



**Marine Strategy Framework Directive (MSFD)**

***Common Implementation Strategy***

**Programmes of measures under the Marine Strategy  
Framework Directive**

***Recommendations for implementation and reporting***

**(Final version, 25 November 2014)**

## 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).

*The Marine Directors of the European Union and associated countries to this process have also endorsed this Document during their informal meeting under the Italian Presidency in Rome (25 November 2014) and reached the following 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 (e.g. on scale of assessment of effectiveness of measures in relation to risk, identification of measures at different levels of responsibility in particular concerning Art. 15, and communication aspects concerning exceptions under Art. 14). 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.

On 5 December 2013, the Marine Directors adopted, as part of the Common Implementation Strategy a ["Strategic document including a work programme for 2014 and beyond"](#), which summarises the lessons learned from the CIS and the Article 12 assessment report, sets out challenges and suggests possible ways forward including the main areas of work.

### **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.*

## Table of Contents

<b>Foreword</b>	<b>1</b>
<b>I. Introduction</b>	<b>3</b>
<b>II. Requirements of the Directive</b>	<b>4</b>
1) Requirements for the development of measures	5
1.1 Aim of the PoM	5
1.2 Content / structure of the PoMs	5
1.3 Financing issue	7
2) Requirements for regional cooperation	7
3) Requirements in relation to other policy frameworks	8
4) Exceptions	9
4.1 Basic principles	9
4.2 The different exceptions and obligations under Article 14	11
4.3 Member States' obligations under Article 14	14
5) Timeline and reporting	16
6) Public consultation and information	16
<b>III. 'Measures' and 'programmes of measures' – definitions</b>	<b>17</b>
<b>IV. Logic of the directive and streamlined procedures for the development of programmes of measures</b>	<b>18</b>
1) Technical specification of environmental targets as a basis for measures	20
2) Gap analysis	20
3) Identification and description of possible new measures	20
4) Selection of new measures	21
5) Content of the PoM	22
6) Implementation planning	23
7) Public consultation	23
<b>V. Interlinkages to other policy frameworks (including other EU directives)</b>	<b>23</b>
1) Measures under the Water Framework Directive (WFD)	23
2) Spatial protection measures	24
2.1 Improving Marine Protected Area (MPA) networks	24
2.2 Other spatial protection measures	26
3) Other relevant regulations	27
<b>VI. Coordination within marine regions</b>	<b>27</b>
<b>VII. Costs &amp; benefits of the programmes of measures</b>	<b>28</b>
1) Definitions	28
2) Relevance to the MSFD	29
3) Further work	31
<b>VIII. Reporting</b>	<b>32</b>
<b>Annex 1: Indicative list of relevant EU legislation that contribute to achieving MSFD GES</b>	<b>33</b>
<b>Annex 2: Reporting on MSFD Programmes of Measures (Art. 13) and on exceptions (Art. 14)</b>	<b>34</b>

## 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 document aims to help Member States by providing:

- basic principles for the establishment of programmes of measures under the MSFD,
- general considerations for the application of the exceptions,
- guidance for their implementation and
- main elements to be considered in the reporting of PoMs to the Commission.

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 the level of the EU and the marine regions.

The present document takes into account existing Member State's guidance on impact assessment (when available), as well as the following relevant existing documents:

- Commission Impact Assessment guidelines<sup>1</sup>;
- "Economic assessment of policy measures for the implementation of the MSFD", Study Report by Arcadis of February 2012<sup>2</sup>;
- EU-MSFD Common Implementation Strategy work programme for 2014 and beyond including contributions from the Regional Sea Conventions (RSCs)<sup>3</sup>;
- Background document summarizing experiences with respect to economic analysis to support Member States with development of their programme of measures for the Marine Strategy Framework Directive (including the results of the workshop on cost-effectiveness of 1 April 2014)<sup>4</sup>;
- Economic and social analyses for the MSFD. Part 2: Program of measures Theme: Marine Litter<sup>5</sup>; and
- Various guidance including those under the Water Framework Directive<sup>6</sup>, the Habitats and Birds Directives<sup>7</sup> and the Marine Strategy Framework Directive<sup>8</sup>.

Whilst the MSFD is addressed to Member States, some issues can only be addressed by working together (e.g. through regional coordination). The MSFD already provides for the possibility to raise such issues to the relevant bodies (e.g. through Articles 13(5) and 15).

Furthermore, the MSCG identified the need to continue working together on these questions within the CIS and the regional cooperation, such as:

- the scale of assessments,
- the division of responsibilities and "who does what" at national, regional and EU levels, and

<sup>1</sup> [http://ec.europa.eu/governance/impact/commission\\_guidelines/commission\\_guidelines\\_en.htm](http://ec.europa.eu/governance/impact/commission_guidelines/commission_guidelines_en.htm)

<sup>2</sup> <http://ec.europa.eu/environment/enveco/studies.htm#4>

<sup>3</sup> [http://ec.europa.eu/environment/marine/eu-coast-and-marine-policy/implementation/index\\_en.htm](http://ec.europa.eu/environment/marine/eu-coast-and-marine-policy/implementation/index_en.htm)

<sup>4</sup> CIRCABC library under "A-documents > A4-other documents"

<sup>5</sup> [http://www.noordzeeloket.nl/projecten/europese-kaderrichtlijn-mariene-strategie/stand\\_van\\_zaken/nationaal/econom\\_analyses\\_2010/Economische\\_analyses\\_KRM\\_2013.aspx](http://www.noordzeeloket.nl/projecten/europese-kaderrichtlijn-mariene-strategie/stand_van_zaken/nationaal/econom_analyses_2010/Economische_analyses_KRM_2013.aspx)

<sup>6</sup> [http://ec.europa.eu/environment/water/water-framework/facts\\_figures/guidance\\_docs\\_en.htm](http://ec.europa.eu/environment/water/water-framework/facts_figures/guidance_docs_en.htm)

<sup>7</sup> [http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index\\_en.htm](http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm)

<sup>8</sup> [MSFD CIRCABC library of public documents](#)

- the communication of exceptions.

This should help improve our common understanding and the effectiveness of the implementation for the second cycle.

## II. Requirements of the Directive

This 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 (recitals 27 and 44);
- the adaptiveness of the PoMs and scientific and technological developments to be taken into account (recital 34);
- the necessity to recognise that achieving or maintaining GES in every aspect in all marine waters by 2020 may not be possible, and the need therefore to provide for exceptions (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***

### **1.1 Aim of the programme of measures (PoMs)**

#### **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 programme of measures.

First, Member States are required to identify measures that contribute to the achievement or maintenance of GES set out in their Marine Strategies (reference to Art. 9(1) determination of GES) and that will address the predominant pressures and impacts identified in the initial assessment of their marine waters (reference to Art. 8 initial assessment). There should be a direct link between the proposed measures and the established national targets (reference to Art. 10 environmental targets). Where relevant it is possible that measures may address several descriptors / targets / pressures / economic sectors / activities.

Lastly this Article states that measures should take into consideration the types of measures set out in MSFD Annex VI; this indicative typology 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. However, in the context of reporting, a different approach has been chosen.

### **1.2 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 improve or maintain the status of the marine environment. Such measures can be existing ones under EU regime or new measures under MSFD. To do this, Member States need to analyse the contribution that existing measures make to the achievement of each target and - if necessary – supplement this with new measures.

#### **1.2.1 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 Regional Sea Conventions (RSCs).

Prior to the adoption of MSFD, sector-specific 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 RSCs. Existing measures might also provide some examples or ideas for new measures for example by expanding or reinforcing existing measures, or by expanding their scope of application.

## 1.2.2 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 should contribute to MPA networks in terms of coherence and representativeness (Article 13.4) and should contribute to 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 (i.e. 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 also section V.2 below) in close cooperation with the Marine Expert Group (MEG) under the Habitats and Birds Directives, taking into account actions in Regional Sea Conventions.

#### **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].*

A contract study<sup>9</sup>: "Develop and test methodology and criteria for assessing coherence, adequacy and representativity of EU networks of marine protected areas" should provide an extensive analysis on the methodology(ies) which could be applied to the current network.

### **1.3 Financing issue**

#### **Art. 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 the co-financing guide<sup>10</sup>.

## ***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 Sea Conventions will play an important role in this respect, and their experience should be used and good examples highlighted. It also stresses the added value of joint PoMs. 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.

<sup>9</sup> [CIRCABC library under "A-documents > A4-other documents"](#)

<sup>10</sup> [CIRCABC library under "A-documents > A4-other documents"](#)



#### **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 Member States' 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 Sea Conventions will have an important role to play with respect to identifying these opportunities and/or risks. Subject to Directive 2001/42/EC (the 'Strategic Environmental Assessment' or SEA Directive), strategic environmental assessments could provide support in the context of this Article.

### ***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.).

#### **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.*

The Commission has not been informed of any such issues (as of October 2014). Consideration by 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 the Commission by an individual Member State, it is more meaningful that regional coordination, e.g. through the RSC, is taking place before submitting any such recommendation.

Further work is necessary on the conditions for the use of Article 15 and the Commission will therefore prepare a background note.

## 4) Exceptions

### 4.1 Basic principles

Provisions on exceptions are contained in Article 14 of the Marine Strategy Framework Directive (MSFD). In addition, the following MSFD recitals provide clarifications on the flexibility embedded in the MSFD, and lend support to the interpretation of Article 14.

#### Recital 11

*Each Member State should therefore develop a marine strategy for its marine waters which, while being specific to its own waters, reflects the overall perspective of the marine region or subregion concerned. Marine strategies should culminate in the execution of programmes of measures designed to achieve or maintain good environmental status. However, Member States should not be required to take specific steps where there is no significant risk to the marine environment, or where the costs would be disproportionate taking account of the risks to the marine environment, provided that any decision not to take action is properly justified.*

Recital 11 relates to the provisions of Article 14(4). Other exceptions are mentioned in Recitals 29 to 33 which help interpreting Article 14(1), points (a) to (e).

