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New generation EU directives, sustainability, and the role of transnational coordination in Baltic Sea maritime spatial planning

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ABSTRACT

The EU MSP Directive is an example of a so-called *new generation* directive, which gives Member States room for adaptation to national contexts. The main objective in this article is to identify and analyse potential obstacles to effective and efficient planning caused by the diversity among national MSP frameworks that the Directive's broad regulatory boundaries have led to. It is shown that *planning approaches* can differ substantially between neighbouring countries, which can make it challenging to coordinate across national borders. Divergence between national MSP frameworks can also emerge from how political, jurisdictional and, administrative systems and traditions are *organised* in different Member States. It is shown that neighbouring countries can diverge substantially in how the ecological, economic and social dimensions of sustainability are balanced, which can make transnational coordination challenging. Furthermore, it is shown that *stakeholder consultations* differ among Member States in terms of, for example, who were invited, how the consultations were undertaken, and the role they play in relation to political decision-making. Because of these, and other differences in how MSP frameworks are being developed in the Member States, it is suggested that regional integration should be promoted with discretion. From this perspective, it seems reasonable to embrace diversity, while simultaneously promoting the adaptive management of coordination problems at lower levels, when, or if, they emerge or can be foreseen. Thus, increased integration of national MSP frameworks should be viewed as an instrument to reduce concrete efficiency losses, rather than as an intrinsic good.

1. Introduction

The recent trend in EU environmental directives in becoming increasingly focused on process and goal achievement rather than on *command and control* creates substantial challenges to Member States in promoting overarching objectives such as sustainable development and integration (Bondarouk and Mastenbroek, 2017; Liefferink et al., 2011). From having been largely concerned with how to “implant” EU regulations into domestic jurisdictions, governments must increasingly interpret EU objectives. EU Member States need to develop national strategies that simultaneously fit domestic contexts and reach directive requirements within given deadlines. Thus, transposition of an EU directive has become less about rule compliance and more about how to

adjust domestic policies to the regulatory boundaries provided by the Directive (Thomann, 2015). However, this move towards improved opportunities for Member States to adopt policies that fit domestic contexts is likely to increase governance diversity among EU countries, which in turn makes integration more challenging. While wider regulatory boundaries can facilitate implementation of EU directives, they simultaneously put more pressure on neighbouring countries to coordinate their policies. Such transnational coordination is especially important in marine settings, because of the inherent interconnectedness in natural resources and various forms of marine infrastructure.

This article addresses how tensions between divergent policy frameworks in Member States and EU overarching objectives on sustainability and Blue Growth play out in the transposition of the Maritime

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Spatial Planning Directive (MSP Directive, 2014).¹ More precisely, the focus is placed on how divergent domestic contexts among some Baltic Sea countries relate to the Directive's call for transnational collaboration as part of the promotion of sustainability and regional cohesion in Baltic Sea MSP. According to the EU Commission, "Implementing the Directive will allow Member States to coordinate their administrations based on integrated planning and management processes. This constitutes a huge simplification and cost-saving exercise both for the country and potential investors." (European Commission, 2014a). The deadline for transposition of the Directive and the designation of Competent Authorities was set to 2016, and all Member States must have national maritime spatial plans in place in 2021.

However, despite the contemporary surge towards systemic integration in marine governance, tensions may develop between, on the one hand, the promotion of adaptation to domestic contexts, and on the other, the expectation of closer coordination among Member States in the MSP Directive so as to ensure cohesion. Differences among the Baltic Sea countries in terms of concrete aspects such as how spatial planning is carried out, by whom and on what administrative levels, how balancing of environmental protection and Blue Growth plays out, how sustainable development is interpreted, and to what extent and how stakeholders are brought into policy processes are bound to create friction among Member States, which in turn can make transnational coordination challenging.

It is plausible that the more divergent national MSP frameworks become, the more challenging effective coordination will be. Policy arenas and tools to facilitate communication across organisational, conceptual, and cognitive divides that can effectively address such challenges are emerging in the Baltic Sea Region but are still in embryonic form. However, it may also be hypothesised that diversity among national MSP frameworks can – via policy diffusion or in other ways – promote transnational social learning. From this perspective, diversity can be an asset, providing Member States with a broad set of examples of how integration challenges can be handled.

The aim of this article is to analyse challenges resulting from the combination of broad boundaries and call for more transnational coordination in the MSP Directive, how these challenges have been handled by the Member States, and whether ways to improve integration and long-term sustainability in Baltic Sea marine spatial planning can be identified. This will be achieved by (a) identifying key coordination aspects in the MSP Directive, (b) selecting dimensions in national MSP frameworks where diversity among Member States is substantial, (c) analysing problems and opportunities in reconciling diversity with transnational coordination, and (d) discussing if and how the MSP Directive is likely to promote regional cohesion. The findings of this study are likely to be valuable not only for improved marine governance in the Baltic Sea Region, but for other regions as well.

The Baltic Sea has been selected in this study because of: its particularly sensitive ecosystems together with the high intensity of marine resource use, the extensive and long-established regional regulatory institutions for protection of the environment as well for Blue Growth, and emerging coordination pressures because of binding EU directives in combination with regional initiatives in support of transnational environmental collaboration. Thus, marine spatial planning of the Baltic Sea provides an interesting case for studying how EU promotion of regional cohesion interact with varying national contexts.

After a brief background on contemporary marine spatial planning in the Baltic Sea Region, a section on method follows. The theoretical approach based on transposition theory and multi-level governance conceptualisations is then described, leading to a presentation of the analytical framework, which is based on contextual dimensions that

have been showed to be relevant in the coordination of regional marine spatial planning. The article continues with a results section where the analytical framework is used as a vehicle for the analysis of interaction between domestic contexts and supranational regulatory structures. Finally, it is discussed how these interactions influence contemporary governance structures and some potential pathways for improvements are suggested.

2. Background

Transnational coordination of domestic MSP frameworks has been identified as a key challenge to efficient and sustainable resource use and protection of ecological integrity in marine areas (European Commission, 2014a,b, 2008). The main reason why transnational coordination tends to be more fundamental in MSP than in traditional, terrestrial planning is that biophysical borders are more porous in the sea than on land, which means that spill-over effects from marine activities are common on especially neighbouring countries. Moreover, because of the importance of efficient marine transportation and communication, integration of institutions and physical infrastructure in these areas is essential.

