



Guidelines needed for cross-border marine planning

Only three EU Member States – the UK, Germany and the Netherlands - have explicit legislation for monitoring the economic, social and environmental impacts of marine activities. This legislation embraces Maritime Spatial Planning (MSP), a promising tool to improve decision-making on the planning of human activities at sea.

'Maritime Spatial Planning' (MSP) is particularly effective in 'crowded' areas where various sectors, such as commercial fishing, offshore wind energy and shipping, are competing for marine space. MSP promotes an efficient use of space in a sustainable way. A new study, exploring different national approaches to MSP, concludes that the UK approach may be the best prepared for cross-sectoral use of the tool from a legal point of view, but still has to prove itself in practice. The concept of MSP recognises that any activity taking place in marine waters should be carried out in a way that is economically, socially and environmentally sustainable, particularly where there are competing objectives. MSP might also be beneficial for investors who consider long-term stability and legal certainty as important factors.

The new study assesses how major pieces of EU biodiversity legislation, such as the Birds and Habitat Directives¹, as well as global treaties, such as the United Nations Convention on the Law of the Sea (UNCLOS²), include elements that involve allocating maritime space, such as the requirement for designated shipping lanes and Marine Protected Areas (MPAs) to preserve rare or fragile ecosystems.

Although existing international and EU law and regulations provide an opportunity for states to undertake MSP, they do not contain legally binding requirements with regard to the tool. Since MSP is the responsibility of the EU Member States, the individual states decide if and how to engage in MSP.

In the past couple of years, the UK, Germany and the Netherlands have established legally-binding systems of MSP. In all three states, desired investments in offshore wind energy have been a major driving force for establishing national legal frameworks to secure MSP. However, their chosen approaches differ substantially. Whereas Germany and the Netherlands extended their existing territorial spatial planning law to the marine areas under their jurisdiction, the UK developed planning law specifically dedicated to MSP.

The study concludes that, from a legal standpoint, the UK has the most comprehensive framework for legally-binding, cross-purpose (i.e. balancing different spatial claims) MSP measures, as recommended in the European Commission's *Roadmap for Maritime Spatial Planning: Achieving Common Principles in the EU* (2008)³. This is largely because its new legal framework for MSP has been fine-tuned to the specific characteristics related to planning for marine areas. Another principle highlighted in the Commission's Roadmap concerns cross-border cooperation and consultation on MSP.

Despite providing a legal basis for MSP measures, the new spatial planning acts in the UK, Germany and the Netherlands do not have explicit guidelines for cooperation on spatial plans and programmes with neighbouring states that share the same marine region, apart from the consultation procedures under the strategic environmental assessment (SEA) requirements. A draft proposal by the OSPAR convention⁴, which currently guides international cooperation in the northeast Atlantic, could stimulate developing cross-boundary best practices in MSP with a view to resolving any potentially controversial issues at an early stage of decision-making.

1. See: http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm
2. See: www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm
3. See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:DKEY=483715:EN:NOT>
4. See: www.ospar.org

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