

Draft

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a framework for maritime spatial planning

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 43(2), 100(2), 192(1), and 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The high and rapidly increasing demand for maritime space for different purposes, such as renewable energy installations, oil and gas exploration and exploitation, maritime shipping and fishing activities, ecosystem and biodiversity conservation, the extraction of raw materials, tourism, aquaculture installations and underwater cultural heritage, as well as the multiple pressures on coastal resources, require an integrated planning and management approach.

¹ OJ C..., p. .

² OJ C..., p. .

- (2) Such an approach to ocean management and maritime governance has been developed in the Integrated Maritime Policy³ for the European Union, including, as its environmental pillar, Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for Community action in the field of marine environmental policy⁴. The objective of the Integrated Maritime Policy is to support the sustainable development of seas and oceans and to develop coordinated, coherent and transparent decision-making in relation to the Union's sectorial policies affecting the oceans, seas, islands, coastal and outermost regions and maritime sectors, including through sea-basin strategies or macro-regional strategies, whilst achieving good environmental status as set out in Directive 2008/56/EC.
- (3) The Integrated Maritime Policy identifies maritime spatial planning as cross-cutting policy tools for public authorities and stakeholders to apply a coordinated, integrated and trans-boundary approach. The application of an ecosystem-based approach will contribute to promoting the sustainable development and growth of the maritime and coastal economies and the sustainable use of marine and coastal resources.
- (4) Maritime spatial planning supports and facilitates the implementation of the Europe 2020 Strategy for smart, sustainable and inclusive growth⁵, endorsed by the European Council in June 2010⁶, which aims to deliver high levels of employment, productivity and social cohesion, including promotion of a more competitive, resource efficient and greener economy. The coastal and maritime sectors have a significant potential for sustainable growth and are key to the implementation of the Strategy.

³ COM(2007) 575 final.

⁴ OJ L 164, 25.6.2008.

⁵ COM(2010) 2020 final.

⁶ Council Conclusions on 17 June 2010.

- (5) In its Communication on Blue Growth⁷, Opportunities for Marine and Maritime Sustainable Growth, the Commission has identified a number of ongoing EU initiatives which are intended to implement the Europe 2020 Strategy for smart, sustainable and inclusive growth. The Communication has also identified a number of activities on which blue growth initiatives could focus in the future and which could be adequately supported by greater confidence and certainty for investors provided through maritime spatial planning.
- (6) Regulation (EU) No 1255/2011, establishing a programme to support the further development of an Integrated Maritime Policy, supported and facilitated the implementation of maritime spatial planning and integrated coastal management. European Structural and Investment Funds, including the European Maritime and Fisheries Fund will provide opportunities to support the implementation of this Directive for 2014-2020⁸.
- (7) The United Nations Convention on the Law of the Sea (UNCLOS) states in its preamble that issues relating to the use of ocean space are closely interrelated and need to be considered as a whole. Planning of ocean space is the logical advancement and structuring of obligations and the use of rights granted under UNCLOS and a practical tool in assisting Member States to comply with their obligations.
- (8) In order to promote the sustainable coexistence of uses and, where applicable, the appropriate apportionment of relevant uses in the maritime space, a framework should be put in place that consists at least in the establishment and implementation by Member States of maritime spatial planning, resulting in plans.

⁷ COM(2012) 494 final.

⁸ Proposal COM(2011) 804 final.

- (9) Maritime spatial planning will contribute to the effective management of marine activities and the sustainable use of marine and coastal resources, by creating a framework for consistent, transparent, sustainable and evidence-based decision-making. In order to achieve its objectives, this directive should lay down obligations to establish a maritime planning process, resulting in maritime spatial plan or plans; such planning process should take into account land-sea interactions and promote cooperation among Member States. Without prejudice to the existing Union acquis in the areas of energy, transport, fisheries and environment, this directive should not impose any other new obligations, notably in relation to the concrete choices of the Member States about how to pursue the sectorial policies in these areas, but should rather aim to contribute to these policies through the planning process.
- (10) In order to ensure consistency and legal clarity, the geographical scope for maritime spatial planning should be defined in conformity with existing legislative instruments of the Union and international maritime law, in particular UNCLOS. The competencies of Member States relating to maritime boundaries and jurisdiction are not altered by this Directive.
- (11) *[deleted]*
- (12) While it is appropriate for the Union to provide a framework for maritime spatial planning, Member States remain responsible and competent for designing and determining, within their marine waters the format and content of such plans including institutional arrangements and, where is the case, any apportionment of maritime space to different activities and uses respectively.
- (13) So as to respect proportionality and subsidiarity, as well as minimise additional administrative burden, transposition and implementation of this Directive should to the greatest extent possible build upon existing national, regional and local rules and mechanisms, including those set out in the European Parliament and Council Recommendation 2002/413/EC or Council Decision 2010/631/EU.