Transnational coordination at multiple governance levels can be complex in marine spatial planning, because appropriate levels of coordination differ depending on the type of ecological threat and planning requirements. This is especially pertinent in marine settings, because the jurisdictions are less clear than in terrestrial settings (especially in Exclusive Economic Zones), and because propagation of ecological disturbances tends to be harder to predict. Whereas coordination at the EU level is warranted on some issues, other issues are better dealt with at bilateral or sub-regional levels, involving authorities and stakeholders at multiple domestic governance levels. Arguably, improved coordination is called for when the gains from increased efficiency exceed the costs, but it is not an intrinsic good.

From a more theoretical perspective, interconnections and interdependencies in marine spatial planning can be captured by the concept of *collective goods*, in this case resources and ecosystem services that are shared among several countries. Two aspects of such transnational collective goods are especially important in relation to regional marine planning: *externalities* and *free-riding* (Sandler, 2004). Externalities arise when action taken in one country, for example on fisheries, environmental protection or offshore wind energy, influences other countries.² When externalities can be foreseen or anticipated, affected countries shall according to the MSP Directive and the Espoo Convention (ECE, 2017) be informed at an early stage. Theoretically, countries involved should be able to negotiate efficient agreements based on the existing distribution of rights (Coase, 1960), primarily the Polluter Pays Principle. However, because of the vagueness and limited enforceability of many treaties, inefficiencies can emerge when externalities are not considered appropriately in the national frameworks and policies.

Closely connected to externalities, the concept of free-riding captures how countries can be tempted to refrain from collaboration in reducing pollution or improving sustainability, when benefits cannot be made conditional on individual participation and contributions. Moreover, in cases where collaboration has been agreed upon, implementation can turn out to be partial at best, for the same reasons. Thus, due to transnational externalities and free-riding, efforts to reduce pollution and improve sustainability tend to be less than ideal from a collective (regional) perspective, and transnational coordination is often more limited than what overall efficiency would imply. Some of

¹ The concept of Blue Growth refers to EU's long term strategy to support sustainable growth in the marine and maritime sectors (see, for example, European Commission, 2017).

² Transnational externalities can be positive or negative. For example, positive externalities can occur when protection of the environment in one country positively influences ecosystem conditions in a neighbouring country. However, because most real-world problems are caused by negative externalities, the focus is henceforth only placed on those.

these challenges are recognised in the MSP Directive, but guidance on how to manage them is not provided.³

Governance structures above the national level that influence MSP in the Baltic Sea can be divided roughly into three parts; Global sectoral treaties, the EU, and regional conventions and agreements (Hassler et al., 2018). At the global level, almost all treaties are sectoral, that is, cover a specific sector, or even a specific problem area (for example, the UN Framework Convention on Climate Change, the Convention on Biological Diversity; International Maritime Organization Conventions, and the World Trade Organization). Global governance structures establish the highest regulatory governance level that forms a first layer of boundaries for policy-makers at lower levels. In other words, policy-makers at lower levels need to respect regulations at higher levels in order to preserve overall consistency, although some inconsistencies tend to emerge nevertheless (Hassler et al., 2018).

EU policies tend to be more precise, and sometimes better integrated over sector borders, compared with global agreements. The main EU policy instruments influencing Baltic Sea MSP, apart from the MSP Directive, are the Marine Strategy Framework Directive (MSFD; Directive 2008/56/EC), the Blue Growth Strategy, and the EU Strategy for the Baltic Sea Region (EUSBSR) (Hassler et al., 2017). These policy instruments comprise a second layer of boundaries that restrict how Member States can design national MSP frameworks. While the MSP Directive exerts direct influence, the Marine Strategy Framework Directive and the Blue Growth Strategy exert indirect influence, since they are the two most important pillars that the MSP Directive rests upon. In fact, the MSP Directive can be interpreted as an attempt to bring these two pillars together, with Sustainable Development as an overarching policy cover.

At the Baltic sea regional level, the HELCOM Baltic Sea Action Plan plays a key role regarding environmental protection. Moreover, the HELCOM-VASAB Maritime Spatial Planning Working Group (HELCOM-VASAB WG) was established in 2010, tasked with promoting co-ordination of national MSP frameworks in the Baltic Sea Region (Luttmann and Janßen, 2016).⁴ Although the HELCOM-VASAB WG relies on non-binding commitments, it can loosely be described as a third layer of policy boundaries that influences how national MSP frameworks evolve. The bringing together of such a working group crossing national as well as sector borders (with HELCOM focusing environmental protection, and VASAB planning), is an interesting initiative in sharing knowledge and promoting understanding, and thus a mechanism to support regional MSP cohesion.

3. Method

This article is empirically based on data that was collected in several in-depth case studies between 2014 and 2017, a task undertaken in the BONUS BALTSAPACE research project. These case studies were focused on evolving national MSP frameworks in selected Baltic Sea countries, policy and sector integration, knowledge integration, stakeholder participation and the role of the HELCOM-VASAB WG. Apart from previous studies, policy documents, public investigations, grey literature and other types of written sources, interviews with strategically selected stakeholders were held (Table 1). The group of stakeholders interviewed was broad in scope, and covered, for example, government officials, administrators, sector representatives, and NGO representatives. Based on this data, narratives were constructed in the case studies.

Moreover, a series of *Dialogue forums* were held, where groups of

³ Some other directives, most notably the Marine Strategy Framework Directive (EU Directive, 2000), have more precise requirements, but like the MSP Directive, they do not comprehensively cover the kind of transnational collaboration challenges referred to here.

⁴ HELCOM: Baltic Marine Environment Protection Commission - The Helsinki Commission; VASAB: Visions and Strategies around the Baltic Sea.

Table 1
Summary of interviews in selected BALTSAPACE case studies.

