



Marine Strategy Framework Directive (MSFD)

Common Implementation Strategy

Marine Directors

Meeting of 15 June 2017, Malta

Agenda Item:	3
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Title:	Further implementation the Marine Strategy Framework Directive – what should it look like?
Prepared by:	DG Environment
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Background:	This paper looks retrospectively at the implementation of the first cycle of implementation of the Marine Strategy Framework Directive and reflects on its achievements and short comings. Building on this, it looks at how the implementation of the Directive could develop in the coming years. It furthermore poses some questions to Marine Directors. Given the time allocated for discussion in the agenda, interventions by Marine Directors should be limited to around 3 minutes; in this sense, not all questions need to be answered in each intervention.

Marine Directors are invited to:

- Take note and discuss.

Further implementation the Marine Strategy Framework Directive – what should it look like?

Introduction

The Marine Strategy Framework Directive (MSFD) is now at the end of its first cycle of implementation. Member States have assessed the state of their marine environment, defined their good environmental status (GES), set their environmental targets and set up their monitoring programmes. Most, but not yet all, have also put in place or published their programmes of measures.

In taking these steps, we recognise that Member States have moved significantly forward since the adoption of the Directive in 2008. To start with, we now know more about the EU Member States' marine waters than we used to. Marine strategies have been set into motion, which despite shortcomings; provide a path to improving the state of the marine environment and achieving GES. There has been a collective effort in addressing issues related to the implementation of the Directive. We have instances of joint monitoring programmes, increased regional cooperation among Member States such as in drawing up regional reports in each region, greater synergies with related policies (e.g. Common Fisheries Policy, Water Framework Directive) and the development and implementation of measures that should make a difference to the marine environment. Discussions on a shared understanding of the Directive, mostly channelled through the Common Implementation Strategy that brings Member States, the Commission and stakeholders together, have also contributed to what has been achieved so far. Our latest achievement was the adoption of a revised Commission Decision on Good Environmental Status aimed at addressing some of the shortcomings identified earlier on in the implementation of the Directive.

By and large, however, we have not progressed as far as is necessary to fulfil the overall objective of the Directive within its 2020 target date. The Commission's two assessments of Member States' reports (2014¹ and 2017²) clearly expressed that the first steps of the Directive were not implemented optimally – lack of ambition, need for more consistency and regional coherence, timelines that went beyond the deadline to achieve GES by 2020, just to name a few. Follow-up actions were required, both on the part of Member States but also from the Commission. Admittedly Member States face real challenges in their implementation of Directive and the development of their marine strategies due, for example, to the ambitious timelines set in the Directive, the frequency of reporting, resources needed for implementation, and the large volume of information and data to be handled.

This paper highlights some of the main issues that were observed in the first implementation cycle and is intended to stimulate a discussion on possible ways to take the protection of Europe's marine environment to the next level.

¹ Report from the Commission to the Council and the European Parliament "The first phase of implementation of the Marine Strategy Framework Directive", COM(2014) 97 final

² Report from the Commission to the Council and the European Parliament assessing Member States' monitoring programmes under the Marine Strategy Framework Directive, COM/2017/03 final

What to achieve and how to achieve it

Our high level goal is to ensure that we have an operational framework in place that protects and improves the state of the marine environment. This corresponds to the Directive's main objective, which *establishes a framework within which Member States shall take the necessary measures to achieve or maintain good environmental status in the marine environment by the year 2020 at the latest*. This puts the focus on two main themes: achieving GES, especially by identifying the key problems facing the marine environment, and the measures with which to achieve it.

The quantification of the scale of the problem therefore comes first. That allows appropriate threshold values to be set – some of which are already in place through (some) regional processes. Finally, that leads to the identification of the measures needed.