- (14) In marine waters, ecosystems and marine resources are subject to significant pressures. Human activities, but also climate change effects, natural hazards and shoreline dynamics such as erosion and accretion, can have severe impacts on coastal economic development and growth, as well as marine ecosystems, leading to deterioration of environmental status, loss of biodiversity and degradation of ecosystem services. Due regard should be given to these various pressures in the establishment of maritime spatial plans. Moreover, healthy marine ecosystems and their multiple services, if integrated in planning decisions, can deliver substantial benefits in terms of food production, recreation and tourism, climate change mitigation and adaptation, shoreline dynamics control and disaster prevention.
- (15) In order to promote the sustainable growth of maritime economies, the sustainable development of marine areas and the sustainable use of marine resources, maritime spatial planning should apply an ecosystem-based approach as referred to in Article 1(3) of Directive 2008/56/EC so as to aim to ensure that the collective pressure of all activities is kept within levels compatible with the achievement of good environmental status and that the capacity of marine ecosystems to respond to human-induced changes is not compromised, while contributing to enable the sustainable use of marine goods and services by present and future generations. An ecosystem-based approach also should be applied in a way that is adapted to the specific ecosystems and other specificities of the different marine regions and consider the ongoing work in the Regional Sea Conventions building on existing knowledge and experiences. The approach will also allow for an adaptive management which ensures a refinement and further development as experiences, and knowledge increases taking into account the availability of data and information at sea basin level to implement this approach. Member States should take into account the precautionary principle and the principle that preventive action should be taken, as laid down in Article 191(2) of the Treaty on the Functioning of the European Union.

(16) Maritime spatial planning will contribute, inter alia, to achieving the aims of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources⁹, Council Regulation 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy¹⁰, Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds^{10a}, Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora^{10b}, Decision 884/2004/EC of the European Parliament and of the Council amending Decision No 1692/96/EC on Community guidelines for the development of the trans-European transport network¹¹, Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy, the EU Biodiversity Strategy for 2020¹², recalling the Roadmap towards a Resource Efficient Europe¹³, the EU Strategy on Adaptation to Climate Change¹⁴, the Strategic goals and recommendations for the EU's maritime transport policy until 2018, as well as, where appropriate, those of the EU Regional Policy, including the sea-basin and macro-regional strategies.

⁹ OJ L 140, 5.6.2009, pp. 16-62.

¹⁰ OJ L 358, 31.12.2002, p. 59–80.

^{10a} ***OJ L 20, 26.1.2010, p. 7.***

^{10b} ***OJ L 206, 22.7.1992, p. 7.***

¹¹ OJ L 167, 30/04/2004, pp. 1-38.

¹² COM(2011) 244 final.

¹³ COM(2011) 571 final.

¹⁴ COM(2013) XXX.

- (17) Maritime and coastal activities are often closely interrelated. In order to promote the sustainable use of maritime space, maritime spatial planning should take into account land-sea interactions. This is why maritime spatial planning can play a very useful role in determining orientations related to sustainable and integrated management of human activities at sea, preservation of living environment, fragility of coastal ecosystems, erosion and social and economic factors. Maritime spatial planning should aim to integrate the maritime dimension of some coastal uses or activities and their impacts and finally allow an integrated and strategic vision.
- (17a) The framework Directive does not interfere with Member States' competence for town and country planning, including any terrestrial or land spatial planning system used to plan how land and coastal zone should be used. If Member States apply terrestrial planning to coastal waters or parts thereof, the provisions of this Directive should not apply to these waters.
- (18) Maritime spatial planning should cover the full cycle of problem and opportunity identification, information collection, planning, decision-making, implementation, revision or updating, and monitoring of implementation, give due regard to land-sea interactions and best available knowledge. Best use should be made of mechanisms set out in existing or future legislation, including Decision 2010/477/EU on criteria and methodological standards for good environmental status of marine waters or the Commission's Marine Knowledge 2020 initiative¹⁵.
- (19) The main purpose of maritime spatial planning is to promote sustainable development and to identify the utilisation of maritime space for different sea uses as well as to manage spatial uses and conflicts in maritime areas. It also aims at identifying and encouraging multi-purpose use, in accordance with the relevant national policies and legislation. In order to achieve that purpose, Member States need at least to ensure that the planning process or processes result in a comprehensive planning identifying the different uses of maritime space, taking into consideration long term changes due to climate change.

¹⁵ COM(2010) 461 final.