Case	Public authorities/ Politicians	IGOs	Sector organisations/ users	NGOs	Science
HV WG	17 ^{a,b}	6	–	1 ^b	1 ^b
Latvia/Lithuania	22	–	–	5	–
Sweden/Denmark	26	–	5	1	–
Germany	6	2	5	2	–
Poland	5	–	12	3	2

^a Interviews partly undertaken by Baltic SCOPE, shared with BALTSAPACE.

^b Interviews/Questionnaires/Personal.

planners, experts and scientists were brought together to discuss MSP-related matters using an *extended peer-review process* (Cornell et al., 2013), where intradisciplinary scientific processes are discussed with stakeholders and practitioners with time- and place-bound knowledge. Because these forums were held at several occasions during the undertaking of the research project, it was possible to adjust and adapt aspects of the scientific process to Dialogue forum findings. The participants had ample opportunities to comment upon the analytical framework used in the project, the tools developed, and conclusions drawn in case studies. The BALTSAPACE research group benefitted substantially from these forums, because aspects that had not been anticipated emerged and evolved during the deliberations. The narratives developed in the BALTSAPACE case studies and protocols from the Dialogue forums form the empirical grounding for this article.⁵

Certain limitations in the methodology adopted should be noted. Because the major objective in the BALTSAPACE project was to *identify* and *understand* integration challenges in regional MSP, rather than to *measure* correlations, emphasis was placed on in-depth interviews and participatory observations, rather than on quantifiable data. This means that the results arrived at in the BALTSAPACE project were indicative rather than conclusive; unambiguous causal relationships could not be established, and statistical inferences could not be made. However, the methodology adopted made it possible to identify and interpret integration challenges that are likely to influence how national MSP frameworks evolve in the Baltic Sea Region.

4. Theory

The main focus in the expanding work on *transposition theory* is placed on differences between what EU directives require and the observable changes in Member States' policies. These divergences are often portrayed as *implementation deficits* or *lack of compliance*, implying that the fundamental problem is how to make sure that Member States fulfil directive requirements as meticulously as possible (Bondarouk and Mastenbroek, 2017; Treib, 2014; Steunenberg and Rhinard, 2010). Three broad categories of underlying explanations of observed implementation deficits and compliance problems dominate the literature: (a) lack of commitment or political “will”, (b) lack of capacity, and (c) domestic organisation of public administrations, including stakeholder participation. Although scholars disagree on how to attribute explanatory power among these categories, there seems to be a reasonable agreement that – depending on what directives are analysed and how compliance and impact are defined – they all have some merit (Delreux and Happaerts, 2016).

This compliance perspective has recently been challenged, or complemented, by scholars emphasising bottom-up perspectives such as *customisation*, where transposition of directives can be described as pragmatic adjustment processes between domestic contexts and EU requirements. This view has, at least partly, emerged as a consequence

⁵ See < <http://www.baltspace.eu> > for additional information and publications.

of the advent of so-called *new generation* directives, EU directives that are less precise regarding compliance requirements compared with earlier ones, and thus allow Member States greater discretion in implementation phases (for example, on how to reach directive targets, and how to design required management mechanisms such as consultation processes (Thomann, 2015; Liefferink et al., 2011; Töller, 2010). Thus, *new generation* directives allow Member States – at least to some extent – to *customise* how to revise existing domestic regulatory structures and institutions.

Bringing the diversity of domestic contexts into the analysis of transposition processes increases the potential of addressing why transposition plays out so differently in the Member States. Moreover, when the issue is not only about compliance with requirements, but rather about more complex adjustment processes, questions related to why states sometimes do more than is required by the directive (“gold-plating”) can fruitfully be addressed (Thomann, 2015). Rather than framing such processes as examples of “over-implementation”, the role of domestic political pressures and context in policy-making can be problematised, where EU directives represent one among other factors that influence how national policies unfold and evolve.

However, more rarely questions have been asked on how the design of the directive influences compliance. Directives with broader boundaries and imprecise requirements – *new generation* directives – can generally be assumed to be easier to comply with compared with traditional, more precise directives.⁶ However, it can also be assumed that the less precise the directive's requirements are, the more divergent policies in the Member States will be. Relaxing precision in the demands on Member States creates greater possibilities of letting domestic contexts influence policy-making, which is likely to result in diverse outcomes. In other words, Member States can be expected to develop quite different national MSP frameworks. Because of divergent national MSP frameworks in combination with substantial externalities and temptations to free-ride, identification and management of coordination problems become more important in order to reduce inefficiencies.

Therefore, a conceptual perspective is adopted in this article, where *new generation* directives are viewed as what might be called transnational *governance arenas*. These governance arenas provide policy boundaries for Member States, conceptually not very different from how market transactions are facilitated through the political provision of regulatory boundaries (Hassler et al., 2018). In contrast with many earlier EU directives that were more precisely specified, *new generation* directives provide an arena in which governments, authorities and stakeholders interact on the transposition of the directive. While policy boundaries can be lax in some areas of the governance arena defined by the Directive, and somewhat more precise in others, Member States have substantial freedom in how to design national policy frameworks under *new generation* directives.

In contrast with the focus on implementation and compliance in much of the earlier work on transposition theory, more weight is given to how EU directives can provide direction (sustainable development) and overarching organisational requirements (a national plan has to be developed before a certain deadline, consultations have to be held, Competent Authorities have to be designated) in order to promote gradual, adaptive, and “open-ended” policy processes that over time can improve governance outcomes (Liefferink et al., 2011). Thus, transposition theory is, in this article, used in a somewhat unorthodox manner, focusing more on the identification of problem areas and Member States' problem-solving capacities, than on measuring

⁶ It can be difficult to know whether the design of a specific directive reflects a conscious strategy to use a *new generation* directive format with broad policy boundaries, or rather a lowest common denominator outcome of Member State negotiations. However, in either case Member States have to accommodate to the directive as it is eventually formulated, irrespective of how it came into being.

compliance.