#### Recital 29

*Member States should take the necessary measures to achieve or maintain good environmental status in the marine environment. However, it should be recognised that achieving or maintaining good environmental status in every aspect may not be possible in all marine waters by 2020. Therefore, for reasons of fairness and feasibility, it is appropriate to make provision for cases where it would be impossible for a Member State to achieve the level of ambition of the environmental targets set or to achieve or maintain good environmental status.*

Recital 29 states that exceptions are possible in cases when achieving good environmental status (GES) “in every aspect” is not possible by 2020. It further mentions that exceptions are appropriate “for cases where it would be impossible for a Member State to achieve the level of ambition of the environmental targets set or to achieve or maintain good environmental status”, therefore clearly defining exceptions as exceptions to reaching environmental targets or GES, as set by Member States. In cases where the GES definitions of Member States, or the environmental targets set are inadequate, it will therefore be difficult in the first MSFD cycle to substantiate and justify exceptions.

#### Recital 30

*In that context provision should be made for two special cases. The first special case refers to the situation where it is impossible for a Member State to meet its environmental targets because of action or inaction for which the Member State concerned is not responsible, or because of natural causes or force majeure, or because of actions which that Member State has itself taken for reasons of overriding public interest which outweigh the negative impact on the environment, or because natural conditions do not allow timely improvement in the status of marine waters. The Member State concerned should substantiate why it considers that such a special case has arisen and identify the area concerned, and should take appropriate ad-hoc measures with the aim of continuing to pursue the environmental targets, preventing further deterioration in the status of the marine waters affected and mitigating the adverse impact within the marine region or subregion concerned.*

Recital 30 relates to Article 14(1), points (a) to (e) and describes three concepts:

- exceptions are limited to specific instances (defined in Article 14(1) and 14(4))
- an exception must be substantiated by the Member State claiming it (identifying the area concerned and the reasons for claiming the exception)

- even in cases covered by an exception, the Member State concerned has a responsibility to take ad-hoc measures<sup>11</sup> as required under Article 14(1). Such ad-hoc measures aim to progress towards the objective set by the environmental target (even if not fully meeting the target), but also to prevent further deterioration in the area affected, and to mitigate any adverse impacts within the marine (sub)region concerned.

Recital 32

*However, the flexibility introduced for special cases should be subject to control at Community level. As regards the first special case, it is therefore appropriate that due consideration be given to the efficacy of any ad-hoc measures taken. Moreover, in cases where the Member State refers to action taken for overriding reasons of public interest, the Commission should assess whether any modifications or alterations made to the marine environment as a consequence do not permanently preclude or compromise the achievement of good environmental status in the marine region or subregion concerned or across marine waters of other Member States. The Commission should provide guidance on possible necessary modifications if it considers that the measures envisaged are not sufficient or suitable to ensure coherence of action across the marine region.*

Recital 32 relates to the directive's provisions for flexibility, detailing control mechanisms for the Commission:

- For exceptions under Article 14(1), points (a) to (e), this control should in particular assess whether ad-hoc measures taken are effective (to progress towards reaching the environmental targets or GES): the Commission is invited to provide guidance on possible modifications to the ad-hoc measures, if it considers these are not sufficient or suitable (permanently preclude or compromise achieving GES in the subregion or in other Member States), keeping in mind the coherence of actions across the region (Article 16).
- In the case of exceptions due to overriding public interest (Article 14(1)(d)), the Commission is invited to assess whether the modifications or alterations made to the environment do not permanently preclude or compromise achieving GES in the subregion or in other Member States (Article 14(2) and Article 16, 3rd paragraph).

Recital 31

*The second special case refers to the situation where a Member State identifies an issue which has an impact on the environmental status of its marine waters, perhaps even of the entire marine region or subregion concerned, but which cannot be tackled by measures taken at national level or which is linked to another Community policy or to an international agreement. In such a case, arrangements should be made to inform the Commission of this within the framework of notification of programmes of measures and, where Community action is needed, to make appropriate recommendations to the Commission and the Council.*

Recital 33

*As regards the second special case, the Commission should consider the issue and respond within a period of six months. The Commission should reflect, as appropriate, the recommendations of the Member State concerned when presenting related proposals to the European Parliament and the Council.*

<sup>11</sup> Some language versions do not distinguish between "steps" and "measures" as the English version does. "Ad-hoc measures" should be understood as mitigation measures, to be included, as far as practicable, with the rest of the measures in the programme of measures. Ad-hoc measures are required when submitting an exception under Article 14(1) and must fulfil three objectives: (a) to continue pursuing the environmental targets, (b) to prevent further deterioration in the status of marine waters, (c) to mitigate the adverse impact.

Recitals 31 and 33 assist in the interpretation of Article 15 which can be linked to the ground for exception set out in Article 14(1)(a).

## **4.2 The different exceptions and obligations under Article 14**

Article 14 creates two broad categories of exceptions, under Article 14(1) and 14(4), with different obligations attached.

### **4.2.1 Article 14(1)**

*1. A Member State may identify instances within its marine waters where, for any of the reasons listed under points (a) to (d), the environmental targets or good environmental status cannot be achieved in every aspect through measures taken by that Member State, or, for reasons referred to under point (e), they cannot be achieved within the time schedule concerned:*

*(a) action or inaction for which the Member State concerned is not responsible;*

*(b) natural causes;*

*(c) force majeure;*

*(d) modifications or alterations to the physical characteristics of marine waters brought about by actions taken for reasons of overriding public interest which outweigh the negative impact on the environment, including any transboundary impact;*

*(e) natural conditions which do not allow timely improvement in the status of the marine waters concerned.*

Article 14(1) covers exceptions to reaching GES or environmental targets fully, or for point (e), on time, which can fall within distinct sub- categories:

#### **a) action or inaction for which the Member State concerned is not responsible**

This sub-category covers cases where GES and targets cannot be reached as a consequence of actions or inaction for which the Member State is not responsible, for instance as a result of environmental damage caused by a third party, or where GES can only be achieved through action at international or Community level. In cases where the issue cannot be tackled by national measures or where it is linked to another community policy or international agreement, the Member State shall inform the Commission accordingly and make appropriate recommendations for actions at international or Community level (Article 15 MSFD).

Examples: Noise from international shipping affects GES in a marine region, but can only be reduced through an International Maritime Organization decision, measures to protect biodiversity in an area from fisheries-related pressures must be agreed under the Common Fisheries Policy and/or through a decision by a regional fisheries management organisation.

#### **b) natural causes**

'Natural causes' refer to uncontrolled, random natural events such as floods, hurricanes, typhoons which, despite due diligence (prevention and disaster risk reduction measures) prevent reaching environmental targets and good environmental status in all its aspects.

#### **c) force majeure**

Force majeure refers to circumstances which are exceptional or which could not reasonably be foreseen such as an armed conflict, an unforeseeable accident or a terrorist attack, and beyond the control of the party claiming force majeure, whose consequence could not have been avoided despite the exercise of due diligence. The effects of the situation of force majeure are limited in time,

namely the time which is needed for an administration exercising a normal degree of diligence to put an end to the crisis.

**d) modifications or alterations to the physical characteristics of marine waters brought about by actions taken for reasons of overriding public interest which outweigh the negative impact on the environment, including any transboundary impact**

Several elements must be met in order for an exception to fall within this sub-category:

- 1) The negative impact on the environment of action taken for reasons of overriding public interest must concern the physical characteristics of marine waters
- 2) Public interest must be “overriding”

The issue of overriding public interest is used regularly in EU environmental law, and has also been further defined by the Court of Justice of the European Union<sup>12</sup>. Some guidance has already been provided by the Commission on this concept in the context of:

- the Habitats Directive<sup>13</sup>, as the elements retained to assess imperative reasons of overriding public interest in that directive relevant to marine protected areas may also be of relevance to the MSFD, and
- the Water Framework Directive<sup>14</sup>.

While every situation will have to be judged on its facts in the context of the particular Directive’s scope and aims, there are elements from these guidance documents that may be of use when assessing an overriding public interest in the context of the MSFD:

- situations where plans or projects envisaged prove to be indispensable and clearly outweigh the negative impacts on the environment, including across borders, and aim at, inter alia:
  - o protecting values fundamental for the citizens' life (health, safety, environment);
  - o carrying out policies fundamental for the State and the society; or
  - o carrying out activities of an economic or social nature, fulfilling specific obligations of public service.
- the public interest is likely to be overriding only if it is a long-term one; short-term interests are unlikely to outweigh the negative impact on environment; not every kind of public interest of a social or economic nature is sufficient to be overriding, in particular when seen against the particular weight of the interests protected by the Directive.

Example: Maritime spatial planning offers a framework within which all relevant data relating to a proposal that may have an impact on GES can be considered.

**e) natural conditions which do not allow timely improvement in the status of the marine waters concerned**

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<sup>12</sup> Cf for instance Case C-304/05 *Commission v Italy*, or Case C-182/10 *Solvay and Others*

<sup>13</sup> Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora, cf also the guidance document on Article 6(4) of the Habitats Directive accessible at [http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/new\\_guidance\\_art6\\_4\\_en.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/new_guidance_art6_4_en.pdf)

<sup>14</sup> Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy, cf also guidance document available at: [https://circabc.europa.eu/sd/a/2a3ec00a-d0e6-405f-bf66-60e212555db1/Guidance\\_documentN%C2%B020\\_Mars09.pdf](https://circabc.europa.eu/sd/a/2a3ec00a-d0e6-405f-bf66-60e212555db1/Guidance_documentN%C2%B020_Mars09.pdf)

This category of exceptions covers cases where, because of natural conditions, such as slow recovery of ecosystems for instance and high natural variability, measures taken will only allow to meet environmental targets and reach GES after 2020. In this case, Member States should specify by when they will reach GES. This exception is therefore an exception to the deadline by which GES must be achieved and not to the full achievement of GES at a future point in time.