(20) Member States should consult and coordinate their plans with the relevant Member State and cooperate with third country authorities in the marine region concerned in conformity with the rights and obligations of these Member States and third countries under European and international law. Effective cross border cooperation between Member States and with neighbouring third countries requires that the competent authorities in each Member State are identified. Member States therefore need to designate the competent authority or authorities responsible for the implementation of this Directive. Given the differences between various marine regions or sub-regions and coastal zones, it is not appropriate to prescribe in detail in this Directive how these cooperation mechanisms should look.

(21) *[deleted]*

(22) The management of maritime areas is complex and involves different levels of authorities, economic operators and other stakeholders. In order to promote sustainable development in an effective manner, it is essential that stakeholders, authorities and the public are consulted at an appropriate stage in the preparation of maritime spatial plans under this Directive, in accordance with relevant EU legislation. A good example for public consultation provisions can be found in article 2(2) of Directive 2003/35.

(23) Through maritime spatial plans Member States can reduce administrative burden and costs in support of their action to implement other relevant Union legislation. The timelines for maritime spatial plans should therefore, where possible, be coherent with the timetables set out in other relevant legislation, especially: Directive 2009/28/EC, which requires that the share of energy from renewable sources in gross final consumption of energy in 2020 is at least 20% and which identifies coordination of authorisation, certification and planning procedures, including spatial planning as an important contribution to achievement of the EU's renewable energy targets; Directive 2008/56/EC and Annex A(6) to Decision 2010/477/EU, which requires that Member States shall take the necessary measures to achieve or maintain good environmental status in the marine environment by 2020 and which identify maritime spatial planning as a tool to support the ecosystem-based approach to the management of human activities in order to achieve good environmental status;

Decision 884/2004/EC of the European Parliament and of the Council amending Decision No 1692/96/EC on Community guidelines for the development of the trans-European transport network which requires that the trans-European transport network shall be established by 2020 by integrating Europe's land, sea and air transport infrastructure networks.

- (24) Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment has established environmental assessment as an important tool for integrating environmental considerations into the preparation and adoption of plans and programmes. Where maritime spatial plans are likely to have significant effects on the environment they are subject to the provisions of Directive 2001/42/EC. When maritime spatial plans include Natura 2000 sites, such an environmental assessment can be combined with the requirements of Article 6 of Directive 92/43/EC, to avoid duplication.
- (25) In order to aim to ensure that maritime spatial plans are based on reliable data and to avoid additional administrative burden, it is essential that Member States make use of the best available data and information by encouraging the relevant stakeholders to share information and by making use of existing instruments and tools for data collection, such as those developed in the context of the Marine Knowledge 2020 initiative and the INSPIRE Directive.
- (26) Member States should send copies of their maritime spatial plans and any updates to the Commission to monitor the implementation of this Directive. The Commission will use the information reported by the Member States and existing information available through EU legislation, to inform the European Parliament and the Council on progress made in implementing this Directive.

(27) *[deleted]*

(28) Timely transposition of the provisions of this Directive is essential since the EU has adopted a number of policy initiatives that are to be implemented by the year 2020 and which this Directive aims to support and complement.

(28a) A landlocked Member State would be under a disproportionate and unnecessary obligation if it had to transpose and implement the provisions of this directive. Therefore, such Member States should be exempted from the obligation to transpose and implement the provisions of this directive.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I
GENERAL PROVISIONS

Article 1

Subject matter

1. This Directive establishes a framework for maritime spatial planning aiming at promoting the sustainable growth of maritime economies, the sustainable development of marine areas and the sustainable use of marine resources.
2. Within the Integrated Maritime Policy of the Union, this framework provides for the establishment and implementation by Member States of maritime spatial planning, with the aim of contributing to the objectives specified in Article 5, taking into account land-sea interactions and enhanced cross-border cooperation, in accordance with relevant UNCLOS provisions.

Article 2

Scope

1. The provisions of this Directive shall apply to marine waters of Member States without prejudice to other Union legislation. They shall not apply to coastal waters or parts thereof falling under a Member State's town and country planning, provided that this is communicated in the maritime spatial plans.
2. This Directive shall not apply to activities the sole purpose of which is defence or national security.
3. This Directive shall not interfere with Member States' competence to design and determine, within the marine waters, the extent and coverage of their maritime spatial plans. It shall not apply to town and country planning.
- 3.a This Directive shall not affect the sovereign rights and jurisdiction of Member States over marine waters which derive from relevant International Law, particularly the United Nations Convention on the Law of the Sea (UNCLOS (1982)). In particular, the application of this Directive shall not influence the delineation and delimitation of maritime boundaries by the Member States in accordance with the relevant provisions of UNCLOS.