5. Analytical framework

In order to construct an analytical framework, data and narratives from the in-depth case studies carried out in the BALTSPACE research project were used to identify four analytical dimensions that are of direct relevance to the MSP Directive. For each dimension, endpoints were defined representing the outer boundaries on a continuous scale; corresponding requirements in the MSP Directive were identified and matching empirical focal points in national MSP frameworks and policies were elaborated (see Table 2). The analytical framework was primarily constructed to relate domestic differences between adjacent Member States that may influence to what extent transnational coordination is needed, with corresponding sections in the MSP Directive. In doing this, possibilities are opened to analyse how, and to what extent, the MSP Directive contributes to regional efficiency in marine spatial planning (see Table 2).

5.1. Planning approach

National MSP frameworks are likely to be substantively influenced by Member States' planning praxis and culture. Some scholars argue that planning in marine settings is fundamentally different from terrestrial planning (Jay, 2018; Gazzola and Onyango, 2018), while others argue that marine planners can learn from experiences gained in terrestrial planning (Kidd and Ellis, 2012; Peel and Lloyd, 2004). In either case, the long history of terrestrial planning, not least sectoral zoning, is likely to influence how contemporary MSP frameworks are designed, especially in territorial waters close to the shoreline. However, it is also reasonable to assume that the more recent emphasis placed on the Ecosystem Approach influences processes and outcomes.

While the MSP Directive explicitly aims to achieve sector integration and adoption of the Ecosystem Approach, it does not specify what this implies for the construction of national frameworks. Thus, the *new generation* vagueness of the MSP Directive does not substantially limit opportunities for Member States to choose varying planning strategies within the spacious governance arena. However, it may evoke tensions between the historical legacies of sectoral zoning traditions and the more recent political demand for system-oriented governance modes. Because of the Directive's vagueness and a host of domestic contextual factors, emerging national MSP frameworks differ in the dimension of sectoral – systemic planning. In most cases, national plans are best characterised as being built on various combinations of sectoral and systemic planning components.

5.2. Organisation

Broadening the scope to the political and administrative organisation of societies, transposition research shows that *new generation* EU directives cannot simply be implanted into national contexts. First, they have to be “domesticated”. Moreover, throughout and beyond the implementation phase, altering power structures and other contextual changes is likely to induce demands for renegotiations. Thus, transposition of a *new generation* directive is more aptly described as a dynamic process that differs over time and among countries, than as a static implanting of the directive into national legislation. Nevertheless, the MSP Directive includes some mandatory components that define the governance arena in this area. First, a Competent Authority must be specified in each Member State, tasked to be a contact point for other countries and the EU. The selection of such a key authority is neither a coincidence, nor greatly influenced by the Directive, but rather reflects complex political considerations, existing institutions, distribution of sectoral influence, and other domestic contextual conditions. In other words, the choice of Competent Authority can be assumed to say something about how planning prioritisations unfold in national MSP frameworks.

Table 2
Selected analytical dimensions, endpoints, focus in the MSP Directive, and key questions to interrogate in relation to domestic contexts.

Dimension	Endpoints (continuous scale)	MSP Directive focus	Focal points in domestic contexts
Planning approach	Sectoral – Systemic	Integrated Maritime Policy (IMP) (Article 1)	To what extent have sectoral zoning logics influenced the elaboration of national MSP frameworks? To what extent have systemic (ecosystem) management perspectives been used to underpin national MSP frameworks?
Organisation	Centralised – Decentralised	Selection of Competent Authority in Member States for implementation of the Directive (Article 13)	In what ways have elaborations of national MSP frameworks been influenced by existing political and administrative regimes in the Member States?
Sustainability	Environmental protection – Blue Growth	Economic, social and environmental aspects of sustainability (Article 5)	How are economic and environmental considerations balanced in national MSP frameworks? ¹
Stakeholder inclusion	Formative – Symbolic	Public participation (Article 9)	Are stakeholder consultations primarily designed to <i>de facto</i> influence planning decisions, or rather to legitimise decisions taken elsewhere?

¹ Because national MSP frameworks so far have almost exclusively been focused on environmental and economic sustainability, the social dimension has been excluded in this study.

Second, and related to the selection of Competent Authority, the distribution of power between governance levels (national, state, and municipal) is likely to influence how national MSP frameworks turn out. In decentralised political systems where municipalities have substantial power over local processes and taxation rights, processes tend to evolve in different ways than under more centralised regimes. For example, decentralised systems can lead to less uniform implementation and higher prioritisations of local objectives than centralised systems, as well as influencing how stakeholder participation processes are staged. Thus, the decentralisation – centralisation dimension can be assumed to be relevant for how national MSP frameworks and policies are designed and evolve.

5.3. Sustainability

While the organisational dimension concerns institutional *form*, the sustainability dimension captures national differences in policy *content*, focusing on how competing claims and objectives on environmental protection and Blue Growth are reconciled or balanced in this part of the governance arena. The organisation and sustainability dimensions are interdependent, because priorities decided upon between environmental protection and Blue Growth objectives both influence, and are influenced by, organisational structures. While principled environmental concern certainly influences how priorities are made, concrete benefits – such as Blue Growth outputs and ecosystem services – comprise claimable goods that influence policy-making. Although most ecosystem values can only be expressed in approximate numbers and attempts to tie stakeholder positions to benefits gained are partial at best, such considerations are not irrelevant (Hassler, 2015). Quite the contrary, distribution of costs and benefits (among stakeholders as well as between public and private sectors) from, for example, decreased marine pollution and promotion of offshore wind energy, influences which positions countries adopt in the environmental protection – Blue Growth dimension, although other factors may influence policy-making as well. Thus, given the features of the MSP Directive, which stays silent on how to balance competing claims and objectives, variation among Member States in terms of expected cost and benefits is likely to induce Member States to design national MSP frameworks somewhat differently in the sustainability dimension.

5.4. Stakeholder inclusion

Stakeholder inclusion is regarded as a crucial component in effective and legitimate planning, especially aspects such as who to invite, when invitations are made, and how consultations are designed (Hassler et al., 2018; UNEP & GEF-STAP, 2014; Gopnik et al., 2012). Despite the recent rapid growth of literature on how to design successful stakeholder and public consultations, the MSP Directive practically stays silent on these

matters. Due to this only vaguely defined governance arena, Member States are likely to design consultations in different ways, not only along the formative/symbolic axis, but also for using them as, for example, instrumental or normative policy tools.