Example: despite all relevant measures implemented to reduce eutrophication in a sea basin, positive effects on the environmental status will be felt only after 2020.

#### **4.2.2 Article 14(4)**

*4. Member States shall develop and implement all the elements of marine strategies referred to in Article 5(2), but shall not be required, except in respect of the initial assessment described in Article 8, to take specific steps where there is no significant risk to the marine environment, or where the costs would be disproportionate taking account of the risks to the marine environment, and provided that there is no further deterioration.*

*Where, for either of these reasons, a Member State does not take any steps, it shall provide the Commission with the necessary justification to substantiate its decision, while avoiding that the achievement of good environmental status be permanently compromised.*

Article 14(4) considers two additional categories of exceptions – "significant risk" and "disproportionate costs", and mentions conditions under which Member States are exempted from taking "specific steps".

##### **a) significant risk**

- The concept of significant risk must be understood in the context of the MSFD and in light of the precautionary principle. As the overall objective of the MSFD is to achieve or maintain GES by 2020, it could be considered that there is no significant risk only:
  - o when Member States, following their initial assessment, have assessed their marine environment as being in GES, and
  - o provided that there is no further deterioration of the marine environment. The fact that there is "no further deterioration of the marine environment" must be justified regularly and in particular rely on recent data, coming from the monitoring programmes under Article 11.
- Member States which, following their initial assessment, have assessed that their marine environment is not in GES, face a significant risk to their marine environment in light of the MSFD's objectives.
- Any exception to the application of the MSFD should in any case be interpreted and assessed in a restrictive manner, in line with EU case-law, to avoid depriving the Directive of its "*effet utile*" ("useful effect").
- Currently, there are very few areas where Member States have assessed their marine environment as being in GES and few instances where environmental targets set have been fully achieved already. It is therefore expected that the use of this category of exceptions will be limited.

##### **b) disproportionate costs**

- When assessing whether costs of a measure would be disproportionate, the following elements should be taken into account:

- The risks to the marine environment; i.e. the risk to permanently jeopardise the achievement of GES or environmental targets set by Member States; and
  - There should be no further deterioration, i.e. no further degradation of GES, in case it is attained already, or no growing gap between the current status and the status described in environmental targets.
- For an exception to apply in this case it will be essential to demonstrate the exception due to disproportionate costs will not permanently compromise GES. In this case, the assessment of disproportionate costs must also be balanced with the risk to the environment.
  - Other environmental legislation and case law offer some clarity on whether costs are disproportionate, in particular, the following considerations of the Water Framework Directive<sup>15</sup> are also relevant to the MSFD<sup>16</sup>:
    - Disproportionality should not begin at the point where measured costs simply exceed quantifiable benefits;
    - The assessment of costs and benefits will have to include qualitative costs and benefits as well as quantitative;
    - The margin by which costs exceed benefits should be appreciable and have a high level of confidence;
    - In the context of disproportionality the decision-maker may also want to take into consideration the ability to pay off those affected by the measures and some information on this may be required.

### 4.3 Member States' obligations under Article 14

1. [...]

*The Member State concerned shall identify such instances clearly in its programme of measures and shall substantiate its view to the Commission. In identifying instances a Member State shall consider the consequences for Member States in the marine region or subregion concerned.*

*However, the Member State concerned shall take appropriate ad-hoc measures aiming to continue pursuing the environmental targets, to prevent further deterioration in the status of the marine waters affected for reasons identified under points (b), (c) or (d) and to mitigate the adverse impact at the level of the marine region or subregion concerned or in the marine waters of other Member States.*

*2. In the situation covered by paragraph 1(d), Member States shall ensure that the modifications or alterations do not permanently preclude or compromise the achievement of good environmental status at the level of the marine region or subregion concerned or in the marine waters of other Member States.*

*3. The ad-hoc measures referred to in the third subparagraph of paragraph 1 shall be integrated as far as practicable into the programmes of measures.*

<sup>15</sup> Common Implementation Strategy for the Water Framework Directive (2000/60/EC), Guidance Document No. 20, Guidance Document on Exemptions to the Environmental Objectives.

<sup>16</sup> Exemptions for environmental objectives under Article 4 of the Water Framework Directive are considered at the level of water bodies. Exceptions under Article 14, MSFD, are considered at the level of marine waters for which GES is determined at the level of the marine region or subregion as referred to in Article 4, MSFD.

**Table 1: Overview of Member States' obligations under Article 14**

Obligations of Member States when applying Article 14(1) to (3)	Obligations of Member States when applying Article 14(4)
<ul style="list-style-type: none"> <li>• Identify exceptions in the programme of measures,</li> <li>• Consider the consequences for Member States in the marine region or subregion concerned,</li> <li>• Take appropriate ad-hoc measures aiming to continue pursuing the targets,</li> <li>• Take appropriate ad-hoc measures aiming to prevent further deterioration (applicable only to points (b), (c) and (d) of Article 14(1)),</li> <li>• Take appropriate ad-hoc measures aiming to mitigate the adverse impact in the marine waters of other Member States,</li> <li>• Integrate, as far as practicable, ad-hoc measures into the programme of measures,</li> <li>• Ensure that the use of exceptions under Article 14(1), point (d), does not permanently preclude or compromise the achievement of GES in the marine waters concerned or in the marine waters of other Member States.</li> </ul>	<ul style="list-style-type: none"> <li>• Avoid that the achievement of GES be permanently compromised.</li> <li>• Identify exceptions in their programme of measures.</li> <li>• Provide the Commission with the necessary justification to substantiate their decision</li> </ul>

As exceptions, if any, are an integral part of the programme of measures (Article 14(1), 2<sup>nd</sup> subparagraph), they must be submitted to public consultation (Article 19), and notified to the Commission jointly with the programme of measures. Ad-hoc measures taken in the context of exceptions should, as far as practicable, be submitted to public consultation and notified to the Commission jointly with the programme of measures.

If Member States have identified exceptions under Article 14(4) during the elaboration phase, these exceptions should be submitted to public consultation and notified to the Commission jointly with the programme of measures.

NB: This section on exceptions does not affect any obligation stemming from the Espoo Convention<sup>17</sup> or any other international agreement to which Member States or the European Union is party.

<sup>17</sup> [http://www.unece.org/env/eia/about/eia\\_text.html](http://www.unece.org/env/eia/about/eia_text.html)



## 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 for Article 16 is expected to be similar to the Article 12 assessment for Member States' reports on Articles 8, 9, 10 and 11, but taking into account lessons learnt from these previous assessments.

### 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.*

The possibility to combine the interim report with the next reporting cycle for Articles 8, 9 and 10 in 2018 could be explored as an option.

## 6) Public consultation and information

### Art. 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 requirement is the need for Member States to undertake a public consultation on their proposed PoM (see Article 19(2)(d)). Therefore, before sending their 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 altering 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 is any action on a national, regional, European or international level which is intended to help achieve or maintain GES and to achieve 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 action that one can actually 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 discourage 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 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 (e.g. Art 8, 9, 10, 11) are by definition not measures.

A "Programme of Measures" (PoM) is a set of measures that the Member States 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 achievement and maintenance of GES under the MSFD, that have been *adopted under other policies and implemented*;
- **Category 1.b:** Measures relevant for the achievement and maintenance 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 achieve and maintain GES which build upon 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 achieve and maintain 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 identification and subsequent establishment and implementation of the programmes of measures.

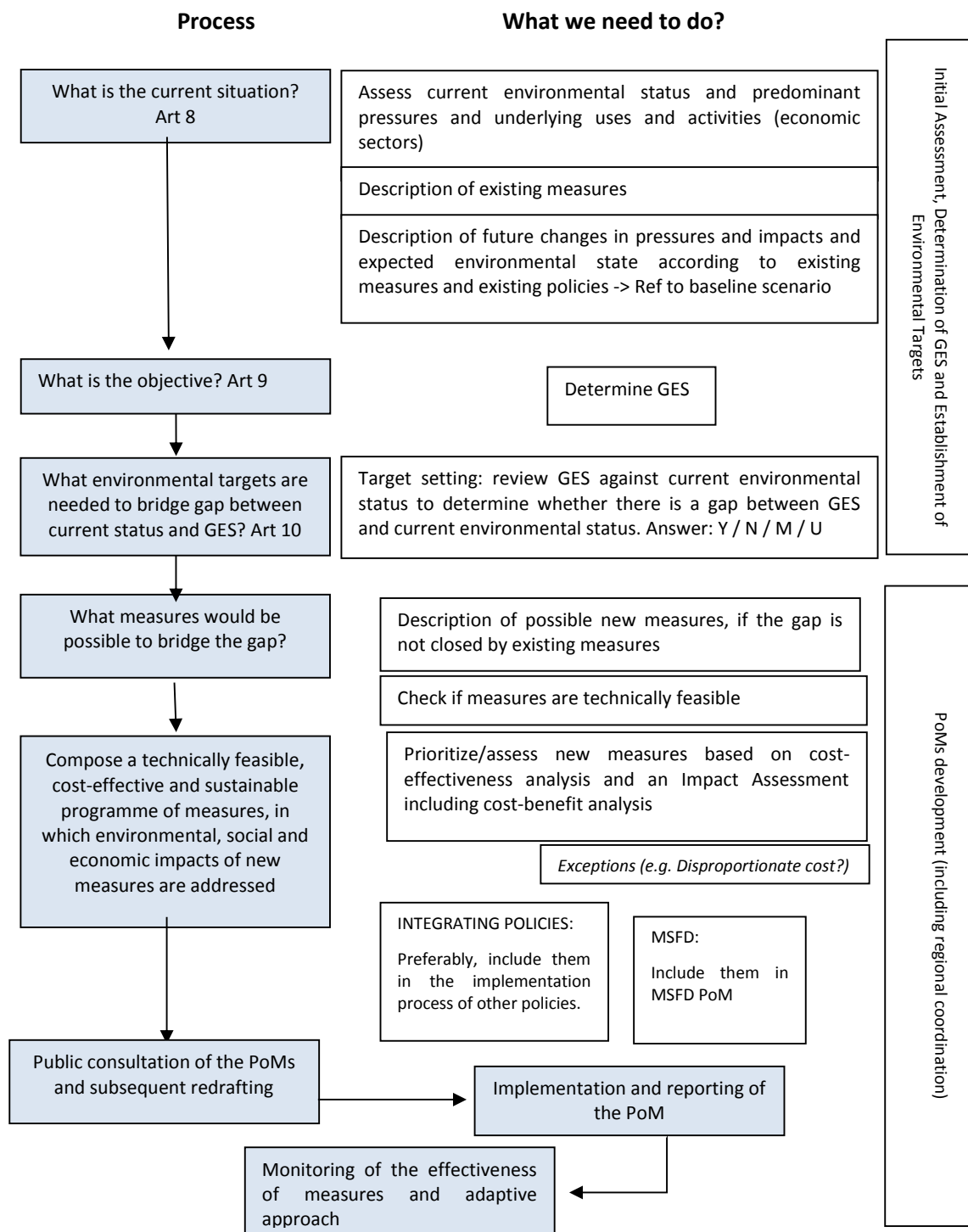
The 2012 initial assessment (Art. 8 MSFD) was intended to provide the baseline for assessing if GES (Art. 9 MSFD) is being achieved or maintained. To achieve and maintain GES, environmental targets (Art. 10 MSFD) were developed to guide progress from the present status to GES. Environmental targets form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