Article 3

Definitions

For the purposes of this Directive, the following definitions apply:

1. *[deleted]*

2. 'Integrated Maritime Policy' means the Union policy with the aim to foster coordinated and coherent decision-making to maximise the sustainable development, economic growth and social cohesion of Member States, in particular with regard to coastal, insular and outermost regions in the Union, as well as maritime sectors, through coherent maritime-related policies and relevant international cooperation.

- 2.a 'Maritime spatial planning' means a process by which the relevant Member State authorities analyze and organize human activities in marine areas to achieve ecological, economic and social objectives.
3. 'Marine region' means the marine region referred to in Article 4 of Directive 2008/56/EC.
4. 'Marine waters' means the waters, the seabed and subsoil as defined in Article 3(1) (a) of Directive 2008/56/EC and coastal waters as defined by Article 2(7) of Directive 2000/60/EC and their seabed and their subsoil.
5. *[deleted]*
6. *[deleted]*
7. *[deleted]*

CHAPTER II

Article 4

Establishment and implementation of maritime spatial planning

1. Each Member State shall establish and implement maritime spatial planning.
 - 1.a In doing so, Member States shall take into account land-sea interactions.
2. The resulting plan or plans shall be developed and produced in accordance with the institutional and governance levels determined by Member States. This Directive shall not interfere with Member States' competence to design and determine the format and content of those plan or plans.
3. Maritime spatial planning shall aim to contribute to the objectives listed in Article 5 and fulfil the requirements referred to in Articles 6 and 8 (new).
4. When establishing maritime spatial planning, Member States shall give due regard to the particularities of the marine regions, relevant existing and future activities and uses and their impacts on the environment, as well as to natural resources, and also taking into account land-sea interactions.

5. Member States may include or build on existing national policy, regulations or mechanisms that have been or are being established before the entry into force of this Directive, provided they are in conformity with the requirements of this Directive.

Article 5

Objectives of maritime spatial planning

1. When establishing and implementing maritime spatial planning, Member States shall consider economic, social and environmental aspects to support sustainable development and growth in the maritime sector, applying an eco-system based approach and promote the co-existence of relevant activities and uses.
2. Through their maritime spatial plans, Member States shall aim to contribute to the sustainable development of energy sectors at sea, of maritime transport, of the fisheries and aquaculture sectors, and the preservation, protection and improvement of the environment including the resilience to climate change impacts. In addition, Member States may pursue other objectives such as the promotion of sustainable tourism and the sustainable extraction of raw materials.
- 3.a The provisions of this Directive are without prejudice to the competence of Member States' to determine how the different objectives are reflected and weighted in their maritime spatial plan or plans.

(a) [deleted]

(b) [deleted]

(c) [deleted]

(d) [deleted]

(e) [deleted]

Article 6

Minimum requirements for maritime spatial planning

1. Member States shall establish procedural steps to contribute to the objectives listed in Article 5, taking into account relevant activities and uses in marine waters.
2. In doing so, Member States shall:
 - (a) take into account land-sea interactions;
 - (b) take into account environmental, economic and social aspects, as well as safety aspects;
 - (c) aim to promote coherence between maritime spatial planning and the resulting plan or plans and other processes such as integrated coastal management or equivalent formal or informal practices;
 - (d) ensure the involvement of stakeholders in accordance with Article 9;
 - (e) organise the use of the best available data in accordance with Article 10.
 - (f) ensure trans-boundary cooperation between Member States in accordance with Article 12.
 - (g) promote cooperation with third countries in accordance with Article 13.
3. Maritime spatial plans shall be reviewed by Member States as decided by them and at least every 10 years.

Article 7

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Article 7 (new)

Land-sea interactions

1. In order to take into account land-sea interactions, in accordance with Article 4 (1 a), should this not be part of the maritime spatial planning process as such, Member States may use other formal or informal processes, such as integrated coastal management. The outcome shall be reflected by Member States in their maritime spatial plans.
2. Without prejudice to Article 2 (3), through maritime spatial planning Member States shall aim to promote coherence of the resulting maritime spatial plan or plans with other relevant processes.