The Nordic countries have long-established democratic political systems with substantial elements of consensual decision-making and influential civil society organisations, although there are nuanced differences among them reflecting national experiences and traditions. While Germany has a shorter democratic history, its contemporary political system shares many underpinnings with the Nordic countries. In contrast, the political systems of Poland and the Baltic States, as relatively recent members of the European Union and with histories of being dominated by the Soviet Union, have been built on somewhat different foundations when it comes to consensual and participatory policy-making. These differences between, on the one hand, the Nordic countries and Germany, and on the other the Baltic States and Poland, can be assumed to have implications for how stakeholder consultations on MSP evolve in these countries.

6. Analysis

The analytical framework with its four key dimensions is in the following used as an analytical vehicle in order to identify transnational coordination challenges due to divergent national frameworks evolving in the Baltic Sea MSP governance arena. Carefully selected aspects from BALTSPACE case studies are used to shed light on how frameworks vary between Baltic Sea countries, despite the shared overarching requirements of the Directive. Even though heterogeneity in the transposition of the MSP Directive is not necessarily a problem – in fact, customisation can improve both implementation effectiveness and domestic legitimacy – divergent frameworks can complicate transnational coordination. The overarching question that will be probed is whether diversity among national MSP frameworks can coexist with an effective transnational coordination that keeps efficiency losses at bay.

6.1. Planning approach – how timing can influence outcomes⁷

The MSP Directive states that Integrated Maritime Policy (IMP) shall be an overarching objective in maritime spatial planning in the EU. Arguably, this implies that environmental safety should be assessed in all sectors, rather than merely being perceived as one sectoral interest among others (Hassler et al., 2018). Moreover, tensions in the use of contemporary spatial resources need to be managed, as well as tensions that may emerge over time. While a forward-looking methodology has been part and parcel of terrestrial planning, functional zoning rather than

⁷ This section builds extensively on Blažauskas et al. (2016).

ecosystem management has historically been the main conceptual underpinning. Against this background, it is interesting to see how the national MSP frameworks in Latvia and Lithuania have evolved along quite divergent trajectories, and what role *timing* has played in these processes.

The reasons why the two countries' MSP frameworks have evolved in different directions are complex and multifarious. However, timing seems to have been one important factor. Rather than elaborating a new legal framework for marine spatial planning, Lithuania chose to use the Law of Territorial Planning (No. 107-2391) and the Programme for Complementing the Comprehensive Terrestrial Plan of the Republic of Lithuania by the Marine Areas (No. D1-775) as departure points for its MSP framework. The Law on Territorial Planning was revised in 2013, that is before the MSP Directive came into force in July 2014. Instead of elaborating the MSP concept, functional zoning procedures were basically extended from terrestrial to marine settings.

A pragmatic promotion of Blue Growth such as offshore wind energy together with designation of marine protected areas were the main drivers behind these regulatory changes. Thus, although both Blue Growth and environmental protection objectives were important, a functional and sectoral, rather than a systemic and integrative, approach was adopted. Moreover, according to sources at the Renewable Energy Department of the Energy Ministry and at the Ministry of Environment (2016), the review of the law on renewable energy that was driven by the expansion of offshore wind energy made it difficult simultaneously and in-depth to analyse how to transpose the MSP Directive.

In contrast, Latvian authorities initiated its MSP framework later than Lithuania. While the key components of the Lithuanian framework were elaborated in 2012–2013, the formative period in Latvia was about a year later, in 2014–2015. Because the MSP Directive came into force when the Latvian authorities were involved in the most intensive work to elaborate the country's national regulatory framework, the MSP Directive (together with the Marine Strategy Framework Directive) became a significant point of departure in Latvia. The focus on those two Directives was emphasised by our sources in the ministries, as well as by scientists and NGO representatives. Thus, rather than extending existing functional zoning jurisdictions as in Lithuania, Latvia chose to rely more heavily on the systemic principles of the Ecosystem Approach that recent EU Directives place in focus.

6.1.1. Conclusion

The elaboration of MSP frameworks in both Lithuania and Latvia is still in its early phase, and it remains to be seen how planning trajectories will unfold at later stages. Although the planning approach adopted is only one of many factors influencing outcomes in national MSP governance arenas, it is likely that path dependencies will make the initial planning path embarked upon important also in the future. Arguably, the spacious boundaries of the MSP governance arena allowed timing to become a significant factor in the early transposition processes, where in Lithuania a functional zoning approach was chosen, whereas in Latvia a system-oriented model was adopted. These differences in planning perspectives between the two countries may lead to challenges when transnational coordination is, or will be, called for, because zoning approaches rely on the assumption that spatial separation can lead to efficient management and adequate goal achievement, whereas the conceptual fundament of ecosystem approaches is that social and ecological systems are interdependent (Hassler et al., 2018).

6.2. Organisation – when transnational interfaces do not match ⁸

The MSP Directive stipulates that Member States are required to identify a contact point for marine spatial planning, a Competent Authority. The legal status of the Competent Authority, responsibilities, and mechanisms for facilitation of coordination with adjacent Member

States and Third countries, shall be communicated to the EU Commission. The main reason why Member States had to appoint a Competent Authority was to facilitate transnational communication and coordination. The following example from Sweden and Denmark illustrates how the organisation of national MSP frameworks can differ substantially between neighbouring countries, despite close historical ties and extensive collaboration. These differences have made transnational coordination difficult, at least during the initial development of national frameworks.

The Swedish Competent Authority is the Ministry of Environment and Energy by way of the Swedish Agency for Marine and Water Management, while in Denmark, the Ministry of Business and Growth by way of the Danish Maritime Authority is the Competent Authority. Planning is more decentralised in Sweden than in Denmark. One important reason why the Swedish MSP framework has evolved in a more decentralised direction compared with that in Denmark is the strong position of municipalities in Sweden. The Swedish Constitutional Law (“Grundlagen”) grants municipalities substantial political control, and their taxation rights provides them with considerable resources. Moreover, there is an overlap in competence of 11 Nautical Miles between central and municipal governments (Planning and Building Act, 1987), where both levels have planning competence. These circumstances give Swedish municipalities significant influence over outcomes in coastal areas. Danish municipalities, on the other hand, do not have a corresponding competence, which results in less local influence over adjacent waters in coastal municipalities.