Monitoring programmes under Art. 11 MSFD relate to relevant GES criteria, environmental targets and associated 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 marine strategy elements can be visualized in the following diagram (note that this chart does not imply any documentation needs under Art. 13 and that it may need to be revised in accordance with the developing Common Understanding of Articles 8, 9 and 10 document):

**Figure 1: Stepwise process for the development of the programme of measures**



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, monitoring, exceptions) and includes the different steps which lead to a cost-effective programme of measures that will achieve and maintain GES and deliver the associated environmental targets.

## ***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 (i.e. the current environmental status described under the Art. 8 assessment) 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 Chapter I.

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

The first step should consist of identifying measures already in place (existing measures) that contribute to addressing the predominant pressures identified in the Article 8 initial assessment and reaching the MSFD environmental targets under Article 10. 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 or list of the existing measures including their relevance for the MSFD should be in the PoM and be subject to public consultation.

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

If gaps are identified between the set of existing measures and what is needed to achieve the environmental targets and hence to achieve or maintain GES, the next step consists of identifying possible new measures to meet the MSFD environmental targets. To verify that these measures are technically 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 EU 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 needs 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 (category 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 (category 2.b) should 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 in Chapter 7.

Concerning Category 2.a measures, Member States 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 measure.

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

- Link to GES descriptor
- Link to 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 marine waters beyond their marine waters (Article 13.8). These requirements should be fulfilled by the Member State 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 (e.g. delivery against environmental targets) and costs, starting with measures that bring the largest contribution

at least cost. By combining cost-effective measures, the least costly PoM is found that will bridge the gap between current environmental status and GES. 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; further information on the tools and their use is given in Chapter VII.

Member States 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 SEA 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 (e.g. 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 PoM may either affect the wider environment, or need to be taken outside the marine environment or marine policy area, interlinkages with other policy areas are key to assessing the full range of impacts of the MSFD 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 PoM in its wider context (Article 13.3).

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

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

The Programme of Measures should contain:

- 1 – An overview of the existing measures with reference to their original publication;
- 2 – A short analysis of the contribution of existing measures to achieving the environmental targets and 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 (e.g. WFD PoM), if not a full description (ref. chapter IV.3);
  - Category 2.b: full description (ref. chapter IV.3);
- 4 – justification for exceptions where no measures will be taken.

The summary for the new measures should 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, Member States should apply the requirements of the Aarhus convention, of Directive 2003/4/EC on public access to environmental information, of 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, of the SEA Directive.

Further work will take place in 2015 in the MSCG, including discussions and experience-sharing from Member States on the public consultation work carried out for their PoM, and in the longer term, work on the regional dimension, considering the input of data and good practices from cross-border experiences.

## **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 December 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 arises (i.e. if land-based or upstream from coastal waters, in coastal waters, or if sea-based)?
- which water is impacted by the pressure (i.e. whether it affects WFD waters and then spreads to MSFD waters, or whether it affects primarily MSFD waters).

To facilitate the coordination between the two PoMs, 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 PoMs could also be streamlined. For the sake of clarity, simultaneous public consultations could be conducted on the MSFD and WFD PoMs. 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 Habitats Directive and Special Protection Areas (SPAs) designated to implement the Birds 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 MPAs, the List of Specially Protected Areas of 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.

### 2.1.1 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 (Art. 13.6).

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>18</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 MPAs, 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 (Art. 21). This is expected to be supported by an EEA report which 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.

### 2.1.2 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.

Criteria for the assessment of the coherence and representativeness of the existing network based on information provided by Member States in 2013 is discussed in the context of the Marine Expert Group as part of a study report<sup>19</sup>.

Some Regional Sea Conventions such as HELCOM, OSPAR<sup>20</sup> and Barcelona Convention<sup>21</sup> have or are going to publish assessments of representativeness and coherence of MPA networks. The main

<sup>18</sup> <http://rod.eionet.europa.eu/obligations/32/overview>

<sup>19</sup> [CIRCABC library under "A-documents > A4-other documents"](#)

<sup>20</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)

findings of these assessments as well as references can be found in the EEA's report "Protected areas in Europe - an overview"<sup>22</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 Habitats 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.

### 2.1.3 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 (including extension of existing 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 Habitats and Birds 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.

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 the conservation and protection of marine biodiversity even if they are not specifically designed to do so. These include:

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<sup>21</sup><http://www.medpan.org/documents/10180/0/The+Status+of+Marine+Protected+Areas+in+the+Mediterranean+Sea+2012/069bb5c4-ce3f-4046-82cf-f72dbae29328>

<sup>22</sup><http://www.eea.europa.eu/publications/protected-areas-in-europe-2012>

- 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 for fishing impact assessments in new fishing grounds with special fishing licenses in sensitive/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 are 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 within marine regions and/or subregions (Art. 5.2 and Annex VI.4)). The 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, fisheries and/or shipping) and agreement of concerted actions of CPs to approach those bodies/authorities through RSCs.

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, ImA and CBA to the MSFD. More information on these concepts can be found in the *Background Document summarising experiences with respect to economic analysis to support member states with the development of their programme of measures for the MSFD*.

### 1) 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 Impact Assessment Guidelines<sup>23</sup> on 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>24</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>25</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)

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<sup>23</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)

<sup>24</sup> Based on <http://www.waterframeworkdirective.wdd.moa.gov.cy/docs/GuidanceDocuments/Guidancedoc1WATECO.pdf>

<sup>25</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)

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>26</sup>.

## ***2) Relevance to the MSFD***

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 Member States 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.

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<sup>26</sup> Guidance document 1: Economics and the environment - The implementation challenge of the Water Framework Directive

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>27</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>28</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 measure, 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, 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.

More information can be found in the Background Document on experiences from Member States with respect to economic analysis.

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<sup>27</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. (<https://circabc.europa.eu/w/browse/1dfbd5c7-5177-4828-9d60-ca1340879afc>) (CIRCABC library under "A-documents > A2-guidance documents")

<sup>28</sup> [CIRCABC library under "A-documents > A4-other documents"](#)

**Table 2: Categories of measures**

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 does not 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.

### **3) 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. Starting from this work, the *Background Document summarising experiences with respect to economic analysis to support member states with the development of their programme of measures for the MSFD* is now available<sup>29</sup>.

<sup>29</sup> [CIRCABC library under "A-documents > A4-other documents"](#)



## VIII. Reporting

Article 13(9) provides that Member States shall notify the Commission and other relevant Member States of their programme 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 so needs to deliver sufficiently detailed information for this purpose.

The Directive assumes that Member States base their programme of measures on the measures needed to be taken to achieve their targets and hence 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>30</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 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". Annex II is the result of the work in WG DIKE and the drafting group to develop the overall approach to reporting on POMs and exceptions.

