Opinion of the Committee of the Regions on Proposed directive for maritime spatial planning and integrated coastal management

(2013/C 356/18)

THE COMMITTEE OF THE REGIONS

- highlights that the proposed Directive is made in the context of a number of Member States already having MSP and ICM policies, to which local and regional authorities are key players; furthermore, would wish the proposal not to affect the competences that exist with and within Member States in the field of spatial planning;
- considers that the question of whether the EU should legislate remains open and that the question of how it should legislate also needs to be addressed; suggests in this regard, that the proposal as currently worded breaches the proportionality principle;
- suggests that the proposed Directive provides insufficient flexibility for implementation as: (a) it cuts across well-established informal processes for ICM, in some of the Member States; and (b) the proposals on ICM, in particular, impinge directly on existing competences for spatial planning policy and practice held at regional and/or local level;
- underlines that a framework Directive must not establish the content of maritime spatial plans;
- believes that a framework Directive should set common principles and facilitate cross-border cooperation and cooperation between national authorities which have competence for their shorelines and leave the definition of 'coastal zones' to Member State authorities;
- highlights that the proposed Directive, as currently worded, will have negative consequences for local/regional planning policy and procedures, as the proposal will subject spatial plans with a coastal dimension to minimum sector-specific content requirements, which considerably undermine the autonomy of planning authorities to balance the needs of all appropriate uses.

5.12.2013

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Rapporteur	Mr Paul O'DONOGHUE, Member of Kerry County Council and South West Regional Authority (IE/ALDE)
Reference document	Proposal for a Directive of the European Parliament and of the Council estab- lishing a framework for maritime spatial planning and integrated coastal management
	COM(2013) 133 final

I. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS

General comments

1. supports the general aims of the proposed Directive to: achieve a more effective management of marine activities and efficient use of marine resources; develop consistent and evidence-based decision-making and enhanced cooperation of coastal and marine management; facilitate the coherent implementation of key EU policy objectives (¹) and contribute to sustainable growth and the development of the 'blue economy';

2. welcomes efforts to achieve better coordination between land-based and sea-based activities; endorses coherent European policy based on international best practice and sympathetic to established national practices; and supports the development of common principles for Marine Spatial Planning (MSP) and Integrated Coastal Management (ICM);

3. highlights that the proposed Directive is made in the context of a number of Member States already having MSP and ICM policies, or developing such policies, to which local and regional authorities are key players; furthermore, would wish the proposal not to affect the competences that exist with and within Member States in the field of spatial planning;

4. given that 'maritime spatial planning' requires regular consultations between the Member States, the EU's role in this area should be limited to establishing a procedural framework or procedural standards;

5. regrets the lack of targeted consultation on the Impact Assessment with local and regional authorities, as planning authorities and key implementers of the proposed Directive;

Legal base

6. recognises that the proposed Directive follows on from the establishment of the Integrated Maritime Policy in 2007 and the adoption of a 'Blue Growth' agenda in 2012, but nevertheless understands a number of the concerns that have been expressed on the multiple legal base of the proposed Directive;

7. in this regard notes the opinion of the Council Legal Service (²) regarding the multiple legal basis used for the proposed Directive; considers that greater clarity will be required when the European Commission makes future proposals using multiple legal bases or using Article 3 (TEUterritorial cohesion) that may have direct and/or indirect implications for spatial planning policy and practice in the Member States;

Subsidiarity and proportionality principles

8. highlights that the subsidiarity check by national (and regional) parliaments produced nine negative reasoned opinions (³); agrees that elements of the proposed Directive fail to adequately meet necessity and added-value requirements for legislation at EU level;

9. appreciates that there are concerns regarding: (a) competence — lack of clear competence at EU level, while MSP and ICM are already national, regional and/or local competences in some Member States; (b) failure of the proposed Directive to adequately take account of regional/local specificities of coastal areas and existing planning and management practices; and (c) the appropriateness of using EU legislation to address specific cross-border issues and the adequacy of the EU level to frame cooperation with third countries, where international maritime conventions already operate;