Article 8

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Article 8 (new)

Set-up of maritime spatial plans

1. When establishing and implementing maritime spatial planning, Member States shall set up maritime spatial plans which identify the spatial and temporal-distribution of relevant existing and future activities, uses in the marine waters in order to contribute to the objectives set out in Article 5.
2. In doing so and in accordance with Article 2(3), Member States shall take into consideration relevant interactions of activities and uses. Without prejudice to Member States' competences, possible activities and uses and interests may include:
 - aquaculture areas;
 - fishing areas;
 - installations and infrastructures for the exploration, exploitation and extraction of oil, gas, mineral and aggregates, and other energy resources and the production of renewable energy;
 - maritime transport routes and traffic flows;
 - military training areas;
 - nature and species conservation sites and protected areas;
 - raw material extraction areas;
 - scientific research;
 - submarine cable and pipeline routes;
 - tourism;
 - underwater cultural heritage.

Article 9

Public participation

Member States shall establish means of public participation by informing all interested parties and by consulting the relevant stakeholders and authorities and the public concerned at an early stage in the development of maritime spatial plans, in accordance with relevant provisions established in Union legislation.

Member States shall also ensure that the relevant stakeholders and authorities, and the public concerned, have access to the plans once they are finalised.

1. *[deleted]*

2. *[deleted]*

3. *[deleted]*

Article 10

Data use and sharing

1. Member States shall organise the use of the best available data, and decide how to organise the sharing of information, necessary for maritime spatial plans.
2. The data referred to in paragraph 1 may include, inter alia:
 - (a) Environmental, social and economic data collected according to the provisions of Union legislation pertaining to the activities referred to in Article 8 (new);
 - (b) Marine physical data in marine waters.
3. When implementing paragraph (1), Member States shall make use of relevant instruments and tools, including those already available under the EU's Integrated Maritime Policy, and other relevant EU policies, such as mentioned in Directive 2007/2/EC.

Article 11

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Article 12

Cooperation among Member States

1. As part of the planning and management process, Member States bordering marine waters shall cooperate with the aim to ensure that maritime spatial plans are coherent and coordinated across the marine region concerned. Such cooperation shall in particular take into account issues of a transnational nature.

2. The cooperation referred to in paragraph 1 shall be pursued through:
 - (a) existing regional institutional cooperation structures such as Regional Seas Conventions and/or;
 - (b) networks or structures of Member States' competent authorities and/or
 - (b)a any other method that meets the requirements of paragraph 1, for example in the context of sea-basin strategies.

Article 13

Cooperation with third countries

Member States shall endeavour, where possible, to cooperate with third countries on their actions with regard to maritime spatial planning in the relevant marine regions and in accordance with international law and conventions, such as by using existing international fora or regional institutional cooperation.

CHAPTER III

IMPLEMENTATION

Article 14

Competent authorities

1. Each Member State shall designate the authority or authorities competent for the implementation of this Directive.
2. Each Member State shall provide the Commission with a list of the competent authorities, together with the items of information listed in Annex I to this Directive.
3. *[deleted]*
4. Each Member State shall inform the Commission of any change to the information provided pursuant to paragraph 1 within six months of such a change coming into effect.

Article 15

Monitoring and reporting

1. Member States shall send copies of the maritime spatial plans, including relevant existing explanatory material on the implementation of this Directive, and all subsequent updates to the Commission and to any other Member States concerned within 3 months of their publication.
2. *[deleted]*
3. The Commission shall submit a progress report to the European Parliament and Council at the latest one year after the deadline for the establishment of the maritime spatial plans, and every 4 years thereafter, outlining the progress made in implementing this Directive.

Article 16

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Article 17

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CHAPTER IV

FINAL PROVISIONS

Article 18

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within 24 months after its entry into force at the latest. They shall forthwith communicate to the Commission the text of those provisions.
2. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Each Member State shall determine how such reference is to be made.

3. The authority or authorities referred to in Article 14(1) shall be designated within 24 months following the entry into force of this Directive.
4. The maritime spatial plans referred to in Article 4 shall be established as soon as possible, and at the latest by April 2021.
5. *[deleted]*
6. *[deleted]*
- 6.a The obligation to transpose and implement the provisions of this Directive shall not apply to landlocked Member States.

Article 19

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 20

Addresses

This Directive is addressed to the Member States.

Done at Brussels,

ANNEX I

Competent authorities

- (1) Name and address of the competent authority or authorities — the official name and address of the competent authority or authorities identified.
- (2) Legal status of the competent authority or authorities — a brief description of the legal status of the competent authority or authorities.
- (3) Responsibilities — a brief description of the legal and administrative responsibilities of the competent authority or authorities, and of its/their role in relation to the marine waters concerned.
- (4) Membership — when the competent authority or authorities act(s) as a coordinating body for other competent authorities, a list of the latter is required together with a summary of the institutional relationships established in order to ensure coordination.
- (5) Regional coordination — a summary is required of the mechanisms established in order to ensure coordination between Member States where their waters are covered by this Directive and fall within the same marine region or sub-region.