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30 [http://ec.europa.eu/environment/marine/publications/index\\_en.htm](http://ec.europa.eu/environment/marine/publications/index_en.htm)

## Annex 1:

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

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

Descriptor No.	Topic	Indicative list of related EU legislation
D1	Biological diversity	Habitats Directive (directive 92/42/EEC) and Birds Directive (directive 2009/147/EC); Water Framework Directive (directive 2000/60/EC)
D2	Non-indigenous species	Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species
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 (91/676/EEC), National Emission Ceilings Directive (2001/81/EC)
D6	Sea-floor integrity	Water Framework Directive (directive 2000/60/EC), Habitats Directive (directive 92/42/EEC) and Birds Directive (directive 2009/147/EC), SEA directive (2001/42/EC), EIA Directive (85/337/EEC) ? Renewable energy directive (85/337/EEC)
D7	Hydrographical changes	Water Framework Directive (directive 2000/60/EC), SEA directive (2001/42/EC), EIA Directive (2011/92/EU)
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 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure
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:

### Reporting on MSFD Programmes of Measures (Art. 13) and on exceptions (Art. 14)

#### Table of Contents of Annex 2

<b>1</b>	<b>Introduction .....</b>	<b>1</b>
<b>2</b>	<b>Setting the scene .....</b>	<b>1</b>
2.1	The MSFD <i>PoM Recommendation</i> .....	1
2.1.1	Programme of Measures.....	1
2.1.2	Types of measures under the MSFD.....	1
2.1.3	Process to develop the MSFD Programme of Measures	<b>Error! Bookmark not defined.</b>
2.1.4	Content of the MSFD Programme of Measures .....	3
2.2	Links to reporting of measures under the WFD .....	4
2.2.1	Overall approach .....	4
2.2.2	WFD Key Types of Measures (KTMs).....	4
2.3	Use of measures under other policies.....	6
<b>3</b>	<b>Reporting of MSFD Programmes of Measures .....</b>	<b>6</b>
3.1	Overall approach to the MSFD PoM reporting.....	6
3.2	Key Types of Measures for MSFD.....	7
3.2.1	Basis for and list of MSFD KTMs .....	7
3.2.2	Linking the different categories of measures to KTMs.....	8
3.3	Reporting package on PoMs.....	9
3.3.1	Joint documentation .....	9
3.4	Summary Report on the Programme of Measures .....	10
3.4.1	General overview section.....	10
3.4.2	Existing and new measures in the PoM.....	12
3.4.3	Reporting on exceptions.....	13
3.5	MSFD PoM Reporting sheet .....	15
3.6	Adapting WFD reporting to MSFD reporting needs.....	15

## 1 Introduction

According to Article 5(2)(b) of the Marine Strategy Framework Directive (MSFD), Member States shall develop a Programme of Measures (PoM) by 2015 at the latest and notify the European Commission of their PoM within three months (Article 13(9)). Any exceptions which the Member State seeks under MSFD Article 14 are to be clearly identified and substantiated in the PoM. The Commission will undertake an assessment of the Member States' PoMs (Article 16) and provide guidance to the Member States on these within six months of receiving all these notifications. This assessment is expected to be presented in the form of national and regional assessment reports, as was done for the Commission's Article 12 assessment, published in 2014, of the Member State Article 8, 9 and 10 reports.

This document outlines the overall approach to reporting on MSFD PoMs and exceptions:

- a. It provides an overview of relevant frameworks upon which the reporting of the MSFD Programme of Measures is built;
- b. It presents the conceptual framework for reporting on the MSFD Programme of Measures and on Exceptions and the expected final reporting products.

The document is based on:

- a. The provisions of the MSFD, in particular Articles 13 (Programmes of measures), 14 (Exceptions) and 16 (Commission's assessment) and Annex VI;
- b. The *PoM Recommendation*; i.e. the document entitled "Programmes of measures under MSFD – Recommendations for establishment/implementation and related reporting"<sup>31</sup>;
- c. WFD reporting guidance 2016<sup>32</sup>.

## 2 Setting the scene

### 2.1 The MSFD PoM Recommendation

The *PoM Recommendation* describes the content of the PoM and the process to develop it. Some elements relevant to the reporting of the PoMs are provided here as context to Section 3 on reporting requirements.

#### 2.1.1 Programme of Measures

The aim of the PoM is set out in MSFD Art. 13(1) (emphasis added):

##### **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.*

The *PoM Recommendation* **defines** a Programme of Measures (PoM) as "*a set of measures that the Member State is responsible for implementing, put into context with each other, referring to the*

<sup>31</sup> [MSFD Programmes of Measures recommendation](#) (Version MSCG\_14-2014-05 of 27 October 2014).

<sup>32</sup> [WFD reporting guidance 2016](#) (Version 4.3 to WG DIS of 13 October 2014).

environmental targets they address. The Programme of Measures includes existing and new measures.”

## 2.1.2 Types of measures under the MSFD

Four categories of measures have been defined in the *PoM Recommendation* (Table 1). These provide a basis for deciding on needs for cost-benefit analyses (CBA) and cost-effectiveness analyses (CEA). The distinction between ‘existing measures’ (type 1) and ‘new measures’ (type 2) also provides a basis for defining reporting needs.

Table 1: Categories of measures (adapted from the *PoM Recommendation*)

Measures	Measure category	Cost-effectiveness analysis (CEA)	Cost-benefit analysis (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 EU 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 EU legislation or international agreements, i.e. that are completely new</i>	NEW 2.b	Yes	Yes

Additionally, the *PoM Recommendation* recognises that measures may have different modes of action (Table 2), whilst MSFD Annex VI outlines different types of measures (Table 3) which are to be considered when devising the measures. These categorisations can be helpful in developing and describing the measures, but are not otherwise used to structure the reporting.

Table 2: Modes of action of measures (from *PoM Recommendation*)

N°	Mode of action
1	<b>Technical:</b> 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.
2	<b>Legislative:</b> Adapting or supplementing national environmental law and other national legislation influencing the marine environment to implement environmental targets and to achieve/maintain GES.
3	<b>Economic:</b> 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.
4	<b>Policy driven:</b> 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.

Table 3: Types of measures provided in MSFD Annex VI that Member States should consider when devising their measures.

N°	Description of measure
1	<b>Input controls:</b> management measures that influence the amount of a human activity that is permitted.
2	<b>Output controls:</b> management measures that influence the degree of perturbation of an ecosystem component that is permitted.
3	<b>Spatial and temporal distribution controls:</b> management measures that influence where and when an activity is allowed to occur.
4	<b>Management coordination measures:</b> tools to ensure that management is coordinated.
5	Measures to improve the <b>traceability</b> , where feasible, of marine pollution
6	<b>Economic incentives:</b> management measures which make it in the economic interest of those using the marine ecosystems to act in ways which help to achieve or maintain the good environmental status objective.
7	<b>Mitigation and remediation tools:</b> management tools which guide human activities to restore damaged components of marine ecosystems.
8	<b>Communication</b> , stakeholder involvement and raising public awareness.

### 2.1.3 Content of the MSFD Programme of Measures

The *PoM Recommendation* gives the following information (section IV.5):

*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 (e.g. 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:*

- a. *Method for selecting measures;*

- b. *Implementation (e.g. by legal, policy, socio-economic and financial instrument), including overview of potentially co-financed measures (art. 22) where relevant;*
- c. *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));*
- d. *Cost-effectiveness and/or cost benefits of the measures (how it has been taken into account?) and sustainability (art. 13(3));*
- e. *Overall coordination or input to other EU legislation and policies (including international agreements);*
- f. *Overall regional coordination including possible impacts on the marine waters of other countries (art. 13(8));*
- g. *Public consultation information.*

## **2.2 Links to reporting of measures under the WFD**

### **2.2.1 Overall approach**

At the Water Directors' and Marine Directors' meeting of 5-6 June 2014 in Heraklion, Greece it was agreed to develop the MSFD PoMs and their reporting in close conjunction with the PoMs reporting for the WFD. Considering that the Reporting Guidance of the WFD had already been developed and agreed, and considering that many measures to improve the status of the marine environment are land-based and thus considered under the WFD, the MSFD reporting will follow the WFD reporting guidance, to the extent possible and feasible. An important aspect of this coordinated reporting is that under the MSFD, in line with the WFD reporting, measures are to be aggregated under a predefined set of **Key Types of Measures (KTMs)**.

The need for coordinated WFD-MSFD reporting does not exclude the addressing of specific issues under the MSFD. For example, the need for cooperation within the MSFD (sub)regions, as required under MSFD Article 5(2), in order to develop a coherent and consistent approach is more developed under the MSFD, whereas the reporting on the WFD is more detailed in terms of cost reporting and economic analysis. WFD reporting, already in its second reporting cycle, is able to report quantitative figures whilst under the MSFD more substantial data gaps are anticipated and hence a more descriptive approach to reporting is proposed.

### **2.2.2 WFD Key Types of Measures (KTMs)**

In the WFD 2016 reporting guidance, detailed reporting schemes are proposed. These include reporting based on 25 Key Types of Measures (KTMs). The KTMs have been predefined as the categories under which measures have to be reported. The 2016 KTMs are based on the KTMs defined for the 2012 progress reports on the implementation of the programme of measures, the new ones reported by Member States in 2012 and commonly reported significant pressures not previously incorporated by predefined KTMs. Table 4 shows the KTMs as included in the WFD 2016 reporting guidance.

Considering that many of the pressures on the European seas are land-based, many of the WFD KTMs and associated measures are also relevant to the marine environment. Thus these measures can help to achieve or maintain GES and to achieve the environmental targets set under the MSFD. An indicative relationship of each WFD KTM to the relevant MSFD descriptors is shown in Table 4; the actual relationship in each country will vary according to the WFD measures selected and their contribution to achieving or maintaining GES.

There is a need to add "new" KTMs which are mainly focused on sea-based (and air-based) pressures in order to cover any new MSFD-specific measures (see section 3.2). This extension to the existing WFD approach will facilitate comparability and the consolidation of information at the EU level.