10. considers that the question of whether the EU should legislate remains open and that the question of how it should legislate also needs to be addressed; suggests in this regard, that the proposal as currently worded breaches the proportionality principle;

11. considers that the proposed Directive is too prescriptive; disagrees with the listing of minimum requirements in Articles 6-8 as these limit the scope for regional or local priority setting and are in contrast to the stated objectives of the Directive being procedural only and not intervening in planning detail;

^{(&}lt;sup>1</sup>) In particular the Marine Strategy Framework Directive, the Birds and Habitats Directives and the reformed Common Fisheries Policy.

⁽²⁾ Opinion of the Council Legal Service issued on 12 July 2013 (12283/13).

^{(&}lt;sup>3</sup>) Negative reasoned opinions were issued by BE, DE, FI, IE, LT, NL, PL, SV, with two positive opinions by PT and RO.

12. suggests that the proposed Directive provides insufficient flexibility for implementation as: (a) it cuts across well-established informal processes for ICM, in some of the Member States; and (b) the proposals on ICM, in particular, impinge directly on existing competences for spatial planning policy and practice held at regional and/or local level;

13. questions, furthermore, the prescriptive approach to other aspects of the proposal, such as the setting of timeframes for the review of plans and strategies (Article 6) and the requirements on reporting (Article 15); considers that the associated increase in bureaucracy, administrative burden and additional costs in implementing the Directive, particularly at local level, further undermine its added-value;

14. has reservations on the proposed use of further Implementing Acts on operational steps for the establishment of plans and strategies (Article 16); feels these go beyond what is required to help implement the obligations of the Directive and seem to suggest that the European Commission considers the Directive, as currently proposed, in need of further strengthening; suggests that the proposed use of Implementing Acts should be reconsidered so that these focus on procedural aspects only;

Maritime Spatial Planning (MSP)

15. fully supports the development of MSP as a multi-sector tool to facilitate the implementation of the ecosystem approach, to support the rational use of maritime resources, to reconcile concurrent human activities and minimise impact on the marine environment, as well as ensuring climate-resilient coastal and marine areas; further supports a plan-led approach that provides clear rules to help foster long-term investment and thus increase the contribution made by maritime activities to achieving the objectives of the Europe 2020 strategy;

16. underlines that MSP must be developed as a neutral planning tool which incorporates a certain level of flexibility to accommodate appropriate policy processes for diverse marine environments; further calls for clarity on the scope of the ecosystem-based approach of the draft Directive as there will need to be a balance between economic development and environmental protection; rejects therefore the setting of 'top-down' priorities and minimum requirements for management plans and using MSP as an instrument to ensure implementation of sector specific policy objectives;

17. considers that the proposed Directive, as currently worded, is too detailed and insufficiently flexible to fully take account of: existing MSP practices; the need to maintain the setting of management priorities at the national or subnational level; and the regional specificity of the marine resource;

18. supports, however, the adoption of a framework Directive for establishing MSP in the European Union, which, taking account of existing practices in some Member States, should: establish the obligation for maritime spatial plans; set common principles; establish minimum requirements for crossborder cooperation and the coordination of maritime plans; and set principles for reconciliation of competing uses in the maritime space and competing objectives of different Marine Spatial Plans;

19. underlines that a framework Directive must not establish the content of maritime spatial plans;

20. highlights that, in supporting MSP, the development of the 'blue economy' requires integrated management of which MSP is part of the solution, but not <u>the</u> solution, and that maritime governance needs to be improved;

21. is therefore surprised that, given its prescriptive nature, the draft Directive is silent on the governance principles required; thus considers that maritime policy and MSP in particular requires a multi-level, cross-sectoral governance approach; acknowledges that whilst Member States have responsibility for administering territorial waters and the EEZs, regional and local authorities by virtue of their spatial planning and management competences can ensure coherence and coordination between maritime and terrestrial spatial planning approaches;

Integrated Coastal Management (ICM)