1. The Decision on Good Environmental Status

A lot of effort has been put into making the requirements of the Directive operational throughout the first cycle. The first GES Decision³ specified the criteria and methodological standards needed for the determination of GES, but it also had its shortcomings. Directly after the first Commission's 2014 assessment, it was clear that the Decision needed to be revised, strengthened and improved, and provide for:

- A clearer determination of GES;
- A better assessment of the state of the marine environment;
- Consistent methodologies for monitoring and assessment;
- Effective and coherent regional cooperation;
- Stronger integration with other policies.

The recently adopted revised GES Decision⁴ addresses these issues. The criteria and the elements to be assessed are better defined and where possible they link to ones already in existence within other frameworks. They provide for a certain degree of flexibility that caters for region- or subregion-specific situations, or to be considered based on risk. It provides for a coherent and measurable way of determining the extent to which GES has been achieved, while also including standardised methods for monitoring and assessment. Where these are not defined, it sets the framework within which these need to be developed. It does not fill in all the details, so further work needs to be carried out, but it has set the goal and direction through which they have to be achieved.

Requirements under existing EU legislation⁵ are given more prominence. Where particular aspects are not yet covered by existing legislation, Member States have to cooperate through an EU, regional, or sub-regional process, also taking into account specific situations. For example they can decide, depending on the region, which species to assess. The regional context is therefore explicitly weaved into the Decision's rationale. The specifications and standardised methods for assessment

³ Commission Decision (EU) 2010/477 of 1 September 2010 on criteria and methodological standards on good environmental status of marine waters; *repealed*

⁴ Commission Decision (EU) 2017/848 of 17 May 2017 laying down criteria and methodological standards on good environmental status of marine waters and specifications and standardised methods for monitoring and assessment, and repealing Decision 2010/477/EU

⁵ Notably the Water Framework Directive; Birds and Habitats Directives; Common Fisheries Policy; Food Safety legislation

outlined in the revised GES Decision are also expected to lead to more consistent outcomes across member States, thereby leading to an improved understanding of the state of the marine environment.

It also provides the flexibility to Member States to focus efforts where the main problems are. They can, for example, de-select criteria that are not relevant; or apply a risk-based approach. This allows for more focused monitoring, which through the revised GES Decision is bound to become more consistent. The regional and subregional contexts play a role over here too as often the larger problems are of a trans-boundary nature.

2. Focus on big issues (pressures)

This brings us to the need to focus on those top issues that are preventing the achievement of GES in our marine waters. By tackling the pressures of greatest concern, we should provide the most effective opportunity to restore the health of our marine ecosystems, and increase its resilience to the wider challenges of climate-induced change.

But what are these main issues? Given a world of unlimited resources, all pressures on the marine environment would be tackled at the same time. But this is not a reality that most Member State authorities can face when implementing the Directive. This is compounded by a number of processes taking place in one or more Regional Sea Conventions, and also at the EU level – it seems there are never enough expert groups to address all the issues at hand. Member States' assessments of the state of their marine waters should point a finger at those pressures that need urgent attention. These pressures may not be the same across the Union, but generally pressures are consistent within the same subregion or region.

One way of doing this is to more systematically quantify the main pressures within each area in order to get a much clearer handle on the scale of the problems and how these differ across the regions and subregions. For example in estimating the spatial extent of a given pressures in each subregion. The 2018 reports by Member States should give us a reinforced indication of what are the main pressures on the marine environment to ensure we focus ongoing efforts to address them. While regional nuances are to be expected, it is likely that across the EU:

- Fisheries remains one of the most significant pressures on the marine environment, both in terms of depletion of stocks as well as in damage to the sea floor and incidental by-catch;
- The extent of eutrophication is significant in some areas and stifles the development of healthy ecosystems;
- Marine litter is an ever growing concern that is also capturing the public eye;
- Underwater noise is on the rise, impacting marine species that are sensitive to sound, and requires a better understanding.

This is likely to be clearer when looking at the regional reports produced by the Regional Sea Conventions as they are more likely to capture those issues of a transboundary nature.