Table 4: List of WFD Key Types of Measures and an indicative relationship to the MSFD and its GES Descriptors (Note: text in red indicates modifications to the WFD KTM title to help distinguish them from MSFD KTMs)

N°	WFD KTM description	Indicative relevance to MSFD
1	Construction or upgrades of wastewater treatment plants	Relevant for the reduction of nutrient loads & solid particles (D5, D10)
2	Reduce nutrient pollution from agriculture	Relevant for the reduction of nutrient loads (D5)
3	Reduce pesticides pollution from agriculture	Relevant for the reduction of contaminants loads (D8, D9)
4	Remediation of contaminated sites (historical pollution including sediments, groundwater, soil)	Relevant for the reduction of contaminants loads (D8, D9)
5	Improving longitudinal continuity (e.g. establishing fish passes, demolishing old dams)	Relevant in relation to diadromous fish (D1) and sediments (D7)
6	Improving hydromorphological conditions of water bodies other than longitudinal continuity (e.g. river restoration, improvement of riparian areas, removal of hard embankments, reconnecting rivers to floodplains, improvement of hydromorphological condition of transitional and coastal waters, etc.)	Relevant (D7)
7	Improvements in flow regime and/or establishment of ecological flows	Relevant (D7)
8	Water efficiency technical measures for irrigation, industry, energy and households	Unlikely
9	Water pricing policy measures for the implementation of the recovery of cost of water services from households	Unlikely
10	Water pricing policy measures for the implementation of the recovery of cost of water services from industry	Unlikely
11	Water pricing policy measures for the implementation of the recovery of cost of water services from agriculture	Unlikely
12	Advisory services for agriculture	Relevant for nutrient and pesticide reduction (D5, D8, D9)
13	Drinking water protection measures (e.g. establishment of safeguard zones, buffer zones etc.)	Relevant for seawater desalination (D7)
14	Research, improvement of knowledge base reducing uncertainty	Relevant, could be applied to all descriptors
15	Measures for the phasing-out of emissions, discharges and losses of priority hazardous substances or for the reduction of emissions, discharges and losses of priority substances	Relevant for the reduction of contaminant loads (D8, D9)
16	Upgrades or improvements of industrial wastewater treatment plants (including farms)	Relevant for the reduction of nutrients, solid particles and contaminant loads (D5, D8, D9, D10)
17	Measures to reduce sediment from soil erosion and surface run-off	Possibly relevant for the reduction of nutrients & sediments (D5, D7)
18	Measures to prevent or control the adverse impacts of invasive alien species and introduced diseases	Relevant (D2)
19	Measures to prevent or control the adverse impacts of recreation including angling	Relevant (D2, D3, D10, D11)
20	Measures to prevent or control the adverse impacts of fishing and other exploitation/removal of animal and plants	Relevant (D1, D3, D4, D6)



N°	WFD KTM description	Indicative relevance to MSFD
21	Measures to prevent or control the input of pollution from urban areas, transport and built infrastructure	Relevant for the reduction of pollution in general (D5, D8, D9, D10, D11)
22	Measures to prevent or control the input of pollution from forestry	Possibly relevant for the reduction of nutrient and contaminant loads (D5, D8, D9)
23	Natural water retention measures	Relevant for positive effects on nutrients and sediment transport (D5, D7)
24	Adaptation to climate change	Relevant, in particular when related to the coastal zone (D1, D4, D6, D7)
25	Measures to counteract acidification	Unlikely (WFD KTM refers to freshwater systems)

### ***2.3 Use of measures under other policies***

Besides measures reported under the WFD, existing measures under other policies can also contribute to achieving or maintaining GES in the marine environment and to the MSFD environmental targets.

Under the MSFD reporting, measures under ‘other policies’ refer specifically to those which are not reported under the WFD. These include measures under the Common Fisheries Policy, the Habitats and Birds Directives, sanitary regulations on sea food, measures on offshore pollution and those of Regional Sea Conventions and other international agreements, as well as national measures. It is important that these other existing measures are considered in the gap analysis on needs for measures under MSFD and incorporated, where relevant, into the MSFD PoM.

## **3 Reporting of MSFD Programmes of Measures including exceptions**

### ***3.1 Overall approach to the MSFD PoM reporting***

In order to not repeat reporting efforts already undertaken through the Water Framework Directive (WFD) in 2016, and to ensure consistency, comparability and coordinated action with WFD implementation, the proposed approach for reporting of the MSFD PoMs is to build upon the existing WFD reporting framework in the following ways:

- a. Use the 2016 WFD reporting for land-based measures which are relevant to MSFD but which are already being reported under WFD;
- b. Use the WFD approach to organise the measures by Key Types of Measures (KTMs) categories. The KTMs reflect the main types of pressure that the measures need to address in order to achieve the MSFD environmental targets and to achieve or maintain GES;
- c. Use the WFD approach to report on new ‘MSFD measures’, by using an adapted WFD template for describing each measure and by having this information held at national level (on a national web site) rather than reported directly to the Commission (as xml files).

This approach reduces the reporting requirements for MSFD to:

- a. Reporting on measures which are additional to those reported under WFD in 2016, either existing measures under other policies or new ‘MSFD measures’, and grouping these according to a set of MSFD KTMs;
- b. Reporting on issues which are specific to the MSFD, such as links to Article 10 environmental targets and to the GES descriptors, regional cooperation and exceptions.

## 3.2 Key Types of Measures for MSFD

### 3.2.1 Basis for and list of MSFD KTMs

The basis for a coordinated reporting between the WFD and MSFD, as agreed by the Marine and Water Directors, is the development of a joint set of Key Types of Measures (KTMs). In the WFD 2016 Reporting Guidance, a set of 25 KTMs has been developed (see section 2.2). Additional KTMs are needed for the MSFD to address sea-based pressures and other types of action in marine waters. The set of additional KTMs needed for the MSFD, which are not yet covered under the WFD, is given in Table 5. These are based on the list of pressures in MSFD Annex III Table 2. Several KTMs address additional needs that are not directly related to a specific pressure; these can be found at the bottom of the KTM table. Considering that the list of KTMs is part of a coordinated reporting and that many WFD KTMs can contribute to achieving environmental targets and GES for the MSFD, the numbering of MSFD KTMs has been set to continue from that of the WFD KTMs.

Table 5: Key Types of Measures (KTMs) for the MSFD, supplementing the WFD KTMs listed in Table 4.

N°	Additional KTMs for MSFD reporting
26	Measures to reduce physical loss <sup>33</sup> of seabed habitats in marine waters (and not reported under KTM 6 in relation to WFD Coastal Waters)
27	Measures to reduce physical damage <sup>34</sup> in marine waters (and not reported under KTM 6 in relation to WFD Coastal Waters)
28	Measures to reduce inputs of energy, including underwater noise, to the marine environment
29	Measures to reduce litter in the marine environment
30	Measures to reduce interferences with hydrological processes in the marine environment (and not reported under KTM 6 in relation to WFD Coastal Waters)
31	Measures to reduce contamination by hazardous substances (synthetic substances, non-synthetic substances, radio-nuclides) and the systematic and/or intentional release of substances in the marine environment from sea-based or air-based sources
32	Measures to reduce sea-based accidental pollution
33	Measures to reduce nutrient and organic matter inputs to the marine environment from sea-based or air-based sources
34	Measures to reduce the introduction and spread of non-indigenous species in the marine environment and for their control
35	Measures to reduce biological disturbances in the marine environment from the extraction of species, including incidental non-target catches
36	Measures to reduce other types of biological disturbance, including death, injury, disturbance, translocation of native marine species, the introduction of microbial pathogens and the introduction of genetically-modified individuals of marine species (e.g. from aquaculture)
37	Measures to restore and conserve marine ecosystems, including habitats and species
38	Measures related to Spatial Protection Measures for the marine environment (not reported under another KTM)
39	Other measures

<sup>33</sup> Measures relating to placement of infrastructure and landscape alterations that introduce changes to the sea-floor substratum and morphology and hence permanent loss of marine habitat.

<sup>34</sup> Measures which address other types of sea-floor disturbance (e.g. bottom fishing, gravel extraction) which can change the nature of the seabed and its habitats but which are not of a permanent nature.

The measures identified as relevant for the MSFD PoM, both existing measures under WFD and other policies and new 'MSFD measures', are to be assigned to the relevant KTM (either the WFD KTMs or the MSFD KTMs) to provide consistency in the reporting and thus facilitate assessment of the PoM by the Commission under MSFD Article 16. Each measure is to be assigned to the most relevant KTM, but where necessary can be assigned to several KTMs.

### 3.2.2 Linking the different categories of measures to KTMs

The PoM Recommendation provides four categories of measures, which are in place or new and the set of KTMs provided an overarching structure under which the measures are aggregated. Table 6 shows this relationship, illustrated with examples of existing (WFD, other) and new MSFD measures for selected KTMs.

Table 6: Examples of existing and new measures for selected KTMs, indicating how they could be treated in reporting

KTM n°	KTM description	Examples of individual measures associated to KTMs	Measure category	Report category
1	Construction or upgrades of wastewater treatment plants	Treatment of urban waste water to reduce Nitrate and Phosphate inputs to fresh and marine waters	Existing: 1a (existing plants) or 1b (new plants)	WFD
		Upgrading a Wastewater Treatment Plants to reduce the inflows of plastics into the marine environment	New 2b	MSFD
2	Reduce nutrient pollution from agriculture	Reduce application of fertiliser to agricultural fields	Existing 1a/1b	WFD
		Use of winter cover crops to reduce nutrient leaching into the groundwater	Existing 1a/1b	WFD
27	Measures to reduce physical damage to the marine environment (not reported under WFD Coastal Waters)	Restrictions on seabed trawling in selected areas	New 2a	Other (CFP)
		Permits for deep-sea mining exploitation	New 2b	MSFD
29	Measures to reduce marine litter	Beach litter removal plan	New 2b	MSFD
		Economic incentives to deposit shipping waste, including old fishing gear, at port reception facilities	New 2a	MSFD
31	Measures to reduce contamination by hazardous substances (synthetic substances, non-synthetic substances, radio-nuclides) and the systematic and/or intentional release of substances in the marine environment from sea-based or air-based sources	Measures to control offshore pollution from oil and gas operations	Existing 1a	Other (e.g. RSC measure)
38	Measures related to Spatial Protection Measures for the marine environment (not reported under another KTM)	Additional MPAs to protect offshore habitats	New 2a	Other (e.g. RSC measure)

### 3.3 Reporting package on PoMs

The reporting package for the Member State Programme of Measures consists of the following (Figure 2):

1. **Summary Report** on the Programme of Measures, which provides a text-based overview of the PoM(s) (e.g. on general approaches to their preparation) and more specific details on the measures and any exceptions. Reference to measures reported under the WFD in 2016, and on existing measures under other policies, can be kept to a minimum. This report should be made available at a suitable national web site for access by stakeholders and other states, and be uploaded to ReportNet.
2. **Reporting Sheet** which includes mainly categorical information which will facilitate the assessment by the Commission of adequacy, consistency and coherence between Member States and across the marine (sub)regions and enable the preparation of statistical information on the PoMs. The report is to be uploaded to ReportNet as an xml file.
3. **Extended WFD reporting**, to cover the MSFD needs, for land-based measures reported under WFD but which also contribute to achieving or maintaining the MSFD environmental targets and GES in the marine environment. A coordinated approach between the MSFD and WFD implementation processes in each Member State will be necessary to make the relevant links between the two reporting processes. This information is reported via the WFD reporting process due in March 2016.