22. underlines that it has been a long-term advocate and supporter of ICM (formerly ICZM) and recognises that ICM can play a significant role in achieving synergies between planning frameworks for the marine and terrestrial environments and building consensus among concerned stake-holders;

23. draws attention to the definition of 'coastal zone' (Article 3.1) and in particular the implications this has on local/ regional planning authorities; in particular, considers that defining the seaward side of the zone to include the entire territorial sea as a very wide delimitation and beyond the scope of existing planning authorities (including their human and financial resources) in a number of Member States and that the defined landward side of the zone lacks clarity and clearly has direct implications for existing land-use plans and practices;

24. believes that a framework Directive should set common principles and facilitate cross-border cooperation and cooperation between national authorities which have competence for their shorelines and leave the definition of 'coastal zones' to Member State authorities, when necessary and as appropriate to the planning policy and practice in their jurisdictions; 25. considers that the interface between land-sea planning must take a more holistic approach, given that the interconnections between land and sea go beyond the 'coastal zone' (such as the influence of river basins further inland, the impact of ports as regional development hubs, the interconnectedness of transportation routes and energy generation and transmission systems; etc.) and suggests that Member States must have greater flexibility in determining which tools to use to enable effective coordination between land-based and seabased activities;

26. questions, therefore, the value of transforming what is currently an informal management approach into an additional formal planning tool; is unconvinced by Article 2.3 which says that 'the provisions of this Directive shall be without prejudice to Member States' competences for town and country planning' as it considers legislating for Integrated Coastal Management as terrestrial planning legislation, which is primarily a competence at Member State level although in some Member States this legislative competence lies with the regions; believes that the implementation of the Directive will have a direct impact on planning practice at national, regional and local levels and for these reasons has strong reservations about making the production of ICM strategies an obligation in all coastal Member States (⁴);

27. recalls the ICZM Recommendation (2002) which considered that 'given the diversity of conditions in the coastal zones and the legal and institutional frameworks in the Member States, the objectives of the proposed action (*implementing ICZM in Europe*) can best be achieved by guidance at the Community level' ⁽⁵⁾; suggests that little has changed since then and regrets that the European Commission did not give full consideration of all non-binding options to strengthen the implementation of ICM;

28. considers, however, that ICM must continue to play an important role in complementing MSP and helping to manage coastal resources and engage concerned stakeholders; calls on the European Commission to reconsider how this could be reinvigorated by developing more appropriate non-binding measures; proposes that Member States assess what specific measures need to be taken to ensure better consistency between land-use and marine spatial plans;

Local and regional impacts

29. underlines the role that local and regional authorities play in spatial planning policy, including in existing MSP and ICM practices; also highlights that local and regional authorities already engage in bilateral cross-border coordination in spatial planning policy; 30. supports existing regional cooperation initiatives, at macro-regional or sea-basin level; regrets that the proposed Directive has not specifically provided for the diversity of maritime environments and the potential closer cooperation taking such regional specificities into account; furthermore considers that provisions will have to be made for the unpredictability of dealing with some third countries and the complexity for the Outermost Regions;

31. considers that the potential intended and unintended impacts of the proposed Directive at local/regional level will be significant, particularly in terms of (a) impacting on existing competences at local/regional level in planning policy and practice; and (b) imposing additional administrative and financial burdens;

32. highlights that the proposed Directive, as currently worded, will have negative consequences for local/regional planning policy and procedures, as the proposal will subject spatial plans with a coastal dimension to minimum sector-specific content requirements, which considerably undermine the autonomy of planning authorities to balance the needs of all appropriate uses;

33. considers that the proposed timescale to have maritime plans and coastal strategies in place within 36 months of the Directive entering into force is very ambitious; highlights that such timeframes would be impossible to comply with where MSP and ICM are in their infancy; proposes therefore that such timescales should be extended;

34. questions, more specifically, the logic of requiring a review of maritime spatial plans and integrated coastal management strategies at least every six years, on the grounds that this will be a difficult and costly exercise for the competent authorities and that it does not necessarily conform with well-established plan review cycles in the Member States;