These differences between Swedish and Danish organisation of MSP have resulted in divergent manoeuvring within the boundaries of the governance arena. Municipal policy-makers on the Swedish side exert considerable influence over local marine planning and are often proactive in agenda-setting, whereas municipal policy-makers in Denmark rather act as stakeholders among others. For example, BAL-TSPACE case studies on MSP initiatives by the County Administrative Board of Scania in the Sound area between Sweden and Denmark show how Swedish municipal experts have been reluctant to act on behalf of their municipalities before having checked with local policy-makers, even though the County Administrative Boards are tasked to monitor local planning.

There are several differences between the countries' political-administrative systems at the central level that have influenced how national MSP frameworks have evolved. While Ministries in Denmark have direct influence over central administrative authorities and can influence individual cases, this is not allowed in Sweden. Thus, whereas Danish Ministries can intervene directly, Swedish Ministries control administrations in more indirect ways, primarily through laws and government ordinances. Moreover, responsibilities for environmental and coastal planning among authorities have repeatedly been reorganised in Denmark during the last decade: First by abolishing regionalised county boards with environmental expertise and relocating this competence with the national authority for the environment, and then by restructuring the environmental authority further and relocating responsibility for MSP with the Maritime Authority. These reorganisations seem to have shifted political influence over the national MSP in Denmark further upwards, at least temporarily.

6.2.1. Conclusion

These few observations of differences between Swedish and Danish MSP frameworks provide a background to our observations of ineffective communication across national borders, which in turn can make transnational coordination challenging. For example, despite the designated Competent Authorities, it has sometimes been difficult to know who to contact in the other country; complaints have been raised regarding the inclusion of stakeholders in consultations on offshore wind energy, and the Swedish authorities have argued that the application of the Espoo Convention procedure regarding Danish planning of sand extraction was inadequate. It seems to be the case that the

⁸ This section builds extensively on Morf and Strand (forthcoming).

evolving national MSP frameworks in these two countries do not differ only because of divergent domestic planning approaches, but also because the MSP Directive is being implanted into different organisational structures. The broad boundaries of the MSP Directive – and the resulting spacious governance arena – may facilitate transposition, increase domestic legitimacy, and make implementation more efficient, but these gains can come at the price of increasing transnational coordination costs. To what extent networks, contacts, and sectoral forums bridging national borders will reduce such costs in the future while still honouring national differences, is difficult to tell.

6.3. Sustainability – balancing competing objectives⁹

Sustainable development constitutes the overarching objective in the MSP Directive, and economic, social and environmental aspects shall be considered by the Member States when implementing the Directive. While all Member States are urged to adopt the systemic Ecosystem Approach for the protection of Baltic Sea ecological integrity (MSPD Article 3: 1) and are simultaneously encouraged to promote economic development in maritime sectors, it is explicitly stated that each Member State determines how “... different objectives are reflected and weighted in their maritime spatial plan or plans” (MSPD Article 5: 3).

Since it is not stipulated how to balance competing claims in the MSP governance arena, it can be expected that Member States will design, or end up in, sustainability strategies that reflect domestic prioritisations rather than a shared stringent, robust and coherent interpretation of sustainable development. The examples of Lithuania/Latvia on the one hand, and Sweden/Denmark on the other hand, illuminate in what ways divergent domestic prioritisations on sustainability have influenced how national MSP frameworks evolve.

6.3.1. Lithuania and Latvia

Even though the Latvian MSP framework may lean slightly more towards system-oriented protection of the environment than towards promotion of Blue Growth compared with the more traditional zoning approach adopted by Lithuania, it is still an open question whether domestic prioritisations will continue along these trajectories. The adoption of the Ecosystem Approach as a foundation for the Latvian MSP framework implies that the EU governance arena on MSP is more narrowly circumscribed by national policy, which defines the boundaries for Blue Growth initiatives. Because of, among other factors, the relatively limited Blue Growth pressure during the formation of the Latvian MSP framework, the timing in relation to the MSP Directive entering into force, and the fact that a non-profit organisation (the Baltic Environmental Forum) coordinated the drafting process, the Ecosystem Approach became the main fundament of the framework.

In Lithuania, on the other hand, the decision to extend existing legislation, the expert-driven process of formulating a national MSP framework, and the need to accommodate pressures from offshore wind energy initiatives led to a policy foundation in functional zoning. In this framework, prioritisations of competing resource uses are made in each functional zone to allow for multiple uses, including the designation of protected areas. However, functional zoning does not necessarily mean that sustainability will be more loop-sided towards Blue Growth, compared with in Latvia. Arguably, investments in offshore wind energy are often part of sustainability strategies to reduce dependence on carbon-based energy sources. Thus, even though offshore wind farms and marine protected areas may compete in space, this example shows that the distinction between economic and ecological sustainability dimensions can be problematic to uphold.

⁹This section builds extensively on Morf and Strand (forthcoming) and Blažauskas et al. (2016).

6.3.2. Sweden and Denmark

In Sweden and Denmark, balancing environmental protection and Blue Growth is quite dissimilar compared with in Lithuania and Latvia. BALTSFACE in-depth case studies showed that the two countries balance environmental protection and Blue Growth objectives in dissimilar ways (Hassler et al., 2018). According to our sources, these differences can be partly related to how use permits are managed.

Denmark has a simplified application procedure for Blue Growth projects such as wind power development and sand extraction. Only one authority needs to be contacted when applying for a permit (a one-stop-shop) and important parts of the environmental impact assessment have been made beforehand (sector planning). Thus, the applicant only needs to follow the criteria determined for the area in order to acquire a permit. In contrast, the Swedish system is not as streamlined for developers. Swedish strategic planning consists of national sector priorities and municipal comprehensive plans in territorial waters. The priority areas established through planning have not been subject to environmental assessment beforehand. Moreover, permits for activities such as dredging or dumping of material must be applied for from other authorities.