Based on the Member State's reports (which may include joint reporting), the Commission will undertake an **EU assessment** that will fulfil the provisions of MSFD Article 16. A first version of the proposed assessment framework for this was presented in DIKE\_10-2014-03.

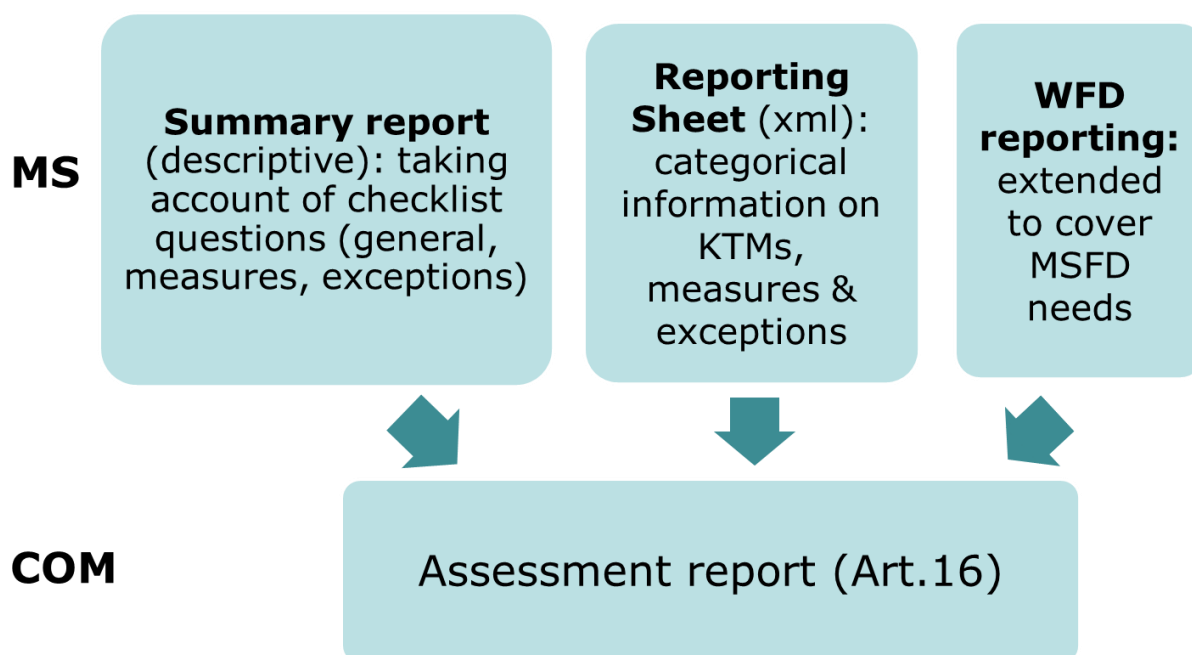


Figure 1: Components of the Member State reporting package for the MSFD Programmes of Measures, including exceptions (which are to be used for the Commission's Article 16 assessment).

#### 3.3.1 Joint documentation

To improve consistency of the reporting between Member States, some reporting could be prepared jointly, in cooperation with relevant Member States in the **Regional Sea Convention** or other international agreements. Some regional/international measures provide an umbrella for more specific measures that are defined and implemented nationally. In such cases, the more broadly-

defined regional/international measure could be documented jointly and supported by the more specific national measures which are documented by the individual Member States. Such an approach could be appropriate, for example, for RSC Marine Litter Action Plans.

### **3.4 Summary Report on the Programme of Measures**

The Member State's Summary Report provides narrative information on the Programme of Measures and is to include the following sections:

- a. **General overview:** indicating the version of environmental targets used for the PoM, the outcomes of the assessment of existing measures, the proposed new measures, the sufficiency of the PoM to achieve the targets and GES, any exceptions sought, regional cooperation and transboundary impacts, and the public consultation and administrative processes.
- b. **Measures in the PoM:** concise information is to be included on existing measures at an aggregated level (measures of type 1a and 1b). More detailed information is to be included for new measures (types 2a and 2b).
- c. **Exceptions:** details on the exceptions being sought by the Member State, including the concerned targets, spatial coverage, type of exception and relevant KTM. Justification is to be provided on why an exception is being sought, including the planned mitigation actions.

The content of each section is further outlined in the following sections. The topics and questions are a checklist of the information to be included in the Summary Report; however the Member State may wish to add further information which it considers necessary for the benefit of its stakeholders, other states or the Commission.

The contents defined here should be the basis for the public consultation undertaken in accordance with MSFD Article 19(2)(d). Member States could choose to use this Summary Report or to develop a specific report tailored to the needs of the Public Consultation. If the latter is the case, Member States are invited to make reference to the report used for public consultation in their Summary Report.

The Summary Report(s) can be prepared in pdf, html or other formats, provided they are suitable for transmission to the Commission (upload to ReportNet) as part of the Reporting Package. The report should be posted on a suitable national web site where it is available to stakeholders and other States.

The Member State may wish to provide a document (e.g. as a separate letter) which is effectively an index to where the responses to each section and question can be found in their Summary Report.

#### **3.4.1 General overview section**

The following "table of contents" (and guiding questions in each section) is proposed for the general overview section. Additional questions/information can be added if the Member State wishes.

##### **1. Environmental targets**

- a. Which version of your environmental targets (Article 10) does the PoM address (e.g. as reported in 2012; revised update on ReportNet; revised update available at national level)? Provide date and web link.
- b. Did you set any operational targets that relate to concrete implementation measures to support their achievement (Annex IV (2))?

##### **2. Inventory of existing measures**

- a. Based on your review of existing measures (Article 13(2)), did you identify a gap between the current set of existing measures (the baseline scenario, taking into ongoing account

implementation of existing measures and forthcoming legislation or international agreements) and what is needed to deliver the environmental targets and to achieve or maintain GES? Describe the outcomes of the analysis.

- b. Provide a reference to where the information referred to in MSFD Article 13(4) and 13(5) is made publicly available, as required under Article 13(6).

### **3. New measures**

- a. When selecting new measures, how have you ensured that they are based on / take into account (Article 13(3)):
  - i. Technical feasibility;
  - ii. Sustainable development: a combination of Impact Assessment (environmental, social and economic), cost-effectiveness analysis and cost-benefit analysis<sup>35</sup>?
- b. Will you include additional spatial protection measures in your PoM (Article 13(4))? How will these contribute to coherent and representative networks of marine protected areas, adequately covering the diversity of the constituent ecosystems in the (sub)region?

### **4. Adequacy of the PoM**

- a. Is the PoM as a whole (existing and new measures) sufficient to achieve your environmental targets and to achieve or maintain GES in your marine waters (Article 13(1))?
  - i. Yes, the PoM as a whole is sufficient;
  - ii. No, the PoM is not expected to achieve GES and the targets in every aspect or is not expected to achieve GES and the targets by 2020 and a request for one or more exceptions under MSFD Article 14 is provided (see separate outline for report on each exception). Specify which descriptors and targets are not fully addressed.
- b. How will the PoM contribute to the achievement or maintenance of GES (Article 13(1)) and environmental targets (Article 13(7))? Where relevant, provide explanations on any actions that will be undertaken (e.g. research, monitoring, survey) to close gaps in the knowledge base and enable improved information of whether the measures are sufficient to achieve the targets and to achieve or maintain GES.

### **5. Regional cooperation and transboundary impacts**

- a. Describe how (sub)regional coordination in development of your PoM was undertaken, and what were the key outcomes (e.g. coordinated national PoMs, joint measures, identification of issues for EU/international consideration) (Article 5(2)).
- b. How did you assess the transboundary impacts of your PoM on waters beyond your marine waters (Article 13(8))?
- c. How and when were any identified transboundary impacts (positive and negative) notified to affected states? Which states were notified and how were their views taken into account in your final PoM?

### **6. Public consultation**

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<sup>35</sup> Following the *PoM Recommendation*, sustainability is not to be assessed separately, but as a combination of impact assessment, SEA and CEA/CBA.

- a. When was the Public Consultation undertaken (Article 19(2))?
- b. Where/how? (consultation website)
- c. Did the Public Consultation include:
  - i. All measures reported under Article 13?
  - ii. All exceptions reported under Article 14?
  - iii. Ad-hoc measures under Article 14(1), 3<sup>rd</sup> subparagraph?
  - iv. If not, provide a list of the measures and/or exceptions which were not included and a reason for this.
- d. How was the Public Consultation taken into account?

#### **7. Administrative processes**

- a. Describe your implementation process, together with your administrative framework (e.g. the policy tools or plans containing the measures, including new measures, for protecting the marine environment, e.g. WFD PoM, National Waste prevention plans) (Articles 13(3), 13(7) and 13(10)).