35. highlights that implementation will place significant additional burdens on planning authorities at local and regional levels, as well as requiring such authorities, at a time of budget restraint, to find additional financial and human resources, including (scarce) suitably qualified marine spatial planners, to comply with the Directive;

36. is concerned that no detailed assessment has been made by the European Commission on the extent of the additional administrative burden and costs of implementation, a significant amount of which will be borne by local and regional authorities; suggests that these impacts undermine the added-value aspects of the proposed Directive for these authorities;

⁽⁴⁾ The Barcelona Convention already places some obligations on Member States in the Mediterranean.

^{(&}lt;sup>5</sup>) Recommendation concerning the implementation of Integrated Coastal Zone Management in Europe (2002/413/EC), Recital 17.

37. proposes, therefore, that the European Commission undertakes a detailed ex-ante assessment of: (a) the impact of the Directive on existing planning policy and practice in coastal regions; and (b) the additional costs of implementing the Directive, particularly at local and regional levels.

II. RECOMMENDATIONS FOR AMENDMENTS

Amendment 1

Recital 3

Text proposed by the Commission	CoR amendment
planning and integrated coastal management as cross- cutting policy tools for public authorities and stakeholders to apply a coordinated, integrated approach. The appli- cation of an ecosystem-based approach will contribute to	The Integrated Maritime Policy identifies maritime spatial planning and integrated coastal management as cross- cutting policy tools for public authorities and stakeholders to apply a coordinated, integrated <u>and cross-border</u> approach. The application of an ecosystem-based approach will contribute to promoting the sustainable growth of the maritime and coastal economies and the sustainable use of marine and coastal resources.

Reason

Stronger cross-border cooperation is crucial for the integrated maritime policy, particularly for maritime spatial planning (MSP) and integrated coastal zone management (ICZM).

Amendment 2

Recital 12

Text proposed by the Commission	CoR amendment
While it is appropriate for the Union to lay down rules on maritime spatial plans and integrated coastal management strategies, Member States and their competent authorities remain responsible for designing and determining, within their marine waters and coastal zones, the content of such plans and strategies, including the apportionment of maritime space to the different sector activities	While it is appropriate for the Union to lay down rules on establish a framework for maritime spatial plans and inte- grated coastal management strategies, Member States and their competent authorities remain responsible for designing and determining, within their marine waters and coastal zones, the content of such plans and strategies, including the apportionment of maritime space to the different sector activities <u>and maritime uses</u> .

Amendment 3

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Text proposed by the Commission	CoR amendment
2. 'Integrated Maritime Policy' means the Union policy with the aim to foster coordinated and coherent decision-making to maximise the sustainable devel- opment, 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. 'Integrated Maritime Policy' means the Union policy with the aim to foster coordinated and coherent inter-sectoral and cross-border maritime governance designed 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.

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Amendment 4

Article 5

Objectives of maritime spatial plans and integrated coastal management strategies

Text proposed by the Commission	CoR amendment	
Maritime spatial plans and integrated coastal management strategies shall apply an ecosystem-based approach to facilitate the co-existence and prevent conflicts between competing sector activities in marine waters and coastal zones, and shall aim to contribute to:	Maritime spatial plans and integrated coastal management strategies shall apply an ecosystem-based approach to facilitate the co-existence and prevent conflicts between competing sector activities in marine waters and coastal zones, and shall <u>set out objectives that may include</u> <u>contributing</u> aim to contribute to:	
(a) (b)	(a) (b)	

Reason

It should be clear that the objectives in the proposed legal text are illustrative. There must be sufficient flexibility to allow the competent authorities to decide priorities as appropriate for their marine environments and how these are delivered.