The differences in how permits are managed in Denmark and Sweden exemplify how differing domestic processes can be related to how environmental protection and Blue Growth is balanced. However, it has not been possible to determine whether these differences were caused by dissimilar political priorities on how to balance sustainability objectives, or whether organisational differences rather have caused outcomes to diverge.

6.3.3. Conclusion

Even though the MSP Directive establishes the outer boundaries for the governance arena by forcing Member States to formulate national planning frameworks, policy processes of balancing environmental and economic objectives remain incremental and evolving, rather than strategically planned. Thus, it cannot yet be determined whether the overarching objective in the MSP Directive to promote sustainable development will lead to a closer alignment of balancing ecological, economic, and social dimensions within and among Member States in the Baltic Sea region, or whether diversity will continue to increase over time. To the extent that diversity in this area expands, transnational coordination challenges are likely to increase as well.

6.4. Stakeholder inclusion – the importance of trust and informal consultations¹⁰

Competing interests, uncertainties, inadequate or lacking information, and other factors tend to make it complicated to design marine spatial plans. Therefore, the MSP Directive requires Member States to “... establish means of public participation ...” (Article 9) so as to promote high quality in plans. Effective stakeholder participation can allegedly expand knowledge boundaries, and thereby improve decision-making quality (UNEP & GEF-STAP, 2014; Gopnik et al., 2012). Furthermore, stakeholder participation can facilitate implementation, especially if undertaken in the early phases.

However, the Directive does not specify how participation mechanisms should be designed in the national frameworks. It only states that: stakeholders and the public shall be informed, consultations shall occur early in the elaboration of the plan, general EU guidelines should be observed, and stakeholders and the public shall have access to the final plan. This leaves considerable room to manoeuvre for Member States deciding on critical factors such as who to invite, how many consultations to undertake, how to structure consultations, and to what extent stakeholders and the public are allowed, or indeed encouraged,

¹⁰This section builds extensively on Gee (2016) and Piwowarczyk et al. (2016).

to influence the plan, including its implementation. The following examples draw on BALTSAPACE case studies on MSP consultations in Mecklenburg-Vorpommern (Germany), and on more specific stakeholder consultations with fishery representatives in Poland. It is shown that mechanisms can differ substantially among Member States, not only regarding formal procedures, but as importantly, concerning contentions among parties involved.

6.4.1. Mecklenburg-Vorpommern

The potential for adaptive learning is possibly the most interesting aspect of how MSP stakeholder consultation processes have evolved in Mecklenburg-Vorpommern. The maritime spatial plan is part of a wider spatial development programme for the state's territory. Formal public consultation is mandatory for any revision of this plan. In 2005, a maritime section was included in the regional development programme. During the formal consultations, maritime aspects were not given much attention, partly because the topic was new to most stakeholders and there were few truly contentious maritime issues that the plan had to deal with. Initial consultations (2005) were primarily held with public authorities and ministries, and only later with business organisations, NGOs, and the public. However, technical expertise and NGOs were invited to informal meetings so as to pave the way for subsequent formal agreements. Thus, although formal consultations were required, these were primarily important for sealing informal agreements reached *before* the formal consultations.

When the Plan was revised in 2016, domestic contexts had changed considerably. The expansion of offshore wind energy created tensions among stakeholders, including environmental NGOs and the public. Informal expert consultations were held in order to identify ecologically sensitive areas that had to be completely protected. Specific restrictions were placed on other areas after having assessed sectoral demands step by step. However, when the first draft designation of areas was made public, it met fierce resistance from stakeholder groups ranging from nature protection activists and fishermen, to tourism, shipping, military, and citizen initiatives. The most important objection concerned how offshore wind farms would influence tourism and seascapes. Eventually, the area set aside for off-shore wind energy was reduced to less than a third of what had been suggested in the first plan.

6.4.2. Polish fisheries

Although the Polish MSP framework is under development, stakeholder consultations seem to unfold in somewhat different ways compared with in Mecklenburg-Vorpommern. Some differences probably depend on the difficulties in comparing conditions at state levels in Germany with how Polish authorities interact with the fisheries sector. Nevertheless, these two examples shed light on how stakeholder consultations can be designed and evolve in quite different directions. While the Mecklenburg-Vorpommern case showed that stakeholder protests and opinions can influence outcomes, consultations between the fishery sector and authorities in Poland have suffered from low levels of mutual trust, thereby muting the informal contacts that are important to make formal planning effective.

Contacts from the Polish fishery sector have argued that the initial consultations were fundamentally flawed.¹¹ Views such as “... why should I attend [public] consultations ... All they [the organisers] want is the list of attendance and organisations involved” were commonly expressed in the BALTSAPACE case studies. Furthermore, it was claimed that not all fishery stakeholders were invited to meetings or even informed about them, documentation was not distributed in advance, and it was not possible to influence meeting agendas. Others felt unfairly treated, because representatives of the offshore wind energy and shipping sectors were allowed to influence outcomes too much.

¹¹ It should be noted that these negative perceptions were possibly influenced by previous experiences of interaction with fishery authorities.

While representatives from the fishery sector were critical of how the consultations were carried out, the Maritime Authority expressed more positive views. Given the early phase of the MSP process, feedback from stakeholders (approximately 30 percent of them responded to mail requests) was described as quite successful by the Maritime Authority. However, sources at the Maritime Authority also expressed feelings of uncertainty regarding how consultations ought to be performed and what their most important objectives were. Some sources argued that the limited knowledge among fishermen about how “MSP works” makes it difficult to reconcile conflicting sector interests. Arguably, at least part of the problem has been that the respective expertise among fishing communities and fisheries administration was not mutually respected. To what extent this depends on mistrust from historic experiences or reflects more general political power hierarchies in Poland is difficult to tell.