Given the identification of these main issues, the next logical step would be to develop possible key outputs for the 2018 reports⁶, such as:

⁶ The 2018 reporting guidance will address all requirements for updating of Articles 8, 9 and 10. However, given the transitional phase between applying the 2010 and 2017 GES Decisions, the ability of Member States to fully report on the extent to which GES has been achieved is expected to vary considerably by topic (descriptor) and

- Number of commercial species not yet in good status or not assessed (D3)
- Spatial extent of eutrophication (D5)
- Spatial extent of seafloor disturbance/impact (D6)
- Amount of litter on the beach (D10)
- Distribution of acute noise events and continuous noise (D11)

3. Define the scale of pressure reductions needed

The improved criteria and methodological standards, including the development of threshold values will bring about a clearer determination of GES. In relation to the main pressures noted above, the new Decision can be used to identify how far we still need to go to achieve GES.

The Marine Strategy Coordination Group (MSCG) decided at its last meeting⁷ that at the next *Working group GES* meeting due in September, both Member States and the Commission will revisit the follow-up work plan for the revised GES Decision. While the Commission will outline how it intends to work on those criteria elements and methodological standards where EU-level work is required, Member States will be expected to map out how the work to be performed at regional or subregional level is going to be carried out.

The development of further threshold values and methodological standards will take time, but could benefit from some prioritisation. Those needed in relation to the key pressures identified above could provide a focus for the most urgent work to tackle, as clear GES definitions for the pressure-related descriptors will support the efforts needed on measures.

4. Putting in place effective measures

And this is where the importance of measures comes into play.

The pressures identified above, given their significance, may be better tackled at an EU and/or regional level than by Member States alone. For example the Common Fisheries Policy should in principle address the depletion of fish stocks, but could also contribute to the mitigating seabed damage. EU instruments, such as the Water Framework, Urban Waste Water Treatment and Nitrates Directive already in part address eutrophication in coastal waters. Here another EU instrument – the Common Agricultural Policy – could for instance play a stronger role in facilitating measures to tackle nutrient enrichment. Same goes for marine litter, where in addition to work that needs to be carried out in the context of the MSFD also sees initiatives that can translate themselves into measures through the Circular economy package, the forthcoming plastics strategy, waste legislation, eco-design and even legislation on port reception facilities. Addressing underwater noise is still in its infancy compared to the rest, but it is important that the work that is envisaged through the GES Decision is carried out to broaden our understanding of the impacts and therefore draft measures that mitigate the impact of noise-generating human activity.

In its ongoing assessment of the programmes of measures submitted by Member States, the Commission is finding that these vary considerably among Member States in terms of ambition and

by region. An agreed prioritisation of reporting could help Member States produce the most important outputs that would support the next stages of implementation.

⁷ 20th meeting of MSCG, 28 April 2017

approach. Most, however, have one thing in common – Member States have found it difficult to express how effective will be the different measures they have or will put in place. This is partly because it is difficult to predict the full practical implication of any one measure on the marine environment, let alone the cumulative benefits of a whole set of them. Another factor contributing to this consideration is the lack of information accompanying the measure, beyond what is essentially a "list" of measures. The gap between existing Member States' measures for a particular pressure and what still needs to be done is therefore unlikely to be filled. Our preliminary assessments of the programmes of measures received to date indicate that it is not possible to assess how much the measures will deliver (in pressure reductions) as the measures are primarily descriptive.

This begs two questions: (i) *Are the measures adequate for doing the job?* And (ii) *How are Member States going to explain whether GES has been achieved?*

The Commission is developing the Blue² tool to help Member States quantify whether measures are doing the job they are supposed to do. This is aimed at bridging this gap between the measures and their effectiveness. It needs to be said however that for the moment this tool is intended to cover some descriptors, and likely to produce partial answers. The preliminary analysis of the programmes of measures is somewhat concerning given this first question cannot be answered adequately. Armed with this knowledge, MSCG can then hold strategic discussions on whether what is being done is enough, notably when it can be projected that the measures are likely not to deliver as adequately to meet the GES objective. It could point at those avenues where research is more necessary, thereby linking them to the priorities identified at both EU or regional levels. And it could provide those strategic discussions that can yield operational outcomes for further bridging the links between existing policies.