Amendment 5

Article 6

Common minimum requirements for maritime spatial plans and integrated coastal management strategies

Text proposed by the Commission	CoR amendment	
1. Maritime spatial plans and integrated coastal management strategies shall establish operational steps to achieve the objectives as set out in Article 5 taking into account all relevant activities and measures applicable to them.	1. Maritime spatial plans and integrated coastal management strategies shall establish operational steps to achieve the objectives as set out in Article 5 taking into account all relevant activities and measures applicable to them.	
2. In doing so, maritime spatial plans and integrated coastal management strategies shall, at least:	2. In doing so, maritime spatial plans and integrated coastal management strategies shall, at least:	
(a) be mutually coordinated, provided they are not inte- grated;	 (a) be mutually coordinated, provided they are not inte- grated; 	
(b) ensure effective trans-boundary cooperation between Member States, and between national authorities and stakeholders of the relevant sector policies;	 (b) ensure effective trans-boundary cooperation between Member States, and between national authorities and stakeholders of the relevant sector policies; 	
(c) identify the trans-boundary effects of maritime spatial plans and integrated coastal management strategies on the marine waters and coastal zones under the sover- eignty or jurisdiction of third countries in the same marine region or sub-region and related coastal zones and deal with them in cooperation with the competent authorities of these countries in accordance with Articles 12 and 13;	(c) identify the trans-boundary effects of maritime spatial plans and integrated coastal management strategies on the marine waters and coastal zones under the sover- eignty or jurisdiction of third countries in the same marine region or sub-region and related coastal zones and deal with them in cooperation with the competent authorities of these countries in accordance with Articles 12 and 13;	
3. Maritime spatial plans and integrated coastal management strategies shall be reviewed at least every 6 years.	3. Maritime spatial plans and integrated coastal management strategies shall be reviewed <u>in accordance</u> with national plan review cycles <u>or at least every 6 years</u> .	

Reason

Implementation cycles will have to vary from one Member State to another in order to reduce the administrative burden required and to ensure that the implementation of the Directive complies with existing and well established practice in the Member States.

Amendment 6

Article 7

Specific minimum requirements for maritime spatial plans

Text proposed by the Commission	CoR amendment
1. Maritime spatial plans shall contain at least a mapping of marine waters which identifies the actual and potential spatial and temporal distribution of all relevant maritime activities in order to achieve the objectives as set out in Article 5.	1. Maritime spatial plans shall contain at least a mapping of marine waters which identifies the actual and potential spatial and temporal distribution of all relevant maritime activities in order to achieve the objectives as set out in Article 5.
2. When establishing maritime spatial plans Member States shall take into consideration, at least, the following activities:	2. When establishing maritime spatial plans Member States shall take into consideration, <u>activities it considers</u> <u>relevant which may include</u> at least, the following activities :
 (a) installations for the extraction of energy and the production of renewable energy; 	 (a) installations for the extraction of energy and the production of renewable energy;
(b) oil and gas extraction sites and infrastructures;	(b) oil and gas extraction sites and infrastructures;
(c) maritime transport routes;	(c) maritime transport routes <u>and recreational navigation</u> <u>zones;</u>
(d) submarine cable and pipeline routes;	(d) submarine cable and pipeline routes;
(e) fishing areas;	(e) fishing areas;
(f) sea farming sites;	(f) sea farming sites;
(g) nature conservation sites.	(g) nature conservation sites;.
	<u>h)</u> port areas (business, fishing, leisure).

Reason

There must be sufficient flexibility to allow the competent authorities to decide priorities as appropriate for their marine environments and how these are delivered.

Recreational boating activities are highly developed in some regions of Europe and need to be taken into account in spatial planning, as do port areas which are important hubs for both maritime and land planning (road and rail networks).