6.4.3. Conclusion

Despite the shared governance arena provided by the MSP Directive, stakeholder inclusion has followed different trajectories in the cases of Mecklenburg-Vorpommern and Polish fisheries. Based on the in-depth case studies underlying this section, mutual trust and informal pre-consultation seem to be important components for stakeholder participation to be effective. Arguably, these favourable conditions are likely to be harder to establish in some national settings, than in others. One important lesson from German experiences is that stakeholder consultations need to go beyond statutory requirements in order to be effective. Ideally, they include informal contacts with stakeholders throughout the process, and not just during the actual drafting of the plan. Another lesson from Germany is that building trust takes time and effort, not least by the planning authority. While offshore wind energy became more contentious in the 2016 consultations than in 2005, it was also indicative of greater public involvement. Because a compromise was achieved, further trust was built. In issue-areas such as fisheries and offshore wind energy where measures taken in one country may affect stakeholders in another country, stakeholder consultations across country borders can be needed. Integrative consultation mechanisms are likely to be especially challenging design and undertake when divergent consultation arrangements have emerged in adjacent countries.

6.5. Summary of findings

Although the Ecosystem Approach has been firmly established in most contemporary policy documents on environmental protection, domestic context and planning experiences influence how MSP frameworks unfold in Member States and to what extent systemic approaches are embraced. It was shown that timing can be one factor, among others, that can influence outcomes, such as in the case of Lithuania and Latvia. While the formulation of national MSP frameworks naturally is focused on internal domestication of the Directive, it is important to identify emerging inefficiencies caused by divergent planning approaches, and to assess whether improved transnational coordination is called for.

More general differences among countries in terms of political and administrative organisation can in similar ways lead to transaction costs that make coordination challenging. Transnational coordination between authorities in different sectors and located at different institutional levels (local, state, or national) is especially complex. The divergent distribution of competence between authorities managing MSP in Sweden and Denmark was shown to create situations where the authorities in one country sometimes must interact with authorities in the other country that belongs to a different sector and is located at a different level. Coordination between, for example, EPAs in two countries on a particular environmental problem tends to be less complex compared with when a national authority on management of natural resources in one country has to coordinate procedures on

environmental protection with, say, a municipal authority in another country. Not only do experience, expertise, reorganisation of authorities, and resources differ in such cases, but so does decision-making competence.

Coordination of sustainability objectives is somewhat different, as shown in the example of Lithuania/Latvia and Sweden/Denmark. First, the conceptual unclarity of the sustainability concept facilitates political agreement but may also mask disagreements. In such cases, disagreements are likely to emerge at later stages and create problems that would have better been dealt with earlier. Second, although ideal coordination solutions (beneficial to all, in ecological, economic, and social dimensions) may exist in theory, in real-world situations they are typically hard to achieve. Because of the plethora of transaction costs and collective action challenges that exist in real-world situations, many ideal solutions do not leave the realm of theory. This does not mean that improvements are impossible, but that challenges need to be better understood. Only then can adequate support in the form of realistic cost-sharing schemes, improved information, mechanisms to curb strategic behaviour (for example, free-riding), and changed incentives be provided. Third, differences in how environmental protection and natural resource are prioritised in different countries – because of “real” differences in ideology or because of varying vulnerability to ecosystem disturbances or dependence on natural resources – are often hard to reconcile. Although national differences as such need not create problems, transaction costs for coordination are likely to increase with policy diversity.

The MSP Directive does not specify how stakeholder consultations should be designed either in domestic or in transnational settings.¹² It was shown above that consultations in Mecklenburg-Vorpommern and in the Polish fishery sector have evolved in quite different ways. When environmental protection, natural resource use, or interconnected infrastructure require transnational collaboration, then stakeholder consultations often need to be designed and undertaken across country borders. Arguably, it would be valuable to have a single consultation process that involved stakeholders in all Member States affected. Stakeholders and the public would then have reasonably similar opportunities to have a say on how to manage conflicting interests. However, the Mecklenburg-Vorpommern/Poland case indicates that such transnational consultation mechanisms are difficult to establish and to maintain. Trust aspects, not only citizens' trust in policy-makers and public authorities but also public authorities' trust in stakeholders, and possibly also stakeholders' trust in scientists, are likely to become increasingly important to address, in both domestic and transnational settings.

7. Discussion

The broad scope of the MSP Directive has contributed to a substantial degree of diversity among national MSP frameworks among Member States in the Baltic Sea region, because of the wide national governance arenas for MSP. The HELCOM-VASAB Maritime Spatial Planning Working Group was established as an attempt to find common ground and build trust among ministries and experts in the Baltic Sea Region on, for example, how the Ecosystem Approach and sectoral planning approaches can be brought closer together through an exchange of ideas and experiences. However, although such common ground is important, BALTSPACE findings indicate that the move towards broader EU Directives (*new generation* directives) represents a novel way to handle tensions between regional cohesion and national contextualisation. The drivers behind the emergence of *new generation* directives – not only in relation to MSP, but in other areas as well – are

¹² Poland and Denmark will soon consult neighbouring countries, as part of their MSP framework. The experiences made in these consultations are likely also to be valuable for other Member States.

multifarious, but they seem to reflect a broad move towards multi-level and multi-actor governance, decentralisation, and subsidiarity.

This implies that comprehensive streamlining of national MSP frameworks in the Baltic Sea Region may not be advisable, since this could counteract developments towards more inclusive governance modes. Instead, more focus can initially be placed on identification of low-hanging fruit such as concrete transnational coordination needs at bilateral or sub-regional levels that are not overly complex, or where coordination is likely to significantly benefit all involved countries. Successful undertakings can then serve as inspiration for other constellations of actors, addressing other coordination challenges. The most challenging coordination tasks involving, for example, large groups of countries, advanced cost-sharing schemes, countries with particularly dissimilar MSP frameworks, and divergent prioritisations on environmental protection and Blue Growth, are better undertaken at later stages, and only if the expected benefits are sufficiently large.

The HELCOM-VASAB Maritime Spatial Planning Working Group can potentially bring national governance arenas closer together as a forum where transnational coordination challenges are addressed, and the experiences gained are disseminated. Moreover, the Working Group may be, or may develop into, a hub for transnational MSP expertise, to which individual countries can turn when drafting bilateral coordination projects. This function is especially valuable as a mechanism to reduce transaction costs, when directly affected Member States experience efficiency losses from a lack of coordination or coordination that is not working properly. However, rather than attempting to establish shared MSP problem-solving templates, it might be more fruitful to focus on generic aspects such as capacity-building, development of common “process ethics”, and to extend and refine national governance arena domains at local levels.

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