### **3.4.2 Existing and new measures in the PoM**

This section should provide a list of all the measures which are part of the PoM and thus considered to be contributing to achieving your environmental targets and to achieving or maintaining GES. The measures should be summarised as follows:

#### **WFD measures (types 1a, 1b)**

Very limited information need be included on measures which are reported under WFD in 2016 and which contribute to your MSFD PoM, as the WFD reporting exercise for 2016 will capture full details (see section 3.6). Provide a list of the relevant WFD KTMs (lists of the individual measures are not needed) and a reference or web link to where details on the individual measures contributing to the KTMs can be found.

#### **Other existing measures (types 1a, 1b)**

With respect to other **existing measures**, only limited and concise information needs to be reported. These measures should be listed, but this can be at a suitable level of aggregation to avoid an unnecessary level of detail (suitable aggregations could be, for example: measures to reduce contaminants under the OSPAR Convention; the protected area provisions of the Habitats Directive; provisions under the CFP to manage the quantities of fish taken). A source reference to the report or website where more information on each measure, covering as far as possible the information made available for the WFD measures or the new MSFD measures, can be found should be provided; this reference should be relevant to your marine waters rather than a general reference to the EU or international policy. The assessment of whether the existing measures are sufficient to achieve targets and GES, covered in the general overview section, could be broken down to the level of the KTMs in this section.

#### **New measures for MSFD (types 2a, 2b)**

For each new measure, more detailed reporting is needed in this section of the Summary Report. The following information, based on the fields that are agreed upon in the WFD 2016 guidance, is needed:

- a. Measure code/name
- b. Description, including mode of implementation (e.g. technical, legal, policy, economic)

- c. For measure type 2a, give policy used (e.g. Habitats Directive, RSC measure)
- d. Relevant KTMs (under WFD or MSFD) and targets
- e. Temporal coverage (start date, end date if appropriate)
- f. Responsible Competent Authority and delivery authorities/organisations
- g. CEA and CBA undertaken (Yes/No)
- h. Financing (state of securing, source of funding)
- i. Level of coordination in implementation (e.g. local, national, regional)
- j. Obstacles to delivery, if any
- k. How will the effectiveness of the measure, once implemented, be assessed?

This information could be presented as a 'fact-sheet' per measure.

### **3.4.3 Reporting on exceptions**

If the Member State seeks to apply for an exception, as provided under MSFD Article 14, the following information is to be reported:

- a. Exception code/name
- b. Relevant targets, GES Descriptors and Annex III elements
- c. Spatial coverage of the exception ((sub)regions, assessment areas, geographic zones<sup>36</sup>)
- d. Exception type (according to options under Art. 14) and justification
- e. Mitigation – consequences and mitigation for other Member States and ad-hoc measures taken

All exceptions should be supported with a justification, using the template provided in Table 7.

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<sup>36</sup> As used in Article 11 reporting (Coastal waters, territorial waters, EEZ, etc)



Table 7: Template for reporting an exception under MSFD Article 14

<b>About the exception</b>	<b>Exception code/name</b>	MS-defined list		
	<b>Exception type</b>	<b>List, single</b>	<b>Reason (list, multiple)</b>	<b>Justification for exception</b>
		Art 14.1a MS is not responsible	<ul style="list-style-type: none"> <li>Action (e.g. environmental damage) caused by a third party for which the MS is not responsible</li> <li>Action needed by another Member State(s)</li> <li>Action needed by another non-EU state(s)</li> <li>Action needed by EU (e.g. CFP)</li> <li>Action needed by another international Competent Authority (e.g. IMO)</li> </ul>	Justification (text), including relevant countries or international CAs. If notified under Art 15 provide date notified and letter.
		Art 14.1b Natural causes	<ul style="list-style-type: none"> <li>Floods</li> <li>Hurricanes/typhoons/storms</li> <li>Other</li> </ul>	Justification (text)
		Art 14.1c Force majeure	<ul style="list-style-type: none"> <li>Armed conflict</li> <li>Terrorism</li> <li>Major accident</li> <li>Other</li> </ul>	Justification (text)
		Art 14.1d Over-riding public interest	<ul style="list-style-type: none"> <li>Protecting fundamental values for citizens</li> <li>Fundamental policies of State and Society                             <ul style="list-style-type: none"> <li>Economic or social activities fulfilling specific obligations of public services</li> </ul> </li> <li>Other</li> </ul>	Justification (text), including how it is ensured that achievement of GES is not permanently precluded/compromised.
		Art 14.1e Natural conditions		Justification (text), including specifying the date by when MS will reach GES.
		Art 14.4	<ul style="list-style-type: none"> <li>No significant risk</li> <li>Disproportionate costs</li> </ul>	Justification (text), including: <ul style="list-style-type: none"> <li>a substantiation of how there would be no further deterioration and demonstrate that the achievement of GES will not be permanently compromised</li> <li>For disproportionate costs, specify which Descriptor(s) and Annex III elements are relevant.</li> </ul>
<b>Mitigation</b> (if exception is notified under Art. 14(1))	<b>Consequence(s) for other MS</b>	Text explanation of the consequences for other Member States in the relevant marine (sub)regions		
	<b>Ad-hoc measures taken</b>	List of ad-hoc measures (select relevant measures that are ad-hoc from full list of measures in PoM).		
	<b>Mitigation</b>	Substantiate how the ad-hoc measures aim to: <ul style="list-style-type: none"> <li>continue pursuing environmental targets and GES;</li> <li>prevent further deterioration in marine water status (for Art 14(1)(b),(c) and (d)) and</li> <li>mitigate the adverse impact on marine waters of (sub)region or other MS.</li> </ul>		
<b>Links to</b>	<b>Relevant Art. 10 targets</b>	From MS Art. 10 report		

	<b>Relevant Art. 9 Descriptors</b>	Descriptors 1-11
	<b>Relevant Annex III elements</b>	From reporting list (2012)
<b>Spatial coverage</b>	<b>Relevant (sub)Regions</b>	From reporting list (2012)
	<b>Relevant assessment areas</b>	From MS list of MarineUnitIDs (select most appropriate area(s))
	<b>Relevant geographic zones</b>	From reporting list (2014)

Member States may wish to include the ad-hoc measures of the mitigation actions that they are required to take under Article 14(1) as an integral part of the programme of measures (i.e. alongside the other measures given in section 3.4.2), but should clearly indicate which these are against each exception.

More information on exceptions is available under Chapter IV of the *PoM Recommendation*.

### **3.5 MSFD PoM Reporting sheet**

In addition to the descriptive information in the Summary report, categorical information on the measures (as reported under section 3.4.2) and exceptions (as reported under section 3.4.3) is to be reported in xml format to ReportNet. The reporting sheet will provide simple links to elements of Articles 8, 9 and 10 that can be used for comparison and to derive statistical information, and be associated to the geographic data ((sub)regions, assessment areas).

The following information is required for the reporting sheet:

- a. Measure or exception code and name (depending on the type of entry)
- b. Associated KTMs
- c. Policy used (select from list: MSFD, WFD, RSC, national, etc)
- d. Relevant targets, GES descriptors and Annex III Table 1 characteristics, <sup>37</sup>
- e. Spatial coverage (MS, (sub)regions, assessment areas, geographic zones)
- f. Web site link to Member State report(s)

### **3.6 Adapting WFD reporting to MSFD reporting needs**

The measures reported under the WFD KTMs in 2016 are expected to make a relevant and significant contribution to achieving the targets and GES for the MSFD, especially to address land-based pressures which are also affecting the marine environment.

In order to avoid reporting of relevant measures under both WFD and MSFD, the 2016 WFD reporting guidance has been adapted to include linkages to the MSFD by means of new reporting questions that cover the MSFD. These are listed in the textbox below.

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<sup>37</sup> To simplify the reporting on Annex III Table 1 characteristics, the following coarse categories can be used: birds, mammals, reptiles, fish, cephalopods, seabed habitats, water column habitats. One or more options can be selected.

**Questions related to MSFD in the 2016 WFD reporting on measures:**

- a. Is this measure relevant for the purpose of the Marine Strategy Framework Directive?
- b. Has the preparations of the WFD RBMP/PoM been coordinated with the implementation of the Marine Strategy Framework Directive?
- c. In developing the WFD PoM, have you assessed the need for additional measures/more stringent measures beyond those required by the WFD in order to contribute to the achievement of the relevant MSFD objectives in coastal and marine environment?
- d. If MSFD Assessment is “yes”, for which issues are additional measures needed to meet the MSFD objectives? Choice is given between Nutrients, chemicals, litter, others
- e. Please provide a reference to where more information can be found on the coordination with the MSFD implementation and the consideration of the MSFD objectives in developing the WFD PoM.
- f. Was joint consultation carried out on the Marine Strategy? If yes, provide more information in the RBMP/background documents.

A question on MSFD relevance has been included in the section entitled “Mapping KTMs to individual measures”<sup>38</sup>, as shown below.

**Existing question in WFD reporting:**

**Schema element:** MSFDRelevance

**Field type / facets:** Yes, No, Unknown

**Guidance:** Required: Is this measure relevant for the purpose of the Marine Strategy Framework Directive?

More specific information on the relevance of the WFD KTMs to MSFD implementation is required, in particular, to make the links to the relevant environmental targets, GES descriptors and Annex III characteristics. Rather than add this detail to the WFD reporting (which could be at a river basin resolution), the information is captured in the MSFD Reporting Sheet (xml). This will ensure the linkages are made to WFD reporting whilst allowing the specific MSFD information to be kept with similar information for non-WFD measures. If a Member State wishes to report the link between MSFD targets and GES Descriptors and the specific WFD measures, this information could be added to the MS report (fact sheet) for the WFD measure (for reporting in the MSFD xml, the links will be made only at the KTM level).

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<sup>38</sup> p.241 of the WFD 2016 Guidance report (9 July 2014 version)