: Regulation 188/2006, Regulation 2073/2005, Regulation 178/2002, Regulation 852/2004, Regulation 854/2004, Regulation 853/2004
D10	Litter	Waste Framework Directive (directive 2008/9/EC), Directive on Port Reception Facilities (directive 2000/59/EC) , Urban Waste Water Directive (directive 91/27/EEC), Directive on ship-source pollutions (directive 2009/123/EC), Bathing directive (DIRECTIVE 2006/7/EC)
D11	Energy, incl. underwater noise	SEA directive (2001/42/EC), EIA Directive (85/337/EEC)

## **Annex 2: Co-financing opportunities**

The Annex provides guidance on the way to implement Article 22 about Community financing.

Arcadis contract on cost-effectiveness of measures and co-financing opportunities is going to focus in the coming weeks on guidance on the use of relevant funds, in particular the European Maritime and Fisheries Fund (EMFF) and Regional Funds where MS have to prepare in the months to come their Operational Programme.

In addition, the guide will be completed by practical information and contain the conditionality and timelines to better understand how each funding could be requested and used.

### Annex 3: Reporting on programmes of measures under MSFD

Detailed information on reporting requirements is set out below

#### **1) General set of questions (PoM level)**

The following set of question/overview provide an overview to assess that the PoM fulfils the requirements from MSFD (Art 13 mainly + exceptions).

To what extent are these measures coordinated and coherent across the sub-region concerned?	Art 5.2 & 6
How did you give due consideration to sustainable development?  Or  If new measures are envisaged, how are sustainable development considerations and socio-economic impacts be addressed?  Administrative framework: short description/overview  CBA / CEA: How was it addressed?	Art 13.3
Will these measures contribute to the development of coherent networks of MPAs in MS waters?	Art 13.4
Did you address any Competent Authority or international organisation? If so, list the CAs and organisations	Art 13.5
Description of implementation process (together with administrative framework art 13.3 and 13.10) eg describe the policy tools or plans containing measures including new measures for protecting marine env (eg WFD PoM, National Waste prevention plans, ..)  Indicative list to be included in table 2  Did you modify the Environmental Targets after Art 12? If 'yes' which targets were modified?  Did you set any operational targets that relate to concrete implementation measures to support their achievement (Annex IV (2))?	Art 13.7
Do you make use of any exception and if so, for what reasons?	Art 14

Ref to MSCG discussion Feb and May 2014	
Have the impacts on the waters of other countries in the Sub-region have been considered in the establishment of the programmes of measures? If so, describe how.	Art 13.8
Have you identified any of measures where co-financing would be necessary? If 'yes', please provide details of the measures.	Art 22

## ***2) Set of specific questions for each measure***

Main questions to be addressed by completing the 2 following tables:

Art 13.7 second part: "how will each of the measures contribute to the achievement of the Environmental Targets?"

**Table 1:** Description of the measure and reference to relevant legislation (where applicable)

		Contribution by existing measures	Contribution by new measures
Environmental targets	Description of the measure	Cat 1.a & b	Cat 2.a & b
1			
2...			

To complete the table as a measure may cover several targets, it should be sufficient to describe the measure once (against the first target it relates to) and simply include a reference to it for subsequent relevant targets.

The description of the measure should be relatively high level with a link to where more detailed information can be found.

**Table 2:** If reported elsewhere no need to fulfil the columns 4 to 7;

Descriptor	List of new measures	Report under....	Relation to specific pressure	Implementation (including timeline)	Level of coordination (bilateral, regional)	EU Cofinancing
		Possible link to (see general				

		set of question)				
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Guidance from DIKE needs to be agreed by WG ESA and MSCG and included on the level of detail required under each of these columns to ensure consistency and comparability in reporting.

In addition, a third table may be added to report on supplementary measures, such as research activities, which may be organised by descriptor if relevant.

### ***3) Further guidance for WG DIKE for drafting the Art 13 reporting sheet***

Possible modification of environmental targets by MS has to be taken into account.

The structure in identification and derivation of necessary measures has also to be reflected in electronic reporting. Thus the respective reporting sheets will be structured in a way that the new measures are listed and relevant existing measures are summarised and aligned to the environmental targets. Additionally, it might be useful to interlink the structure of electronic reporting for articles 10 and 13 by developing fact sheets for each new measure that among other things specify its derivation and contribution to environmental targets.

Further information on CEA/CBA is not needed.

MS may choose to report by factsheets (decentralised reporting) provided that they include all information contained in table 2. A minimum of active reporting should have to be submitted along the structure of table 1.