Amendment 7

Article 8

Specific minimum requirements for integrated coastal management strategies

Text proposed by the Commission	CoR amendment
1. Integrated coastal management strategies shall contain at least, an inventory of existing measures applied in coastal zones and an analysis of the need for additional actions in order to achieve the objectives set out in Article 5. The strategies shall provide for integrated and cross-sectoral policy implementation and consider inter- actions between terrestrial and maritime activities.	applied in coastal zones and an analysis of the need for additional actions in order to achieve the objectives set out

Text proposed by the Commission	CoR amendment	
2. When establishing integrated coastal management strategies, Member States shall take into consideration, at least, the following activities:	2. When establishing integrated coastal management strategies, Member States shall take into consideration, at least, the following activities:	
 (a) utilisation of specific natural resources including instal- lations for the extraction of energy and the production of renewable energy; 	(a) utilisation of specific natural resources including instal- lations for the extraction of energy and the production of renewable energy;	
(b) development of infrastructure, energy facilities, transport, ports, maritime works and other structures including green infrastructure;	(b) development of infrastructure, energy facilities, transport, ports, maritime works and other structures including green infrastructure;	
(c) agriculture and industry;	(c) agriculture and industry;	
(d) fishing and aquaculture;	(d) fishing and aquaculture;	
(e) conservation, restoration and management of coastal ecosystems, ecosystem services and nature, coastal land-scapes and islands;	(e) conservation, restoration and management of coastal ecosystems, ecosystem services and nature, coastal landscapes and islands;	
(f) mitigation and adaptation to climate change.	(f) mitigation and adaptation to climate change.	

Reason

Considers that legislating for ICM is the equivalent of land-use planning legislation, which is a competence of Member States. Furthermore, sees little added-value of formalising an existing informal management tool.

Amendment 8

Article 14

Competent authorities

Text proposed by the Commission	CoR amendment
1. Each Member State shall designate for each coastal zone and marine region or sub-region concerned, the authority or authorities competent for the implementation of this Directive, including to ensure cooperation with other Member States as defined in Article 12 and cooperation with third countries as defined in Article 13.	1. Each Member State, taking into account the need for a strong multi-level governance and cross-sectoral approach, shall designate for each coastal zone and marine region or sub-region concerned, the authority or authorities competent for the implementation of this Directive, including to ensure cooperation with other Member States as defined in Article 12 and cooperation with third countries as defined in Article 13.
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.	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. At the same time, each Member State shall send to the Commission a list of their competent authorities responsible for those international bodies in which they participate and which are relevant for the implementation of this Directive.	3. At the same time, each Member State shall send to the Commission a list of their competent authorities responsible for those international bodies in which they participate and which are relevant for the implementation of this Directive.
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.	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.

Reason

Underlines in the legal text the need for a multi-level governance approach to the implementation of the Directive.

Amendment 9

Article 16

Implementing acts

Text proposed by the Commission	CoR amendment	
1. The Commission may, by means of implementing acts, adopt provisions on:	1. The Commission may, by means of implementing acts, adopt provisions on:	
 (a) operational specifications for management of data referred in Article 10, provided they have not been established by other EU legislation, such as Directive 2007/2/EC or 2008/56/EC, on 	(a) operational specifications for management of data referred in Article 10, provided they have not been established by other EU legislation, such as Directive 2007/2/EC or 2008/56/EC, on	
 the sharing of data, and interfacing with existing data management and collection processes; and 	 the sharing of data, and interfacing with existing data management and collection processes ; and 	
(b) the operational steps for the establishment and reporting on maritime spatial plans and integrated coastal management strategies concerning:	(b) the operational steps for the establishment and reporting on maritime spatial plans and integrated coastal management strategies concerning:	
 — coherence of reporting obligations under this Directive with other relevant Union legislation; 	— coherence of reporting obligations under this Directive with other relevant Union legislation;	
- monitoring and revision cycles;	— monitoring and revision cycles;	
— cross-border cooperation modalities;	— cross border cooperation modalities ;	
— public consultation.	— public consultation.	
2. The implementing acts referred to in paragraph 1 shall be adopted in accordance with the procedure referred to in Article 17(2).	2. The implementing acts referred to in paragraph 1 shall be adopted in accordance with the procedure referred to in Article 17(2).	

Reason

There are significant reservations on the use of Implementing Acts, particularly on operational aspects for establishing plans and strategies, which go beyond what is required to help implement the obligations of the Directive.

Brussels, 9 October 2013.

The President of the Committee of the Regions Ramón Luis VALCÁRCEL SISO