The second question is not totally unrelated to the first. If the measures cannot be proven to be adequate for the job they are supposed to do, then it is likely to be difficult for Member to justify that their measures have had a discernible effect on the state of the environment. The problem is compounded by the fact that the next update on the assessment of current environmental status (Article 8) is only due in 2024; the forthcoming update of Article 8 in 2018 is expected to be based largely on data from 2014-2016 (before any MSFD measures from the first 6-year cycle are implemented). This means that data from the Article 8 assessment for the review in 2023 will not be recent enough to draw meaningful conclusions on distance to GES in 2020. On the implementation side, we should be able to observe some improvements in implementation benefiting from a flattening learning curve, as Member States should be implementing the second cycle in full swing, including those elements that would have been introduced by the new GES Decision wherever possible.

How do we go about tackling them together?

While the Common Implementation Strategy provides a shared understanding of the Directive's obligations, the responsibility of implementing the Directive itself rests with Member States.

The Marine Directors' meeting in Riga affirmed that the Common Implementation Strategy has yielded useful results and advised that it is a good mechanism with which to take forward the implementation of the Directive. This however was also put in the context of decreasing national

resources, both financial and human, with which the work needs to be carried out. There was a call for rationalisation of work so that resources could handle the work at hand.

The Common Implementation Strategy structure has been renewed through the work programme for 2016-2019. It should be noted that this strategy hinges itself onto the Marine Strategy Coordination Group, which is a Commission expert group⁸. This group is a collaborative effort intended to make implementation easier for Member States in view of their responsibilities. The Commission sees its role as that of a facilitator and providing steer towards achieving the EU objective. Moreover all subgroups of MSCG, that is all working groups and technical groups, follow the same rules and processes where the Commission and the Chairs should work together, in a spirit of transparency and loyal cooperation. In this sense, the Chairs of the working groups and technical groups have been appointed as representatives of Member States, who are ultimately represented by their MSCG representatives. Coordination within a given Member State across the different groups is therefore essential to increase the efficiency of the system, so that delays are avoided and space is made for example for holding strategic discussions as identified earlier. Work carried out within the MSCG subgroups should also be consistent with work carried out at regional level, for example in the setting of threshold values or for reporting, in a bid to avoid duplication and provide the opportunity to genuinely identify regional differences and share best practice across the regions.

From the considerations above, Marine Directors are asked to address the following questions to help shape the implementation process in the coming years:

- 1. Do you agree on the main pressures identified that are preventing the achievement of GES?
Should the 2018 reporting exercise focus on their assessment as a priority?*
- 2. Do these pressures also provide a means to focus efforts in implementing the new GES
Decision (through defining the necessary threshold values and methodological standards)?*
- 3. How do you intend to establish the extent to which GES has been achieved in 2020?*
- 4. What should be done to better quantify the reductions in key pressures expected from the
reported programmes of measures?*
- 5. How can we work more effectively at EU and regional level to address these main pressures
(if there are shortcomings in the established programmes of measures)?*
- 6. How can Member States be more empowered to develop and deliver the Common
Implementation Strategy?*

⁸ As understood by Commission Decision C(2016) 3301 on establishing horizontal rules on the creation and operation of Commission expert groups.

Annex: Working and technical group chairs

WG GES	Commission, DE, IT
WG POMESA	Commission, SE, FI
WG DIKE	Commission, EEA
TG LITTER	FR, Commission (JRC), DE
TG NOISE	NL, UK
TG DATA	EEA, FR